

NEWBERG CITY COUNCIL MINUTES
REGULAR SESSION
SEPTEMBER 19, 2016, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

A work session was held at 6:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilors Lesley Woodruff, Denise Bacon, Mike Corey, Scott Essin, Patrick Johnson and Stephen McKinney. Also present were City Manager Joe Hannan, City Attorney Truman Stone, City Recorder Sue Ryan, Library Director Leah Griffith, City Engineer Kaaren Hofmann, Finance Director Matt Zook, Community Development Director Doug Rux and Public Works Director Jay Harris.

Mayor Andrews called the meeting to order.
City Committee chairs gave their reports.

Planning Commission Chair Allyn Edwards reported on the Transportation System Plan review, an accessory dwelling unit off of Carol Avenue, marijuana regulations, stream corridor variance, annexation hearings, and land division regulations. There was a discussion on the recent accessory dwelling unit application. The Planning Commission's decision to approve the application had not been appealed.

Library Board Chair Kerrie Allen reported on two committee appointments made to the Board. Their current projects were: merging with the Library Friends group, increasing the membership of the Library Foundation, reviewing the Library's policies and developing new policies, and supporting the upcoming plans to remodel the Library.

Budget Committee Chair Lon Wall reported on the Budget Committee. The budget had been approved and at this time the Committee did not have work to do. There was a discussion on this year's budget process and input from the community. Mr. Wall said he thought people were concerned about the number of FTEs in the budget.

Citizens Rate Review Committee Chairman Rick Rogers reported they had met to discuss wastewater rates and the utility assistance program. The rates had been largely formulaic in terms of operational costs, and the CRRC had the most impact on capital improvements. The Long Range Financial Planning Committee would be looking at how to best deal with the capital improvement projects. The CRRC suggested utility assistance for active duty military. They would meet again in fall of 2017. There was discussion on active military members and rates.

Historic Preservation Commission Chair Rick Fieldhouse reported they had met on a draft report on the reconnaissance level survey of downtown historic resources. Part of the work was to do an intensive level survey of five to 10 notable resources in downtown and to construct a website for the public with the information. Two resources were identified as being prime candidates for the National Historic Register, the Cameo Theatre and the Painted Lady Restaurant. These were privately owned facilities and dependent upon property owners whether or not they wanted to proceed. The website had been designed but not yet published. Data would be turned over to staff to integrate into the City's website.

Councilor Woodruff announced the Walk and Bike to School Day on October 5. She encouraged everyone to participate.

CALL MEETING TO ORDER

The Mayor called the business session to order at 7:00 p.m.

ROLL CALL

Members Present:	Mayor Bob Andrews Lesley Woodruff Patrick Johnson	Scott Essin Mike Corey	Stephen McKinney Denise Bacon
Staff Present:	Joe Hannan, City Manager Sue Ryan, City Recorder Jay Harris, Public Works Director Matt Zook, Finance Director	Truman Stone, City Attorney Kaaren Hofmann, City Engineer Doug Rux, Community Development Department	

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

PROCLAMATIONS:

MOTION: Bacon/Woodruff moved to proclaim September 26th through October 3rd, 2016, as Diaper Need Awareness Week. Motion carried (7 Yes/ 0 No).

MOTION: Bacon/Johnson moved to proclaim September 21, 2016, as Acts of Kindness Day. Motion carried (7 Yes/ 0 No).

Mayor Andrews read both proclamations.

Cara Copeland from A Family Place said they had been giving out diapers to families in need across Yamhill County for the last three and a half years. Currently they were giving out 4,000 diapers per month and helping families meet a gap in their budgets. There would be a diaper drive at local banks starting on Monday.

Damon Talbot encouraged everyone to do an Act of Kindness on September 21. There would be a Peace March as part of the International Day of Peace.

PRESENTATIONS: Public Works Maintenance Superintendent Russ Thomas and Public Works Director Jay Harris presented the Public Works Maintenance Facility Master Plan. Superintendent Thomas said the current maintenance facility was purchased in the 1960s and buildings had been added over the years and modifications had been made. In 2015 an agreement was reached to purchase the neighboring property from Cal Portland to expand the facility. Most of the materials needed for Public Works were stored at the Wastewater Treatment Plant and reservoirs. The expansion provided space to consolidate operations. He explained the improvements. City staff had done all of the clearing and leveling.

For the Five Year Plan, Phase 1 would remodel the existing former Cal Portland office building that would give them four additional office cubicles for crew chiefs and a conference room as well as bathrooms, storage, and lunchroom space. Phase 2 was site work: paving, moving the fence, putting in a landscape buffer, putting in automated gates, and adding lighting and security. Most prep work could be done by staff. Employee parking would increase. Phase 3 would be to construct a four-bay maintenance shop and a two-story administration shop. This building would be able to be used for at least 40 years and it could be expanded. It could cost \$80,000 for Phase 1, \$400,000 for Phase 2, and \$2.7 million for Phase 3. The funding would come from SDCs and utility funds. He described the physical layouts. PWSD Harris clarified the plan was to use 20% of SDCs, 10% of fleet/facility funds, and 70% of utility funds for the new Public Works Master Plan.

Councilor Johnson agreed there was a need for the expansion. He asked for more information on the following items: theft on the site, cost if they did the whole thing at once instead of in phases, cost if the City had contracted out the leveling and conduit work, the cost if they built new buildings instead of remodeling, and estimate of the time and cost of gathering the materials from the other sites. Superintendent Thomas said if the City had contracted for site and conduit work, costs could range from \$80,000 on the low end to \$150,000 on the high end. Councilor Bacon asked how much the equipment was worth that was parked outside without cover. Superintendent Thomas explained the value was more than a million dollars.

CITY MANAGER'S REPORT: City Manager Hannan reported on current activities across the City. He met with the stakeholders for the Transient Lodging Tax and the recommendations would be brought back to Council in October. The City had invited 32 churches, County Commissioners, and the Sheriff on October 13 to discuss emergency preparedness. He had met one-on-one with employees and worked on re-tooling the Traffic Safety Commission to have the City Engineer as the primary staff person. He attended the first Long Range Financial Planning Committee meeting, participated in the benefit golf tournament for the Toys for Kids program, met with TVF&R Fire Chief Sherrard, small cities meeting in King City, League of Oregon Cities Candidate Forum, and meeting with West Rock representatives regarding future development.

APPOINTMENTS: Planning Commission:

MOTION: Bacon/Johnson moved to approve the appointment of Patricia Watson for a term of September 19, 2016, to December 31, 2016, on the Planning Commission. Motion carried (7 Yes/ 0 No).

Citizens Rate Review Commission:

MOTION: Johnson/Corey moved to approve the re-appointment of Bill Rourke and Rick Rogers for a term of September 19, 2016, to June 30, 2019, on the Citizens Rate Review Commission. Motion carried (7 Yes/ 0 No).

PUBLIC COMMENTS: None.

CONSENT CALENDAR:

MOTION: Corey/Johnson moved to approve the Consent Calendar, including approving the content of the 2016-2017 Notice of Funding Availability (NOFA) for the Newberg Affordable Housing Trust Fund (NAHTF) and for staff to proceed with notification and publication of the NOFA; Resolution 2016-3324, A Resolution to authorize the City Manager to enter into a professional services agreement with Keller Associates to complete the update to the Wastewater Master Plan; Resolution 2016-3329, A Resolution to authorize the City Manager to enter into a professional services agreement with Murray, Smith and Associates, Inc. to design the city's Dayton Avenue Wastewater Lift Station Replacement Project; Resolution 2016-3325, A Resolution to authorize the City Manager to enter into a professional services agreement with HDR Engineering, Inc. to design the city's WWTP Oxidation Ditch Rehabilitation Project; and to approve the Council minutes for August 1, 15, and 26, 2016. Motion carried (7 Yes/ 0 No).

