

# City of Brookings

## MEETING AGENDA

### **CITY COUNCIL**

**Monday, November 13, 2017, 7:00pm**

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

The City Council will meet in Executive Session at 6:00 PM, in the City Manager's office, under the authority of ORS 192.660 (2)(d) "To conduct deliberations with persons designated by the governing body to carry on labor negotiations" and under the authority of ORS 192.660 (2)(i) "To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing."

#### **A. Call to Order**

#### **B. Pledge of Allegiance**

#### **C. Roll Call**

#### **D. Ceremonies**

1. World Candle Lighting Day Proclamation [Pg. 3]
  - a. Proclamation [Pg. 4]
  - b. The Compassionate Friends organizational information [Pg. 5]

#### **E. Scheduled Appearances**

1. Curry Community Health (Ken Dukek) [Pg. 8]
  - a. Presentation [Pg. 9]

#### **F. Oral Requests and Communications from the audience**

1. Public Comments on non-agenda items – 5 minute limit per person.\*

#### **G. Staff Reports**

1. Azalea Park Tree Removal [Parks, Pg. 26]
  - a. Arboriculture International Excerpt [Pg. 30]
  - b. Western Pacific Tree Service Estimate (8 tree removal) [Pg. 40]
  - c. Western Pacific Tree Service Estimate (35 tree removal) [Pg. 42]
2. Possible Moratorium on Marijuana Dispensaries [City Attorney, Pg. 43]
  - a. City Attorney Memo [Pg. 44]
  - b. League of Oregon Cities Guidebook [Pg. 47]
3. Golf Course Property Tax [City Manager, Pg. 67]
  - a. Property Tax Statement [Pg. 69]
  - b. Letter dated March 31, 2017 to Kolen [Pg. 70]
  - c. Email dated March 20, 2017 from Garner [Pg. 75]
  - d. Letters dated April 1, 2015 to Kolen [Pg. 78]
  - e. Property Tax appeals forms [Pg. 80]
4. Brookings Harbor Community Theater Fee Refund [Parks, Pg. 88]
  - a. Fee refund email request [Pg. 89]
  - b. Park Use Application [Pg. 91]
5. Beat the Brewers Event Evaluation [City Recorder, Pg. 93]

- a. Evaluation [Pg. 94]
- b. Repayment [Pg. 95]
- 6. Rock the Chetco Event Evaluation [City Recorder, Pg. 96]
  - a. Evaluation [Pg. 97]

#### **H. Consent Calendar**

- 1. Approve Council minutes for October 23, 2017 [Pg. 98]
- 2. Accept TPAC minutes for September 14, 2017 [Pg. 102]
- 3. Approve Chetco Brewing Liquor License [Pg. 104]

#### **I. Informational Non-Action Items**

- 1. October Vouchers [Pg. 106]
- 2. Vacant Committee Positions [Pg. 110]

#### **J. Remarks from Mayor and Councilors**

- 1. Council Liaison Reports

#### **K. Adjournment**

\*Obtain Public Comment Forms and view the agenda and packet information on-line at [www.brookings.or.us](http://www.brookings.or.us), at City Hall and at the local library. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.





# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: November 13, 2017

Originating Dept: City Recorder

  
\_\_\_\_\_  
Signature (submitted by)  
  
\_\_\_\_\_  
City Manager Approval

---

Subject: Worldwide Candle Lighting Day Proclamation

Recommended Motion:

Motion to authorize Mayor Pieper to issue a Proclamation designating the second Sunday in December 2017 as Worldwide Candle Lighting Day.

Background/Discussion:

A representative of The Compassionate Friends Northwest Coast Chapter contacted staff requesting the proclamation and providing the verbiage.

Council issued a proclamation for this designation in 2016 as well as each year between 2010-2013.

Attachment(s):

- a. Proclamation
- b. Information about The Compassionate Friends organization

# City of Brookings *Proclamation*

**WHEREAS**, every year in the United States nearly 150,000 infants, children, teens, and young adults die and countless tens of thousands are born still or are miscarried; and

**WHEREAS**, we recognize that our children are our country's, our state's, and our city's most valuable resource; and

**WHEREAS**, the work of local chapters of The Compassionate Friends provides a caring environment in which bereaved parents, siblings, and grandparents can work through their grief with the help of others traveling the same road; and

**WHEREAS**, The Compassionate Friends Worldwide Candle Lighting the second Sunday in December has become a symbolic day when these children are remembered around the globe.

**NOW, THEREFORE BE IT RESOLVED**, that I, Jake Pieper, Mayor of the City of Brookings, do hereby proclaim the second Sunday in December 2017, as

## *Worldwide Candle Lighting Day*

**BE IT FURTHER RESOLVED**, that all residents are encouraged to observe this day by lighting a candle for one hour at 7 p.m. the second Sunday in December in support of bereaved families in the City of Brookings and participate in other appropriate activities in remembrance of all children who have died.

***In Witness Whereof***, I, Mayor Jake Pieper, do hereto set my hand and cause the official seal of the City of Brookings, Oregon, to be affixed this 13<sup>th</sup> day of November, 2017.

**THE COMPASSIONATE FRIENDS  
NORTHWEST COAST CHAPTER**

P.O. Box 1595, Brookings, OR 97415 (541) 469-5814

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

[info@tcfnorthwestcoast.org](mailto:info@tcfnorthwestcoast.org)

**MISSION STATEMENT**

***When a child dies, at any age, the family suffers intense pain and may feel hopeless and isolated. The Compassionate Friends provides highly personal comfort, hope, and support to every family experiencing the death of a son or a daughter, a brother or a sister, or a grandchild, and helps others better assist the grieving family.***

**STEERING COMMITTEE**

*Each person on this committee has lost one or more children, grandchildren or siblings. The Steering Committee handles the operation of our Chapter and facilitation of monthly meetings and annual events.*

**Danette Christie**  
Brookings, OR

**Georgia Cockerham**  
Brookings, OR

**Bruce Cockerham**  
Brookings, OR

**Sandy Garber**  
Brookings, OR 97415

**Florence Johnson**  
Brookings, OR 97415

**Larry Johnson**  
Brookings, OR 97415

**Don McArthur**  
Crescent City, CA

**ADVISORY BOARD**

*Each Advisory Board member is an ambassador to his or her own professional community, providing information and referrals.*

**Dan Brattain, President**  
Cal-Ore Life Flight  
P.O. Box 1986  
Brookings, OR 97415  
[dan@cal-ore.com](mailto:dan@cal-ore.com)

**Carlene Bettencourt, RN, PhD**  
Case Management  
Sutter Coast Hospital  
800 East Washington Blvd.  
Crescent City, CA 95531  
[carlenebet@hotmail.com](mailto:carlenebet@hotmail.com)

**Dr. Teresa Costa, Psy.D**  
Costa Clinical Psychology  
625 Spruce Street  
Brookings, OR 97415  
541-412-0700  
[teresacostapsyd@gmail.com](mailto:teresacostapsyd@gmail.com)

**Lynne Meininger, LCSW**  
Bereavement Coordinator  
Coastal Home Health & Hospice  
POBox 142  
Port Orford, OR 97465  
[Lynne.meininger@coastalhhh.org](mailto:Lynne.meininger@coastalhhh.org)

**Travis Sandusky, General Mgr.**  
Redwood Memorial Chapel  
1020 Fifeld  
Brookings, OR 97415  
(541) 469-9112  
[travis@redwoodmemorial.net](mailto:travis@redwoodmemorial.net)

**Alice Sandusky, RN**  
Brookings, OR 97415  
[travisalice@gmail.com](mailto:travisalice@gmail.com)





**The  
Compassionate  
Friends**  
Supporting Family After a Child Dies

## *How Your Donation Is Making A Difference*

*When a child dies, at any age, the family suffers intense pain and may feel hopeless and isolated. The Compassionate Friends provides highly personal comfort, hope, and support to every family experiencing the death of a son or a daughter, a brother or a sister, or a grandchild, and helps others better assist the grieving family.*

The Compassionate Friends (TCF) is a national nonprofit, self-help support organization, offering friendship, understanding, and hope to families grieving the death of a child of any age, from any cause. There is no religious affiliation, and no individual membership fees or dues are charged. All bereaved family members are welcome. Founded in England in 1969, TCF was established in the United States in 1972, with 501(c)(3) not-for-profit incorporation in 1978, under which provision the organization's more than 650 local Chapters also operate. TCF operates as separate entities in at least 30 countries around the world.

### *Organization*

- In the 40 years since its incorporation, TCF/USA has grown from 40 Chapters to nearly 700, with locations in all 50 states plus Washington D.C., Guam, Saipan, and Puerto Rico. More than 4,000 volunteers who are bereaved parents, siblings, or grandparents serve as Regional Coordinators, Chapter Leaders, meeting facilitators, Newsletter Editors, workshop presenters, and National Conference coordinators. An additional 300 volunteers moderate and support our growing online presence which includes our public Facebook page, 25 private Facebook groups and our online support chat rooms.
- The Compassionate Friends has a 13-member national volunteer Board of Directors consisting of bereaved parents, siblings, and grandparents who are elected for one or two three-year terms by the general membership.
- The Compassionate Friends National Office is located in Oak Brook, Illinois. Our paid staff includes the Executive Director who works in partnership with the board and is supported by six full-time and two part-time staff members.

### *Examples of Services Provided by the National Organization*

- In 2016, more than one million families accessed one or more of our services. In addition, our resources are regularly accessed by grief professionals, social service departments, academic institutions, hospitals, hospice, religious entities and other grief organizations. The TCF National Office publishes more than 40 bereavement brochures (in English and Spanish) on most aspects of grief following the death of a child.
- TCF's national website ([www.compassionatefriends.org](http://www.compassionatefriends.org)) has more than 100,000 visitors each month and provides resources and information. In addition, TCF's National Facebook Page communicates with more than 275,000 followers and continues to grow.
- TCF offers an Online Support Community with chat rooms open every day, as well as 25 private Facebook groups covering many topics related to the death of a child.



- TCF's flagship magazine, *We Need Not Walk Alone*, is published and distributed digitally. It features articles from top grief professionals as well as individual stories of hope and healing, and provides the latest in grief related information. In addition, a monthly e-newsletter is sent to more than 45,000 people.

## *How Do We Do It?*

- TCF's 2017 budget is over \$3 million, with 85 percent allocated for services to Chapters and the public. Administrative and fundraising costs comprise only 15 percent of the organization's total operating budget.
- TCF has been awarded The Independent Charities Seal of Excellence for being able to certify, document, and demonstrate on an annual basis that it meets the highest standards of public accountability, program effectiveness, and cost effectiveness. Only 2,000 of the one million charities operating in the United States today have been awarded this Seal. All contributions to The Compassionate Friends are tax-deductible.

## *Role of Local Chapters*

- Each month more than 20,000 grieving family members attend meetings at our nearly 700 local Chapters. Monthly meetings provide a caring environment where the bereaved can work through their grief with the help of others who have "been there."
- Chapters are organized and facilitated by local members trained by the national organization. In addition to monthly meetings, Chapters provide community outreach and education, publish local newsletters, websites, Facebook Pages, and offer special programs.

## *Signature Events*

- *National Conference* — In 2017 TCF hosted its 40<sup>th</sup> Annual National Conference in Orlando, Florida with record attendance of over 1,400 people. This three-day healing event rotates to a different city each year. In an environment that encourages parents to talk about their missing children and bond with a community of similarly grieving families, the conference also provides more than 100 workshops, special programs, ceremonies, and some of the top speakers on grief and loss.
- *Walk to Remember* — Started 17 years ago on the final day of our National Conference, more than 1,000 parents, grandparents and siblings carrying pictures, banners and signs with the names of their lost children participate in our Annual Walk to Remember. At the same time, hundreds of our Chapters host an annual walk in their local communities.
- *Worldwide Candle Lighting* — On the 2<sup>nd</sup> Sunday in December every year, The Compassionate Friends hosts the largest continuous lighting of candles in the world. Started in 1997 to commemorate the first Children's National Memorial Day, TCF initiated the Worldwide Candle Lighting. What began as a few gatherings throughout the United States has grown into a worldwide commemoration featuring thousands of events around the world. At 7 PM local time, candles are lighted in each time zone creating a virtual ring of light around the globe.

*It is our hope that ... "everyone who needs us will find us,  
and everyone who finds us will be helped."*

For further information, contact The Compassionate Friends, Inc.

1000 Jorie Blvd, Ste. 140 • Oak Brook, IL 60523

Toll-free: (877) 969-0010 • Fax: (630) 990-0246

E-mail: [nationaloffice@compassionatefriends.org](mailto:nationaloffice@compassionatefriends.org) • Website: [www.compassionatefriends.org](http://www.compassionatefriends.org)



Facebook: [www.facebook.com/TCFUSA](https://www.facebook.com/TCFUSA) • Twitter: <https://twitter.com/TCFofUSA>

# **CITY OF BROOKINGS**

## **COUNCIL AGENDA REPORT**

Meeting Date: October 23, 2017

Originating Dept: City Recorder

  
\_\_\_\_\_  
Signature (submitted by)  
  
\_\_\_\_\_  
City Manager Approval

---

Subject: Curry Community Health Presentation

Recommended Motion:  
Information Only

Financial Impact:  
None.

Background/Discussion:  
Staff was contacted on October 10 by a representative from Curry Community Health (CCH) requesting to be included on the October 23, 2017 City Council meeting agenda to make a presentation regarding the services CCH provides.

CCH also provided a packet of information that will be addressed in the presentation. It is attached here.

Attachment(s):  
a. CCH Presentation Packet





# Curry Community Health

February 1, 2013 – June 30, 2017

# Background Information

- Curry County developed a transfer agreement in conjunction with Oregon Health Authority and Addictions Mental Health Division to transition Curry County Public Health, Addictions, and Mental Health to an independent non-profit organization.
- Curry Community Health (CCH) is a nonprofit 501(c)3 private corporation with oversight from a volunteer Board of Directors that was created to support this transition.
- Curry County transferred the mandated duties and responsibilities of the Community Mental Health Program and Local Public Health Authority to CCH on February 1, 2013.
- Curry County appointed a Public Health Administrator (.25 FTE Curry County) that serves as the Public Health Director for CCH (.75 FTE CCH). Curry County retains the Public Health Authority and exercises that control by and through the Public Health Administrator.
- At the request of CCH, Curry County has designated a Community Mental Health Director that serves as the Behavioral Health Director for CCH.
- CCH has service locations in Brookings, Gold Beach, and Port Orford.



# Where are we today?

## Brookings:

- ✓ 517 Railroad – Support Services
- ✓ 615 5<sup>th</sup> Street – 7/10/17 – Integrated Services
- ✓ 625 Pioneer – School Based Health Clinic (SBHC)

## Gold Beach:

- ✓ 29692 Ellensburg – Goldrush Center –  
Integrated Services by 10/1/17
- ✓ 29821 Colvin Street – Behavioral Health
- ✓ 29845 Airport Way – MINDS Clubhouse
- ✓ 29833 Airport Way – Hammond House

## Port Orford:

- ✓ 1403 Oregon Street – Integrated Services



# Public Health & Medical Services

Encounter Type	2013-14	2014-15	2015-16	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	Total
Annual	201	153	159	10	14	9	9	8	4	15	20	5	13	9	11	127
Babies 1st	89	123	203	13	15	9	8	11	2	1	1	2	1			63
BCCP	28	13	10	1	1					2			2	1	1	8
Birth Control/Supply	71	13	21	3	1	2			1	1	1			0		9
BP Check		3	7	1		3	2	4								10
Cacoon	26	18	58	2		5	4				1	1	2			15
Child	364	420	390	5	76	25	53	15	6	10	21	15	10	21	9	266
Family Planning	316	382	380	21	36	23	24	33	25	38	27	34	32	44	26	363
Immunizations	1522	1281	1069	40	60	127	135	120	58	86	108	42	33	54	47	910
Injections	135	105	102	8	13	16	9	7	8	12	13	14	7	12	11	130
IUD	34	21	10	2	1	1	2	1				2				9
MCM	47	37	42	1	1								1			3
Nexplanon/Check	17	6	8	2	3	1	1		2			1	4	1		15
OMC/Preg Intake	28	10	2													0
Pregnancy Test	27	11	25	1	2	2	2		6	3	2	1	1	1		21
Adult Illness	0	303	1317	143	158	159	131	130	167	172	157	159	150	142	145	1813
New Patient	0	117	365	26	37	27	30	19	20	30	15	28	40	30	25	327
Other Service	28	10	22	4	6	1	1	3	1	6	1	2	1	3	4	33
Total	2933	3026	4190	283	424	410	411	351	300	376	367	306	297	318	279	4122

# Public Health Programs

13

- Environmental Health
- School-Based Health Center
- TB Case Management
- Public Health Emergency Preparedness
- Tobacco Prevention & Education
- Women, Infants and Children (WIC)
- Reproductive Health Program
- Child & Adolescent Health
- Immunizations
- Safe Drinking Water Program
- Community Health Worker
- Living Well With Chronic Conditions
- Prescription Drug Overdose Program
- Drug & Alcohol Prevention
- Special Projects – Drug & Alcohol Prevention

# Addictions Program

Encounter Type	2013-14	2014-15	2015-16	2016-17 Encounters	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	Total
U/A	850	1144	960	U/A	75	104	66	80	66	64	73	60	85	75	88	72	876
Assessment	250	259	271	Assessment	16	29	18	27	17	14	18	16	21	21	22	2	233
Assess Update	49	77	91	Assess Update	11	8	4	4	8	4	7	3	7	7	10	26	74
Case Management	13	50	112	Case Management	29	19	9	6	4	0	6	3	7	4	15	9	109
DC Plan	115	130	95	DC Plan	11	10	9	5	13	9	11	12	10	16	6	13	121
A&D Group	2514	2433	2524	A&D Group	188	230	175	227	182	183	224	172	209	148	175	142	2197
A&D Ind. Therapy	521	953	843	A&D Ind. Therapy	58	76	50	47	42	59	64	57	68	73	92	91	730
ISSP	18	33	264	ISSP	15	25	19	25	16	16	21	18	13	18	18	16	213
Anger Mgt. Ind.	38	33	12	Anger Mgt. Ind.	0	0	0	0	0	2	0	0	0	0	0	0	2
Anger Mgt. Group	19	0	0	Anger Mgt. Group	0	0	0	0	0	0	3	3	2	1	1	0	10
DVIP	120	149	153	DVIP	14	26	23	11	14	14	23	14	14	12	16	21	187
Gamble Assmt.	3	2	4	Gamble Assmt.	0	1	0	1	0	0	0	0	0	0	0	0	2
Gamble Group	15	53	5	Gamble Group	0	0	0	0	0	0	0	0	0	0	0	0	0
Gamble Individ.	15	23	31	Gamble Individ.	3	5	1	1	0	0	0	0	1	0	0	0	11
Other Service	248	5	2	Other Service	0	0	0	0	4	15	4	0	0	1	0	2	24
Total	4788	5344	5367	Total	420	533	374	434	366	380	454	358	437	376	443	394	4969

# Addictions Programs

- Individual Therapy
- Group Therapy
- Drug Screening
- DUII Education
- Case Management
- Discharge Planning
- Relapse Prevention
- Screening and Referral Services
- Anger Management (Individual & Group)
- Domestic Violence Intervention Program
- Parenting Classes
- Problem Gambling Services (Individual & Group)
- Gambling Prevention

# Mental Health Program

Encounter Type	2013-14	2014-15	2015-16	2016-17 Encounters	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	Total
Med Mgt.	236	227	980	Med Mgt.	171	208	202	190	204	206	158	136	122	143	161	150	2051
Med Records	71	88	127	Med Records	7	21	9	12	6	11	17	12	32	27	7	19	180
Therapy Med Mgt.	207	894	831	Therapy Med Mgt.	165	207	190	188	193	202	154	128	114	136	155	147	1979
Assessment Adult	322	408	609	Assessment Adult	52	72	58	47	60	55	55	51	74	65	74	57	720
Assessment Child	75	87	108	Assessment Child	7	10	19	15	11	12	9	16	14	19	12	11	155
Case Management	356	469	410	Case Management	35	25	35	15	41	72	72	74	77	61	86	95	688
Crisis	585	617	926	Crisis	64	80	70	82	95	76	58	78	78	90	64	59	894
Family Therapy	179	113	102	Family Therapy	0	0	1	3	0	0	4	0	1	3	1	2	15
Family + Client	52	180	110	Family + Client	8	6	7	5	6	9	2	7	13	8	20	7	98
Individual Therapy	1661	2400	3949	Individual Therapy	320	383	367	383	432	383	439	353	437	360	464	470	4791
ISSP	951	575	718	ISSP	47	75	64	86	60	62	73	81	107	103	111	60	929
Screen	436	784	187	Screen	1	2	2	2	1	3	4	0	0	0	0	0	15
Supported Employ	167	220	407	Supported Employ	38	42	33	23	36	38	42	42	47	33	49	48	471
Skills Training	107	224	933	Skills Training	76	77	77	76	80	77	111	91	108	101	152	94	1120
Psych Assess	57	117	203	Psych Assess	20	23	23	27	25	21	36	23	19	35	33	25	310
Community Support	2	34	25	Community Support	0	2	0	0	0	0	0	0	0	0	0	0	2
Environ Intervent.	7	561	839	Environ Intervent.	89	87	86	69	57	48	69	86	80	53	93	64	881
Other Service	589	586	1142	Other Service	126	200	232	187	251	296	277	252	248	328	384	325	3106
Total	6060	8566	12606	Total	1226	1520	1475	1410	1558	1571	1580	1430	1571	1565	1866	1633	18405

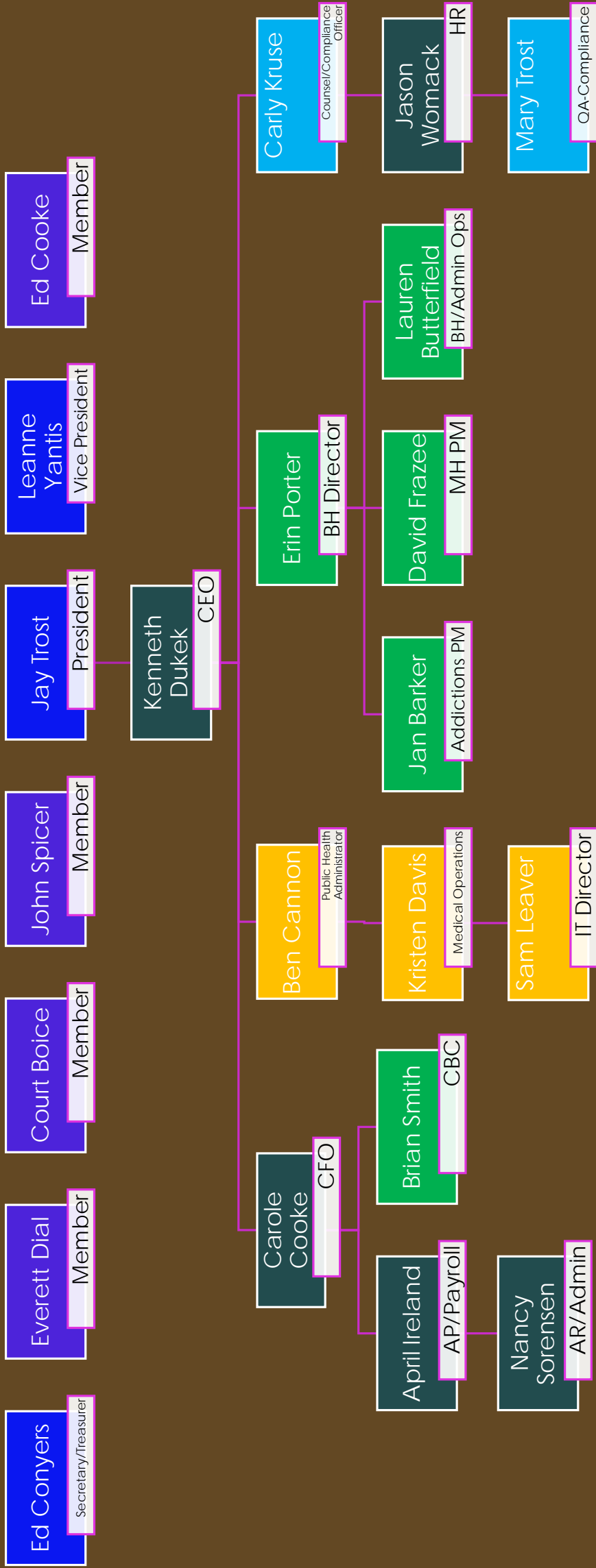
# Mental Health Programs

17

- Individual, Family, Couples, Group Therapy
- Psychiatric Services
- Case Management
- ABA
- Skills Training/Groups
- Supported Employment
- \*ACT – Assertive Community Treatment
- Wrap Around – Children
- EASA – Early Assessment Support Alliance
- School-Based Health Center
- \*Mobile Crisis
- Peer Support
- Drop-in Center – GB; Brookings by 1/1/18
- Jail Diversion Program

# Curry Community Health

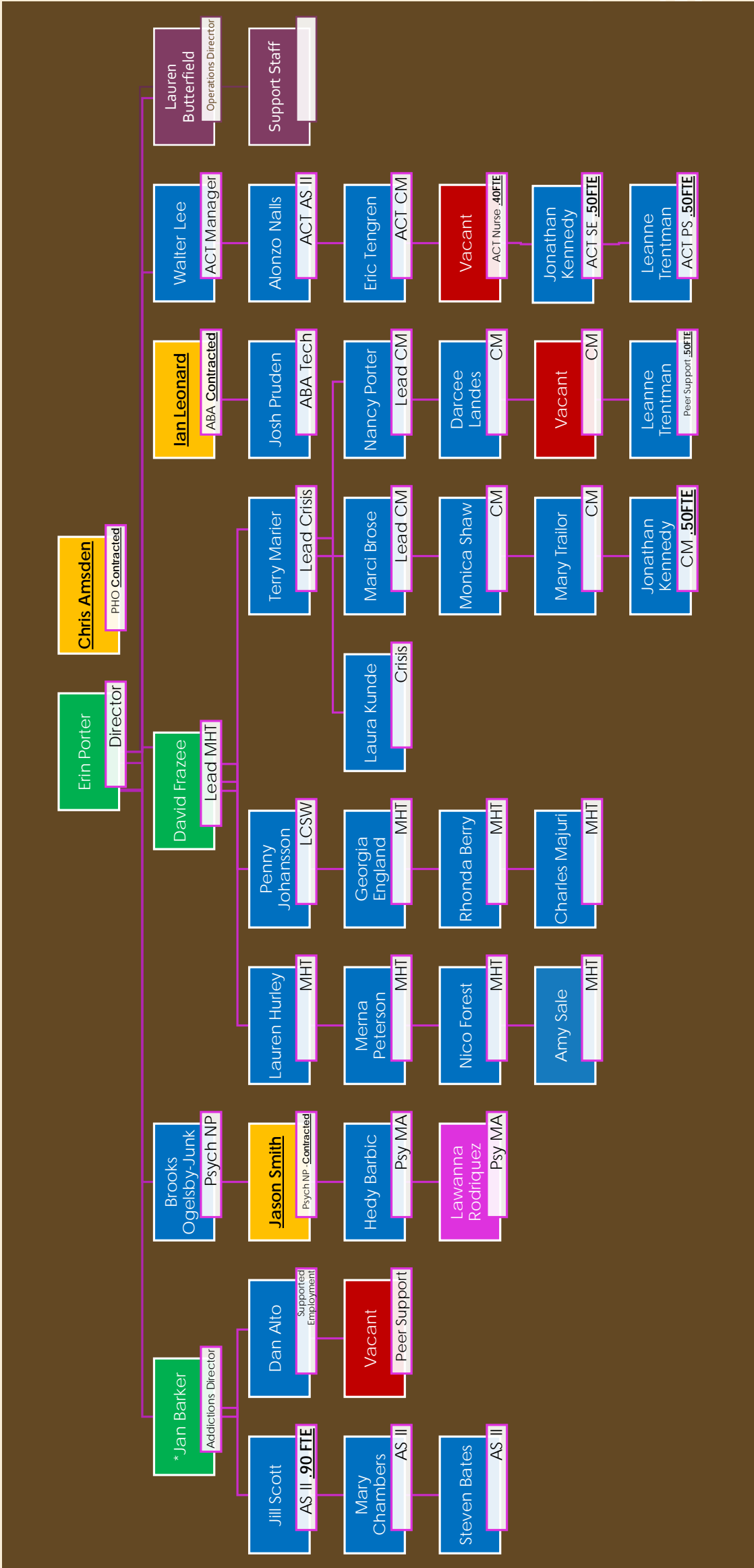
## Board of Directors & Administration





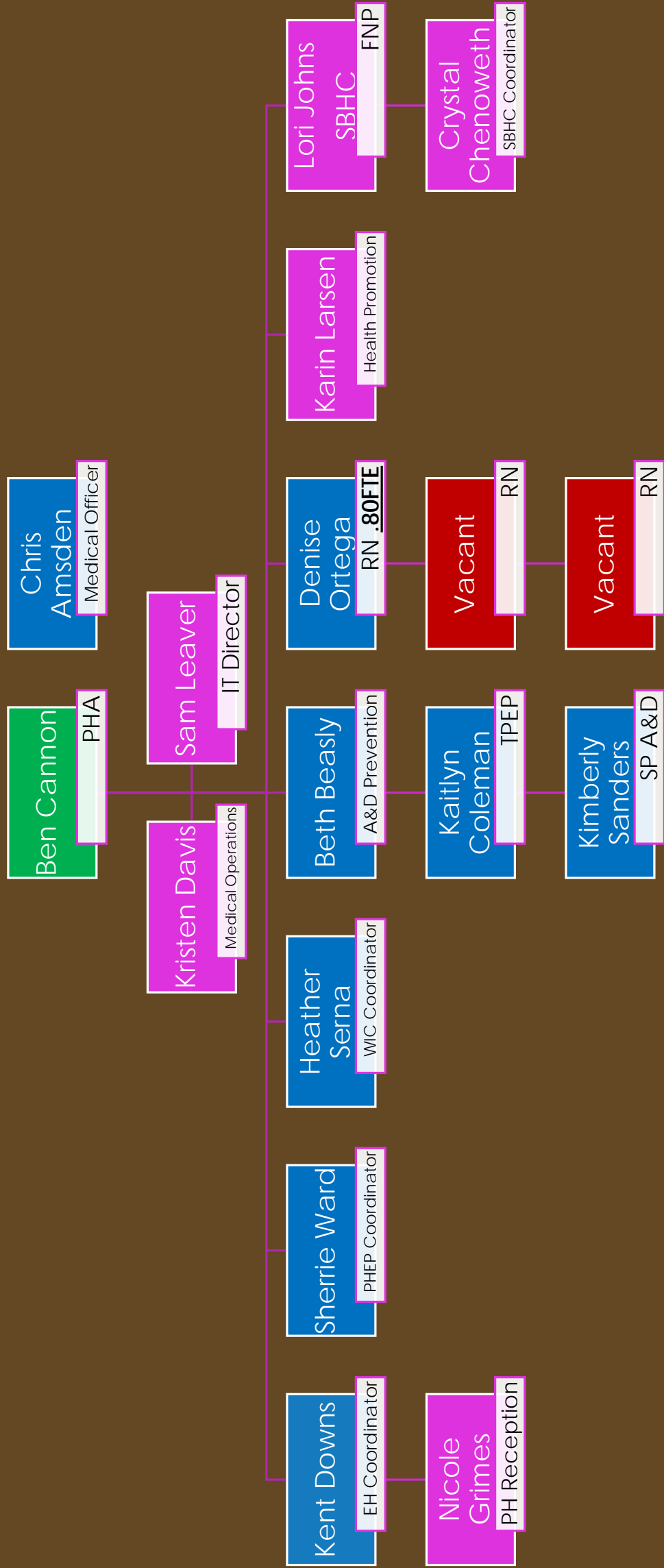
# Curry Community Health

## Behavioral Health



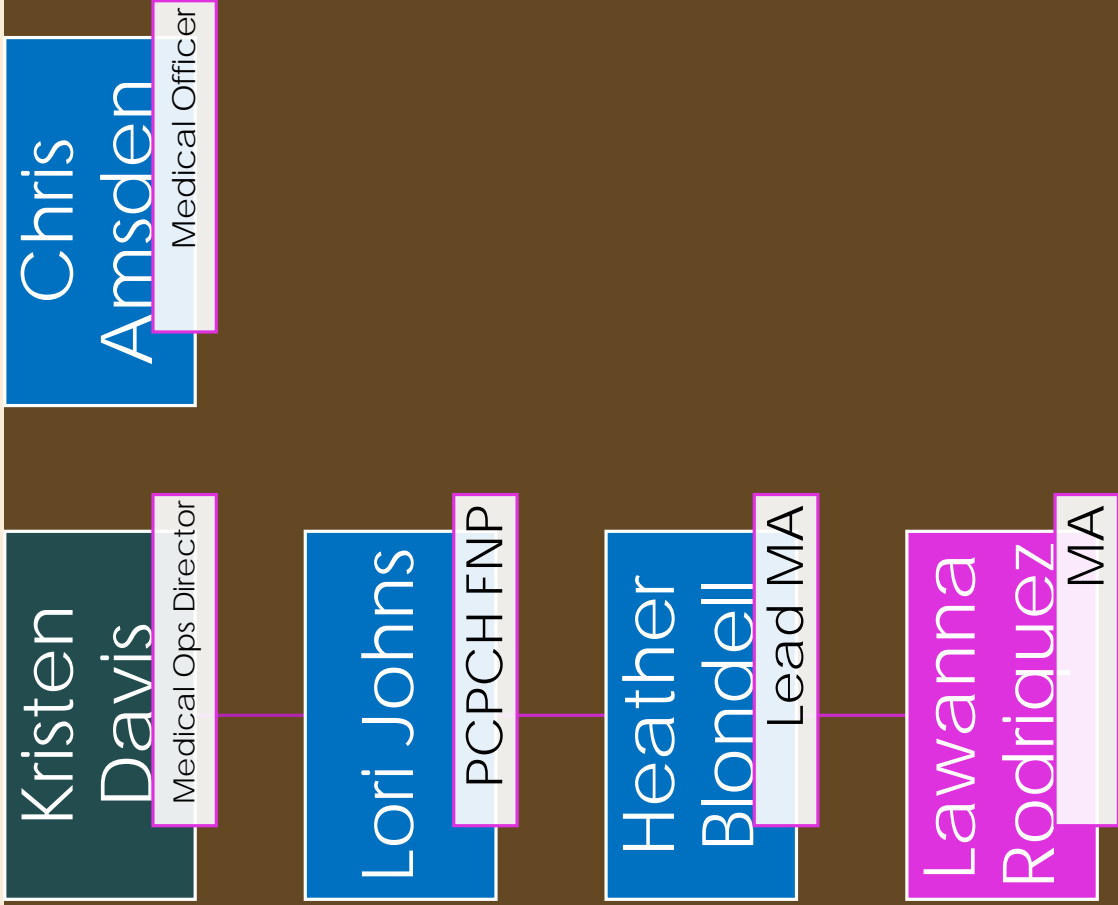
# Curry Community Health

## Public Health



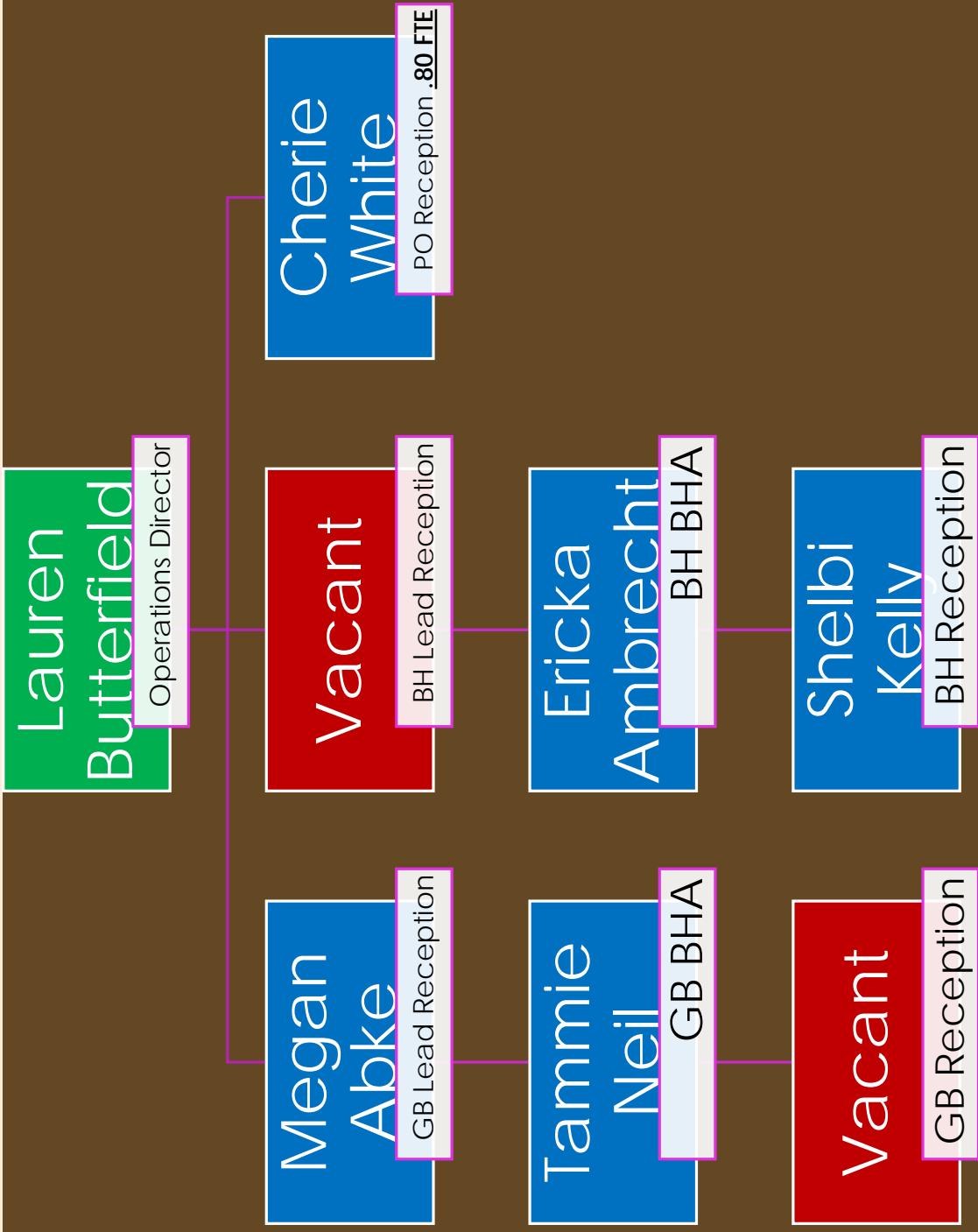
# Curry Community Health

## Primary Care



# Curry Community Health

## Support Staff



# Consumer Complaints

Program	2015-16	2016-17
Mental Health	23	33
Addictions	4	1
Public Health	3	3
Agency	3	3
Primary Care	0	8
Total	33	48

# Budget Outline 2017-18

Revenue		Admin	BH	PH/PC	Total
State Contracts		-	982,172	560,823	1,542,995
Third Party		-	769,000	522,667	1,291,667
CCO		-	3,490,000	30,000	3,520,000
Total Revenue		-	5,241,172	1,113,490	6,354,662
Expenses		Admin	BH	PH/PC	Total
Personnel - Salary		488,664	2,142,539	832,398	3,463,601
Personnel - Benefits		128,416	540,360	222,960	891,736
Materials/Services Costs		92,437	1,178,629	275,811	1,546,877
Total		709,517	3,861,528	1,331,169	5,902,214

# Curry County and CCH Projects for FY 2017-18

1. Work with Curry County to add Public Health Services to the Curry County Website. This will include contact information so that the public has access to departmental phone numbers and email.
2. Work with Curry County to add an office for Ben Cannon, PHA at the Curry County Annex to increase communication, awareness, and accessibility.
3. Work with Curry County to develop the sub-contract necessary to provide Public Health Services because OHA will not permit three-party contracts/IGA's after 12/31/17.
4. Work with Curry County to develop the enforcement codes necessary to support Environmental Health.

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: November 13, 2017

Originating Dept: Parks

  
Parks & Planning Manager  
  
City Manager Approval

---

Subject: Azalea Park Tree Removal

Recommended Motion: the following motions are prioritized with the first being the preferred recommendation by Staff.


1. Authorize the removal of 60 trees per the original Azalea Park tree removal work plan
2. Authorize the removal of 35 trees within the Azalea Park tree removal work plan area
3. Authorize the removal of 8 trees within the Azalea Park tree removal work plan area per recommendations in the French Report.

Financial Impact: The proposed contract with Western Pacific Tree Service to remove 60 trees in May 2017 is a zero sum contract. The City would receive no money for the trees harvested in this contract. The value placed on the 60 trees was \$21,000 which would be surrendered to the contractor in exchange for the work to remove the trees. The City did receive funds from the trees removed along Lundeen Road and proposes using a portion of those funds to replant designated areas within the tree removal work plan area.

Staff obtained a second proposal from Western Pacific Tree Service to undertake the recommended work as outlined in the French report which included the removal of eight trees along with pruning and deadwood removal of the remaining trees. The cost proposal to do this work is \$23,860. There would be no recovery from the sale of the eight trees.

Western Pacific Tree Service prepared an additional proposal to reflect the removal of 35 trees within the Azalea Park tree removal work plan. Proceeds from timber sales will cover the cost to remove the trees leaving the expense of pruning and deadwood removal from the remaining 25 trees at \$11,435.

There is no funding allocated in the 2017-18 budget for the recommended work. Any funding allocated for this work would draw from the Capital Reserve Fund currently leveraged for required matching grant funds for projects in parks and to maintain five percent emergency contingency per Council direction.

Reviewed by Finance & Human Resources Director: 



Background/Discussion: In December 2014 during a storm a tree uprooted and fell into the adjacent trees near the intersection of Old County Road and Lundeen Road. The incident prompted a closer look at the condition of the remaining trees. This removal was initiated by Coos Curry Electric Cooperative due to concerns the trees would fall onto high transmission lines disrupting electric power service in the community. The City Council authorized the removal of 38 trees citing concern for public safety.

The tree removal along Lundeen Road prompted a closer look at all trees in high traffic areas of Azalea Park to assess their condition and potential risk to park visitors. The process included Oregon State Forester Kristen Ramstad who presented to the Parks and Recreation Commission literature published by the International Society of Arboriculture (ISA) titled "How To Recognize and Prevent Tree Hazards". Based on this document, coupled with the experience with the Lundeen Road trees, staff consulted with experts Noah Mitchell (Western Pacific Tree Service) and Rusty Strain (Leatherneck Logging) in identifying trees in Azalea Park which fall under the criterion of "hazard trees". A tree removal work plan identifying the area of tree removal and preservation was developed and adopted by City Council in December 2016. The work plan map not only identifies hazard trees but also trees that shade native azaleas and tend to fall on the lower end of aesthetics.

The tree removal work plan identifies hazard trees to be removed in specified areas but also identifies areas for preservation and maintenance. The majority of the 60 trees identified in this project for removal exhibit one or more of the following problems; have "conk", split trunk with included bark, deadwood or broken tops, lean, and have multiple crown issues. Other factors include hazard trees in high traffic areas, in areas where there is dense congregation of people and potential property damage.

The project was delayed when a petition surfaced calling for the City to reconsider the tree removal project. Staff was then instructed to gather more information.

The City contracted with Licensed Arborist Brian French, owner of Arboricultural International out of Portland Oregon. Staff worked with French to collect data on the trees proposed to be removed and created a map. The data and map were then used to generate a report by French which lists conditions and recommendations moving forward. The report includes a spreadsheet providing specific data on each tree slated for removal.

#### French Report - spreadsheet quick glance

- 8 trees identified for removal ( all with multiple crown issues, conks, included bark, lean)
- 3 trees listed as "possible removal"
- 10 trees listed with "conk" two of which require a level 2 assessment
- 8 trees with lean between three and 10 degrees
- 6 trees with included bark, two of which are also listed with conk

- 8 trees with crown issues i.e. sparse crown, crown decline, suppressed crown, asymmetrical crown, crown die back, low crown ratio.
- 1 tree with buttress planing
- 2 trees with history of limb failure
- 29 trees listed with split stems (co dominant stems, co dominant tops, grafted co dominant stems, co dominant trunks, and co dominant leaders)

More detailed information regarding the 60 trees to be removed can be found in the French report.

The City held a special workshop on September 18 to discuss the findings in the French report. Thirteen members of the community attended the workshop. The workshop was published in the Curry Coastal Pilot, announced on Curry and KCIW radio, and posted on the City website. The press release called upon anyone who wished to present information on the proposed tree removal to do so in writing by September 11, 2017. Councilor Triglia submitted documents which include "*Field Guide for Hazard Tree Identification and Mitigation on Developed Sites in Oregon and Washington Forests (2014)*" and "*Long Range Planning for Developed Sites in the Pacific Northwest (1992)*" along with email correspondence suggesting some of the trees slated for removal be left as habitat trees. Darlene Ashdown submitted a letter concerned about Sudden Oak Death and that the permit process to remove trees is followed. Staff reviewed the submitted materials and they are available for viewing on the City's website.

The initial staff report didn't list all 60 trees as hazardous. What was listed was a combination of "hazard trees, trees shading native azaleas and less attractive trees".

Prior to the formal tree evaluation by French, staff was advised that "conk" which is an indication of red ring rot (*Phellinus pini*) is a death sentence for conifers. This info was gathered from local tree fallers and with that info, it was determined several of the trees slated for removal were hazardous. Also considered was the future health of the trees listed with conk which could result in the removal at a later date. Submitted materials by Triglia, ***Long Range Planning for Developed Sites in the Pacific Northwest (1992 by Robert Harvey)***, states that "Red ring rot is the most common heart rot of Pacific Northwest conifers. The damage associated with this fungus is severe stem decay" (page 50) and "red ring rot is more severely damaging moving south in Oregon" (page 52). There is no information supporting the assertion that a tree with red ring rot can heal itself over time. Trees with red ring rot require continuous monitoring and assessment.