PUBLIC HEARING: Ordinance 2016-2809:

Mayor Andrews opened the hearing and called for any abstentions or conflicts of interest on the part of the Council or any objections to the Council's jurisdiction. There was none.

Community Development Director Doug Rux gave the staff report (Exhibit A). This was a reconciliation process on marijuana regulations. The City started working on marijuana regulations in 2015. A marijuana subcommittee was formed that made recommendations to the Council, and the Council adopted regulations for both medical and recreational marijuana. In 2016 the Oregon legislature passed new laws regarding marijuana which merged medical and recreational marijuana. There were three medical marijuana dispensaries in Newberg, and all three came to the City with Land Use Compatibility Statements to transition their operations from medical dispensaries to recreational retail operations.

The City filled out the forms, and applications were currently at the Oregon Liquor Control Commission. Due to these applications, staff found inconsistencies between medical and recreational regulations. Staff proposed the following changes: to allow medical dispensaries as permitted uses in C-1 and C-4 with a 1,000 foot buffer from parks and schools, a 1,000 foot separation between dispensaries, and operating hours of 9 a.m. to 8 p.m.; to allow medical marijuana processors as a conditional use in C-2 with a 1,000 foot buffer from parks and schools and to be indoor use only in M-1, M-2, M-3, and M-4; to allow medical wholesalers as a conditional use in C-2 with a 1,000 foot buffer from parks and schools and to be permitted in M-1, M-2, M-3, M-4, and Airport Industrial and their subdistricts with a 1,000 foot buffer from parks and schools; and to allow recreational processors in the M1-SP district. All the marijuana regulations would be moved together under Miscellaneous in the Code and footnotes updated. The Marijuana Subcommittee recommendations aligned with these proposed changes and the Planning Commission did not make any revisions to their proposal. The changes met Comprehensive Plan criteria.

Mayor Andrews if Sitka Academy might in the future be less than 1,000 feet from two of the current dispensaries. CDD Rux said Canna Brothers submitted their application prior to the School District entering into a lease and starting Sitka Academy. Oasis opened after that. It was uncertain if Sitka Academy would operate this school year or not. Both of the businesses were notified they were less than 1,000 feet from a school. If the School District initiated the program in the future, the City would have to notify the appropriate authority.

Proponents: None.

Opponents: Doug Heuer, Newberg, opposed the ordinance because it was discriminatory to place buffers from parks when there was no such buffer for stores selling alcohol. The way the ordinance was set up it seemed like they were trying to eliminate marijuana businesses in the area. Alcohol was sometimes sold at the parks and at other events where children were present. He discussed areas of the Code that still had fines for possession of marijuana and paraphernalia and the taxes on marijuana were higher than allowed. He would be presenting the tax information to the State as he thought it was illegal that they were higher than the maximum allowed at 3%.

Mayor Andrews closed the hearing. He asked for closing items from staff and their final recommendation. CDD Rux recommended adoption of the ordinance.

Deliberations: Councilor Essin about the possession of marijuana and paraphernalia in the City's Municipal Code. City Attorney Truman Stone said there was an infraction for possession of less than an ounce of marijuana, which had been preempted by State law. It was not being enforced and was on a list of items to be addressed. There was a provision regarding drug paraphernalia which was modeled after State law. When Measure 91 passed, it created a new category called marijuana paraphernalia as a subset of drug paraphernalia that was legal. The City was aware the Code was out of date on marijuana law and was working on making changes.

Councilor Essin asked about the drug tax being illegal. The City was aware of the situation, but thought since the City's taxes were in place before the State regulations, they were not illegal. Mayor Andrews clarified the City passed the taxes before Measure 91 was passed.

MOTION: Bacon/McKinney moved to waive the first reading of Ordinance 2016-2809. Motion carried (7 Yes/ 0 No).

MOTION: Essin/Bacon moved to adopt Ordinance 2016-2809, An ordinance amending the Newberg Development Code for medical marijuana dispensaries, processors, wholesalers and recreational marijuana processors as permitted or conditional uses in districts and subdistricts within the City of Newberg to be read by title only. Motion carried (7 Yes/ 0 No).

CONTINUED BUSINESS: Ordinance 2016-2808, second reading:

MOTION: Corey/Bacon moved to adopt Ordinance 2016-2808, An ordinance repealing Newberg Municipal Code Section 10.20.050 regarding volunteer bicycle registration to be read by title only. Motion carried (7 Yes/ 0 No).

Non-Potable Water:

City Engineer Kaaren Hofmann said was following up from the September 6 meeting regarding the non-potable water system expansion. Discussion regarding what level of expansion should be included in the Water Master Plan included three options: Option A was to do nothing, Option B was a northerly expansion of Otis Springs, and Option C was a full expansion of the system. Staff recommended moving forward with Option B.

Mayor Andrews asked why Option B was better than A or C. CE Hofmann said expanding the non-potable water system was a good thing for sustainability and the environment. Option B was middle ground between the two, and a full expansion would be a significant capital cost. Option B would help continue to serve the golf course and properties on the north including the Gramor development and Springbrook Master Plan properties as well as existing irrigation water users that might want to connect to the non-potable system. There were many funding options and would most likely be paid for by a combination of developer funds, water SDCs, and water rates. If the City wanted to expand the system to the north, the opportune time was now so the project could be put in the Water Master Plan. This would require developers to bear the costs of putting in pipes.

Councilor Woodruff asked how long the Water Master Plan was to be in effect. CE Hofmann said for 10 years. Councilor Corey asked if the plan would be on hold until developers agreed to putting in pipes or would the City put in pipes and be reimbursed by developers. CE Hofmann said the plan would be the developers would install it and if there was a gap the City would take care of that portion. The City would not start construction next year. Councilor Corey clarified that the

City would not take any steps to expand the non-potable water line until a planned development was going in and the developer would put it in. CE Hofmann affirmed that was correct.

Councilor Johnson said by building the gap they were making rate payers pay for the non-potable water system. Was it a benefit for the whole community to expand the non-potable water system? CE Hofmann said there was an environmental benefit to using the system, both for what they were not putting back into the river and reducing the amount of water coming out of the well field.

MOTION: Essin/Bacon moved to approve that the Option B projects for the non-potable water system should be placed into the Water Master Plan update and be incorporated into the financial aspects of said plan. Motion carried (7 Yes/ 0 No).

ADJOURNMENT: The meeting was adjourned at 8:42 p.m.

ADOPTED by the Newberg City Council this 7th day of November, 2016.


Sue Ryan, City Recorder

ATTESTED by the Mayor this 8th day of November, 2016.


Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 19, 2016

Order ____ Ordinance XX Resolution ____ Motion ____ Information ____
No. No. 2016-2809 No.

SUBJECT: An ordinance amending the Newberg Development Code for medical marijuana dispensaries, processors, wholesalers and recreational marijuana processors as permitted or conditional uses in districts and subdistricts within the City of Newberg

Contact Person (Preparer) for this
Motion: Doug Rux, Director
Dept.: Community Development
File No.: DCA-16-003

HEARING TYPE: ☒ LEGISLATIVE ☐ QUASI-JUDICIAL ☐ NOT APPLICABLE

RECOMMENDATION:

Adopt Ordinance No. 2016-2809 amending the Newberg Development Code for recreational marijuana wholesalers, laboratories, research certificates and retailers.