Several of the trees listed for removal have multiple crown issues which could be a symptom of root or butt disease. Prior to the formal tree evaluation by French, staff was advised that damage to the cambium layer of a root can create a conduit for disease and decay. Several trees listed in the report have significant root exposure and/or are impacted by soil compaction in high traffic areas. Submitted materials by Triglia, ***Field Guide for Hazard-Tree Identification and Mitigation on Developed Sites in Oregon and Washington Forests (2014 by USFS)*** (page 43) notes that symptoms and signs of root or butt disease are difficult to detect and detection efforts are time consuming. Subtle symptoms include a general decline of the entire crown and lateral shoot growth, dying branches and thinning crowns. The Lundeen trees possessed these subtle

symptoms as well which contributed to the fall of the one tree and ultimately the removal of the remaining 38 trees.

The Lundeen Road trees and the trees listed in the tree removal work plan are similar in many ways. These are trees which remain along the outer edge of old stand previously removed. They are closely grown together, have multiple crown issues, co-dominant stems, conk and are in high traffic and high wind area with targets. The scaling tickets from the 38 trees removed indicated multiple defects similar in nature to those listed in the French report.

Attachments:

- a. Arboriculture International - pages 1-10 excerpt from Arborist Report
- b. Western Pacific Tree Service Inc. - Estimate based on Arborist Report (8 tree removal)
- c. Western Pacific Tree Service Inc. - Estimate based on staff recommendation (35 tree removal)



## Arborist Report

### Tree Inventory, Condition Report and Recommendations

#### PREFACE

This report was prepared at the request of the City of Brookings for inventory and condition ratings of 62 trees located near center of Azalea Park, Brookings, Oregon. Recommendations to remove or retain trees were given after reviewing visual risk assessments.

Tony Baron  
Parks and Planning Manager, City of Brookings  
(541) 469-1159  
[abaron@brookings.or.us](mailto:abaron@brookings.or.us)

Report by Brian French, principal of Arboriculture International, ISA Certified Arborist PN-2786AT and Tree Risk Assessor #CTRA 670 prepared this evaluation.

Unless expressed otherwise, the information contained in this report covers only those items that were examined and reflects the condition of those items at the time of inspection. The inspection is limited to visual examination of accessible items without dissection, excavation, probing, or coring. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the trees in questions may not arise in the future.

This document is provided to the stated recipients and is not to be duplicated or disseminated to other parties.

**RE: Tree inventory, condition report and recommendations for trees located at Azalea.**

Date: 6/13/2017  
Attn: Tony Baron  
Site Address: Azalea Park, Brookings, OR

April 3<sup>rd</sup> 2017, I was referred to Tony Baron by Kristen Ramstad from the Oregon Department of Forestry to assist with tree risk assessment and recommendations as a certified and consulting arborist. Tony and I made plans to meet, inventory and make recommendations for trees located at Azalea Park. The following report is based on this inventory.

**Table of Contents**

Summary .....3

Assignment & Scope of Report.....3

Methods .....4

Limits of Assignment.....4

- Appendix A – Maps, Tree Inventory & Photographs
- Appendix B – Common Tree Protection Requirements
- Appendix C – Assumptions & Limiting Conditions
- Appendix D – Glossary

## Summary of Site and Tree Conditions

This park is dominated by stands of mature Douglas-fir trees that offer shade, vertical space, structural diversity and decaying woody debris that supports a diverse understory of plants and wildlife. Overall, the stand appears healthy and vigorous. However, there are individual trees that, in their condition, may pose threats to public safety and property. Although some of the trees are not identified as 'likely to fail', trees are living organisms and will require future monitoring as health and structure will change over time.

## Assignment

### Tree Inventory

The purpose of this tree inventory and VTA is to:

- Assess the health and structural condition of significant trees growing within sections as identified.
- Assess the probability of failure of full tree and/or part of tree i.e. deadwood, branch, stem and list likelihood.
- Provide recommendations to prune, remove or retain trees within subject areas.

The tree inventory includes a number to identify each tree. Each tree with an assigned number in the report is photographed. 62 trees are evaluated as part of this report and all are located within the park limits. Trees smaller than 6 inches DBH were not included in this report. The individual tree data is provided on the attached Tree Evaluation spreadsheet (Appendix A).

## Methods

I used a Visual Tree Assessment (VTA) method to evaluate tree health and structure. VTA is based on the outward indications of tree stress and growth, as indicated by the formation of new tree parts, the shape of the new wood and the amount of live tissue. Trees adapt to current and past stress by growing wood to support themselves in an upright condition. This type of assessment is facilitated by my personal knowledge of tree growth as it relates to structural integrity. I used a diameter tape marked in inches on one side and with diameter calculations on the opposite for measuring tree diameter.

### Inventory Methodology

The evaluated trees within the park areas were assessed for the following information:

- Assigned tree number
- Tree species
- Trunk diameter (4.5' above grade)
- Height
- Crown Class
- Condition note
- Recommendation
- Photo

The following are crown class types and their definitions:

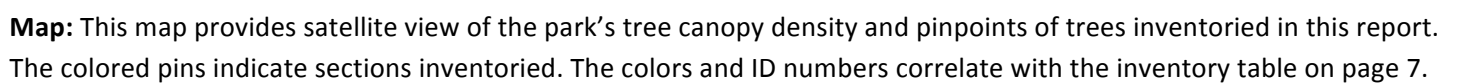
- Dominant – Typically open grown and free from competition
- Co-Dominant – Growing together as a group
- Sub-dominant – Growth restricted by other trees nearby
- Suppressed – Growth severely restricted by competing trees

Condition notes offer additional information about trees with defects or structure that may lead to a 'likely' failure. This evaluation is of above ground structures only, and additional defects may exist at root collars or within the root systems. Furthermore, this inventory and evaluation does not consider pests, disease or any other factors that may affect the trees' health at this time.

### **Limits of Assignment**

Unless stated otherwise: 1) Information contained in this report covers only those trees that were examined and reflects the condition of those trees at the time of inspection; and 2) The inspection is limited to visual examination of the subject trees without dissection, excavation, probing, climbing, or coring unless explicitly specified. There is no warranty or guarantee, expressed or implied, that problems or deficiencies of the subject trees may not arise in the future. Additional Assumptions and Limiting Conditions can be found in Appendix C.









## Tree Inventory

Section	Tree ID #	Species	Height	DBH	Crown Class	Condition Notes	Recommendation	Photos
A	T1	<i>D-fir</i>	126	41	Co-Dominant	co-dominant 4 stems, sparse, decline		P 11,12
A	T2	<i>D-fir</i>	119	41	Co-Dominant	co-dominant 3 stems, conks		P 13-15
A	T3	<i>D-fir</i>	131	28	Co-Dominant	3 degrees lean		P 16
A	T4	<i>D-fir</i>	131	33	Co-Dominant	10 degrees lean, conks		P 17,18
A	T5	<i>D-fir</i>	137	25	Co-Dominant			P 19,20
A	T6	<i>D-fir</i>	98	18	Suppressed	Co-dominant stems, included bark, canker		P 21-23
A	T7	<i>D-fir</i>	111	24	Dominant	15 degrees lean, buttress planning on tension side	Removal	P 24-26
A	T8	<i>D-fir</i>	124	46	Co-Dominant	Co-dominant 3 stems, included bark on upper stems, conks		P 27,28
A	T9	<i>D-fir</i>	137	28	Dominant	Buttress planning, appears stable		P 29,30
A	T10	<i>D-fir</i>	137	26	Dominant	Low crown ratio		P 31,32
A	T11	<i>D-fir</i>	70	(S1)18, (S2)41		Co-dominant stems: (stem1: low crown ratio, poor diameter to height ratio, co-dominant and broken top) (stem 2: epicormics, broken top with slight lean		P 33,34
A	T12	<i>D-fir</i>	134	24	Dominant			P 35
A	T13	<i>D-fir</i>	72	24	Sub-Dominant	Asymmetrical crown, low crown ratio		P 36,37
A	T14	<i>D-fir</i>	137	34	Dominant	Sparse crown, dead branches and hangers	Pruning	P 38,39
A	T15	<i>D-fir</i>	111	38	Dominant	Bulbous concave at 50'		P 40,41
A	T16	<i>D-fir</i>	131	32	Co-Dominant			P 42,43
A	T17	<i>D-fir</i>	55	16	Dominant	Long arched branch over sidewalk, recommend weight reduction	Pruning	P 44-46

A	T19	D-fir	134	"	Dominant	Co-dominant stems, broken branches, deadwood	Reduction long branch, deadwood prune	P 47-49
A	T20	D-fir	128	58	Dominant	Co-dominant top, concave in stem at 60ft		P 50,51
A	T21	D-fir	134	30	Dominant			P 52,53
A	T22	D-fir	150	41	Dominant			P 54,55
A	L1	D-fir	134	68	Dominant	Co-dominant stems, long heave lateral branches, high crown complexity	Weight reduction pruning on heavy branches, Level 2 assessment	P 56-58
B	T1	D-fir	141	37	Co-Dominant	Co-dominant stems, included bark, conks	Height reduction on smaller stem by 30%	P 59-61
B	T2	D-fir	131	33	Co-Dominant	Conks		P 62,63
B	T3	D-fir	131	37	Co-Dominant	Emergent above other trees		P 64,65
B	T4	D-fir	134	34	Dominant	Swelling at base, conk at base	Level 2 assessment	P 66-70
B	T5	D-fir	101	24	Co-Dominant	6 degree lean towards parking area		P 71,72
B	T6	D-fir	"	34	Co-Dominant	Co-dominant stem		P 73-75
B	T7	D-fir	134	43	Dominant	Major co-dominant stems	Mitigation work, possible removal	P 76,77
B	T8	D-fir	104	26	Co-Dominant			P 78,79
B	T9	D-fir	91	42	Co-Dominant	Suppressed crown, broken top with 4 secondary tops	Prune out hazardous deadwood	P 80,81
B	T10	D-fir	141	41	Co-Dominant	10 degree lean, self-corrected, emergent top	Prune dead branches	P 82,83
B	T11	D-fir	124	30	Co-Dominant	Emergent top, severe conks	Removal	P 84,85
B	T12	D-fir	85	20	Co-Dominant	Conks in lower crown	Level 2 assessment	P 86,87
B	T13	D-fir	121	38	Co-Dominant	Grafted co-dominant stems	Prune dead branches	P 88,89
B	T14	D-fir	127	48	Co-Dominant	Emergent top, vigorous epicormic growth	Prune dead branches	P 90,91
B	T16	D-fir	85	18	Suppressed			P 92,93
B	T17	D-fir	124	31	Co-Dominant		Reduction pruning on long branches over	P 94,95

							sidewalk	
B	T18	<i>D-fir</i>	121	40	Co-Dominant	Conk	Reduction pruning on long branches over sidewalk	P 96,97
B	T19	<i>D-fir</i>	114	34	Co-Dominant			P 98-100
B	T20	<i>D-fir</i>	121	36	Co-Dominant	Sparse crown with epicormics, crown dieback	Monitor health	P 101-103
C	T1	<i>D-fir</i>	141	48	Dominant	Hangers, large dead branches	Prune dead branches, crown raise 2 whorls	P 104,105
C	T2	<i>D-fir</i>	131	27	Co-Dominant	6 degree lean, deadwood and hangers	Prune dead branches	P 106,107
C	T3	<i>D-fir</i>	131	38	Co-Dominant	7 degree lean, deadwood		P 108,109
C	T4	<i>D-fir</i>	134	33	Dominant	Co-dominant stems, dead and broken branches	Reduce co-dominant leader for light on azaleas, possible removal	P 110,111
C	T5	<i>D-fir</i>	124	28	Dominant	Deadwood and hangers, co-dominant stems	Reduce co-dominant stem, possible removal	P 112,113
C	T6	<i>D-fir</i>	72	33	Co-Dominant	Long heavy lateral branches, broken top with reiterations, hangers and deadwood	Removal	P 114,115
C	T7	<i>D-fir</i>	118	10	Co-Dominant	5 degree lean some deadwood		P 116,117
C	T8	<i>D-fir</i>	118	28	Co-Dominant	Co-dominant stems, included bark, conk		P 118,119
C	T9	<i>D-fir</i>	127	27,16	Co-Dominant	Co-dominant trunks, dead branches	Prune dead branches, crown raise	P 120,121
C	T10	<i>D-fir</i>	137	38	Dominant	Co-dominant tops, possible included bark, history of limb failure, dead branches, hangers	Prune to remove hazard branches, inspect top, possible crown reduction	P 122,123
C	T11	<i>D-fir</i>	141	36	Co-Dominant	Dead branches		P 124,125
C	T12	<i>D-fir</i>	127	48	Co-Dominant	Emergent top, asymmetrical crown, large deadwood at park entrance	Prune dead branches	P 126,127
C	T13	<i>D-fir</i>	147	68	Dominant	Co-dominant stems near trunk, included bark, history of limb failures	Crown reduction or possible removal	P 128,129
D	L1	<i>D-fir</i>	111	72	Dominant	Co-dominant leaders, high crown complexity, dead branches, broken branches, large hangers, conks,	Weight reduction on reiterations, remove deadwood	P 130,131

						included bark on middle reiteration		
D	L2	<i>D-fir</i>	98	54	Dominant	Co-dominant stem, conks	Deadwood removal, climb to inspect crown	P 132,133
D	T1	<i>D-fir</i>			Dominant	Crown dieback	Removal	P 134
D	T50	<i>D-fir</i>				Co-dominant stems, included bark, 20 degree lean	Removal	P 135
D	T60	<i>D-fir</i>			Co-Dominant	Crown decline	Removal	P 136
D	T61	<i>D-fir</i>			Co-Dominant	Suppressed crown, low crown ratio	Removal	P 137
E	T1	<i>D-fir</i>			Dominant	48" of backfill on trunk within the critical root zone (CRZ)	Removal	P 138

**Guide to abbreviations:**

*D-fir* – *Pseudotsuga menziesii*, Douglas-fir



# Western Pacific Tree Service, Inc.

P.O. Box 998  
Brookings, OR 97415  
Phone: 541-469-7450  
Fax: 541-813-1256

# Estimate

Date	Estimate #
9/4/2017	2017

Name / Address
City of Brookings Attn: Tony Baron 898 Elk Dr. Brookings, OR 97415

Description	Qty	Rate	Total
Estimates regarding arborist report dated 6/13/2017 Each bid includes fulfilling arborist recommendation with complete clean up of all debris. All Pruning will be from either an Aerial Lift or climbed using SRT for low impact to crown of trees.		0.00	0.00
AT7 Doug Fir		975.00	975.00
AT14		275.00	275.00
AT17		200.00	200.00
AT19		575.00	575.00
AL1		1,850.00	1,850.00
BT7		2,200.00	2,200.00
BT1		425.00	425.00
BT9		325.00	325.00
BT10		325.00	325.00
BT11		725.00	725.00
BT13		325.00	325.00
BT14		325.00	325.00
BT17		225.00	225.00
BT18		225.00	225.00
CT1		650.00	650.00
CT2		325.00	325.00
CT3		350.00	350.00
CT4		1,900.00	1,900.00
CT5		750.00	750.00

<b>Total</b>
--------------

## Western Pacific Tree Service, Inc.

P.O. Box 998  
Brookings, OR 97415

Phone: 541-469-7450

Fax: 541-813-1256

Estimate

Date	Estimate #
9/4/2017	2017

### Name / Address

City of Brookings  
Attn: Tony Baron  
898 Elk Dr.  
Brookings, OR 97415

Description	Qty	Rate	Total
CT6		875.00	875.00
CT7		325.00	325.00
CT9		475.00	475.00
CT10		1,100.00	1,100.00
CT11		325.00	325.00
CT12		325.00	325.00
CT13		650.00	650.00
DL1		1,700.00	1,700.00
DL2		760.00	760.00
DT1		825.00	825.00
DT50		600.00	600.00
DT60		2,100.00	2,100.00
DT61		625.00	625.00
ET1		225.00	225.00

<b>Total</b>	<b>\$23,860.00</b>
--------------	--------------------

**Western Pacific Tree Service, Inc.**

P.O. Box 998  
Brookings, OR 97415

Phone: 5414697450

Fax: 541-813-1256

**Invoice**

Date	Invoice #
11/6/2017	2167

**Bill To**

City of Brookings  
Attn: Tony Baron  
898 Elk Dr.  
Brookings, OR 97415

Description	Rate	Amount
Estimate regarding arborist report dated 6/13/2017		0.00
Each bid includes fulfilling arborist recommendation with complete clean up of all debris. All pruning will be from either an Aerial Lift or climbed using SRT for low impact to crown of trees.		
AT7	975.00	975.00
AT19	575.00	575.00
AL1	1,850.00	1,850.00
BT7	2,200.00	2,200.00
BT11	725.00	725.00
BT13	325.00	325.00
BT14	325.00	325.00
BT17	225.00	225.00
CT1	650.00	650.00
CT9	475.00	475.00
CT11	325.00	325.00
CT12	325.00	325.00
DL1	1,700.00	1,700.00
DL2	760.00	760.00
Remaining 35 trees tagged for removal by the City on arborist report will be felled to be logged and cleaned up, cost will be covered by proceeds of selling logs to South Coast Lumber.	0.00	0.00
<b>Total</b>		<b>\$11,435.00</b>
<b>Payments/Credits</b>		<b>\$0.00</b>
<b>Balance Due</b>		<b>\$11,435.00</b>

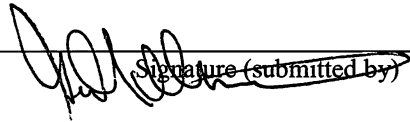


# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: November 13, 2017

Originating Dept: City Attorney

  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

---

---


Subject: Possible Moratorium on Marijuana Dispensaries

Recommended Motion:

Review City Attorney memo and provide direction to staff.

Financial Impact:

See City Attorney memo.

Reviewed by Finance & Human Resources Director: 

Background/Discussion:

At the City Council meeting of October 23, the City Council heard from local marijuana dispensary owner Michael Horgan who expressed concern with the proliferation of recreational marijuana dispensaries in Brookings. Horgan noted that the State regulations do not provide the same minimum 1,000 foot separation between recreational marijuana dispensaries that is provided for medical marijuana dispensaries and expressed concern that there could be a proliferation of recreational dispensaries in the commercial district. The City Council instructed staff to explore a possible moratorium on additional recreational dispensaries.

Soon after the State authorized the sale of medical marijuana, the City Council opted to not enact regulations more stringent than those imposed by the State. Medical marijuana State restrictions include a mandatory 1,000 foot separation between dispensaries. However, State rules adopted for recreational sales do not include this special separation provision.

The City Attorney has prepared a memorandum discussing the various options for addressing this concern, including the adoption of a moratorium on new recreational dispensaries while the City considers alternatives for adopting local regulations. This would allow the Planning Commission and City Council to consider various alternatives including 1,000 or 500 feet or five shops or other provisions such as X distance from schools.

There are no recreational marijuana dispensary applications pending within the City Limits.

Attachment(s):

- a. City Attorney memorandum.
- b. Excerpts from "Local Government regulation of Marijuana in Oregon" guidebook by the League of Oregon Cities.

# BLACK & RICE LLP

Robert N. Black, Partner  
rblack@attyblack.com

Attorneys at Law  
The McNulty House  
710 H Street

Crescent City, CA 95531

Martha D. Rice, Partner  
mrice@attyblack.com

Autumn E. Luna, Associate  
aluna@attyblack.com

Andre L. Carpenter, OfficeMgr  
acarpenter@attyblack.com

---

## MEMORANDUM

TO: Mayor Pieper and Councilors; City Manager Gary Milliman

FR: City Attorney Martha D. Rice *MR*

DT: November 13, 2017

RE: Quasi-Moratorium / Moratorium on Recreational Marijuana Retailers – Process

---

### BACKGROUND:

At the last city council meeting, the Council received public comment from a local businessman who pointed out that the state laws regulating recreational marijuana retailers do not contain the same 1000 foot buffer between businesses as exists in the law governing medical marijuana dispensaries. This gentlemen expressed concern that without some regulation of the siting of recreational marijuana retailers that Brookings may see an influx of recreational retailers from outside the area that find the lack of regulation and proximity to California appealing. Such a situation could harm current businesses and sour the public's view of the industry if Brookings is inundated with recreational marijuana storefronts. The Council gave staff direction to research the process for instituting a moratorium on new recreational marijuana retailers while the Council reviews the issue of local regulations.

### ANALYSIS:

State Law – Location Regulations. Under state law, medical marijuana dispensaries cannot locate within 1000 feet of another dispensary.<sup>1</sup> Recreational marijuana retailers, however, do not have the same restriction and can locate next door to each other. Both medical marijuana dispensaries and recreational marijuana retailers are prohibited from locating within 1000 feet of a school.<sup>2</sup> And neither can be located in an area zoned exclusively for residential use.<sup>3</sup> Any additional regulation of the siting of recreational marijuana retailers will have to come from the local agency with jurisdiction.

---

<sup>1</sup> ORS 475B.450(3)(e).

<sup>2</sup> ORS 475B.450(3)(d); ORS 475B.110(c).

<sup>3</sup> ORS 475B.110(d).

State Law – Land Use Compatibility. When applying for a license to operate a recreational marijuana retail business from the OLCC, the applicant must request a land use compatibility statement (LUCS) from the local government before the OLCC will issue a license.<sup>4</sup> The LUCS states whether the proposed use is allowable in the zone requested and must be issued within 21 days of receipt of (1) the request if the land use is allowable as an outright permitted use or (2) final local permit approval if the land use is allowable as a conditional use.

Ban / Quasi-Moratorium – Process. Under state law, local jurisdictions may outright ban recreational marijuana producers, processors, wholesalers, and retailers as well as medical marijuana processors and dispensaries.<sup>5</sup> If a city chooses to ban one or more of the six listed types of activities, then the council must adopt an ordinance and refer it to the voters for at a statewide general election, meaning an election in November of an even-numbered year. As soon as the city adopts the ordinance, the city must submit the ordinance to the OHA (for medical bans) or the OLCC (for recreational bans) and those agencies will cease registering and licensing facilities that are banned by the ordinance. The ordinance then serves as a quasi-moratorium until the election results are returned. Depending on the results, the moratorium will either be lifted or turned into a permanent ban on the specified activities. It is also possible for the City Council to repeal the ordinance prior to the election and lift the ban on the moratorium. However, so long as there is a ban in place, the City may not collect any local taxes on the banned activities. If this process is used, the moratorium could be adopted at the next council meeting (Dec. 11<sup>th</sup>). If an emergency declaration is included and adopted by a three-fourths vote of the council, then the ordinance would be effective immediately.<sup>6</sup>

Moratorium – Process. Under state land use law, the City may adopt a temporary moratorium on the establishment of new, or expansion of existing, recreational and/or medical marijuana facilities, as desired.<sup>7</sup> The process for establishing a moratorium requires a 45-day notice to the Oregon Dept. of Land Conservation and Development, written findings justifying the need for the moratorium, and a public hearing.<sup>8</sup> Within 60 days of the effective date of the moratorium, the council is required to adopt a program, i.e., plan of action, to correct the problem creating the moratorium. The moratorium is limited to 6-months but may be extended for a longer period.<sup>9</sup> The corrective action program must be presented at a public hearing. The DLCD must receive 14 days' advance notice of this public hearing. The moratorium is implemented by ordinance, which normally take effect

---

<sup>4</sup> ORS 475B.063.

<sup>5</sup> ORS 475B.800.

<sup>6</sup> ORS 221.310.

<sup>7</sup> ORS 197.505, et seq.

<sup>8</sup> ORS 197.520.

<sup>9</sup> ORS 197.530.