EXECUTIVE SUMMARY:

A. SUMMARY:

The proposed Development Code amendments do the following:

- Allows Medical Marijuana Dispensaries as a permitted use in C-1 and C-4.
- Allows Medical Marijuana Dispensaries as a permitted use in C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H Subdistricts with a 1,000 foot buffer from schools and parks, a 1,000 foot separation between dispensaries and operating hours between 9:00 a.m. and 8:00 p.m.
- Allows Medical Marijuana Processors as a conditional use in C-2 with a 1,000 foot buffer from schools and parks.
- Modifies Medical Marijuana Processors to be an indoor use only in M-1, M-2, M-3 and M-4-I.
- Allows Medical Marijuana Wholesalers as a conditional use in C-2 as an indoor use only and with a 1,000 foot buffer from schools and parks.
- Allows Medical Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I and AI with a 1,000 foot buffer from schools and parks.
- Allows Medical Marijuana Wholesalers as a permitted use in M/1-SP, SD/E and II with a 1,000 foot buffer from schools and parks.

- Allows Recreational Marijuana Processors in the M-1/SP Subdistrict.

BACKGROUND:

The Oregon voters passed Measure 91 on recreational marijuana in November 2014. The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program. HB 2014 was enacted addressing taxes on the sale of recreational marijuana, SB 460 related to limited retail sales of marijuana from medical marijuana dispensaries and SB 844 enacted a task force on researching the medical and public health properties of cannabis. In addition to the enacting of the four bills the Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on October 22, 2015 that were subsequently modified on November 20, 2015 for recreational marijuana under Chapter 845, Division 25

On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At the City Council Business Session on September 8th they established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews. The City Council also directed staff to bring back an ordinance with a ban of the sale of recreational marijuana from Medical Marijuana Dispensaries.

On September 21, 2015 the Newberg City Council passed Ordinance No. 2015-2787 declaring a ban on the early sale of recreational marijuana by marijuana dispensaries and declaring an emergency.

The original Marijuana Subcommittee met between November 19, 2015 and March 3, 2016 to discuss possible regulations for medical and recreational marijuana. The Subcommittee held its last meeting on March 3, 2016 discussing paraphernalia and taxes. The Oregon Legislature met in its short session in early 2016 and passed several new bills related to marijuana. These include SB 1601 (Taxes), SB 1511, HB 4014, SB 1598 and HB 4094 (Banking). The State also took prior legislation and incorporated them into ORS 475B – Cannabis Regulation (2015 Edition).

SB 1601 (Taxes) and HB 4049 (Banking) will not be the focus of this report as taxes were discussed by the Subcommittee on March 3 and the City Council on April 4, 2016, and the marijuana banking bill is not applicable to the City. This leaves the remaining three bills passed by the legislature and signed by the Governor.

The City Council by Ordinance No. 20125-2780 adopted land use regulations for medical marijuana dispensaries and Ordinance No. 2016-2793 for medical marijuana grow sites and processors. The City Council also adopted land use regulations for recreational marijuana producers and processors by Ordinance No. 2016-2798. Local land use regulations for recreational marijuana wholesalers, laboratories, research certificates and retailers was passed by Ordinance 2016-2801 on June 6, 2016.

At the May 10, 2016 Marijuana Subcommittee (Subcommittee) meeting the Subcommittee passed a motion 3-0 directing staff to create a Request for Council Action (RCA) to initiate a Development Code amendment to reconcile the differences between the medical marijuana and recreational marijuana programs based on 2016 Oregon Legislature actions to bring forward for

Council consideration on July 5, 2016. The City Council adopted Resolution No. 2016-3312 on July 5, 2016 initiating the Development Code amendment process (Attachment 1).

The Subcommittee at their meeting on May 10, 2016 also developed recommendations on medical marijuana and recreational marijuana reconciling previous City Council actions and the new 2016 laws.

B. PROCESS:

A development code amendment is a Type IV application and follows the procedures in Newberg Development Code 15.100.060. Important dates related to this application are as follows:

1. 5/10/16: The City Council Marijuana Subcommittee met and developed recommendations to the Planning Commission.
2. 7/5/16: The Newberg City Council initiated the Development Code amendment.
3. 8/11/16: After proper notice, the Planning Commission held a legislative hearing to consider the item, took public comment, and approved Resolution 2016-321.
4. 9/19/16: After proper notice, the City Council held a legislative hearing to consider the item.

D. PUBLIC COMMENTS:

As of the writing of this report, the city has no comments on the application. If the city receives written comments by the comment deadline, Planning staff will forward them to the City Council.

E. ANALYSIS:

Provisions of SB 1511 that are applicable to land use place, time and manner are recreational marijuana producers, process, wholesalers and retailers with OLCC licenses that are now allowed to perform these activities for medical marijuana purposes but must register with OLCC for those activities (SB 1511, Sections 2-10). Important provisions are highlighted in yellow. The law reads:

(Marijuana Producers)

SECTION 2. (1) As used in this section, “designated primary caregiver,” “marijuana processing site,” “medical marijuana dispensary” and “registry identification cardholder” have the meanings given those terms in ORS 475B.410.

(2) To produce marijuana for medical purposes, a marijuana producer that holds a license under ORS 475B.070 must register with the Oregon Liquor Control Commission under this section.

(3) The commission shall register a marijuana producer for the purpose of producing marijuana for medical purposes if the marijuana producer:

(a) Holds a license under ORS 475B.070;

(b) Meets any qualifications adopted by the commission by rule;

**(c) Applies to the commission in a form and manner prescribed by the commission; and
(d) Pays any fee adopted by the commission by rule.**

(4)(a) A marijuana producer registered under this section may produce marijuana for a registry identification cardholder, and provide usable marijuana to the registry identification cardholder or to the designated primary caregiver of the registry identification cardholder, if the marijuana producer enters into an agreement with the registry identification cardholder for whom the marijuana producer is producing the marijuana. An agreement entered into under this subsection:

(A) Must be submitted to the commission in a manner prescribed by the commission;

(B) Except as provided in subparagraph (C) of this paragraph, may not allow the marijuana producer to be compensated for producing the marijuana or providing the usable marijuana;

(C) May require a registry identification cardholder, or a designated primary caregiver on behalf of a registry identification cardholder, to reimburse a marijuana producer for all costs associated with producing marijuana for the registry identification cardholder or providing usable marijuana to the registry identification cardholder or designated primary caregiver;

(D) May not allow the marijuana producer to produce for the registry identification cardholder an amount of mature marijuana plants that exceeds the amount that a registry identification cardholder and a designated primary caregiver may jointly possess under ORS 475B.428;

(E) May not allow the marijuana producer to provide to the registry identification cardholder an amount of usable marijuana that exceeds the amount that a registry identification cardholder and a designated primary caregiver may jointly possess under ORS 475B.430; and

(F) May allow the marijuana producer to keep a portion of the usable marijuana harvested from the marijuana produced for the registry identification cardholder for the purposes of:

(i) Providing usable marijuana to additional registry identification cardholders or designated primary caregivers; and

(ii) Transferring or selling usable marijuana to marijuana processing sites or medical marijuana dispensaries.

(c) Marijuana produced for a registry identification cardholder, and usable marijuana transferred or sold to a marijuana processing site or medical marijuana dispensary, pursuant to an agreement entered into under this subsection must be tracked by the system developed and maintained under ORS 475B.150.

(d)(A) Upon request by the commission, the Oregon Health Authority shall provide the commission, notwithstanding any laws relating to the confidentiality of information under ORS 475B.460 and 475B.462, with the registration information of:

(i) A registry identification cardholder who enters into an agreement under this subsection; or

(ii) A registry identification cardholder, designated primary caregiver, marijuana processing site or medical marijuana dispensary that receives usable marijuana pursuant to an agreement entered into under this subsection.