30 days after adoption. Often times, moratoriums are accompanied by an emergency declaration (adopted by a unanimous vote of the council) that allows the ordinance to go into effect immediately. The City would not be prohibited from collecting taxes under this process. If this process is used, the moratorium could not go into effect until the first meeting in January at the earliest (Jan. 8<sup>th</sup>).

#### OPTIONS:

The City Council has three options: (1) adopt an ordinance instituting a ban to be referred to the voters on one or more of the six types of activities listed herein; (2) adopt an ordinance implementing a moratorium on one or more of the six types of activities listed herein; (3) do neither and maintain the status quo. In conjunction with any of these options would be the parallel track of studying the pertinent issues regarding the appropriate regulations, if any, and implementing legislative text amendments to the land development code as appropriate.

	PROS	CONS
BAN – REFERRAL TO VOTERS <i>QUASI-MORATORIUM</i>	- Effective sooner (Dec. 11), - Few procedural requirements	- Must cease collecting taxes
MORATORIUM	- Continue collecting taxes	- Effective later (Jan. 8) - More procedural requirements
STATUS QUO	- Continue collecting taxes - No procedural hoops	- no control over establishment of new businesses while studying the issued

## Introduction and a Word of Caution

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

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

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

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

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

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



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

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

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

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

## Home Rule in Oregon

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

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

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

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

A home rule charter operates like a state constitution in that it vests all government power in the governing body of a municipality, except as expressly stated in that charter, or preempted by state or federal law. According to the League's records, all of Oregon's 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, 576 P2d 1204, *aff'd on reh'g*, 284 Or 173, 586 P2d 765 (1978). In that case, the Oregon Supreme Court said that home rule municipalities have authority to enact substantive policies, even on a topic also regulated by state statute, as long as the local enactment is not “incompatible” with state law, “either because both cannot operate concurrently or because the Legislature meant its law to be exclusive.” In addition, the court said that where there is a local enactment and state enactment on the same subject, the courts should attempt to harmonize state statutes and local regulations whenever possible.<sup>2</sup>

---

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

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

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

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

---

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

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

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



## Federal Law

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

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

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 9<sup>th</sup> Circuit Court of Appeals, 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 9<sup>th</sup> 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.

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

## **An Overview of Oregon's Marijuana Laws**

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

### *Oregon Medical Marijuana Act*

Oregon has had a medical marijuana program since 1998, when voters approved Ballot Measure 67, the Oregon Medical Marijuana Act (OMMA) (codified at ORS 475B.400 – ORS 475B.525). Since that time, the Legislature has amended the OMMA on a number of occasions. Generally, under the OMMA, a person suffering from a qualifying debilitating health condition must get a written statement from a physician that the medical use of marijuana may mitigate the symptoms or effects of that condition. The person may then obtain a medical marijuana card from the Oregon Health Authority, which is the agency charged with regulating medical marijuana. The patient may designate a caregiver and a grower if the patient decides not to grow his or her own marijuana, each of whom also get a medical marijuana card. Patients, caregivers and growers with medical marijuana cards, who act in compliance with the OMMA, are immune from state criminal prosecution for any criminal offense in which possession, delivery or manufacture of marijuana is an element. Those without medical marijuana cards may also claim immunity from state criminal prosecution if they are in compliance with the OMMA and, within 12 months prior to the arrest at issue, had received a diagnosis of a debilitating medical condition for which a physician had advised medical marijuana could mitigate the symptoms or effects. The OMMA also provides protection from state criminal prosecution for medical marijuana processors and medical marijuana dispensaries acting in compliance with the law.

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

Legislation in 2015, 2016, and 2017 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 personal growing and use of certain amounts of recreational marijuana by persons 21 years of age or older. The OLCC is the agency charged with licensing and regulating the growing, processing, and sale of recreational marijuana. In particular, the OLCC has been tasked with administering a license program for producers, processors, wholesalers and retailers, and under that program, a person may hold more than one type of license.

Since the voters approved Measure 91, the Legislature has made notable changes to its structure, primarily increasing accountability and safety requirements. For example, the Legislature added testing, labeling, inspection and reporting requirements for licensees, required handlers permits for those working with marijuana, and charged the OLCC with licensing OHA-accredited laboratories to conduct the required testing. The Legislature also expanded the OLCC's rulemaking authority, tasking the agency with, among other things, developing and maintaining a seed-to-sale tracking system and adopting restrictions on the size of recreational marijuana grows. The Legislature also tasked the OLCC with certifying public and private marijuana researchers. As noted above, the Legislature 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 between Section 845-025-1000 and 845-025-8750 of the Oregon Administrative Rules.

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 a number of other issues including testing, packaging, labeling, advertising, waste, and implementing a seed to sale tracking system.

## *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 tax, to be collected by those retailers. The Legislature clarified that medical marijuana cardholders and caregivers will not have to pay the state tax on the retail sale of marijuana items. (SB 1511, § 17)

Of that state tax revenue, 10 percent will be transferred to cities under the Control and Regulation of Marijuana Act, *i.e.* the law regulating recreational marijuana.<sup>6</sup> That 10 percent will be distributed using different metrics before and after July 1, 2017. Before that date, tax revenues collected will be distributed proportionately to all Oregon cities based on their population. After July 1, 2017, those revenues will be 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. 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 or not in its jurisdiction, are required quarterly. A city's failure to timely certify will result in a forfeiture of its share of the state's revenue, with that city's share going to the cities that filed the 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>7</sup> The table on the next page provides a summary of each type of activity and its registration/licensing requirements along with a citation to the laws that governs those activities.

---

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

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



## Oregon's Ten Regulated Marijuana Activities

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

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

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

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

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

### *Early Sales of Recreational Marijuana*

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

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

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

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

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

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

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

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

## Local Government Options for Regulation of Marijuana

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

As set out in ORS 475B.340, ORS 475B.500, and under their home rule authority, cities have a number of options for regulating marijuana activities. Whether to regulate is a local choice. What follows is an overview of the options available to cities. However, before embarking on any form of regulation, cities should begin by examining the 10 types of marijuana activities authorized by state statute and the restrictions state law (including administrative regulations adopted by the OLCC [found in OAR chapter 845, division 25] and the OHA [found in OAR chapter 333, division 8]) places on each type of activity to determine whether a gap exists between what state law allows and what the community desires to further restrict.

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

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

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

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

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

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



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

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

(OAR 845-025-1230) Recreational marijuana growers are additionally prohibited from locating on public land, 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. (OAR 845-025-1115)

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

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

### *Medical Processing Sites and Recreational Processors*

Processors that produce medical marijuana extracts may not be located in an area zoned for residential use. The OHA has defined "zoned for residential use" to mean "the only primary use allowed outright in the designated zone is residential." (OAR 333-008-0010(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>8</sup> As a practical matter, that means that dispensaries cannot locate within 1,000 feet of most public and private elementary, middle and high schools. However, if a school is established within 1,000 feet of an existing dispensary, the dispensary may remain where it is unless the OHA revokes its registration. In addition, under the 2016 legislation, a city can allow a dispensary within 500 feet of a school under limited circumstances involving physical or geographic barriers between the school and establishment. (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. (SB 1511).

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

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

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

---

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

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

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

local government before the OLCC issues a license. A LUCS describes whether the proposed use is allowable in the zone requested, and must be issued within 21 days of:

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

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

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

## **Local Government Means of Regulation**

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

### *Tax*

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

In ORS 475B.345, adopted in 2015, the Legislature vested authority to “impose a tax or fee on the production, processing or sale of marijuana items” solely in the Legislative Assembly, 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>9</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. (SB 1511, § 18).

---

<sup>9</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 <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.345, the status of those taxes remains an open question. Arguably, cities that had "adopt[ed] or enact[ed]" taxes prior to the effective date of ORS 475B.345 are grandfathered in under the law. However, the issue is not free from doubt, and cities that decide to collect on pre-ORS 475B.345 taxes should be prepared to defend their ability to do so against legal challenge. Consequently, cities that plan to continue to collect taxes imposed prior to the passage of ORS 475B.345 should work closely with their city attorney to discuss the implications and risks of that approach.

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

Under ORS 475B.800, cities may prohibit within the city the operation of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and medical marijuana dispensaries. The law is silent on whether a city can ban medical marijuana growers, marijuana laboratories, and marijuana researchers from operating in the city. However, ORS 475B.800 does not indicate that the bill's process for banning marijuana activities is the exclusive means to do so. Cities considering banning medical marijuana grow sites, marijuana laboratories, or marijuana researchers should consult their city attorney about whether they can do so under either home rule, federal preemption or both legal theories. Please be advised that this approach entails 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 above. For cities that did not take that approach within the required timeline, and for cities not located in those counties, the city council may adopt an ordinance banning any of the six activities listed above, but that ordinance must be referred to the voters at a statewide general election, meaning an election in November of an even-numbered year. Medical marijuana dispensaries and medical marijuana processors that have registered with the state by the time

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

Under either procedure, as soon as the city council adopts the ordinance, it must submit it to the OHA for medical bans and the OLCC for recreational bans, and those agencies will stop registering and licensing the banned facilities. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election occurs.<sup>10</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. (HB 3470 (2017))

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

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

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

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

### *Business License Ordinance*

Although ORS 475B.800 provides an avenue for cities to ban certain marijuana activities, nothing in the statute makes that the exclusive means for prohibiting marijuana activities. As a result, some cities may not need to go through the procedures outlined in ORS 475B.800 to ban

---

<sup>10</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.

A number of cities have imposed a ban through a local business license ordinance that provides that it is unlawful for any person to operate a business within the city without a business license, and further provides that the city will not issue a business license to any person operating a business that violates local, state or federal law. Indeed, cities that have a business license ordinance in place should review their existing codes to determine if such wording already exists. Additionally, whether adopting a new business license program or amending an existing one to provide that the city will not issue a business license to any person operating a business that violates local, state or federal law, a city should work with its legal counsel to ensure that its business license ordinance includes an enforcement mechanism to address a situation in which a person is operating a business without a business license.

In addition, cities that decide to enforce a business license ordinance instead of adopting a ban under ORS 475B.800 should consult their city attorney regarding *City of Cave Junction v. State of Oregon* (Josephine County Circuit Court Case #14CV0588; Court of Appeals Case #A158118) and *Providing All Patients Access v. City of Cave Junction* (Josephine County Circuit Court Case #14CV1246, Court of Appeals Case #A160044). At issue in those cases is whether the city of Cave Junction may enforce its business license ordinance, which prohibits issuance of a business license to a business operating in violation of local, state or federal law, to effectively prohibit medical marijuana dispensaries from operating. Two trial courts in Oregon have upheld the city's business license ordinance against challenges that it has been preempted by the OMMA (prior to its amendment by HB 3400). This issue is currently being litigated on appeal before the Oregon Court of Appeals.

### *Development Code*

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

### *Land Use Code*

As noted previously, state law places restrictions on where certain marijuana activities can locate, including prohibiting certain processors, dispensaries and retail establishments from locating in residential zones. In addition to those state requirements, cities can impose their own more stringent land use requirements and restrictions. Moreover, cities that desire to prohibit marijuana facilities altogether might also do so through amendments to their land use codes. Before considering this option, cities should work with their legal counsel to first determine if the wording of their zoning codes already prohibits marijuana operations, and if not, to identify

the appropriate land use procedures and the amount of time it would take to comply with them. If the wording in a city's zoning codes does not prohibit marijuana operations, the city has different options. One option is to add wording such as "an allowed use is one that does not violate local, state or federal law" to the city's zoning code. Cities that adopt a prohibition that references federal law would then rely on existing mechanisms in their ordinances for addressing zoning violations.<sup>11</sup>

It is important to note that under ORS 475B.063 (as amended in HB 4014, section 11), a land use compatibility statement is required as part of the OLCC's licensing process. In particular, before issuing a producer, processor, wholesaler or retailer license, an applicant must request a statement from the city that the requested license is for a location where the proposed use of the land is a permitted or conditional use. If the proposed use is prohibited in the zone, the OLCC may not issue a license. A city has 21 days to act on the OLCC's request, but when that 21 days begins varies. If the land use is allowed as an outright permitted use, the city has 21 days from receipt of the request; if the land use is a conditional use, the city has 21 days from the final local permit approval. The city's response to the OLCC is not a land use decision, and the city need not act on a LUCS request while a measure proposing to ban marijuana facilities is pending.

### *Time, Place and Manner Regulations*

ORS 475B.340 (recreational) and ORS 475B.500 (medical) provide that local governments may impose reasonable regulations on the time, place and manner of operation of marijuana facilities. The League believes that, under the home rule provisions of the Oregon Constitution, local governments do not need legislative authorization to impose time, place and manner restrictions, and that the Legislature's decision to expressly confirm local authority to impose certain restrictions does not foreclose cities from imposing other restrictions not described in state law.

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

- The hours of operation of recreational marijuana producers, processors, wholesalers, and retailers and medical marijuana grow sites, processing sites and dispensaries;

---

<sup>11</sup> Under existing law, the League believes it is clear that a city may enforce civil regulations of general applicability (such as zoning codes, business licenses and the like) through the imposition of civil penalties. Although a city likely cannot directly recriminalize conduct allowed under state criminal law, it is a different legal question whether a city may impose criminal penalties for violating a requirement of general applicability when the conduct at issue is otherwise immune from prosecution under state law (i.e. whether a city may impose criminal penalties for operation of a medical marijuana dispensary in violation of a city's land use code). *Cf. State v. Babson*, 355 Or 383, 326 P3d 559 (2014) (explaining that generally applicable, facially neutral law, such as a rule prohibiting use of public property during certain hours, may be valid even if it burdens expressive conduct otherwise protected under Article I, section 8, of the Oregon Constitution). Consequently, a city should work closely with its city attorney before imposing criminal penalties against a person operating a medical marijuana facility in violation of a local civil code, such as a zoning, business license or development code.

- The 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.

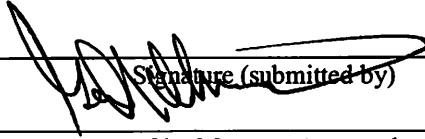
What regulations a city ultimately adopts will depend on community wants and needs, as well as on future changes to the law and to the rules adopted by the OHA and the OLCC. As a result, although cities may want to begin considering the types of regulations that they want to impose, cities should be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

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: November 13, 2017

Originating Dept: City Manager

  
\_\_\_\_\_  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

---


Subject: Golf Course Property Tax

Recommended Motion:

Motion to authorize the City Manager and City Attorney to pursue an appeal of the property tax assessment for the Salmon Run Golf Course to the Curry County Property Tax Board of Appeals.

Financial Impact:

Potential increase in golf course operating subsidy of about \$21,000 annually. Costs associated with legal representation to appeal County Assessor decision to Board of Appeals.

Reviewed by Finance & Human Resources Director: 

Background/Discussion:

The City has owned the property upon which the Salmon Run Golf Course is located since April, 1987. The property was leased to private parties until April 1, 2016. As a leaseholder operating the golf course as a for-profit enterprise, the private parties were required to pay property tax.

The City terminated the lease agreement with Wild Rivers Golf Management (WRGM) on April 1, 2016, and assumed direct responsibility for operation and maintenance of the golf course on that date. Rather than hire employees, the City elected to contract management of the golf course to the Early Management Team (EMT). As a contractor...not a leaseholder...EMT is not required to pay property tax.

The City did pay \$16,656.79 in delinquent property taxes owed by the former lessee, WRGM, on April 19, 2016. The City notified the County Assessor that it had taken control of the property and was claiming public agency exemption on April 1, 2016.

The City notified the Curry County Assessor that the City had assumed operational control of the golf course as a public facility. Like other public facilities owned by the City (i.e. parks, treatment plants, water tank sites) these properties are exempt from property tax. However, the County Assessor has asserted that because the City does not operate the golf course with City employees and has a management agreement under which EMT retains all fees as consideration for services, that the property is taxable. The golf course continues to operate at a loss.

City staff and the City Attorney have corresponded extensively concerning this matter. The County Assessor has conferred with the Oregon Department of Revenue. Our last letter was dated March 31, 2017, a copy of which is attached. The Oregon Department of Revenue has no

authority in determining local property tax issues. The valuation assigned to the golf course and the application of the property tax rate is entirely within the discretion of the County Assessor.

On October 13, 2017, the City received a property tax statement from the Curry County Assessor in the amount of \$21,205.67. We received no response to our March 31, 2017 correspondence and the tax is due on November 15, 2017, just 32 days after receiving the surprise tax bill. The property tax amount is not budgeted.

The tax statement shows market values of \$2,939,270 for the land and \$755,470 for improvements for a total of \$3,694,740. The value is adjusted to a \$3,331,920 assessed value. The property was donated to the City by South Coast Lumber Company under a deed restriction that the property must be used as a golf course; this agreement included a reversion clause. The property and improvements cannot be “sold” so do not have any real market value.

Staff continues to believe that the property is not subject to the property tax. Staff is recommending that the City file an appeal with the Curry County Property Tax Board of Appeals (the Curry County Board of Commissioners). In the appeal the City would raise two issues: 1) the exemption from tax because the property is publicly held and 2) the property having no value due to the deed restriction.

Attachment(s):

- a. Property Tax statement
- b. Letter dated March 31, 2017 to Assessor Jim Kolen
- c. Email dated March 20, 2017 from Deputy Assessor Tracy Garner
- d. Letters dated April 1, 2016 to Assessor Jim Kolen
- e. Property Tax appeals forms



7/1/17-6/30/18 REAL PROPERTY TAX STATEMENT  
CURRY COUNTY, OR. 97444 (541) 247-3305  
PROPERTY DESCRIPTION  
ACRES 127.24

ACCOUNT NO.: R24965

ACRES: 127.24  
MAP: 4113-02 -00101-00  
CODE: 17-3

RECEIVED

OCT 13 2017

LAST YEAR'S TAX

See back for explanation of taxes marked with (\*)

CITY OF BROOKINGS

1257\*2\*\*G50\*\*0.536\*\*1/1\*\*\*\*\*AUTO5-DIGIT 97415  
CITY OF BROOKINGS  
898 ELK DR  
BROOKINGS OR 97415-9648



THIS YEAR'S TAX

EDUCATION:

ESD 1,476.71  
SWOCC 2,338.01  
SCHOOL 17-C 10,826.74

EDUCATION TOTAL:

14,641.46

GENERAL GOVERNMENT:

COUNTY GENERAL 1,997.82  
CC 4-H & EXTENSN 340.19  
PORT-BROOKINGS 438.48  
CEM.-SOUTH CURRY 122.61  
LIB.-CHETCO 1,114.53

GENERAL GOVERNMENT TOTAL

4,013.63

EXCLUDED FROM LIMITATION:

SCHOOL 17-C BOND 2,550.58

EXCLUDED FROM

LIMITATION TOTAL:

2,550.58

2017-18 PROPERTY

TAX TOTALS

21,205.67

VALUES: LAST YEAR THIS YEAR

MARKET VALUES:

LAND 2,939,270 2,939,270  
IMPROVEMENT 761,180 755,470  
TOTAL VALUE 3,700,450 3,694,740

TAXABLE VALUES:

ASSESSED VA 0 3,331,920  
EXEMPTION 0 0

NET TAXABLE:

0 3,331,920

PLEASE MAKE PAYMENTS TO:  
CURRY COUNTY TAX COLLECTOR  
PO BOX 1568  
MEDFORD, OR. 97501

If a mortgage company pays your taxes,  
This statement is for your records only.

Full Payment with  
3% Discount

20,569.50

2/3 Payment with  
2% Discount

13,854.38

1/3 Payment  
No Discount

7,068.56

TOTAL TAX (After Discount)

20,569.50

▲ Tear Here

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

Tear Here ▲

2017-18 Property Taxes

CURRY REAL

ACCOUNT NO.: R24965

Full Payment Enclosed .....	Due:	Pay By	Discount Allowed	Net Amount
or 2/3 Payment Enclosed .....	Due:	11/15/17	636.17 3%	20,569.50
or 1/3 Payment Enclosed .....	Due:	11/15/17	282.74 2%	13,854.38
			NONE 0%	7,068.56

DISCOUNT IS LOST & INTEREST APPLIES AFTER DUE DATE

☐ Mailing address  
change on back

Enter Payment Amount

\$

TAX DUE MAY INCLUDE DELINQUENT TAXES IF ANY  
PLEASE MAKE PAYMENTS TO:

CURRY COUNTY TAX COLLECTOR  
PO BOX 1568  
MEDFORD, OR. 97501

CITY OF BROOKINGS  
898 ELK DRIVE  
BROOKINGS, OR 97415

08000001249650002056950000138543800007068569



# City of Brookings

898 Elk Drive, Brookings, OR 97415  
(541) 469-1101 Fax (541) 469-3650 TTL (800) 735-1232  
[gmilliman@brookings.or.us](mailto:gmilliman@brookings.or.us)

## GARY MILLIMAN

*City Manager*  
Credentialed City Manager  
International City Management Association

ICMA Career Excellence Award 2012  
ICMA Management Innovation Award 1979

Jim Kolen, Assessor  
Curry County  
94235 Moore Street  
Gold Beach, OR 97415

March 31, 2017

RE: Property Tax Assessment, City of Brookings Golf Course

The purpose of this letter is to respond to your email dated March 20, 2017, concerning the property tax exemption for the City-owned Salmon Run Golf Course. By way of this letter, the City is providing additional information for your consideration in determining whether it is appropriate to revoke the property's tax exempt status for the 17-18 tax year.

The analysis of the tax exempt status of public property always begins with the presumption that the property is tax exempt. As stated in *City of Eugene v. Keeney* (134 Ore. 393 (1930)), when "public corporations are involved, exemption is the rule and taxation the exception." The management agreement between the City of Brookings and the Early Management Team ("EMT") does not grant a possessory interest to EMT. The City has hired EMT to provide a professional service to the City. The City maintains possession, control and full ownership of the property. And therefore, the property remains tax-exempt under ORS 307.090.

### *Additional Information Concerning the City's Role*

Based upon your email, it appears that you may not be fully informed about the City's role as property owner of this public facility.

Over the past 12 months, the City has expended some \$250,000 in maintaining and improving facilities, and providing equipment at the golf course including the following major items:

1. A complete remodel of the clubhouse at a cost of \$97,905.
2. Roadway and parking repairs at a cost of \$12,300.
3. Cart path repairs at a cost of \$15,000.
4. Water system repairs at a cost of \$6,200.
5. Replacement of a heat pump at a cost of \$7,181.
6. Purchase and installation of an event tent at a cost of \$8,780.
7. Kitchen hood and ventilation system repairs at a cost of \$16,395.

8. Electrical repairs at a cost of \$2,600.

City staff and equipment has performed maintenance at the golf course, including mowing, drainage ditch clearing, pothole repair and well maintenance.

The City has entered into a five year lease/purchase agreement for 48 golf carts. The lease/purchase cost is \$48,383 annually.

City staff maintains the water system, including the potable system serving the clubhouse, the roads, drainage ditches, culverts, buildings, cart paths, and the onsite sewage collection system.

In contrast, the Early Management Team (EMT) with whom the City has contracted for *management* services, has been tasked with duties that are operational in nature, including organizing tournaments, advertising, supervising play, providing for the maintenance of golf equipment, operating the pro shop, providing score cards, divot tools and golf balls, providing for the professional manicure of greens and fairways, and so on.

Going forward, the City's Parks Division, which oversees the golf course, has requested \$74,575 in the 2017-18 General Fund budget for the following purposes:

- Clubhouse structural repairs.
- Clubhouse carpet replacement.
- Floor repair, electrical repair, door replacement for event tent.
- Parking lot lighting.
- Irrigation system repairs.
- Well building repairs.
- Potable water treatment system.
- Irrigation meter.
- Bridge repairs.
- Cart path repairs.
- Miscellaneous electrical and plumbing repairs.
- Repairs to perimeter fences damaged by Elk.