(B) Registration information received by the commission under this paragraph that is confidential and not subject to public disclosure under ORS 475B.460 and 475B.462 remains confidential and not subject to public disclosure after being provided to the commission.

(e) Marijuana produced pursuant to an agreement entered into under this subsection is

not subject to rules restricting the size of mature marijuana plant grow canopies adopted by the commission under ORS 475B.075.

(5)(a) The commission shall adopt rules necessary to administer this section, including rules:

(A) For the equitable conversion of a number of mature marijuana plants to a size of mature marijuana plant grow canopy;

(B) Limiting the amount of marijuana that may be produced under section (4) of this section;

(C) Limiting the amount of usable marijuana that may be provided, transferred or sold under subsection (4)(a)(F) of this section;

(D) Limiting the number of registry identification cardholders for whom a marijuana producer registered under this section may produce marijuana; and

(E) Prohibiting a registry identification cardholder from entering into more than one agreement with a marijuana producer registered under this section.

(b) The rules must provide that any fee adopted by the commission under subsection (3)(d) of this section be in an amount reasonably calculated to not exceed, together with other fees collected under ORS 475B.010 to 475B.395, the cost of administering ORS 475B.010 to 475B.395.

(Marijuana Processors)

SECTION 3. (1) To process marijuana for medical purposes, a marijuana processor that

holds a license under ORS 475B.090 must register with the Oregon Liquor Control Commission under this section.

(2) The commission shall register a marijuana processor for the purpose of processing marijuana for medical purposes if the marijuana processor:

(a) Holds a license under ORS 475B.090;

(b) Meets any qualifications adopted by the commission by rule;

(c) Applies to the commission in a form and manner prescribed by the commission; and

(d) Pays any fee adopted by the commission by rule.

(3) A marijuana processor registered under this section may process marijuana and usable marijuana into medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

(4) The commission shall adopt rules necessary to administer this section. The rules must provide that any fee adopted by the commission under subsection (2)(d) of this section be in an amount reasonably calculated to not exceed, together with other fees collected under ORS 475B.010 to 475B.395, the cost of administering ORS 475B.010 to 475B.395.

(Marijuana Wholesalers)

SECTION 4. (1) To sell marijuana at wholesale for medical purposes, a marijuana wholesaler that holds a license under ORS 475B.100 must register with the Oregon Liquor Control Commission under this section.

(2) The commission shall register a marijuana wholesaler for the purpose of selling marijuana at wholesale for medical purposes if the marijuana wholesaler:

(a) Holds a license under ORS 475B.100;

(b) Meets any qualifications adopted by the commission by rule;

(c) Applies to the commission in a form and manner prescribed by the commission; and
(d) Pays any fee adopted by the commission by rule.

(3) A marijuana wholesaler registered under this section may sell medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts at wholesale.

(4) The commission shall adopt rules necessary to administer this section. The rules must provide that any fee adopted by the commission under subsection (2)(d) of this section be in an amount reasonably calculated to not exceed, together with other fees collected under ORS 475B.010 to 475B.395, the cost of administering ORS 475B.010 to 475B.395.

(Marijuana Retailers)

SECTION 5. (1) As used in this section, “designated primary caregiver” and “registry identification cardholder” have the meanings given those terms in ORS 475B.410.

(2) To sell marijuana at retail for medical purposes, a marijuana retailer that holds a license under ORS 475B.110 must register with the Oregon Liquor Control Commission under this section.

(3) The commission shall register a marijuana retailer for the purpose of selling marijuana at retail for medical purposes if the marijuana retailer:

(a) Holds a license under ORS 475B.110;

(b) Meets any qualifications adopted by the commission by rule;

(c) Applies to the commission in a form and manner prescribed by the commission; and
(d) Pays any fee adopted by the commission by rule.

(4) A marijuana retailer registered under this section:

(a) May sell medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts to registry identification cardholders and designated primary caregivers;

(b) May not sell medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts to individuals other than registry identification cardholders and designated primary caregivers;

(c) May sell usable marijuana and medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts to registry identification cardholders and designated primary caregivers at a discounted price; and

(d) May provide usable marijuana and medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts to registry identification cardholders and designated primary caregivers free of charge.

(5) The commission shall adopt rules necessary to administer this section. The rules must provide that any fee adopted by the commission under subsection (3)(d) of this section be in an amount reasonably calculated to not exceed, together with other fees collected under ORS 475B.010 to 475B.395, the cost of administering ORS 475B.010 to 475B.395.

SECTION 6. Notwithstanding the provisions of ORS 475B.400 to 475B.525, rules adopted by the Oregon Health Authority under ORS 475B.400 to 475B.525 must allow for the provision, transfer and sale of usable marijuana as described in section 2 of this 2016 Act.

(General Rulemaking Authority)

SECTION 7. ORS 475B.070 is amended to read:

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

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

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

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

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

(3) The commission shall adopt rules that:

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

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

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

(d) Allow a marijuana producer registered under section 2 of this 2016 Act to produce marijuana for medical purposes in the same manner that rules adopted under ORS 475B.010 to 475B.395 allow a marijuana producer to produce marijuana for nonmedical purposes, excepting those circumstances where differentiating between the production of marijuana for medical purposes and the production of marijuana for nonmedical purposes is necessary to protect the public health and safety;

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

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

(i) The production of marijuana; or

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

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

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

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

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

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

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

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

(c) Shall be deposited in the Marijuana Control and Regulation Fund established under ORS

475B.240.

SECTION 8. ORS 475B.090 is amended to read:

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

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

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

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

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

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

(3) The commission shall adopt rules that:

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

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

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

(d) Allow a marijuana processor registered under section 3 of this 2016 Act to process marijuana and usable marijuana into medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts in the same manner that rules adopted under ORS 475B.010 to 475B.395 allow a marijuana processor to process marijuana and usable marijuana into general use cannabinoid products, cannabinoid concentrates and cannabinoid extracts, excepting those circumstances where differentiating between the processing of medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts and the processing of general use cannabinoid products, cannabinoid concentrates and cannabinoid extracts is necessary to protect the public health and safety; and

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

(A) Cannabinoid edibles;

(B) Cannabinoid concentrates;

(C) Cannabinoid extracts; and

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

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

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

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

SECTION 9. ORS 475B.100 is amended to read:

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

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

license under this section, a marijuana wholesaler:

- (a) Must apply for a license in the manner described in ORS 475B.040;
- (b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under ORS 475B.040 has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;
- (c) May not be located in an area that is zoned exclusively for residential use; and
- (d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.

(3) The commission shall adopt rules that:

- (a) Require a marijuana wholesaler to annually renew a license issued under this section;
- (b) Establish application, licensure and renewal of licensure fees for marijuana wholesalers;
- (c) Require marijuana items received, stored or delivered by a marijuana wholesaler to be tested in accordance with ORS 475B.555; [and]

(d) Allow a marijuana wholesaler registered under section 4 of this 2016 Act to sell medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts at wholesale in the same manner that rules adopted under ORS 475B.010 to 475B.395 allow a marijuana wholesaler to sell general use cannabinoid products, cannabinoid concentrates and cannabinoid extracts at wholesale, excepting those circumstances where differentiating between the sale of medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts and the sale of general use cannabinoid products, cannabinoid concentrates and cannabinoid extracts is necessary to protect the public health and safety; and

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

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

- (a) May not exceed the cost of administering ORS 475B.010 to 475B.395 with respect to marijuana wholesalers; and
- (b) Shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240.