In summary, the golf course property and all physical assets are owned and maintained by the City of Brookings. The City of Brookings contracts with the Early Management Team for management of the day-to-day operation of the golf course. Just as a City might contract with a YMCA for the operation of its swimming pool, or contract with a private company to operate its wastewater treatment plant, or when the County enters into an agreement with a park host, the asset remains under the ownership and control of the City.

***Additional Tax Court Precedent and Comparisons***

The email from the Department of Revenue that was provided to the City stated an opinion that appears to be based on limited information and even more limited analysis. That opinion correctly cites *Sproul v. Gilbert* (226 Ore. 392 (1960)) as the seminal case

concerning the test for whether real property being used or occupied by someone other than the public agency owner is taxable. As stated in *Sproul*, “[t]here is no exact judicial gauge which can be set against the facts to prove our conclusion with mathematical precision. The exclusiveness of one’s occupancy is a matter of degree.” The *Sproul* court compared two types of grazing arrangements: (1) grazing permits, which gave ranchers a nonexclusive right to graze their cattle within a designated grazing district; and (2) grazing leases, which gave ranchers an exclusive right to graze their cattle on designated land that was not part of an official grazing district. The court held that grazing leases were taxable under ORS 307.060, while suggesting that grazing permits were not.

Of equal importance is the court’s instruction that “the substantiality of the occupant’s interest is tested by the inquiry: Does he have sufficient control over the premises to warrant the label of possession? For the most part, this inquiry is judicially answered by matching the facts in the case before the court with other cases where a similar situation has been the subject of adjudication.”

The DOR email cites one tax court case *Canteen Co. v. DOR* (8 Or.Tax 450 (1980)) as “helpful to read” and concludes that the golf course agreement grants possession to EMT and therefore, the property is taxable. But the City’s management agreement is less like the lease in *Sproul* or the lease in *Canteen Co.* and more like the management contract that was the subject of the case *City of Cannon Beach v. Clatsop County Assessor* (19 Or.Tax 250 (2007)).

The *Canteen* case concerned an agreement to provide food services in a public building. Although the agreement was titled a “lease” the *Canteen Co.* argued that what was granted was not a lease but was instead a license. The *Canteen Co.* based its argument on the fact that the agreement placed numerous restrictions on the operations of the *Canteen Co.* relating to operating hours, menu, prices, and wages. The Court found these restrictions did not prevent the creation of a “possessory” interest denoting a lease because the *Canteen Co.* was entitled to possession of the premises against everyone including the owner. If the *Canteen Co.* failed to follow the restrictions, then the County had to give a 30-day notice prior to retaking possession. In addition, the Court pointed out that the *Canteen Co.* was specifically prohibited from assigning, transferring or disposing of the lease without the written consent of the County. The Court noted that a license is not transferable and therefore, such language stating that the County must approve the assignment indicates that a lease was the intention of the parties.

Contrast these key facts pointed out by the court with the facts in the instant case. First, as pointed out in *Canteen Co.*, the degree of control over operations is not indicative of possession. Therefore, whether Lane Co. exercised a greater degree of control over the operations of the *Canteen Co.* than does the City over the operations of EMT is of no consequence. Second, the *Canteen Co.* was entitled to possession of the leased area against everyone including the owner during the term of the lease. This is not the case with the golf course. The management agreement does not grant any possessory interest and the City may enter at any time for any reason. In addition, the Management Agreement itself details the City’s extensive involvement with the physical grounds on a regular basis as well as the City’s ongoing responsibility to repair and maintain the real property itself.

Third, unlike in the *Canteen Co.* case, there is no right to a notice period upon the termination of the management agreement. Instead, the City has the sole authority to come up with a schedule that meets its needs in terms of winding up and transitioning from EMT to the next manager. Fourth, unlike in the *Canteen Co.* case, the management agreement is expressly an agreement for the personal services of EMT and is not transferable.

The DOR email rests its conclusion of possession on the following points. The City provides the following facts to show why those conclusions are flawed.

- The Agreement delegates to EMT authority for all policies, procedures, prices, regulations and implementation of the same, as well as for all property, maintenance, food and beverage service, merchandising, accounting, and fiscal reporting.
  - Section 3.0 requires that the City approve EMT's business plan on annual basis.
  - Per Section 5.0, the City is responsible for maintaining the access road in good repair; maintaining cart roads in good repair; maintaining bridge structure in good repair; maintaining roadside drainage, ditches and culverts; maintaining potable water system, including source of supply, treatment and distribution; maintaining equipment and piping used to extract irrigation water from the Freeman Ranch well and the transmission main connecting to the golf course irrigation system; maintaining the on-site sewage collection system, but not including periodic pumping of the septic tank; maintaining the shop building structure including roof; providing and maintaining an event tent adjacent to the clubhouse; providing and maintaining an entrance sign at South Bank Chetco River Road; service direction signs on Highway 101 from the Oregon Department of Transportation.
  - Section 7.0 grants EMT the right to *use* the property for the purposes set forth in the agreement while emphasizing that the *City retains possession* of the property.
  - Section 14.03 states that the City will provide fire protection and suppression services to the property.
  - Section 17.04 requires that subcontracts with total payments out of more than \$10,000 per year be approved by the City.
- EMT bears sole liability for acts on the course and is required to carry insurance.
  - The requirement that an independent contractor carry insurance that will cover its performance under the contract and that its insurance will be the primary insurance in the event of a claim is standard and not indicative of possession or control. In addition, the statement that "EMT bears sole liability for acts on the course" is a gross oversimplification of the indemnification clause of the agreement, another clause that will be found in nearly every contract with an independent contractor.
- The course will be run using EMT's business plan and not the City's and EMT provides all materials and labor, and EMT has its own employees.
  - Again, Section 3.0 requires that the City approve EMT's business plan on annual basis.



- It is true that EMT is required to provide materials and labor/employees under the agreement. This is part of the service that EMT is providing. However, neither EMT nor its employees have any possessory rights. They are simply allowed on the property to provide the services called for under the agreement.
- The split of taxable income between EMT and the City heavily favors EMT.
  - The fee for management services is that EMT gets to keep 90% of its taxable income rather than receive a fixed monthly payment. However, when you consider that EMT had negative taxable income and took no salaries last year, the conclusion that the split of taxable income as a fee heavily favors EMT does not hold water.

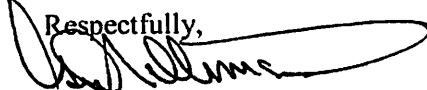
The Golf Course Management Agreement is much more similar to the management agreement discussed in *Cannon Beach v. Clatsop County Assessor*. The *Cannon Beach* case concerned a management agreement with the City of Cannon Beach and an individual for the management of an RV park, pool and spa, and several other buildings owned by the City of Cannon Beach. The manager was tasked with the following:

“The Manager shall manage the City’s RV Park, including, but not limited to paying for all expenses associated with the RV Park, hiring and terminating employees, maintaining the books and records, collecting and disbursing funds, repairing and maintain structures and the swimming pool, advertising and renting RV spaces, operating the store and fueling stations, maintaining the landscaping, maintaining adequate security, operating a reservation system, and applying for and obtaining la required governmental and quasi-governmental permits, licenses and approvals. . . .”

Thus, in the *Cannon Beach* case, the manager was tasked with doing many of the same things that EMT is tasked with doing under the management agreement with the City. Yet, the court did not find that the performance of these duties granted the manager a sufficient degree of control over the property to constitute possession. In addition, the court pointed out that lessees and other holders of an interest in property pay the owner rent to use the property for the user’s benefit. Both of the cases cited by the DOR, *Sproul* and *Canteen Co.*, involved arrangements where rent was paid for the use of property. In the *Cannon Beach* case, as in the instant case, no rent was paid to the landowner because no possessory interest has been granted.

The City has not leased the property to EMT and no matter how you twist and contort the management agreement, no possessory interest has been granted to EMT. EMT has been hired to perform a professional service, to manage the golf course on behalf of the City.

The City’s golf course should remain exempt from property taxes.

Respectfully,  


Cc: Mayor and City Council, Finance/HR Director, City Attorney, Val Early

## **Gary Milliman**

---

**From:** Tracy Garner  
**Sent:** Monday, March 20, 2017 4:46 PM  
**To:** gmilliman@brookings.or.us  
**Cc:** Jim Kolen  
**Subject:** FW: City owned Golf Course Exemption  
**Attachments:** Canteen Co v DOR 1980\_Ore\_\_Tax\_LEXIS\_26.pdf

Good afternoon Mr. Milliman, On April 1, 2016, County Assessor, Jim Kolen received a letter from you letting him know the lease agreement for Salmon Run Golf course between the City of Brookings (City) and Wild Rivers Golf Management LLC had been terminated. Per that letter the property account for the golf course went from Taxable to Non-taxable Exempt since the City of Brookings is a municipal corporation and is exempt per ORS 307.090 for 2016-17. In November 2016 our office was provided a copy of the Golf Course Management Agreement between the City and Early Management Team (EMT) signed May 20, 2016. I forwarded that Management Agreement to the Oregon Department of Revenue (DOR) and requested a formal opinion regarding the tax exempt status. I received a response and it is the DOR's opinion that the property should be returned to taxable status. If the property's exclusive possession and use has been leased or otherwise granted to a taxable entity that would make it taxable despite government ownership per ORS 307.110. The Management Agreement delegates to EMP authority for all policies, procedures, prices, regulations and implementation of same, as well as for all the property, maintenance, food and beverage service, merchandising, accounting and fiscal reporting. EMT bears sole liability for acts on the course and is required to carry all the casualty and liability insurance. It grants possessory interest.

The Management Agreement has a term of 36 months, commencing on May 20, 2016 and terminating on May 19, 2019, but may be extended for two additional 36 month periods. We will be returning account # R24965, Salmon Run Golf Course to taxable status for the 2017-18 year and forward until the Management Agreement comes to an end.

Please see below the Department of Revenue email regarding the property. If you have any questions or concerns please let me know.

Tracy A Garner  
Deputy Assessor  
Curry County Oregon  
541-247-3288

---

**From:** HALL Rebecca \* DOR [mailto:Rebecca.HALL@oregon.gov]  
**Sent:** Sunday, March 19, 2017 9:32 AM  
**To:** Tracy Garner  
**Cc:** BENJAMIN Danette M \* DOR  
**Subject:** FW: City owned Golf Course Exemption

Hi, Tracy –

Sorry for the delay in getting back to you on this.

The golf course situation is very similar to the Curry Health Network situation and you use the same analysis. I'll restate what I said in that earlier email:

The standard for whether public property being used by a taxable entity is taxable was set out by the Oregon Supreme Court in *Sproul v. Gilbert*, 226 Or. 392 (1961). The *Sproul* court held that if an interest is less than possessory, it's a license and not taxable, and whether the person has a possessory interest depends on whether the person has sufficient control over the premises to call it possession. I have attached a case that might be helpful (*Canteen Co. v. DOR*, 8 Or.Tax 450 (1980)). In the *Canteen* case, the county entered into a "lease" for use of a food service area, but at court the county claimed the "lease" was actually a license. In spite of restrictions on what could be served and how much employees had to be paid, the court found the "lease" granted a sufficient possessory interest to make the property taxable.

I've attached the *Canteen* case, which is helpful to read. The situation there was in some ways similar to the golf course situation, but in *Canteen* the county asserted even more control over operations than the city does over the golf course. The court still found there was sufficient evidence of "possession or control" of the premises to make them taxable.

The golf course "Agreement" tries to assert in a parenthetical that the city maintains possession and can enter the golf course at any time. The city may enter at any time, but the rest of the agreement shows that at best the city is sharing possession with EMT. All of the rest of the agreement evidences EMT's near total control over the property. The agreement delegates to EMT authority for all policies, procedures, prices, regulations, and implementation of same, as well as for all the property, maintenance, food and beverage service, merchandising, accounting, and fiscal reporting. EMT bears sole liability for acts on the course and is required to carry all the casualty and liability insurance. The agreement provides that the course will be run using EMT's business plan, not the city's, and that EMT provides all materials and labor, and that EMT's employees are not city employees. Paragraph 17.0 says "EMT shall be free from the direction and control of the City over the means and manner of performing services under this Agreement, subject only to the right of the city to specify the desired result." In addition, the split of taxable income between EMT and the city heavily favors EMT.

The *Canteen* court discussed the differences between a license and a lease, and factors that indicate the control necessary to be a lease. When you compare the facts in that case to the situation with the golf course

agreement, it seems quite reasonable to conclude the golf course agreement is sufficient to render the property taxable.

Please note this information is provided for your consideration and not as legal advice. You may want to consult your county counsel if you want legal advice.

Thanks for being patient!

**Rebecca Hall**

Finance, Taxation & Exemptions

Property Tax Division

Oregon Dept. of Revenue

(971) 301-0312

[rebecca.hall@oregon.gov](mailto:rebecca.hall@oregon.gov)



# City of Brookings

898 Elk Drive, Brookings, OR 97415  
(541) 469-1101 Fax (541) 469-3650 TTL (800)735-1232  
[gmilliman@brookings.or.us](mailto:gmilliman@brookings.or.us)

**GARY MILLIMAN**

*City Manager*  
Credentialed City Manager  
International City Management Association

April 1, 2016  
Mr. Jim Kolen  
Curry County Assessor  
94235 Moore Street, Suite 221  
Gold Beach, OR 97444

RE: Salmon Run Golf Course (99040 South Bank Chetco River Rd, Brookings, OR 97415)

[Tax Map / Lot]

Dear Mr. Kolen:

This letter is to advise the Curry County Assessor's office that as of April 1, 2016, the City has terminated its lease agreement with Wild Rivers Golf Management LLC for the lease of the Salmon Run Golf Course. Without a taxable lessee of the property, the property is no longer subject to property tax under ORS 307.110. Therefore, the City of Brookings, a municipal corporation and owner of the property, hereby requests that the property known as Salmon Run Golf Course be immediately removed from the County tax rolls as an exempt property pursuant to ORS 307.090.

A copy of the notice of termination has been included for your reference.

Sincerely,

Gary Milliman

Enc.





# City of Brookings

898 Elk Drive, Brookings, OR 97415  
(541) 469-1101 Fax (541) 469-3650 TTL (800) 735-1232  
[gmilliman@brookings.or.us](mailto:gmilliman@brookings.or.us)

**GARY MILLIMAN**

*City Manager*

Credentialed City Manager  
International City Management Association

ICMA Career Excellence Award 2012  
ICMA Management Innovation Award 1979

April 1, 2016

Mr. Jim Kolen  
Curry County Assessor  
94235 Moore Street, Suite 221  
Gold Beach, OR 97444

RE: Salmon Run Golf Course  
(99040 South Bank Chetco River Rd, Brookings, OR 97415)  
[Including but not limited to Account #R24965]

Dear Mr. Kolen:

This letter is to advise the Curry County Assessor's office that as of April 1, 2016, the City has terminated its lease agreement with Wild Rivers Golf Management LLC for the lease of the Salmon Run Golf Course. Without a taxable lessee of the property, the property is no longer subject to property tax under ORS 307.110. Therefore, the City of Brookings, a municipal corporation and owner of the property, hereby requests that the property known as Salmon Run Golf Course be immediately removed from the County tax rolls as an exempt property pursuant to ORS 307.090.

A copy of the notice of termination has been included for your reference.

Respectfully,

Gary Milliman

Enc.

# Board of Property Tax Appeals

## Real Property Petition and Instructions for Filing

### General information

Use this form to request a reduction of the value of your land, buildings, manufactured structures, and industrial machinery and equipment. The value of your business personal property or floating property should be appealed on the personal property petition form.

For the current tax year, your petition must be postmarked or delivered by December 31. If December 31 falls on a weekend or holiday, the filing date moves to the next business day. See the back of this form for filing instructions.

We provide the following information to help you understand how your property is assessed.

- **Real market value (RMV)** is the value the assessor has estimated your property would sell for on the open market as of the assessment date. The assessment date for most property is January 1 preceding the mailing of the tax statements in October.
- **Maximum assessed value (MAV)** is the greater of 103 percent of the prior year's assessed value or 100 percent of the prior year's MAV. **MAV may be increased above 3 percent** of the prior year's assessed value if certain changes, defined as exceptions, are made to your property. MAV doesn't appear on most tax statements.
- **Exception** means a change to property, not including general ongoing maintenance and repair or minor construction. Changes that could affect MAV include new construction or additions, major remodeling or reconstruction, rezoning with use consistent with the change in zoning, a partition or subdivision, or a disqualification from special assessment or exemption. Minor construction is defined as additions of real property improvements with a RMV that doesn't exceed \$10,000 in one assessment year or \$25,000 over a period of five assessment years. Exception value doesn't appear on your tax statement.
- **Assessed value (AV)** is the value used to calculate your tax. It is the lesser of RMV or MAV.
- **Specially assessed value (SAV)** is a value established by statute. The legislature has established several programs that create value levels below market value for certain types of property. Examples of types of property that may qualify for special assessment are farmland, historic property, government-restricted low income multiunit housing, and property that qualifies as "open space."

Contact your county assessor for more information about how your property value was determined.

### Appeal rights

**Generally.** Except for centrally assessed property and industrial property appraised by the Department of Revenue, you may appeal the current real market, maximum assessed, specially assessed, or assessed value of your taxable real property to the board of property tax appeals (BOPTA). However, the authority of BOPTA to reduce your property's MAV and AV is **limited to the calculation allowed by law**, and an appeal may not result in a reduction of tax.

**Industrial property.** If you're appealing **principal or secondary industrial** property appraised by the Department of Revenue, you must file a complaint with the Magistrate Division of the Tax Court. The deadline for filing your appeal with the Tax Court is the same as the deadline for filing with BOPTA. You may contact the Tax Court at (503) 986-5650.

**Centrally assessed property.** The value of utilities and other centrally assessed property must be appealed to the Department of Revenue on or before June 15 of the assessment year on forms that we provide.

**MAV.** MAV is based on the prior year's MAV and AV. The 3 percent increase from the prior year's AV can't be reduced by BOPTA. If the AV increased by more than 3 percent due to an exception, the board may reduce the value of the exception.

**AV.** AV is established by a simple comparison between RMV and MAV and is equal to whichever one is less. It can only change as the result of changes to RMV or MAV. If BOPTA reduces RMV but it remains higher than MAV, AV won't change.

### Instructions for filing a petition

Read all instructions carefully before completing this form. If your petition isn't complete, it will be returned. **If your petition isn't corrected by the date indicated on the "Defective Petition Notice" mailed to you, it will be dismissed.**

#### Petitioner (lines 1-10)

The owner, an owner, or any person or business that holds an interest in the property that obligates the person or business to pay the property taxes is legally authorized to appeal to BOPTA. If the person or business isn't the owner or doesn't receive the tax statement, **proof of an obligation to pay the taxes must be submitted with the petition.** Contracts and lease agreements are examples of documents that may allow a party other than the owner to appeal.

If property is owned by a business, the petition (or authorization to represent, if applicable) must be signed by a person who can legally bind the company. For most corporations, this is usually a corporate officer. **Employees regularly**

employed in tax matters for a corporation or other business may also sign the petition.

If you need help in determining who can sign the petition for your business or other organization, contact the county clerk's office in your county.

### Authorized representative (lines 11–22)

The law allows only certain people to sign the petition and appear at the hearing to represent the petitioner.

**People who need a signed authorization from the petitioner in order to sign the petition include:**

- A relative of the owner(s). Relative is defined as: spouse, (step)son, (step)daughter, (step)brother, (step)sister, (step)father, (step)mother, grandchild, grandparent, nephew, niece, son- or daughter-in-law, brother- or sister-in-law, father- or mother-in-law.
- A real estate broker licensed under Oregon Revised Statute (ORS) 696.022.
- A real estate appraiser certified or licensed under ORS 674.310, or registered under 308.010.
- A person duly qualified to practice public accountancy in Oregon. This includes Oregon licensed certified public accountants (CPAs) or public accountants (PAs), or PAs from another state who have proof of substantial equivalency authorization from Oregon.
- A lessee, if the lessee isn't obligated to pay the taxes. Lessees obligated to pay the taxes aren't required to provide authorization from the owner, but must provide proof of the obligation.

An attorney-in-fact under a general power of attorney executed by the owner of the property can also sign the petition and appear at the hearing to represent the petitioner. The attorney-in-fact must provide a copy of the general power of attorney with the petition.

**People who don't need a signed authorization include:**

- An attorney-at-law. The attorney's Oregon state bar number must be included on the petition.
- Legal guardian or conservator of the owner(s) with court appointment.
- Trustee in bankruptcy proceedings with court appointment.

### Attendance at hearing (line 23)

Checking "yes" means you or your representative will attend the hearing. Checking "no" means that neither you nor your representative will attend the hearing. If you don't attend the hearing, BOPTA will make a decision about the value of your property based on the written evidence you submit.

If you check "yes" or don't check any box in this section, BOPTA will schedule a hearing and notify you of the time and place to appear. **Hearings will be scheduled between the first Monday in February and April 15.** Some counties have established time limits for you and the assessor to present evidence. The BOPTA clerk can advise you of your county's procedure.

### Property information (lines 24–27)

You must include the assessor's account number or a copy of your tax statement with your petition.

### RMV (lines 28–31)

Enter the RMV you are appealing in the left-hand column or **attach a copy of your tax statement**. Enter the RMV you're requesting for your property in the right hand column. This number should represent what you think your property was worth on the open market as of **January 1 of the current year**. You may appeal either the total value of your property or the value of any or all components (land, buildings, machinery and equipment, or manufactured structures).

### SAV (line 32)

If your property is specially assessed, complete this section to appeal the specially assessed portion of your property. You may need to talk to your county assessor to determine which value on your tax statement is the SAV.

Enter the total SAV you're appealing in the left-hand column. Enter the total SAV you're requesting for your property in the right-hand column. Many special assessments result from an application filed with the county assessor and often only a portion of the property is under special assessment. **Most property is not specially assessed. BOPTA cannot grant special assessments or restore a property's previous qualification for special assessment.**

### AV (line 33)

Enter AV from your tax statement or the assessor's records. A new AV may result from your appeal based on the RMV, SAV, or MAV determined by BOPTA.

**Note:** Even if BOPTA reduces RMV of your property, your tax bill may not change unless RMV is reduced below AV.

### Evidence of property value (lines 34–35)

Explain the basis of your appeal and provide evidence that the value the assessor has placed on your property is incorrect. The Department of Revenue information circular, *How to Appeal Your Property Value*, contains information about the type of evidence needed for a successful appeal. **Comparing the value on the tax roll of your house to the value on the tax roll of your neighbor's house or comparing the taxes you pay to the taxes your neighbor pays generally isn't considered satisfactory evidence.**

If you have recently built or installed a new home or other structure, remodeled, or added to an already existing structure, **you should address the cost of this portion of your property on line 34, "Changes to property."**

**All evidence submitted, including pictures and appraisals, will be kept. It won't be returned to you.**

### Declaration and signature (lines 36–37)

Sign and date the petition form. The petition will be considered defective if not signed.

You can also download this form at [www.oregon.gov/dor/forms](http://www.oregon.gov/dor/forms).