SECTION 10. ORS 475B.110 is amended to read:

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

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

- (a) Must apply for a license in the manner described in ORS 475B.040;
- (b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under ORS 475B.040 has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;
- (c) May not be located in an area that is zoned exclusively for residential use;
- (d) Except as provided in section 29b of this 2016 Act, may not be located within 1,000 feet of:**

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

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and

(e) Must meet the requirements of any rule adopted by the commission under subsection (3)

of this section.

(3) The commission shall adopt rules that:

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

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

(c) Require marijuana items sold by a marijuana retailer to be tested in accordance with ORS 475B.555; [and]

(d) Subject to the limitations and privileges described in section 5 (4) of this 2016 Act, allow a marijuana retailer registered under section 5 of this 2016 Act to sell medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts at retail in the same manner that rules adopted under ORS 475B.010 to 475B.395 allow a marijuana retailer to sell general use cannabinoid products, cannabinoid concentrates and cannabinoid extracts at retail, excepting those circumstances where differentiating between the sale of medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts and the sale of general use cannabinoid products, cannabinoid concentrates and cannabinoid extracts is necessary to protect the public health and safety; and

[(d)] **(e)** Require a marijuana retailer to meet any public health and safety standards and industry best practices established by the commission by rule.

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

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

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

SB 1511 also has new provisions that allow a reduced buffer for medical marijuana dispensaries and recreational marijuana retail stores from schools.

SECTION 29. (1) Notwithstanding ORS 475B.450 (3)(d), a city or county may adopt an ordinance allowing a medical marijuana dispensary to be located within 500 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), if the county or city determines that a physical or geographic barrier capable of preventing children from traversing to the school separates the medical marijuana dispensary from the school.

(2) A city or county that adopts an ordinance under this section must inform the Oregon Health Authority, in a form and manner prescribed by the authority, of the content and effective date of the ordinance.

SECTION 29b. (1) Notwithstanding ORS 475B.110 (2)(d), a city or county may adopt an ordinance allowing a premises for which a license has been issued under ORS 475B.110 to be located within 500 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), if the county or city determines that a physical or geographic barrier capable of preventing children from traversing to the school separates the premises from the school.

(2) A city or county that adopts an ordinance under this section must inform the Oregon Liquor Control Commission, in a form and manner prescribed by the commission, of the content and effective date of the ordinance.

HB 4014 has modified the language for Land Use Compatibility Statements. The law reads:

LIQUOR CONTROL COMMISSION LICENSEES

SECTION 11. ORS 475B.063 is amended to read:

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

(2) **Except as provided in subsection (3) of this section,** a city or county that receives a request for a land use compatibility statement under this section must act on that request within 21 days of:

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

(3) A city or county that receives a request for a land use compatibility statement under this section is not required to act on that request during the period that the commission discontinues licensing those premises pursuant to ORS 475B.800 (4)(b).

[(3)] **(4) A city or county action concerning a land use compatibility statement under this section is not a land use decision for purposes of ORS chapter 195, 196, 197, [or] 215 or 227.**

HB 4014 added language for public disclosure of information. The law reads:

EXEMPTION FROM PUBLIC DISCLOSURE

SECTION 21. Section 22 of this 2016 Act is added to and made a part of ORS 475B.010 to 475B.395.

SECTION 22. (1) Subject to subsection (2) of this section, information is exempt from public disclosure under ORS 192.410 to 192.505 if the information is:

- (a) The address of a premises for which a license has been issued or for which an applicant has proposed to be licensed under ORS 475B.070, 475B.090 or 485B.100;
- (b) Is related to the security plan or the operational plan for a premises for which a license has been issued or for which an applicant has proposed to be licensed under ORS 475B.070, 475B.090, 485B.100 or 475B.110; or
- (c) Is related to any record that the Oregon Liquor Control Commission determines contains proprietary information of a person who holds a license under ORS 475B.070, 475B.090, 485B.100 or 475B.110.

(2) **The exemption from public disclosure as provided by this section does not apply to a request for information if the request is made by a law enforcement agency.**

HB 4014 added language for the ability of a medical marijuana grow site, medical processor and medical dispensary to transition to licensing by OLCC. The law reads:

**MEDICAL MARIJUANA BUSINESSES
APPLYING TO BE LICENSED BY THE
OREGON LIQUOR CONTROL COMMISSION**

SECTION 24. Section 25 of this 2016 Act is added to and made a part of ORS 475B.010 to 475B.395.

SECTION 25. (1) The Oregon Liquor Control Commission shall adopt by rule procedures by which:

(a) A person responsible for a marijuana grow site registered under ORS 475B.420, or, if multiple persons responsible for a marijuana grow site registered under ORS 475B.420 are located at the same address, each person responsible for a marijuana grow site located at the address, may apply for a license under ORS 475B.070 to transition from being registered by the Oregon Health Authority to being licensed by the commission;

(b) A marijuana processing site registered under ORS 475B.435 may apply for a license under ORS 475B.090 to transition from being registered by the authority to being licensed by the commission; and

(c) A medical marijuana dispensary registered under ORS 475B.450 may apply for a license under ORS 475B.110 to transition from being registered by the authority to being licensed by the commission.

(2)(a) In adopting rules under this section, the commission shall adopt, at a minimum, procedures by which the inventory possessed by a person responsible for a marijuana grow site, a marijuana processing site or a medical marijuana dispensary on the date on which the person responsible for a marijuana grow site, the marijuana processing site or the medical marijuana dispensary is first subject to tracking by the commission under ORS 475B.150:

(A) May be delivered to a premises for which a license has been issued under ORS 475B.090, 475B.100 or 475B.110; or

(B) May be sold to consumers by marijuana retailers that hold a license under ORS 475B.110.

(b) Procedures adopted under this subsection must require a person responsible for a marijuana grow site registered under ORS 475B.420, or, if multiple persons responsible for a marijuana grow site registered under ORS 475B.420 are located at the same address, each person responsible for a marijuana grow site located at the address, to return to an individual to whom a registry identification card has been issued under ORS 475B.415, and for whom the person or persons are producing marijuana, all the marijuana and usable marijuana owned by the individual, except as otherwise allowed under a personal agreement entered into under ORS 475B.425, at the time that the person or the persons receive a license under ORS 475B.070.

HB 4014 modified language allowing cities to enter into an Intergovernmental Agreement (IGA) with the Department of Revenue to collect local marijuana taxes on behalf of a city. The Department of Revenue would charge a cost for the collection service. The law reads:

**(Intergovernmental Agreements Between Cities
and Counties and the Department of Revenue)**

SECTION 32. ORS 305.620 is amended to read:

305.620. (1) Any state agency or department may enter into agreements with any political subdivision of this state for the collection, enforcement, administration and distribution of local taxes of the political subdivision imposed upon or measured by gross or net income, wages or net earnings from self-employment, [or] local general sales and use taxes **or taxes imposed under ORS 475B.345.**

(2) The department or agency shall prescribe the rules by which the agreements entered into under subsection (1) of this section are administered.

(3) The department or agency shall prescribe the rules by which the taxes described by subsection (1) of this section are administered, collected, enforced and distributed.

(4) A political subdivision may appear as an intervenor at any conference held by the Department of Revenue or conference, hearing or proceeding held by another department or agency in connection with a local tax administered by the department or agency. The political subdivision may be represented by its own counsel. The department or agency shall adopt rules governing the procedures to be followed by the political subdivision in making an appearance.

(5) Costs incurred by the department or agency in the administration, enforcement, collection and distribution of taxes under the agreements entered into under subsection (1) of this section shall be first deducted from the taxes collected before distribution is made to the political subdivision which is a party to the agreement.