# Board of Property Tax Appeals Real Property Petition

for \_\_\_\_\_ County

- Read all instructions carefully before completing this form.
- Please print or type the requested information on both sides of this petition.
- Complete one petition form for each account you're appealing.
- Return your completed petition(s) to the address shown on the back.
- Use this form for manufactured structures, not the *Personal Property Petition*.
- Include a copy of your tax statement.

For official use only
Petition number and date received

## Petitioner (person in whose name petition is filed)

1 Check the box that applies: <input type="checkbox"/> Owner.		
<input type="checkbox"/> Person or business, other than owner, obligated to pay taxes (attach proof of obligation).		
2 Name—individual, corporation, or other business		3 Email address (optional)
4 Phone number		
Daytime		Evening
5 Mailing address (street or PO Box)		
6 City		7 State
		8 ZIP code
For business use only }	9 Name of person acting for corporation, LLC, or other business	
	10 Title (for example, president, vice president, tax manager, etc.)	

If a representative is named on line 11, all correspondence regarding this petition will be mailed or delivered to the representative.

## Representative } Complete this section when the petition is signed by an authorized representative of petitioner. Only certain people qualify to act as an authorized representative. See the instructions for a list of who qualifies.

11 Name of representative		12 Email address (optional)	
13 Phone number			
Daytime		Evening	
14 Mailing address (street or PO Box)			
15 City		16 State	17 ZIP code
18 Relationship to petitioner named on line 2			
19 Oregon state bar number	20 Oregon appraiser license number	21 Oregon broker license number	22 Oregon CPA or PA permit or S.E.A. number

Any refund resulting from this appeal will be made payable to the petitioner named on line 2 unless separate written authorization is made to the county tax collector. However, if a representative is designated, any refund will be sent to this individual or business, not the petitioner.

## Attendance at hearing

23 Will you or your designated representative attend the hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No
If you choose not to be present at the hearing, BOPTA will make a decision based on the written evidence you submit.

## Property information

24 Assessor's account number (from your tax statement)		25 Assessor's map and tax lot number (from your tax statement)	
26 Street address and city where property is located		27 Property type <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Farm	
		<input type="checkbox"/> Mfd structure <input type="checkbox"/> Multi-family <input type="checkbox"/> Forest <input type="checkbox"/> Industrial	

	Real market value (RMV) from tax statement or assessor's records	RMV requested (for property as existed on assessment date)
28 Land →	\$	\$
29 Buildings, machinery, etc. →	\$	\$
30 Manufactured structure →	\$	\$
31 Total RMV →	\$	\$
32 Total SAV of specially assessed portion (farmland, historic property, government-restricted low income multi-unit housing, or property that qualifies as "open space"). →		
Most property isn't specially assessed. Please read the instructions to see if this section applies to your property.		
	Specially assessed value (SAV) from assessor's records	SAV requested (SAV is limited to the qualifications and calculations allowed by law)
	\$	\$
	Assessed value (AV) from tax statement or assessor's records	AV Requested (AV is limited to the calculation allowed by law)
33 Total AV →	\$	\$

**Evidence of property value** Include documentation (recently recorded deeds, listings, appraisals, construction bids, etc.)

34. Check any of the following that applied to the property at or near the assessment date and the reason for appealing. Include documentation.

☐ Property sale/purchase

Date Purchase price Short sale or foreclosure? ☐ Yes ☐ No

☐ Property listing

Date Asking price

☐ Property appraisal

Date Appraiser Finding

☐ Condition issues/damages—What condition issues or damages exist? How long have they existed? Enclose additional pages if necessary:

☐ Changes to property—What changes have been made? When? Enclose additional pages if necessary:

☐ Other (for example, market data)

Specify and provide a short explanation or documentation:

35 Why do you think the value of your property is incorrect? (Answer the question in the space provided; enclose additional pages, if necessary. Provide enough information to support the value(s) you are requesting. Be specific.)

**Declaration:** I declare under the penalties for false swearing [ORS 305.990(4)] that I have examined this document, and to the best of my knowledge, it is true, correct, and complete.

36 Signature and name of petitioner or petitioner's representative (attach authorization if necessary)

Sign name

Print or type name

37 Date

X

Please return this petition to:

See Publication OR-BOPTA-CL on [www.oregon.gov/dor/forms](http://www.oregon.gov/dor/forms).

When and where to file your petition

File your petition in the office of the county clerk. No other county office can accept petitions. Your petition must be postmarked or delivered by December 31 to the county clerk's office in the county where the property is located. If December 31 falls on a weekend or holiday, the filing deadline moves to the next business day. Mail or deliver your petition to the address shown in the box.



# Board of Property Tax Appeals

## Personal Property Petition and Instructions for Filing

### General information

Use this form to request a reduction of the value of your taxable personal property. Personal property is taxable in Oregon if it is currently being used or being held for use in a business, or is floating property.

For the current tax year, your petition must be postmarked or delivered by December 31. If December 31 falls on a weekend or holiday, the filing date moves to the next business day. See the back of this form for filing instructions.

The following information is provided to help you understand how your property is assessed.

- **Real market value (RMV)** is the value the assessor has estimated your property would sell for on the open market as of the assessment date. The assessment date for most property is January 1 preceding the mailing of the tax statements in October.
- **Maximum assessed value (MAV)** is the greater of 103 percent of the prior year's assessed value or 100 percent of the prior year's MAV. **MAV may be increased above 3 percent** of the prior year's assessed value if certain changes, defined as exceptions, are made to your property. Maximum assessed value does not appear on your tax statement.
- **Exception** means a change to property that adds value. Personal property exceptions include the addition of leased property, increased non-inventory supplies, and the acquisition of any other taxable personal property. The exception amount is derived by subtracting the prior year real market value from the current year real market value.
- **Assessed value (AV)** is the value used to calculate your tax. It is the lesser of real market value or maximum assessed value.

Contact your county assessor for more information about how your property value was determined.

### Appeal rights

**Generally**—Except for centrally assessed property and industrial property appraised by the Department of Revenue, you may appeal the current real market, maximum assessed, or assessed value of your taxable personal property to the board of property tax appeals. However, the authority of BOPTA to reduce the MAV and AV of your property is **limited to the calculation allowed by law**, and an appeal may not result in a reduction of tax.

**Industrial property**—If you are appealing personal property that is part of a **principal or secondary industrial** property appraised by the Department of Revenue, you must file a

complaint with the Magistrate Division of the Tax Court. The deadline for filing your complaint with the Tax Court is the same as the deadline for filing with the board of property tax appeals. You may contact the Tax Court at (503) 986-5650.

**Centrally assessed property**—The value of utilities and other centrally assessed property must be appealed to the Department of Revenue on or before June 15 of the assessment year on forms provided by the department.

**MAV**—MAV is based on the prior year's MAV and AV. For personal property, RMV decreases as the property depreciates. MAV does not decrease due to depreciation. Therefore the MAV of personal property is normally equal to or greater than RMV.

**AV**—AV is established by a simple comparison between RMV and MAV and is equal to whichever one is less. Therefore the AV of personal property is normally equal to the RMV.

**Penalties**—Penalties assessed for the late filing of a personal property return may also be appealed to the board of property tax appeals. Penalties should be appealed on a *Petition for Waiver of Late Filing Penalty* form.

### Instructions for filing a petition

*Read all instructions carefully before completing this form. If your petition is not complete, it will be returned. If your petition is not corrected by the date indicated on the "Defective Petition Notice" mailed to you, it will be dismissed.*

#### Petitioner (lines 1–10)

The owner, an owner, or any person or business that holds an interest in the property that obligates the person or business to pay the property taxes is legally authorized to appeal to the board of property tax appeals. If the person or business is not the owner or does not receive the tax statement, **proof of an obligation to pay the taxes must be submitted with the petition**. Contracts and lease agreements are examples of documents that may allow a party other than the owner to appeal.

If property is owned by a business, the petition (or authorization to represent, if applicable) must be signed by a person who can legally bind the company. For most corporations, this is usually a corporate officer. **Employees regularly employed in tax matters for a corporation or other business may also sign the petition.**

If you need help in determining who can sign the petition for your business or other organization, contact the county clerk's office in your county.

### Authorized representative (lines 11–22)

The law allows only certain people to sign the petition and appear at the hearing to represent the petitioner.

**Those people who need a signed authorization from the petitioner in order to sign the petition include:**

- A relative of the owner(s). Relative is defined as: spouse, (step)son, (step)daughter, (step)brother, (step)sister, (step)father, (step)mother, grandchild, grandparent, nephew, niece, son- or daughter-in-law, brother- or sister-in-law, father- or mother-in-law.
- A real estate broker licensed under ORS 696.022.
- A real estate appraiser certified or licensed under ORS 674.310, or registered under ORS 308.010.
- A person duly qualified to practice accountancy in the state of Oregon. This includes Oregon licensed certified public accountants (CPAs) or public accountants (PAs), or CPAs from another state who have proof of substantial equivalency authorization from Oregon.
- A lessee, if the lessee is **not** obligated to pay the taxes. Lessees obligated to pay the taxes are not required to provide authorization from the owner, but must provide proof of the obligation.

An attorney-in-fact under a general power of attorney executed by the owner of the property can also sign the petition and appear at the hearing to represent the petitioner. The attorney-in-fact must provide a copy of the general power of attorney with the petition.

**Those people who do not need a signed authorization from the petitioner in order to sign the petition include:**

- An attorney-at-law. The attorney's Oregon state bar number must be included on the petition.
- Legal guardian or conservator of the owner(s) with court appointment.
- Trustee in bankruptcy proceedings with court appointment.

### Attendance at hearing (line 23)

Checking "yes" means that you or your representative or both of you will attend the hearing. Checking "no" means that neither you nor your representative will attend the hearing. If you do not attend the hearing, the board will make a decision about the value of your property based on the written evidence you submit.

If you check yes or don't check any box in this section, the board will schedule a hearing and notify you of the time and

place to appear. Hearings will be scheduled between the first Monday in February and April 15. Some counties have established time limits for you and the assessor to present evidence. The board clerk can advise you of your county's procedure.

### Property information (lines 24–27)

You must include the assessor's account number or a copy of your tax statement with your petition.

### Real market value (lines 28–32)

You may appeal the total real market value of your property or the value of a specific item, category, or schedule. The assessor can provide you with an itemized listing of the real market value of the items, categories, or schedules assessed to your account. You should review these values carefully before filing your petition.

Enter a description of the property, the value you are appealing, and the value you are requesting in this section. The requested value should represent what you think your property was worth on the open market as of **January 1 of the current year**.

### Assessed value (line 33)

Enter the AV from your tax statement or the assessor's records. A new AV may result from your appeal based upon the RMV or MAV determined by the board.

*Note: Even if the board reduces the real market value of your property, your tax bill may not change unless the real market value is reduced below the assessed value.*

### Evidence of property value (lines 34–35)

Explain the basis of your appeal and provide evidence that the value the assessor has placed on your property is incorrect. The Department of Revenue information circular, *How to Appeal Your Property Value*, contains information about the type of evidence needed for a successful appeal.

**All evidence submitted to the board, including pictures and appraisals, will be kept by the board and become a part of the public record. It will not be returned to you.**

### Declaration and signature (lines 36–37)

Sign and date the petition form. The petition will be considered defective if not signed.

# Board of Property Tax Appeals Personal Property Petition

for \_\_\_\_\_ County

For official use only

Petition number and date received

- Read all instructions carefully before completing this form.
- Please print or type the requested information on both sides of this petition.
- Complete one petition form for each account you are appealing.
- Return your completed petition(s) to the address shown on the back.
- Please attach a copy of your tax statement.
- If you wish to appeal the value of a manufactured structure, use the *Real Property Petition* (150-310-063) instead of this petition.

## Petitioner (Person in whose name petition is filed)

- 1 Check the box that applies: ☐ Owner.  
☐ Person or business, other than owner, obligated to pay taxes (attach proof of obligation).

2 Name—individual, corporation, or other business		3 Telephone number			
		Daytime		Evening	
4 Mailing address (street or PO Box)		5 City	6 State	7 ZIP code	8 Email address (optional)
For business use only	9 Name of person acting for corporation, LLC, or other business		10 Title (for example, president, vice president, tax manager, etc.)		

If a representative is named on line 11, all correspondence regarding this petition will be mailed or delivered to the representative.

## Representative } To be completed when petition is signed by an authorized representative of petitioner. Only certain people qualify to act as an authorized representative. See the instructions for a list of who qualifies.

11 Name of representative		12 Telephone number			
		Daytime		Evening	
13 Mailing address (street or PO Box)		14 City	15 State	16 ZIP code	17 Email address (optional)
18 Relationship to petitioner named on line 2					
19 Oregon state bar number		20 Oregon appraiser license number	21 Oregon broker license number	22 Oregon CPA or PA permit or S.E.A. number	

Any refund resulting from this appeal will be made payable to the petitioner named on line 2 unless separate written authorization is made to the county tax collector. However, if a representative is designated, any refund will be sent to this individual or business, not the petitioner.

## Attendance at hearing

- 23 Will you or your designated representative attend the hearing? ☐ Yes ☐ No  
If you choose to not be present at the hearing, the board will make a decision based on the written evidence you submit.

## Property information

24 Assessor's account number (from your tax statement)		25 Code area number (from your tax statement)	
26 Street address and city where property is located		27 Business/property type <input type="checkbox"/> Retail <input type="checkbox"/> Industrial <input type="checkbox"/> Floating Property <input type="checkbox"/> Office <input type="checkbox"/> Motel/Apartment <input type="checkbox"/> Small Manufacturing <input type="checkbox"/> Food Service <input type="checkbox"/> Other	

Attach additional pages if necessary.

Description of item, category, or schedule	Real market value (RMV) from assessor's records	RMV requested (for property as existed on assessment date)
28	\$	\$
29	\$	\$
30	\$	\$
31	\$	\$
32 Total RMV →	\$	\$
	Assessed value (AV) from tax statement or assessor's records	AV requested (AV is limited to the calculation allowed by law)
33 Total assessed value (AV) →	\$	\$

**Evidence of property value** Include documentation (recently recorded deeds, listings, appraisals, construction bids, etc.)

34. Check any of the following that applied to the property at or near the assessment date. Include documentation.

☐ Property sale/purchase

Date Purchase price Short sale or foreclosure? ☐ Yes ☐ No

☐ Property listing

Date Asking price

☐ Property appraisal

Date Appraiser Finding

☐ Condition issues/damages—What condition issues or damages exist? How long have they existed? Enclose additional pages if necessary:

☐ Changes to property—What changes have been made? When? Enclose additional pages if necessary:

☐ Other (for example, market data)

Specify and provide a short explanation or documentation:

35 Why do you think the value of your property is incorrect? (Answer the question in the space provided; enclose additional pages, if necessary. Provide enough information to support the value(s) you are requesting. Be specific.)

**Declaration:** I declare under the penalties for false swearing [ORS 305.990(4)] that I have examined this document, and to the best of my knowledge, it is true, correct, and complete.

36 Signature and name of petitioner or petitioner's representative (attach authorization if necessary)  
Sign name Print or type name

37 Date

X

Please return this petition to:

See Publication OR-BOPTA-CL on [www.oregon.gov/dor/forms](http://www.oregon.gov/dor/forms).

**When and where to file your petition**

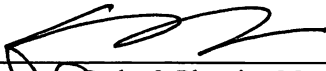
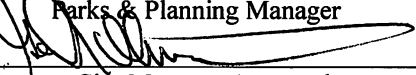
File your petition in the office of the county clerk. No other county office can accept petitions. Your petition must be postmarked or delivered by December 31 to the county clerk's office in the county where the property is located. If December 31 falls on a weekend or holiday, the filing deadline moves to the next business day. Mail or deliver your petition to the address shown in the box.

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: November 13, 2017

Originating Dept: Parks


  
\_\_\_\_\_  
Parks & Planning Manager  
  
\_\_\_\_\_  
City Manager Approval

---

Subject: Refund Park Use Fees for Brookings Harbor Community Theater

Motion: Motion to refund park use fees in the amount of \$123.00 to the Brookings Harbor Community Theater.

Financial Impact: Loss of park use fees in the amount of \$123.00 for a theater event in Azalea Park.

Reviewed by Finance & Human Resources Director: 

Background Information: The Brookings Harbor Community Theater (BHCT) is requesting a refund of fees paid in the amount of \$123.00 for the use of the band shell stage area in Azalea Park.

Attachments:

- a. BHCT email request
- b. BHCT Park Use Application



## Tony Baron

---

**From:** Teri Davis  
**Sent:** Wednesday, November 08, 2017 10:10 AM  
**To:** Tony Baron  
**Subject:** FW: BHCT Fee Waiver Request  
**Attachments:** BHCT - 10-8-17 Permit.pdf

See below

*Teri Davis*  
City Recorder

---

**From:** Lauri Ziemer [mailto:[lziemer@brookings.or.us](mailto:lziemer@brookings.or.us)]  
**Sent:** Monday, October 30, 2017 1:12 PM  
**To:** Teri Davis  
**Subject:** BHCT Fee Waiver Request

BCHT would like to pursue a waiver from the City Council for their Park Use fees of \$123. Event is over so the fees would have to be refunded, they already received their deposit back.

**Lauri Ziemer**  
Public Works | Dev. Services  
[City of Brookings](#)  
898 Elk Drive | Brookings, OR 97415  
(541) 469-1103  
[lziemer@brookings.or.us](mailto:lziemer@brookings.or.us)

---

**From:** C Pruden [mailto:[cpruden92@gmail.com](mailto:cpruden92@gmail.com)]  
**Sent:** Monday, October 30, 2017 11:38 AM  
**To:** Lauri Ziemer  
**Subject:** Re: Azalea Park Rental Reservation

Hello,  
I would formally like to request a refund of the \$123 fee for the use of Azalea park to preform Much Ado About Nothing.

Brookings Harbor Community Theater is a non-profit organization that organizes and preforms theatrics for all age groups. We wanted to do "Shakespeare in the Park" with our most recent performance of Much Ado About Nothing with free admittance in order to connect with the community. The theater itself, being a non profit, does not have ample funds. So I personally fronted the money for the fee so that we were able to see this happen.

I appreciate your services and hope you will consider the cost of the fee to be refunded.

Thank you,  
Courtney Pruden

On Sep 20, 2017 11:13 AM, "C Pruden" <[cpruden92@gmail.com](mailto:cpruden92@gmail.com)> wrote:  
Got it, thank you!

On Wed, Sep 20, 2017 at 11:11 AM, Lauri Ziemer <[lziemer@brookings.or.us](mailto:lziemer@brookings.or.us)> wrote:

Hi Courtney - Received your deposit and fees for use of Azalea Park on Sunday, Oct. 8<sup>th</sup>. Just need your insurance document to add to the permit application.

Notice your event times are 1 to 9 pm, and wanted to remind you that with sunset being at 6:45 pm and very limited lighting in the park and on the walk ways you will need to arrange to have lighting and end your event so you have time to dismantle and clean up the area.

If you have any other questions please let me know. Thanks!!

**Lauri Ziemer**  
Public Works | Dev. Services

City of Brookings  
[898 Elk Drive, Brookings, OR 97415](#)  
[\(541\) 469-1103](#)  
[lziemer@brookings.or.us](mailto:lziemer@brookings.or.us)



# PARK USE APPLICATION PERMIT

The City of Brookings programs, services, and activities are open to all persons without regard to race, age, sex, disability, religion, or national origin.

CITY USE ONLY		Rec'd Date: 9/18/17	By: [Signature]	
Department:	By:	Date:	Approved	Comment
Parks	[Signature]	9-21-17	(Y) / N	(Y) / (N)
Public Works	[Signature]	9-26-17	(Y) / N	(Y) / (N)
Fire	[Signature]	9-25-17	(Y) / N	(Y) / (N)
Police	[Signature]	9-21-17	(Y) / N	(Y) / (N)
Finance Dept.	[Signature]	9-23-17	(Y) / N	(Y) / (N)

Please sign, date and deliver to the next Dept. Please note comments on pg. 4 under "Comments" and RETURN TO LAURI Distributed: 9/21/17

see comments

Event Date(s): 10 / 05 / 17 to NA / NA / NA Time: 1pm am/pm to 9 am/pm Day(s): M/T/W/R/F/Sat/Sun

No. of participants (each day): 200 Nature/Name of Event: Performance of "Much Ado About Nothing"

Organization: Brookings Harbor Community Theater

Contact Person: Courtney Pruden Phone #: Cell #: (541) 254-0286

Mailing Address: P.O. Box 6172, Brookings, OR 97415

email: cpruden92@gmail.com Return deposit to: Courtney Pruden

## PARK/LOCATION: (Check all that apply)

- ☒ Azalea ☐ Bud Cross ☐ Easy Manor  
☐ Bankus ☐ Skate Park ☐ Chetco Point  
☐ Stout ☐ Tennis Courts ☐ Oasis  
 Other: \_\_\_\_\_

## AZALEA PARK AREA: (Check all that apply)

- ☐ Gazebo ☐ Bandshell/Stage ☐ Concession Stand - Bandshell  
☒ Lawn area ☐ Kidtown Picnic Area ☐ Restrooms only - Bandshell  
☐ Softball Field 1 ☐ Field 2 ☐ Multiuse Field ☐ Concession Stand - Softball  
 Other: \_\_\_\_\_ ☐ Restrooms only - Softball

P.O. Box 4434  
Brookings, OR

## Check Yes or No to each of the following:

- Will you be renting picnic tables? ☐ Yes ☒ No Qty: \_\_\_\_\_ Delivery \_\_\_\_\_
- Is this event free? ☒ Yes ☐ No If no, how will funds be secured/protected? \_\_\_\_\_
- Will amplification equipment be used? ☐ Yes ☒ No If yes, noise level must be contained within the immediate area.  
Describe purpose/type: To allow actors to be clearly heard.
- Will alcohol be served? ☐ Yes\* ☒ No Will alcohol be sold? ☐ Yes\* ☒ No If yes, must obtain Liquor License  
\*Additional requirements - see page 8 of application
- Will merchandise be sold? ☒ Yes ☐ No By whom/ Describe purpose/type: BHHS volunteers fund raising
- Do you want to place temporary signs? ☒ Yes ☐ No (Requires prior Park Supervisor approval - see page 1) Souvenir masks

## LIABILITY STATEMENT/AGREEMENT

I/We agree to abide by all applicable federal, state, and local laws, regulations, and ordinances which pertain to the use of said property and agree to pay for any damage to same, as a result of use. I/We agree to hold the City, its officials and employees, harmless from any liability resulting from use of said property and to obtain any and all required permits and/or business licenses required by the City.

### THE CITY OF BROOKINGS ASSUMES NO RESPONSIBILITY OR LIABILITY FOR INCLEMENT WEATHER

The undersigned agrees to pay for any and all damages occurring during the reserved period. User agrees that the deposit paid herewith will be applied toward damages to the facility or its contents during the reserved period. Any of the deposit not applied to damages will be applied first to unpaid rental fees with any excess refund to user. Normal wear and tear as determined by the City of Brookings shall not be considered damage. User also acknowledges that he/she has read and understands the Rules and Regulations for Brookings City Parks and has reviewed all pages of the application. APPLICANT: It is the applicant's responsibility to obtain required insurance, permits and/or licenses prior to the event and provide proof to the City.

Applicant Name (PRINT): Courtney Pruden

Applicant SIGNATURE: Courtney M. Pruden

Date: 09/18/17

City Use Only: Paid: \$240. - Applicant Notified: 9/20/17 Parks Notified: 9/26/17

- 9/21/17 advised Courtney - the bandshell cover to come down before scheduled event.



# PARK USE FEE/REQUIREMENT WORKSHEET



THIS PAGE FOR CITY USE ONLY:

Use	# of people	City Resident	Non Profit	User Fees	Deposit Fees	Restrictions/Comments
Park	200	<input checked="" type="checkbox"/> Y / <input type="checkbox"/> N	<input checked="" type="checkbox"/> Y / <input type="checkbox"/> N	\$ 21.50	\$ 21.50	
Bandshell/Stage		Y / N	Y / N	\$ 21.50	\$ 21.50	
Concession Stand w/restrooms - \$80.00				\$ 80.-	\$ 80.-	
Concession Restrooms ONLY - \$25.00				\$	\$	
Picnic Tables: Qty _____ @ \$20 each				\$	\$	
TOTAL				\$ 123.00	\$ 123.00	
Check #						
City Receipt #						

## Other Requirements

## Additional Information/Comments

☐ Site Plan
 ☐ Map
 ☐ On-site visit required. Date: \_\_\_\_\_ Time: \_\_\_\_\_ am/pm

☐ City Business License

☐ Liquor License - Required to sell alcoholic beverages (Must obtain license through the Oregon Liquor Control Commission)

☒ Proof of Insurance *provided*

☐ Security No. of Officers: \_\_\_\_\_ Comments: \_\_\_\_\_

☐ Temporary Signs Park Supervisor Approval: ☐ Yes ☐ No

Comments: \_\_\_\_\_

Department Comments: *Event times 1-9 pm (Sunset 6:45 pm). Must provide adequate lighting on the walkways & in <sup>the</sup> park for dismantling event if event ends after sunset. Emailed this info to Courtney 9/20/17. by*

☐ Security Deposit refund submitted on: \_\_\_\_\_ Amount: \$ \_\_\_\_\_

☐ Deposit not returned/reason: \_\_\_\_\_

☐ Event cancelled on: \_\_\_\_\_ Fee returned: ☐ in full ☐ partial Amount refunded: \$ \_\_\_\_\_

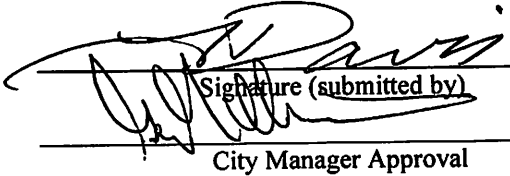
Reason for refund: \_\_\_\_\_

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: November 13, 2017

Originating Dept: City Recorder

  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

---

**Subject:**

Beat the Brewers Relay Event Evaluation

**Recommended Motion:**

Motion to accept the Beat the Brewers Relay Event Evaluation report.

**Financial Impact:**

Funding was already allocated for this project.

**Background/Discussion:**

At the March 27, 2017 City Council meeting, Council authorized an agreement with Chetco Brewing Company to provide a \$3,000 advance in Transient Occupancy Tax (TOT) funding for the Beat the Brewers Relay event.

The relay organizers have provided an event evaluation report to the Tourism Promotion Advisory Committee. They indicate the TOT funds were used for equipment rental, advertising, licensing and promotional items.

Total attendance was approximately 350-450 with most being local. The organizers have an expectation of drawing more out of town participants next year as the event was promoted to participants at the Wild Rogue Relay, many of which indicated an interest in participating.

They repaid \$100.69 from their proceeds. They also indicated at the time of the funding request they do not intend to ask for funding in 2018.

**Attachment(s):**

- a. Event Evaluation
- b. Copy of repayment



# City of Brookings

898 Elk Drive, Brookings, OR 97415

(541) 469-1102 Fax (541) 469-3650

## Tourism Promotion Special Event Program

### Event Evaluation Report Form

Within three (3) months of completing the event, the following information must be provided and returned to Lauri in Visitor Center.

Event Title: Beat the Brewers Relay Completion Date: 9/29/17  
Contact Person: Mike or Alex Frederick Phone: 541 661 3586  
Amount Awarded: \$ 3000 loan

1. How was the funding used? (Examples: "Purchase flyers - \$\_\_\_," or "Purchase advertising in [name of publication] - \$\_\_\_." Detailed receipts are not required).

Equipment Rental	
Sound / Banner Hoses	1350 <sup>00</sup>
Advertising	834
TShirts / Runner items	658
License / permits	525
MUSIC	1000
Labor	529
Supplies / Snacks / Banners	398

2. How many people attended the event (participation/spectators)? Approximately how many of these were from outside Curry County? Include results as defined in Applicant's proposed methodology.

Approximately 350-450 through out the day.  
The majority of attendees were local, like our first year - but we hope to attract more out of town teams next year. At this year's Wild Rogue Relay, many runners indicated they wanted to do Beat the Brewers in 2018.

Note: Failure to submit this report to the City within the allotted time (three months from approved event completion) will eliminate your organization from future consideration for funding under this program.

Signed: [Signature] Dated: 9/21/17  
Organization: Cheba Brewing Co





**Chetco Brewing Company**  
16883 Yellowbrick Road  
Brookings, OR 97415  
541-661-KEGS

Umpqua Bank  
721 Chetco Avenue  
PO Box 1520  
Brookings, OR 97415  
96-605/1232

3115

09/28/17

PAY TO THE  
ORDER OF

City of Brookings

\$\*100.69

One Hundred and 69/100\*\*\*\*\*

DOLLARS

City of Brookings

MEMO

repay any profit made on Beat the Brewer's 201

AUTHORIZED SIGNATURE

AP

⑈003115⑈ ⑆123205054⑆9851615485⑈

Details on Back



Security Features Included

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: November 13, 2017

Originating Dept: City Recorder

  
Signature (submitted by)  
  
City Manager Approval

---

**Subject:**

Rock the Chetco Event Evaluation

**Recommended Motion:**

Motion to accept the Rock the Chetco Event Evaluation report.

**Financial Impact:**

Funding was already allocated for this project.

**Background/Discussion:**

At the May 8, 2017 City Council meeting, Council authorized an agreement with Chetco Brewing Company to provide a \$3,000 grant in Transient Occupancy Tax (TOT) funding for the Rock the Chetco event.

The event organizers have provided an event evaluation report to the Tourism Promotion Advisory Committee. They indicate the TOT funds were used for shuttle service, security, equipment rental, and advertising.

Total attendance was approximately 2700-3000 per day for the three-day event with most being local. The organizers estimate that 40% of participants were from outside the Brookings area.

**Attachment(s):**

- a. Event Evaluation



# City of Brookings

898 Elk Drive, Brookings, OR 97415  
(541) 469-1102 Fax (541) 469-3650

## Tourism Promotion Special Event Program

### Event Evaluation Report Form

Within three (3) months of completing the event, the following information must be provided and returned to Lauri in Visitor Center.

Event Title: Rock the Chetco Completion Date: 5/29/17  
Contact Person: Mike or Alex Frederick Phone: 541 661 3586  
Amount Awarded: \$ 3000.00

1. How was the funding used? (Examples: "Purchase flyers - \$\_\_\_," or "Purchase advertising in [name of publication] - \$\_\_\_." Detailed receipts are not required).

Shuttle around town: \$500.00  
Security 675.00  
Sound equipment rental/music 346.5  
Advertising - Shuttle flyers, 180.00  
local & regional print  
Radio

2. How many people attended the event (participation/spectators)? Approximately how many of these were from outside Curry County? Include results as defined in Applicant's proposed methodology.

Estimated attendance was 2700-3000 per day in and around the various shuttle stops.  
Of all charged purchases at our booth, it is estimated that 40% of visitors came from outside the 97415 zip code.  
A survey of vendors in the Port indicates that they experienced 50% of their patrons coming from outside the local area.

Note: Failure to submit this report to the City within the allotted time (three months from approved event completion) will eliminate your organization from future consideration for funding under this program.

Signed: [Signature] Dated: 9/1/17

Organization: Chetco Brewing Company

# City of Brookings CITY COUNCIL MEETING MINUTES

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

**Monday, October 23, 2017**

## **Call to Order**

Mayor Pieper called the meeting to order at 7:00 PM.

## **Roll Call**

Council present: Mayor Jake Pieper, Councilors Bill Hamilton, Brent Hodges, Councilor Thompson, and Dennis Triglia; a quorum present.

Staff present: City Manager Gary Milliman, City Attorney Martha Rice, Public Works and Development Director Paul Stevens, Parks and Planning Manager Tony Baron, and City Recorder Teri Davis.

Media Present: Jane Stebbins of the Curry Pilot present

Others Present: Nineteen audience members.

## **Scheduled Appearances**

### *Housing Study*

City Manager Milliman provided the staff report.

Sam Baugh of South Coast Development Council addressed Council with specific findings of the study.

**Councilor Triglia moved, Councilor Hamilton seconded and Council voted unanimously to accept Housing Needs Assessment prepared by South Coast Development Council and to distribute the report to as wide an audience as possible to promote housing development within the City.**

### *Curry Community Health*

Postponed until November 13, 2017 meeting

### *Historic Building Survey*

Parks and Planning Manager Baron provided the staff report.

Katie Henry and Jason Allen of the Oregon State Historic Preservation Office provided a presentation regarding why Brookings downtown does not meet the criteria to be designated a historic district, and offering other recommendations for specific buildings that might meet the criteria.

### **Oral Requests and Communications from the audience**

1. Gina Early, of 15589 Cedar Lane, Harbor, addressed Council requesting consideration of an Ordinance prohibiting adult, sexually-oriented establishments within the City limits.
2. Mike Frederick, of 16883 Yellowbrick Road, addressed Council requesting to review the boundaries of the Downtown core district.
3. Mike Horgan, of 335 Memory Lane, addressed Council requesting to removal of a tree in front of his business and also about the lack of enforcement by Oregon Liquor Control Commission on marijuana retail establishments.

### **Staff Reports**

#### *Beach Camping*

City Manager Milliman presented the staff report.

June Podesta of 200 Macklyn Cove spoke in favor of prohibiting beach camping.  
Cory Sills of 200 Macklyn Cove, #4 spoke thanking Council for considering this action.

Emails provided by Podesta and several other area residents were entered into record.

Council discussed its authority on the matter, enforcement issues of the prohibition, impacts on the community at large, and admonitions about criminalizing homelessness.

**Councilor Thompson moved, Mayor Pieper seconded and Council voted 2-3 with Mayor Pieper and Councilor Thompson voting Aye and Councilors Hamilton, Hodges and Triglia voting Nay to direct the City Manager to contact the Oregon Department of Parks and Recreation to craft appropriate language for an Oregon Administrative Regulation (OAR) to prohibit campfires after midnight on the shoreline adjacent to the City of Brookings between Harris Beach State Park and the Chetco River. Motion failed.**

#### *Letter of Support for Contour Airlines*

City Manager Milliman presented the staff report.

**Councilor Thompson moved, Councilor Hamilton seconded and Council voted 4-1 with Councilor Triglia voting Nay to authorize the Mayor to sign a letter of support to the Federal Aviation Administration for the selection of Contour Airlines as the commercial air service provided at the Del Norte County Regional Airport.**

#### *Water and Wastewater Treatment Contract Services*

Public Works and Development Director Stevens presented the staff report.

Mark Haglund of 437 Azalea Park Road, and speaking as an employee of the Treatment Plant, addressed Council in opposition to contracting out the Treatment Plant operations.

Council discussed the particulars and content of the RFP process and indicated its desire that the RFP include a provision for the employment of the City's current employees working in the Treatment Plants.

**Councilor Hodges moved, Councilor Thompson seconded and Council voted unanimously to authorize the City Manager to issue a Request for Proposal to CH2M and Veolia Water North America – West, LLC to provide contract services to maintain and operate the water treatment plant, wastewater treatment plant, water storage reservoirs, lift stations, and pump stations.**

*Response to Request for Information re Infrastructure Projects*

City Manager Milliman presented the staff report.

**Councilor Hodges moved, Councilor Triglia seconded and Council voted unanimously to authorize the City Manager to submit responses to the Request for Information issued by the Regional Solutions program concerning three potential economic development projects as described in this staff report, and authorizing the Mayor to sign a support letter for each project.**

*As Needed Engineering Contract Extension*

Publics Works and Development Director Stevens presented the staff report.

**Councilor Triglia moved, Councilor Thompson seconded and Council voted unanimously to authorize the City Manager to extend the professional services contract for as needed engineering services with The Dyer Partnership Engineers and Planners, Inc. for a period of one year.**

## **Resolutions**

*Public Procurement and Contracting Policy*

City Manager Milliman presented the staff report.

**Councilor Triglia moved, Councilor Hodges seconded and Council voted unanimously to adopt Resolution 17-R-1123, adopting the Model Rules for Public Contracting, adopting Public Procurement and Contracting Policy, and designating the City Council as the Local Contract Review Board.**

## **Consent Calendar**

1. Approve Council minutes for October 9, 2017
2. Receive Monthly Financial Report for September 2017

Councilor Triglia moved, Councilor Hodges seconded and Council voted unanimously to approve the Consent Calendar.



### **Remarks from Mayor and Councilors**

Councilor Hamilton advised that the water fountain donated to Kidtown by the Lions Club has arrived and will be installed soon. He desires a photo opportunity when complete.

Mayor Pieper requested that the topic of adult, sexually-oriented business be brought to an upcoming Workshop meeting.

Mayor Pieper requested and received Council's agreement on bringing the marijuana retail establishment issues addressed by Mr. Horgan to the next City Council meeting of November 13.

### **Adjournment**

Councilor Hodges moved, Councilor Hamilton seconded, and the meeting adjourned at 9:55 p.m.

Respectfully submitted:

ATTESTED:  
this \_\_\_\_\_ day of \_\_\_\_\_ 2017:

---

Jake Pieper, Mayor

---

Teri Davis, City Recorder

**TOURISM PROMOTION ADVISORY COMMITTEE (TPAC) MINUTES**  
**Thursday – September 14, 2017**

**CALL TO ORDER**

Meeting called to order at 4:00 PM

**1. ROLL CALL**

*Present:* Committee members Chair Skip Watwood, Angi Christian, Candice Michel, Dane Tippman, Bob Pieper, and Sonya Billington.

Also present: Staff Committee Liaison Teri Davis

Sonya Billington was introduced as new member to the Committee.

**2. APPROVAL OF MINUTES –**

- a. Motion made by Candice Michel to approve the minutes of July 20, 2017, motion seconded by Dane Tippman and Committee voted; the motion carried unanimously.**

**3. Public Comment –** There was no one present to address the Committee on non-agenda items.

**4. ACTION ITEMS**

- a. TPAC Voting Procedures –** Dane Tippman addressed changing the method by which the committee votes to a individual polling method.

**Motion made by Dane Tippman to change the voting procedure to individual polling, motion seconded by Candice Michel.**

Staff member Teri Davis advised that the Code would have to be modified.

**Committee tabled the motion.**

- b. Coastal Christmas Elves –** Kathy Breshears presented the proposal requesting \$2,000 for the event.

**Motion made by Candice Michel to recommend the proposal to City Council for funding, motion seconded by Angi Christian; the motion carried unanimously.**

- c. Travel & Adventure Show –** Teri Davis presented the proposal requesting funding not to exceed \$1,745.

**Motion made by Candice Michel to recommend the proposal to City Council for funding, motion seconded by Angi Christian; the motion carried unanimously.**

**5. INFORMATIONAL ITEMS**

- a. Spectrum Analytics –** Jeremy Bakke provided a comprehensive overview of the analytics for the prior month of the advertising campaign.
- c. Budget Status –** Committee reviewed the budget status
- c. Internet Hit Info –** Committee reviewed internet hits document provided


**6. COMMITTEE COMMENTS –**

- Candice Michel spoke about an events calendar proposal that Tim Patterson would like to implement. The Committee will discuss the proposal in full at the next meeting.
- Candice Michel provided an update about the Harris Beach video status.

**7. SCHEDULE NEXT MEETING –** Next meeting scheduled for October 19, 2017.

**8. ADJOURNMENT** – with no further business before the Committee, the meeting adjourned at 5:19 pm.

Respectfully submitted,

  
Skip Watwood, Chair  
(approved at October 19, 2017 meeting)



# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Application is being made for:

## LICENSE TYPES

- ☐ Full On-Premises Sales (\$402.60/yr)  
☐ Commercial Establishment  
☐ Caterer  
☐ Passenger Carrier  
☐ Other Public Location  
☐ Private Club  
  
☐ Limited On-Premises Sales (\$202.60/yr)  
☐ Off-Premises Sales (\$100/yr)  
☐ with Fuel Pumps  
☒ Brewery Public House (\$252.60)  
☐ Winery (\$250/yr)  
☐ Other: \_\_\_\_\_

## ACTIONS

- ☐ Change Ownership  
☐ New Outlet  
☐ Greater Privilege  
☐ Additional Privilege  
☒ Other change of location

## CITY AND COUNTY USE ONLY

Date application received: 11/8/17

The City Council or County Commission:

(name of city or county)

recommends that this license be:

☐ Granted ☐ Denied

By: \_\_\_\_\_  
(signature) (date)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## OLCC USE ONLY

Application Rec'd by: [Signature]

Date: 8/24/17

90-day authority: ☐ Yes ☒ No

## 90-DAY AUTHORITY

☐ Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

## APPLYING AS:

- ☐ Limited Partnership ☐ Corporation ☒ Limited Liability Company ☐ Individuals

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① Brookings Brewing Co, LLC ③ \_\_\_\_\_

② \_\_\_\_\_ ④ \_\_\_\_\_

2. Trade Name (dba): Chetco Brewing Company

3. Business Location: 830 RAILROAD AVE Brookings OR 97415  
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: PO Box 1500 PMB 255 Brookings OR 97415  
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 541-6661 5347, 541 6661 3586  
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? ☐ Yes ☒ No

7. If yes to whom: \_\_\_\_\_ Type of License: \_\_\_\_\_

8. Former Business Name: N/A

9. Will you have a manager? ☒ Yes ☐ No Name: Alex Carr Frederick  
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? Brookings, OR  
(name of city or county)

11. Contact person for this application: Alex Carr Frederick 541 6661 3586  
(name) (phone number(s))

116883 Yellenbrick Rd Brookings OR 97415 BraAC@chetcobrew.co  
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① [Signature] Date 8/6/17 ③ \_\_\_\_\_

② [Signature] Date 8/6/17 ④ \_\_\_\_\_

# CITY OF BROOKINGS POLICE DEPARTMENT

Chris Wallace, Chief of Police



**To:** Brookings City Council through City Manager Gary Milliman  
**From:** Lieutenant Donny Dotson  
**Date:** 11/08/17  
**Subject:** Liquor License Application

The Brookings Police Department found no **local** disqualifying information prohibiting **Alex Carr Frederick and Michael Frederick** with their attached **Location Change** liquor license application. The business "**Brookings Brewing Company**" is to be located at 830 Railroad Avenue, Brookings, Oregon. It is the recommendation of the Brookings Police Department the above mentioned applicants be granted their request with final approval coming from the **Oregon Liquor Control Commission**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donny Dotson".

Lieutenant Donny Dotson  
Brookings Police Department



## Report Criteria:

Report type: Summary

GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Check GL Account	Amount
10/17	10/04/2017	71573	5196	Robbins, Summer	30-00-2005	100.00- V
10/17	10/05/2017	80157	1314	Bernie Bishop Mazda	25-00-2005	1,243.37
10/17	10/05/2017	80158	313	Brookings Vol Firefighters	10-00-2005	2,250.00
10/17	10/05/2017	80159	715	Budge McHugh Supply	25-00-2005	5,468.62
10/17	10/05/2017	80160	5567	CAL/OR Insurance Specialists Inc	30-00-2005	683.33
10/17	10/05/2017	80161	5822	Chaves Consulting Inc	49-00-2005	370.20
10/17	10/05/2017	80162	5821	City of Gold Beach	32-00-2005	1,265.00
10/17	10/05/2017	80163	3834	Clean Sweep Janitorial Service	20-00-2005	1,715.00
10/17	10/05/2017	80164	1745	Coastal Paper & Supply, Inc	10-00-2005	224.08
10/17	10/05/2017	80165	183	Colvin Oil Company	25-00-2005	4,517.25
10/17	10/05/2017	80166	2384	Curry County Road Dept	15-00-2005	6,183.12
10/17	10/05/2017	80167	5211	CXT, Inc	58-00-2005	42,797.77
10/17	10/05/2017	80168	259	Da-Tone Rock Products	50-00-2005	2,377.32
10/17	10/05/2017	80169	284	Day Management Corp	49-00-2005	2,000.00
10/17	10/05/2017	80170	1	Briana Adaza	20-00-2005	184.36
10/17	10/05/2017	80171	1	Tobie Bardsley	20-00-2005	146.77
10/17	10/05/2017	80172	1	Myranda Buck	20-00-2005	98.17
10/17	10/05/2017	80173	1	Robert Closson	20-00-2005	207.62
10/17	10/05/2017	80174	1	Tori Fallis	20-00-2005	141.13
10/17	10/05/2017	80175	1	Johnny Medina	20-00-2005	196.66
10/17	10/05/2017	80176	1	William Morton	20-00-2005	170.53
10/17	10/05/2017	80177	1	David Reese	20-00-2005	96.80
10/17	10/05/2017	80178	5125	Jordan Fanning	25-00-2005	91.00
10/17	10/05/2017	80179	3342	Fastenal	25-00-2005	1,340.79
10/17	10/05/2017	80180	153	Ferrellgas	25-00-2005	461.29
10/17	10/05/2017	80181	5642	Financial Pacific Leasing	10-00-2005	4,031.88
10/17	10/05/2017	80182	5432	First Community Credit Union	25-00-2005	812.99
10/17	10/05/2017	80183	529	Flora Pacifica Inc	15-00-2005	3,595.92
10/17	10/05/2017	80184	4646	Frontier	30-00-2005	545.35
10/17	10/05/2017	80185	5090	Galvanizers Company	50-00-2005	150.00
10/17	10/05/2017	80186	5065	Gold Beach Lumber	25-00-2005	134.99
10/17	10/05/2017	80187	199	Richard Harper	10-00-2005	400.00
10/17	10/05/2017	80188	3408	IDEXX Distribution Inc	25-00-2005	920.08
10/17	10/05/2017	80189	5820	Interpath Laboratory Inc	10-00-2005	343.64
10/17	10/05/2017	80190	2216	John D Rapraeger Inc	52-00-2005	90,410.00
10/17	10/05/2017	80191	328	Les Schwab Tire Center	25-00-2005	48.42
10/17	10/05/2017	80192	4573	Methodworks	25-00-2005	907.00
10/17	10/05/2017	80193	4269	Milliman, Gary	10-00-2005	67.50
10/17	10/05/2017	80194	2971	Mission Communications LLC	25-00-2005	12,272.40
10/17	10/05/2017	80195	3935	Northern California Glove	25-00-2005	340.00
10/17	10/05/2017	80196	3789	Oak Street Health Care Center	10-00-2005	429.50
10/17	10/05/2017	80197	279	One Call Concepts, Inc	20-00-2005	29.04
10/17	10/05/2017	80198	5251	Pacific Power Group, LLC	25-00-2005	233.06
10/17	10/05/2017	80199	4	Brookings Harbor Rotary Club	10-00-2005	320.00
10/17	10/05/2017	80200	322	Postmaster	25-00-2005	850.00
10/17	10/05/2017	80201	322	Postmaster	10-00-2005	25.00
10/17	10/05/2017	80202	207	Quill Corporation	10-00-2005	397.51
10/17	10/05/2017	80203	3	Hank Shields	20-00-2005	26.63
10/17	10/05/2017	80204	5196	Robbins, Summer	30-00-2005	100.00
10/17	10/05/2017	80205	3309	Roberts & Associates	50-00-2005	360.00
10/17	10/05/2017	80206	1840	Rogue Credit Union	50-00-2005	2,497.61
10/17	10/05/2017	80207	5819	Paul Stevens	25-00-2005	163.50
10/17	10/05/2017	80208	142	Tidewater Contractors Inc	52-00-2005	53,529.16



GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Check GL Account	Amount
10/17	10/05/2017	80209	990	UPS	20-00-2005	176.28
10/17	10/05/2017	80210	2863	Verizon Wireless	10-00-2005	559.36
10/17	10/05/2017	80211	169	Waste Connections Inc	10-00-2005	175.50
10/17	10/05/2017	80212	151	Western Communications, Inc.	32-00-2005	519.50
10/17	10/12/2017	80213	882	Advanced Security Systems	20-00-2005	73.50
10/17	10/12/2017	80214	5283	Best Western Plus Hood River Inn	10-00-2005	326.10
10/17	10/12/2017	80215	4363	Black & Rice LLP	10-00-2005	2,484.60
10/17	10/12/2017	80216	5004	Blumenthal Uniforms & Equipment	10-00-2005	323.12
10/17	10/12/2017	80217	5048	Brookings Harbor Medical Center	25-00-2005	200.00
10/17	10/12/2017	80218	2364	C & S Fire-Safe Services LLC	25-00-2005	1,119.50
10/17	10/12/2017	80219	5070	Canon Solutions America	10-00-2005	975.94
10/17	10/12/2017	80220	193	Central Equipment Co, Inc	10-00-2005	4,000.00
10/17	10/12/2017	80221	3015	Charter Communications	10-00-2005	714.96
10/17	10/12/2017	80222	5534	Chet's Garden Center	15-00-2005	559.90
10/17	10/12/2017	80223	3834	Clean Sweep Janitorial Service	10-00-2005	350.00
10/17	10/12/2017	80224	822	Coast Auto Center	10-00-2005	1,720.85
10/17	10/12/2017	80225	5450	Complete Wireless Technologies	10-00-2005	330.60
10/17	10/12/2017	80226	166	Dan's Auto & Marine Electric	10-00-2005	542.40
10/17	10/12/2017	80227	185	Del Cur Supply	20-00-2005	151.26
10/17	10/12/2017	80228	1	Theron Fox	20-00-2005	62.70
10/17	10/12/2017	80229	1	Orville Randall	20-00-2005	18.27
10/17	10/12/2017	80230	3342	Fastenal	20-00-2005	120.89
10/17	10/12/2017	80231	5642	Financial Pacific Leasing	30-00-2005	47,689.78
10/17	10/12/2017	80232	4646	Frontier	10-00-2005	380.07
10/17	10/12/2017	80233	5452	Pamela Ganey	10-00-2005	77.00
10/17	10/12/2017	80234	3961	Grizzly Fence & Construction	15-00-2005	386.55
10/17	10/12/2017	80235	139	Harbor Logging Supply	10-00-2005	290.44
10/17	10/12/2017	80236	4357	Hemlock Street Properties LLC	10-00-2005	440.00
10/17	10/12/2017	80237	162	Kerr Hardware	10-00-2005	1,244.14
10/17	10/12/2017	80238	4981	McLennan Excavation, Inc	54-00-2005	186,861.36
10/17	10/12/2017	80239	4573	Methodworks	25-00-2005	777.00
10/17	10/12/2017	80240	424	Munnell & Sherrill	25-00-2005	107.00
10/17	10/12/2017	80241	685	Neilson Research Corporation	20-00-2005	922.95
10/17	10/12/2017	80242	4487	Net Assets Corporation	10-00-2005	350.00
10/17	10/12/2017	80243	3603	Norwest Safety	25-00-2005	53.25
10/17	10/12/2017	80244	3561	Oil Can Henry's	10-00-2005	41.99
10/17	10/12/2017	80245	5008	Online Information Services	10-00-2005	109.78
10/17	10/12/2017	80246	252	Paramount Pest Control	10-00-2005	50.00
10/17	10/12/2017	80247	4	Jimmy McMillan	10-00-2005	214.00
10/17	10/12/2017	80248	4	Courtney Pruden	10-00-2005	123.00
10/17	10/12/2017	80249	866	Pitney Bowes Global Financial , LLC	10-00-2005	249.00
10/17	10/12/2017	80250	1893	Public Safety Center	10-00-2005	121.92
10/17	10/12/2017	80251	207	Quill Corporation	10-00-2005	90.10
10/17	10/12/2017	80252	5765	Mark Schexnayder	10-00-2005	140.25
10/17	10/12/2017	80253	5298	Sea Clear Window Cleaning	10-00-2005	565.00
10/17	10/12/2017	80254	267	SeaWestern Fire Fighting Equip	10-00-2005	1,397.00
10/17	10/12/2017	80255	5823	Joseph Snipes	10-00-2005	80.00
10/17	10/12/2017	80256	142	Tidewater Contractors Inc	55-00-2005	253,171.01
10/17	10/12/2017	80257	1412	Triangle Pump & Equipment Inc	25-00-2005	828.50
10/17	10/12/2017	80258	5788	Vikki's Custom Alterations	10-00-2005	25.00
10/17	10/12/2017	80259	861	Village Express Mail Center	10-00-2005	4.43
10/17	10/12/2017	80260	2122	Cardmember Service	25-00-2005	5,931.88
10/17	10/12/2017	80261	169	Waste Connections Inc	20-00-2005	1,043.79
10/17	10/12/2017	80262	4220	Woof's Dog Bakery	61-00-2005	67.99
10/17	10/12/2017	80263	4131	Zumar Industries Inc	15-00-2005	477.13
10/17	10/19/2017	80264	4734	Aramark Uniform Services	10-00-2005	150.00

GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Check GL Account	Amount
10/17	10/19/2017	80265	4939	BI- Mart Corporation	10-00-2005	183.45
10/17	10/19/2017	80266	1169	Brookings Electronic Svs Inc	50-00-2005	658.00
10/17	10/19/2017	80267	4767	Brookings Harbor Chamber of Commere	32-00-2005	1,150.80
10/17	10/19/2017	80268	5824	Calculated Comfort	10-00-2005	21.11
10/17	10/19/2017	80269	5534	Chet's Garden Center	54-00-2005	695.89
10/17	10/19/2017	80270	4746	Curry County Treasurer	10-00-2005	1,905.00
10/17	10/19/2017	80271	5825	David Evans and Associates Inc	58-00-2005	1,150.62
10/17	10/19/2017	80272	317	DCBS - Fiscal Services	10-00-2005	380.25
10/17	10/19/2017	80273	5224	Department of Administrative Services	25-00-2005	900.00
10/17	10/19/2017	80274	1	Brie Bateman	20-00-2005	166.44
10/17	10/19/2017	80275	1	Matt & Christine Steendahl	20-00-2005	150.64
10/17	10/19/2017	80276	2640	Dyer Partnership Inc., The	52-00-2005	59,355.32
10/17	10/19/2017	80277	5804	Early Management Team Inc	50-00-2005	18,603.18
10/17	10/19/2017	80278	4011	ECO Lab	25-00-2005	241.42
10/17	10/19/2017	80279	3342	Fastenal	15-00-2005	31.02
10/17	10/19/2017	80280	2186	Ferguson Enterprises Inc #3011	20-00-2005	1,600.42
10/17	10/19/2017	80281	4646	Frontier	25-00-2005	886.62
10/17	10/19/2017	80282	167	Hach Company	25-00-2005	898.27
10/17	10/19/2017	80283	4573	Methodworks	25-00-2005	777.00
10/17	10/19/2017	80284	5744	Michels Corporation	53-00-2005	23,464.39
10/17	10/19/2017	80285	2	Zebulon Wardle	10-00-2005	135.00
10/17	10/19/2017	80286	329	New Hope Plumbing	10-00-2005	1,317.00
10/17	10/19/2017	80287	334	North Coast Electric Company	25-00-2005	55.80
10/17	10/19/2017	80288	5155	Oregon Department of Revenue	10-00-2005	5,833.75
10/17	10/19/2017	80289	5390	O'Reilly Automotive, Inc	25-00-2005	35.85
10/17	10/19/2017	80290	4	Deidrea Dornback	10-00-2005	16.00
10/17	10/19/2017	80291	4	Samantha Mintzmyer	10-00-2005	214.00
10/17	10/19/2017	80292	4	Christian Snyder	10-00-2005	207.00
10/17	10/19/2017	80293	5101	Pitney Bowes Reserve Acct	10-00-2005	500.00
10/17	10/19/2017	80294	5730	Spectrum Reach	32-00-2005	1,000.00
10/17	10/19/2017	80295	380	Stadelman Electric Inc	50-00-2005	77.00
10/17	10/19/2017	80296	5448	Stover Engineering	53-00-2005	3,165.60
10/17	10/19/2017	80297	169	Waste Connections Inc	25-00-2005	1,721.45
10/17	10/19/2017	80298	151	Western Communications, Inc.	32-00-2005	1,480.13
10/17	10/19/2017	80299	5011	Xylem Water Solutions USA, INC	25-00-2005	1,500.00
10/17	10/26/2017	80300	254	American Water Works Assn	20-00-2005	1,112.00
10/17	10/26/2017	80301	496	APSCO LLC	25-00-2005	510.94
10/17	10/26/2017	80302	993	ATCO International	10-00-2005	240.00
10/17	10/26/2017	80303	1314	Bernie Bishop Mazda	20-00-2005	430.11
10/17	10/26/2017	80304	416	Brookings Lock & Safe Inc	25-00-2005	19.50
10/17	10/26/2017	80305	4928	CIS Trust	10-00-2005	751.49
10/17	10/26/2017	80306	183	Colvin Oil Company	10-00-2005	2,118.67
10/17	10/26/2017	80307	2384	Curry County Road Dept	20-00-2005	743.95
10/17	10/26/2017	80308	5826	Ron Dean	10-00-2005	25.00
10/17	10/26/2017	80309	1	Curry Community Health	20-00-2005	27.53
10/17	10/26/2017	80310	1	Jim Freeman	20-00-2005	1.55
10/17	10/26/2017	80311	1	Geneva Trevino	20-00-2005	153.26
10/17	10/26/2017	80312	261	Engineered Control Products	20-00-2005	324.78
10/17	10/26/2017	80313	2067	Enviro-Clean Equipment	25-00-2005	228.65
10/17	10/26/2017	80314	773	Environmental Resource Associates	25-00-2005	185.46
10/17	10/26/2017	80315	3342	Fastenal	20-00-2005	159.77
10/17	10/26/2017	80316	2186	Ferguson Enterprises Inc #3011	25-00-2005	1,386.86
10/17	10/26/2017	80317	5491	Fire Rescue Equipment NW, LLC	10-00-2005	1,030.00
10/17	10/26/2017	80318	198	Grants Pass Water Lab	50-00-2005	588.00
10/17	10/26/2017	80319	4526	Janell K. Howard	10-00-2005	541.47
10/17	10/26/2017	80320	4269	Gary Milliman	10-00-2005	219.32

GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Check GL Account	Amount
10/17	10/26/2017	80321	1844	My-Comm, Inc	10-00-2005	167.00
10/17	10/26/2017	80322	3603	Norwest Safety	25-00-2005	286.20
10/17	10/26/2017	80323	207	Quill Corporation	10-00-2005	268.77
10/17	10/26/2017	80324	3	Isaac Hodges	20-00-2005	53.09
10/17	10/26/2017	80325	3	Pauline McAmoil	20-00-2005	58.18
10/17	10/26/2017	80326	3	Matt & Christine Steendahl	20-00-2005	113.68
10/17	10/26/2017	80327	5691	Ritz Safety LLC	25-00-2005	1,641.38
10/17	10/26/2017	80328	3093	Shelton Turnbull Printers Inc	10-00-2005	244.99
10/17	10/26/2017	80329	5448	Stover Engineering	53-00-2005	1,721.75
10/17	10/26/2017	80330	142	Tidewater Contractors Inc	50-00-2005	32,968.10
10/17	10/26/2017	80331	5280	Dennis Tippetts	10-00-2005	25.00
10/17	10/26/2017	80332	5167	Trojan Technologies	25-00-2005	754.51
10/17	10/26/2017	80333	861	Village Express Mail Center	10-00-2005	4.00
10/17	10/26/2017	80334	5011	Xylem Dewatering Solutions Inc	20-00-2005	3,688.00
Grand Totals:						<u>951,309.28</u>

Dated: \_\_\_\_\_

Mayor: \_\_\_\_\_

City Council: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Recorder: \_\_\_\_\_

Report Criteria:

Report type: Summary

# Committee Vacancies

Date: November 13, 2017

**Re: Vacant Volunteer Positions**

---

Following is a list of all Commission/Committee positions and terms currently vacant:

Position	Held By	Month/ Day	Year Expires	Term/ Years
Budget #1	VACANT	2/1	2018	3
Budget #3	VACANT	2/1	2019	3
Public Art #1	VACANT	11/1	2017	3
Public Art #4	VACANT	11/1	2018	3
Public Art #5	VACANT	11/1	2018	3
Traffic Safety #1	VACANT	1/14	2018	2
Traffic Safety #2	VACANT	1/14	2019	2

## AZALEA PARK FOUNDATION AREA OF RESPONSIBILITY

The Azalea Park Foundation, a non-profit corporation founded in 1996, has as its primary purpose: TO ASSIST THE CITY OF BROOKINGS WITH MAINTENANCE AND IMPROVEMENTS OF AZALEA PARK. Please note that it says Azalea Park Foundation, and its assistance is not limited to the Formal Gardens by its charter.

In Article 6, subheading 2, I read: ANY ACTION WHICH INVOLVES PHYSICAL ALTERATION, ADDITIONS TO, OR REMOVAL FROM AZALEA PARK MUST BE APPROVED FIRST BY THE BOARD AND NEXT BY THE CITY OF BROOKINGS. This suggests a dialogue and mutual cooperation exists.

The 2015 Memorandum of Understanding between the City and the Foundation includes clauses covering the Foundation's work and responsibility for the so-called Formal Gardens. It also includes the following quotes: WHEREAS CITY IS RESTRUCTURING THE MANNER IN WHICH IT MAINTAINS ITS PUBLIC LANDSCAPE AREAS AND DESIRES TO WORK WITH NON-PROFIT GROUPS IN THE MAINTENANCE OF THESE AREAS, and WHEREAS FOUNDATION HAS EXPRESSED INTEREST IN PARTNERING WITH THE CITY IN THIS REGARD, THE FOUNDATION WILL PROVIDE CONSULTATION SERVICES AS NEEDED. This strongly suggests mutual dialogue and cooperation.

Included with this MOU is a color drawing that clearly includes all of the area of the Formal Gardens, and all of the area of the proposed tree removal.

The point is, the City has not partnered with the Foundation or even discussed with the Foundation the tree removal issue. Members of the Foundation were not included in discussions concerning the shade from the trees damaging the native azaleas.

Finally, a recent tour of the area shows that two of the biggest trees, marked L1 and L2, are close to the hilltop gazebo and are clearly within the limits of the Formal Gardens. To the south of the Formal Gardens, trees marked 1,4,5 and 6 are all between 68 and 100 feet from the Formal Gardens. The other trees up to number 12 are all less than 140 feet from the Formal Gardens. If the loggers fall these trees to the north they will fall through an area of old azalea plants outside of the formal gardens, and many trees would fall into the formal gardens. We have been given no assurance from the City that falling these trees will not cause damage to the Formal Gardens.

David Paoli, Vice President, Azalea Park Foundation



Electricity outlets

PARKING AREA

STAGE BANDSHELL

HANDICAPPED PATIO AREA

LOWER LOT PARKING LOT

STORE SHED

CATERING KITCHEN

SOLAR GLASS

Jetties Benches

DEEP CANYON

DEEP CANYON

ROAD ST

HWY 101

PARKING

ROAD ST

NOT TO SCALE



## Azalea Park “Tree Removal plane” 11,13,2017

Azam Azaditabar- Carlson

1223 Barclay lane

Brookings, OR 97415

503-489-8458

I would like to know how many of you had read this little booklet provided by arborist Mr. Brian French on September 18 workshops?

I also would like to know how many of the recommended “Protections”, in this booklet, implemented by contractors or by city’s parks & planning manager, Tony Baron, to protect the trees while creating the Children play ground, the grand-ball parks area, Disc Golf & 4 different parking lots. In my opinion, none.

At the arborist workshop, September 18, 2017, Mr. French said and also reported at Pilot News Paper, Sep 19,2017, ““If there is no grass, the soil is as hard as a rock, cool to the touch and you pour water on it and it runs off, that’s compacted soil,” French said. He recommended placing 3 inches of chipped branches around the bases to increase the soil temperature and moisture content and provide material for tree growth.”

“He also recommended the city build one path from the parking lot to the bandshell area to discourage people from randomly crossing through the grove that further compacts the soil.”

My recollection from the September workshop is to protect the trees behind the “Bandshell,” we have to limit the pedestrian traffic to single pathway, also to protect these trees’s “critical root zone” by blocking truck & car traffic through the area and letting shrubs & small plants grow underneath them.

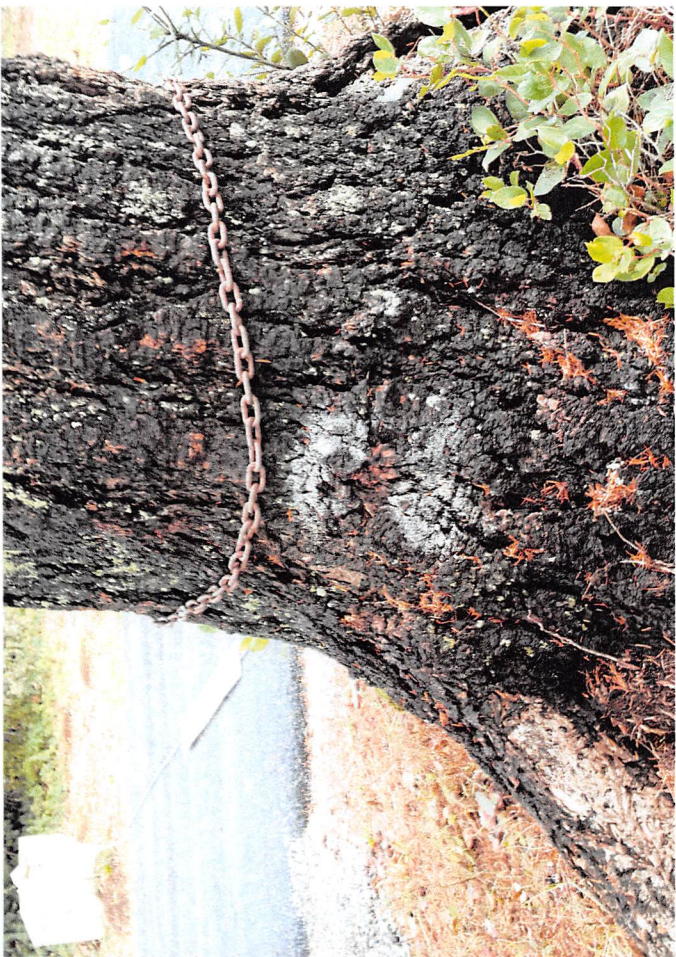
What the city did since that workshop, there is an asphalt road that goes right next to 10 or more of these big tree trunks & made a wide road for something. Here are some pictures from that area & new road.

As I have heard many times, from some of the city officials', concern about the safety of the Azalea Park because of these majestic trees, I would like to bring to these officials attention the bigger and real safety concern, the high rate of suicide in this area among young teenagers & even children, the lack of facilities to help people with mental disease & drug abuse and young adults & even teenagers are moving out of this city to other part of the State for lack of vision for their future.

I clearly see most of the Brookings City officials see the trees as liabilities rather than treat them as assets of our beautiful city.

Yes, I am a tree hugger & love all kinds of natural environment. The trees are not only pleasing to my eyes, more importantly they clean the air & produce oxygen for me to breath. I finish with a quote from City's website, the History of Azalea Park, as "Mr. Crissey urged state officials to preserve the "natural beauty" of that place forever", I urge you to do so too.

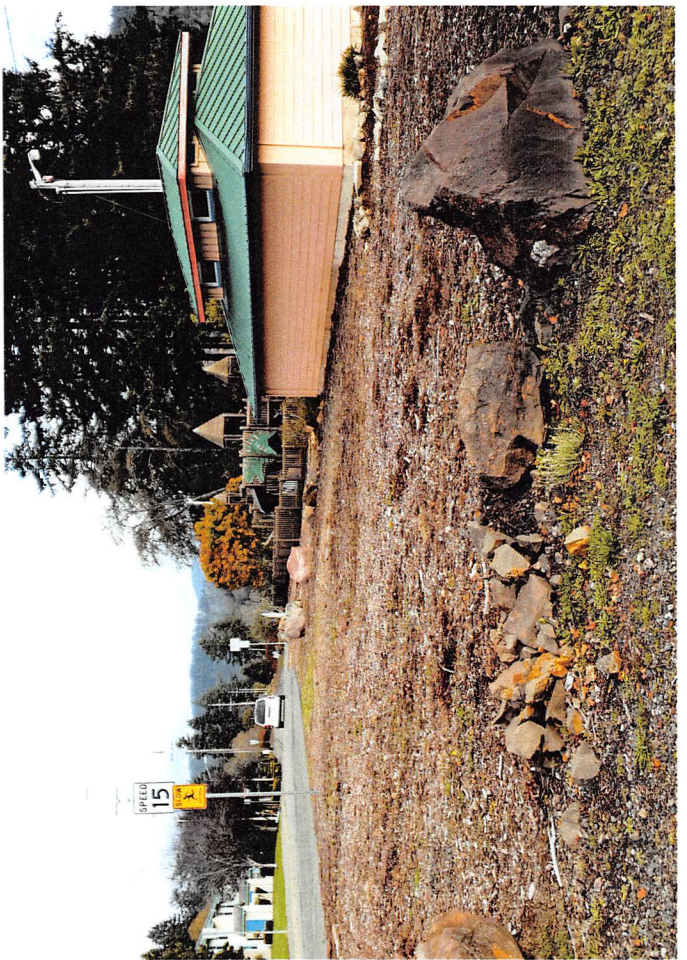
















*The Compassionate Friends*  
Supporting Family After a Child Dies

Light a candle for all  
children who have died

# *Worldwide Candle Lighting®*

*... that their light  
may always shine.*

**Second Sunday in December  
7 PM Around the Globe**



**LOCAL PROGRAM STARTS at 6:00 P.M.**

**SUNDAY, DECEMBER 10,**

**Kalmiopsis Elementary School, 650 Easy St.  
Brookings**

The Compassionate Friends Worldwide Candle Lighting unites family, friends and communities around the globe in lighting candles to honor and remember our sons, daughters, grandchildren, brothers and sisters who have gone too soon and will never be forgotten. The local program **BEGINS**

**AT 6:00 P.M.** with a beautiful music video of our loved ones.

Candles, refreshments, hand warmers and seating provided.  
Event takes place outside under shelter 1 in the school playground.

Weather will not cancel. Dress for outdoor climate.

Bring pictures for the Memorial Table.

Call Georgia at 541-469-5814 with questions.