(6) The Oregon Tax Court shall have exclusive jurisdiction to review determinations of the Department of Revenue or orders of another department or agency relating to the collection, enforcement, administration and distribution of local taxes under agreements entered into under subsection (1) of this section.

(7) A proceeding for refund or to set aside additional taxes or taxes assessed when no return was filed may be initiated before the state agency or department.

(8) An appeal from a determination or an order may be taken by the taxpayer or by the political subdivision whose taxes are in issue, by filing a complaint with the clerk of the Oregon Tax Court at its principal office in Salem, Oregon, within 60 days after the notice of the determination of the Department of Revenue or the order of the department or agency is sent to the taxpayer or the political subdivision. The filing of the complaint in the Oregon Tax Court shall constitute perfection of the appeal. Service of the taxpayer's complaint shall be accomplished by the clerk of the tax court by filing a copy of the complaint with the administrative head of the department or agency and a copy with the political subdivision. Service of the political subdivision's complaint shall be accomplished by the clerk of the tax court by filing a copy of the complaint with the administrative head of the department or agency and mailing a copy of the complaint to the taxpayer. The complaint of a taxpayer shall be entitled in the name of the person filing as plaintiff and the department or agency as defendant. The complaint of a political subdivision shall be entitled in the name of the political subdivision as plaintiff and the taxpayer and the department or agency as defendants. A copy of the order of the department or agency shall be attached to the complaint. All procedures shall be in accordance with ORS 305.405 to 305.494.

SB 1598 added new language on land use compatibility statements. The law reads:

LAND USE LAWS

SECTION 1. Section 2 of this 2016 Act is added to and made a part of ORS 475B.010 to 475B.395.

SECTION 2. The requirement under ORS 475B.063 to obtain a land use compatibility statement as a condition of receiving a license under ORS 475B.070 does not apply to an applicant if:

- (1) The applicant is applying for a license at an address where a marijuana grow site registered under ORS 475B.420 is located;
- (2) The address is outside of city limits;
- (3) At least one person responsible for a marijuana grow site located at the address first registered with the Oregon Health Authority under ORS 475B.420 before January 1, 2015;
- (4) Each person responsible for a marijuana grow site located at the address first registered with the Oregon Health Authority under ORS 475B.420 before February 1, 2016; and
- (5) The applicant is applying for a mature marijuana plant grow canopy of:
 - (a) 5,000 square feet or less, if the marijuana is produced outdoors; or
 - (b) 1,250 square feet or less, if the marijuana is produced indoors.

SB 1598 modified language on local time, place and manner regulations. The law reads:

SECTION 4. ORS 475B.340 is amended to read:

475B.340. (1) For purposes of this section, “reasonable regulations” includes:

- (a) Reasonable conditions on the manner in which a marijuana producer licensed under ORS 475B.070 may produce marijuana **or in which a person who holds a certificate issued under ORS 475B.235 may produce marijuana or propagate immature marijuana plants;**
 - (b) Reasonable conditions on the manner in which a marijuana processor licensed under ORS 475B.090 may process marijuana **or in which a person who holds a certificate issued under ORS 475B.235 may process marijuana;**
 - (c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under ORS 475B.100 may sell marijuana at wholesale;
 - (d) Reasonable limitations on the hours during which a marijuana retailer licensed under ORS 475B.110 may operate;
 - (e) Reasonable conditions on the manner in which a marijuana retailer licensed under ORS 475B.110 may sell marijuana items;
 - (f) Reasonable requirements related to the public’s access to a premises for which a license **or certificate** has been issued under ORS 475B.070, 475B.090, 475B.100 [or], 475B.110 **or 475B.235;** and
 - (g) Reasonable limitations on where a premises for which a license **or certificate** may be issued under ORS 475B.070, 475B.090, 475B.100 [or], 475B.110 **or 475B.235** may be located.
- (2) Notwithstanding ORS **30.935, 215.253 (1) or** 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110, **or for which a certificate has been issued under ORS 475B.235,** if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not:

(a) Adopt an ordinance that prohibits a premises for which a license has been issued under ORS 475B.110 from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under ORS 475B.110.

(b) Adopt an ordinance after January 1, 2015, that imposes a setback requirement for an agricultural building used to produce marijuana located on a premises for which a license has been issued under ORS 475B.070 if the agricultural building:

(A) Was constructed on or before July 1, 2015, in compliance with all applicable land use and building code requirements at the time of construction;

(B) Is located at an address where a marijuana grow site first registered with the Oregon Health Authority under ORS 475B.420 on or before January 1, 2015;

(C) Was used to produce marijuana pursuant to the provisions of ORS 475B.400 to 475B.525 on or before January 1, 2015; and

(D) Has four opaque walls and a roof.

[(3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.]

The Newberg Municipal Code states the following regarding retail, wholesale and warehouse:

15.05.030 Definitions.

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Light manufacturing category” means a category of uses under Chapter 15.303 NMC that involves manufacturing, processing, fabrication, packaging, or assembly of goods. These types of firms are involved in the secondary processing and assembly of materials and components into finished products, generally for the wholesale market, for transfer to other plants, or to order for firms or consumers. The external impact from these uses is generally less than heavy manufacturing. Outdoor storage and processing of goods and materials is less than 10 percent of the site. Transportation needs are often met by truck. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).

“Retail sales – general category” means a category of uses under Chapter 15.303 NMC that sell or rent goods to the general public. Items are sold indoors, or, if outdoors, are limited to small items that do not require machinery to load to customers. Most items for sale are stored on or picked up from the site. Operators may be commercial or nonprofit entities.

“Wholesale and industry sales category” means a category of uses under Chapter 15.303 NMC that sell goods or merchandise to retailers, to industrial, commercial, institutional, or other professional business users, or to other wholesalers and related subordinated services. Items are only occasionally sold directly to the general public.

“Warehouse, storage and distribution category” means a category of uses under Chapter 15.303 NMC that involve the storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. It includes data centers that store and distribute electronic data. There is little on-site sales activity with the customer present.

Use Categories

15.303.421 Retail sales – General category.

A. Characteristics. General retail sales uses sell or rent goods to the general public. Items are sold indoors, or, if outdoors, are limited to small items that do not require machinery to load to customers. Most items for sale are stored on or picked up from the site. Operators may be commercial or nonprofit entities.

15.303.503 Wholesale and industry sales category.

A. Characteristics. Wholesale sales uses sell goods or merchandise to retailers, to industrial, commercial, institutional, or other professional business users, or to other wholesalers and related subordinated services. Items are only occasionally sold directly to the general public.

15.303.504 Warehouse, storage and distribution category.

A. Characteristics. Warehouse. Storage and distribution uses involve the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. It includes data centers that store and distribute electronic data. There is little on-site sales activity with the customer present.

15.303.506 Light manufacturing category.

A. Characteristics. Light manufacturing uses involve manufacturing, processing, fabrication, packaging, or assembly of goods. These types of firms are involved in the secondary processing and assembly of materials and components into finished products, generally for the wholesale market, for transfer to other plants, or to order for firms or consumers. The external impact from these uses is generally less than heavy manufacturing. Outdoor storage and processing of goods and materials is less than 10 percent of the site. Transportation needs are often met by truck. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).

B. Accessory Uses. Retail sales of goods produced on site, provided the floor area devoted to retail sales is small (less than 10 percent of the floor area, up to 2,000 square feet).

C. Examples. Instrument and machinery manufacturers, food processors, furniture manufacturers, wineries, wholesale bakeries.

D. Exclusions. Heavy manufacturing is a separate category. [Ord. 2763 § 1 (Exh. A § 5), 9-16-13.]

	USES	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards
400	COMMERCIAL USES																			
	Retail sales - General						P (20)	P (15) (21)	P	P		P (23)								
500	INDUSTRIAL USES																			
	Wholesale and industry sales							C (31)			P (31)	P	P	P	P				P(33)	
	Warehouse, storage and distribution										P (32)	P	P	P	P				P (33)	
	Light Manufacturing										P	P	P	P					P(33)	

Key:

P: Permitted use

S: Special use – Use requires a special use permit

C: Conditional use – Requires a conditional use permit

X: Prohibited use

(#): See notes for limitations

Notes.

(15) Facility over 40,000 square feet gross floor area requires a conditional use permit.

(20) Businesses in the C-1 zone that have hours of operation between 10:00 p.m. and 7:00 a.m. require a conditional use permit.

(21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a conditional use permit. Otherwise, drive-up service windows, except those in service on April 1, 2002, are prohibited. Changes in use will not be allowed.

(23) Limited to secondhand stores.

(31) Allowed indoors only.

(32) Allowed indoors only. Outdoor use requires a conditional use permit.

(33) Must be aviation-related. See Chapter 15.332 NMC.

Staff therefore proposes the following code amendments:

- Allow Medical Marijuana Dispensaries as a permitted use in C-1 and C-4.
- Allow Medical Marijuana Dispensaries as a permitted use in C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H Subdistricts with a 1,000 foot buffer from schools and parks, a 1,000 foot separation between dispensaries and operating hours between 9:00 a.m. and 8:00 p.m.

- Allow Medical Marijuana Processors as a conditional use in C-2 with a 1,000 foot buffer from schools and parks.
- Modify Medical Marijuana Processors to be an indoor use only in M-1, M-2, M-3 and M-4-I.
- Allow Medical Marijuana Wholesalers as a conditional use in C-2 as an indoor use only and with a 1,000 foot buffer from schools and parks.
- Allow Medical Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I and AI with a 1,000 foot buffer from schools and parks.
- Allow Medical Marijuana Wholesalers as a permitted use in M/1-SP, SD/E and II with a 1,000 foot buffer from schools and parks.
- Allow recreational marijuana processors in the M-1/SP Subdistrict.

Attachment 2 is a map depicting the 1,000 foot buffers from schools and parks recommended by the Subcommittee and Planning Commission.

F. MARIJUANA SUBCOMMITTEE RECOMMENDATION:

The Subcommittee developed the following recommendations.

Medical Marijuana

1. Allow medical marijuana dispensaries to be permitted in C-1 and C-4 to align with recreational.
2. Allow medical marijuana processors as a conditional use in C-2 with a 1,000 foot buffer from schools and parks.
3. Have the medical marijuana wholesaler regulations mirror those for recreational wholesaler.
4. Include medical marijuana dispensaries in the same subdistricts as recreational retailers.
5. Keep the buffer for schools and parks at 1,000 feet.

Recreational Marijuana

1. Allow recreational marijuana processors in the same subdistricts as medical marijuana processors.
2. Keep the buffer for schools and parks at 1,000 feet.

G. PLANNING COMMISSION RECOMMENDATION:

The Newberg Planning Commission held a public hearing on August 11, 2016, heard public testimony, and approved Resolution 2016-321, which recommends that the City Council:

- Add Medical Marijuana Dispensaries as a permitted use in C-1 and C-4.
- Add Medical Marijuana Dispensaries as a permitted use in C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H Subdistricts with a 1,000 foot buffer from schools and parks, a 1,000 foot separation between dispensaries and operating hours between 9:00 a.m. and 8:00 p.m.
- Add Medical Marijuana Processors as a conditional use in C-2 with a 1,000 foot buffer from schools and parks.
- Modify Medical Marijuana Processors to be an indoor use only in M-1, M-2, M-3 and M-4-I.
- Add Medical Marijuana Wholesalers as a conditional use in C-2 as an indoor use only and with a 1,000 foot buffer from schools and parks.
- Add Medical Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I and AI with a 1,000 foot buffer from schools and parks.
- Add Medical Marijuana Wholesalers as a permitted use in M-1/SP, SD/E and II with a 1,000 foot buffer from schools and parks.
- Add Recreational Marijuana Processors in the M-1/SP Subdistrict.

FISCAL IMPACT:

The fiscal impact of allowing medical marijuana and recreational marijuana operations cannot be specifically quantified at this time. There is a local tax of 5% on medical marijuana gross sales at dispensaries and 10% on recreational marijuana gross sales at retail stores. The State also has a tax on recreational marijuana gross sales of 17%.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

Reconciling local medical and recreational marijuana regulations based on laws passed by the Oregon Legislature in 2016 clarifies where the various medical marijuana dispensaries, processors and wholesalers as well as recreational marijuana processors can legally be located within the city. Zoning restrictions on the uses are appropriate to address potential adverse impacts on adjacent uses.

The proposal also responds to Goal #4 – Provide a high level of Public Safety services and Objective 3.4 – Identify and develop regulations and codes addressing the changing laws regarding the distribution and use of marijuana.

ATTACHMENTS:

Ordinance 2016-2809 with

Exhibit “A”: Proposed Development Code Text Amendment

Exhibit “B”: Findings

1. City Council Resolution 2016-3312
2. 1,000 foot Schools/Parks Buffer Map
3. Planning Commission Resolution No. 2016-321



ORDINANCE No. 2016-2809

**AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE
FOR MEDICAL MARIJUANA DISPENSARIES, PROCESSORS,
WHOLESALEERS AND RECREATIONAL MARIJUANA PROCESSORS AS
PERMITTED OR CONDITIONAL USES IN DISTRICTS AND SUBDISTRICTS
WITHIN THE CITY OF NEWBERG**

RECITALS:

1. Measure 91 was approved by Oregon voters in November 2014 and House Bill 3400 was enacted by the Oregon Legislature in 2015 related to recreational marijuana.
2. The Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on October 22, 2015 that were subsequently modified on November 20, 2015 for recreational marijuana under Chapter 845, Division 25.
3. The Newberg City Council established the Marijuana Subcommittee on September 8, 2015 to review and provide recommendations on local place, time and manner regulations for recreational marijuana.

The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding reconciling place, time and manner regulation for medical marijuana growers, processors and dispensaries; and recreational marijuana wholesalers, laboratories, research certificates and retailers on July 5, 2016, under City Council Resolution 2016-3321.

4. The Marijuana Subcommittee met on May 10, 2016 and developed recommendations to the Planning Commission on medical marijuana dispensaries, processors, wholesalers and recreational marijuana processors as permitted or conditional uses in districts and subdistricts within the City of Newberg.
5. After proper notice, the Newberg Planning Commission held a hearing on August 11, 2016 to consider the amendment for medical marijuana dispensaries, processors, wholesalers and recreational marijuana processors as permitted or conditional uses in districts and subdistricts. The Commission considered testimony, deliberated, and found that adding regulations for medical marijuana dispensaries, processors, wholesalers and recreational marijuana processors as permitted or conditional uses in districts and subdistricts would be in the best interests of the city. The Planning Commission approved Resolution 2016-321, which recommends that the City Council adopt the proposed amendments to the Newberg Development Code.
6. After proper notice, the Newberg City Council held a hearing on September 19, 2016 to consider the proposed amendment. The Council considered testimony and deliberated.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The Council finds that adding regulations for medical marijuana dispensaries, processors, wholesalers and recreational marijuana processors as permitted or conditional uses in districts and would be in the best interests of the city. The Council adopts the amendments to the Newberg Development Code as shown in Exhibit “A”. Exhibit "A" is hereby adopted and by this reference incorporated.
2. The findings shown in Exhibit “B” are hereby adopted. Exhibit "B" is by this reference incorporated.

➤ **EFFECTIVE DATE** of this ordinance is of this ordinance is October 19, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 19th day of September, 2016, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this 22nd day of September, 2016.

Bob Andrews, Mayor

**Exhibit “A” to Ordinance 2016-2809
Development Code Amendments –File DCA-16-003
Medical Marijuana Dispensaries,
Processors, Wholesalers and
Recreational Marijuana Processors**

**Note: Existing text is shown in regular font.
Added text is shown in double-underline
Deleted text is shown in ~~strikethrough~~.**

Section 1. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:

See Exhibit A, Attachment 1

Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:

See Exhibit A, Attachment 2

Section 3. Newberg Development Code, Stream Corridor Overlay Subdistrict, Section 15.342.110 is amended to read as follows:

15.342.110 Prohibited uses and activities.

The following activities or **uses** are prohibited within this subdistrict:

- A. Except as provided in NMC 15.342.040(R), the planting or propagation of any plant identified as a nuisance plant as determined by a qualified botanist or indicated as a nuisance plant on the Newberg plant list.
- B. The removal of native trees that are greater than six inches in diameter at breast height, except as is otherwise permitted within this chapter.
- C. Any **use** dealing with hazardous substances or materials, including but not limited to gas service stations.
- D. Public pathways, except those in conjunction with public lands, public **parks** or public **easements** that have been acquired by other than eminent domain. [Ord. 2451, 12-2-96. Code 2001 § 151.475.]
- E. Recreational Marijuana Producer and Recreational Marijuana Processor.
- F. Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers.

Section 4. Newberg Development Code, Civic Corridor Overlay Subdistrict, Section 15.350.030 is amended to read as follows:

15.350.030 Permitted buildings and uses.

All **uses** permitted in the underlying primary district are permitted within the CC subdistrict except as follows:

A. In addition to the **buildings** and **uses** permitted conditionally in NMC 15.305.020, the **planning commission** may grant a **conditional use permit** for any of the following **buildings** and **uses** in accordance with a Type III procedure:

1. Facilities which exist for the purpose of providing for the temporary care and/or lodging of adult indigent **persons**.

2. **Hospitals**.

B. The following **uses** are prohibited within the CC subdistrict:

1. **Automobile sales**, new and used.

2. Car washes, coin-operated or mechanical.

3. Garages, repair.

4. Service stations. [Amended during 11/13 supplement; Ord. 2561, 4-1-02. Code 2001 § 151.526.3.]

5. Recreational Marijuana Producer and Recreational Marijuana Processor.

6. Recreational Marijuana Wholesalers and Retailers.

7. Medical Marijuana Dispensaries and Wholesalers.

Section 5. Newberg Development Code, Bypass Interchange Overlay, Section 15.356.050 is amended to read as follows:

15.356.050 Prohibited uses.

A. Several commercial types of **uses** are permitted outright or with conditional **use** approval in Newberg's industrial districts (M-1, M-2, and M-3). The area within the Newberg UGB near the Oregon 219 Interchange is generally planned for industrial **use**. To protect the interchange area from commercial development, the following **uses** are prohibited within the M-1, M-2, and M-3 districts within the boundaries of the bypass interchange overlay:

1. **Automobile sales**, new and used.

2. Billboards.
3. Car washes.
4. Convenience grocery stores.
5. **Restaurants** larger than 2,000 square feet or with drive-up service windows.
6. Service stations.
7. Drive-in theaters.
8. Auction sales.
9. Bakeries, retail.
10. **Building** material sales.
11. Driving ranges.
12. Feed and seed stores.
13. Miniature **golf courses**.
14. Skating rinks.
15. Recreational Marijuana Producer and Recreational Marijuana Processor.
16. Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers.
17. Medical Marijuana Dispensaries and Wholesalers.

B. The industrial commercial subdistrict of the M-4 district shall not be applied within the boundaries of the BI overlay. [Ord. [2734](#) § 1 (Exh. B), 3-7-11; Ord. [2708](#) § 2, 12-1-08; Ord. [2602](#), 9-20-04. Code 2001 § 151.531.4.]

Section 6. Newberg Development Code, Interim Industrial Overlay, Section 15.358.030 is amended to read as follows:

15.358.030 Permitted uses.

All **uses** of land and water that are permitted in the underlying zoning district(s) are also permitted in the interim industrial overlay, with the exception of those **uses** listed in NMC [15.358.050](#). In addition, the following are permitted:

- A. Contractor's equipment or storage.

B. Construction material storage. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.2.]

C. Recreational Marijuana Producer (indoor).

D. Recreational Marijuana Wholesalers, Laboratories, Research Certificates.

E. Medical Marijuana Wholesalers.

Section 7. Newberg Development Code, Interim Industrial Overlay, Section 15.358.050 is amended to read as follows:

15.358.050 Prohibited uses.

The following **uses** are prohibited in the interim industrial overlay:

A. **Cemeteries.**

B. Garbage dumps, sanitary landfills.

C. **Parks.**

D. Permanent **buildings.**

E. **Wrecking yards** for motor vehicles, **building** materials, and other similar items.
[Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.4.]

F. Recreational Marijuana Processor.

G. Recreational Marijuana Retailers.

H. Medical Marijuana Dispensaries.

**Exhibit “B” to Ordinance 2016-2809
Findings –File DCA-16-003
Medical Marijuana Dispensaries,
Processors, Wholesalers and
Recreational Marijuana Processors**

I. Statewide Planning Goals - relevant goals

Goal 1, Citizen Involvement, requires the provision of opportunities for citizens to be involved in all phases of the planning process.

Finding: The City Council initiated the potential development code amendment at a public meeting on July 5, 2016. The Marijuana Subcommittee meet on May 10, 2016 at a public meeting to review potential amendments for place, time and manner regulations for Medical and Recreational Marijuana. The Planning Commission, after proper notice, held a public hearing on August 11, 2016. The City Council considered the recommendation of the Planning Commission on September 19, 2016 and decided whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process. The development code amendment process provides opportunity for public comments throughout the planning process.

Goal 2, Land Use Planning, requires the development of a process and policy framework that acts as a basis for all land use decisions.

Finding: The Medical and Recreational Marijuana proposal is supportive of this goal because it was developed following city procedures for legislative action.

II. Newberg Comprehensive Plan - relevant policies

A. CITIZEN INVOLVEMENT GOAL: To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.

Finding: The City Council initiated the potential development code amendment at a public meeting on July 5, 2016. The Marijuana Subcommittee meet on May 10, 2016 at a public meeting to review potential amendments for place, time and manner regulations for Medical and Recreational marijuana. The Planning Commission, after proper notice, held a public hearing on August 11, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on September 19, 2016 and decided whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

B. LAND USE PLANNING GOAL: To maintain an on-going land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

Finding: The Medical and Recreational Marijuana proposal is supportive of this goal because it was developed following city procedures for legislative action.

H. THE ECONOMY GOAL: To develop a diverse and stable economic base.

1. General Policies

c. The City will encourage the creation of a diversified employment base, the strengthening of trade centers and the attraction of both capital and labor intensive enterprises.

g. The City shall encourage business and industry to locate within the Newberg City limits.

Finding: The city encourages new businesses to develop within the city. Medical and Recreational Marijuana operations are a legal operation under State law. Allowing Medical and Recreational Marijuana operations as permitted or conditional use as represented in Exhibit A, Attachments 1 and 2 is consistent with this Comprehensive Plan goal.

III. **Conclusion:** The proposed development code amendments meet the applicable requirements of the Statewide Planning Goals, and the Newberg Comprehensive Plan, and should be approved.