

NEWBERG CITY COUNCIL MINUTES
REGULAR SESSION
May 16, 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, Patrick Johnson and Stephen McKinney. Also present were City Manager Pro Tem Stephen Rhodes, City Attorney Truman Stone, City Recorder Sue Ryan, City Engineer Kaaren Hofmann, Community Development Director Doug Rux, Public Works Director Jay Harris, Interim Human Resources Director Nancy McDonald, and Environmental Engineer Sonja Johnson.

Outside City Water Use Discussion:

CE Hofmann discussed the City's water service areas. She referred to a Powerpoint presentation (Exhibit A). Typically the City sold 1.6 to 1.9 million gallons of water per day and the water demand would continue to increase as population increased. The water associations were 3.7% of the yearly revenue. Those pipes might or might not meet City standards. The City also served 81 individual customers outside of the City limits.

CA Stone explained the Municipal Code's history as it applied to group customers that were served by a group system such as a water district, water association, or master meter serving two or more properties. The City acquired water through the Springs' system and wells. In 1965, the City passed an ordinance stating the City would no longer supply water to any additional users outside the City limits. In 1978 the City passed an ordinance for a hardship process, which maintained that the City would not serve users outside the City limits unless it was proven there was a hardship. These hardships could connect as individuals and group customers. In 1988, the City discovered several illegal connections to the water districts. The policy was proposed to be changed so that it no longer required a hardship to connect if the structure was an existing residence, but the residence had to exist prior to 1988 and be located either in the Urban Growth Boundary or in the boundaries of a water district. It would have to be a joint application with the water district. In 1989, another ordinance was passed that allowed the request for service to be before January 1, 1988, not that the residence had to be in existence before 1988. This was how to connect group customer lines, and applicants did not have to prove a hardship. Individuals could still connect by showing hardship criteria.

CDD Rux explained the land use history of group water connections for Newberg. The Comprehensive Plan was acknowledged in 1981 and there were policies regarding infrastructure for water. Sewer and water would not be provided outside of the City limits except for cases of health hazards or no other alternative and the property owners agreed to annex upon request of the City. The urbanization goal was to provide orderly and efficient transition from rural to urban uses and conversion of land would be based on a plan for extension of urban services. There was another policy that supported development outside of the City limits, but within the Urban Growth Boundary or Urban Reserves. Residential development would be based on one house per 10 acres or any lot of record created by January 1, 1989. He said land classifications included the low density residential target density was 4.4 dwelling units per acre and high density residential with a target density of 21.8 dwelling units per acre. He explained how community growth and population numbers were calculated and how it was difficult to plan when urban services were allowed outside of the City limits because it prolonged the time those properties would be developed. The Urban Growth Management Agreement with Yamhill County stated the city had to update and share its utility plans with Yamhill County.

CE Hofmann said there were seven known water districts or associations served by meters. They did not know how many accounts were on the group customer lines or how many properties were connected. No agreements had been entered into between the City and the private water users outside the City limits currently. The hardships approved by the Council had not been reviewed if the conditions required annexation. Two current issues were requests for hardships. The first was at 1208 NE Chehalem Drive, which was within the NW Newberg Water Association boundaries. The owner wanted to sell the property and the potential new owner wanted to build a new house. The hardship criteria did not apply because it was a new structure.

CA Stone said it was unclear about the status of the lot and whether there were multiple lots or not. The land boundary and title issues were unclear, but the potential buyer wanted to connect to the group customer line because it was an area of limited water. The water association was willing to connect the property if the City approved.

CDD Rux clarified this property was designated as high density residential in the Comprehensive Plan to be multi-family housing in the future.

CE Hofmann said the other issue was 1650 NE Chehalem Drive, which was within the Chehalem Valley Water Association. The applicant wanted to hook up to the City through a hardship application. The house was built after 1988 and did not meet the criteria to hook up to group customer lines. Their existing well was going dry and it could not be rehabilitated. They were not near the City water line or contiguous to the City. CA Stone said the first property had a contiguous boundary to the City limits on the east side and could qualify to annex to the city while the other property did not. He said there was an issue with annexation because of a provision that public services either already exist or could be provided within a three-year window. The closest City water was either east of the property across the creek to another subdivision or near the pump station on Highway 240. There was not an easy connection for water or sewer to the second property. CDD Rux explained how difficult it would be for the second property to connect to City water. He also discussed how these properties might develop and the number of units needed to make it affordable to extend the sewer and water lines. These properties were at the edge of the City, not unincorporated islands of land within the City limits. CA Stone said the work session was to educate the Council on this issue, and to get direction on where to go from here. Staff was advising the Council not entertain hardship requests to group customer lines per the Newberg Municipal Code. Additional information was needed from the current status list in order to develop a recommendation on policy direction. Staff would come back to Council with a recommendation and alternatives. There was discussion on whether the properties would qualify for immediate annexation.

Presentation from Mountainview Middle School:

Students from Mountainview Middle School presented on Hess Creek test results. They did the water testing as a science experiment for school and did their testing on George Fox University's property. The water was clean and healthy with strong levels of macroinvertebrates. They discussed what made a healthy stream and explained the data they collected.

CALL MEETING TO ORDER

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

ROLL CALL

Members Present:	Mayor Bob Andrews	Scott Essin	Stephen McKinney
	Lesley Woodruff	Denise Bacon	
	Patrick Johnson		

Staff Present:	Stephen Rhodes, City Manager Pro Tem	Sue Ryan, City Recorder
	Truman Stone, City Attorney	Matt Zook, Finance Director
	Doug Rux, Community Development Director	Jay Harris, Public Works Director
	Russ Thomas, PWS Maintenance Supervisor	Nancy McDonald, Interim Human Resources Director

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

PRESENTATIONS: Mayor Andrews presented a certificate of appreciation to student commissioner Isamar Ramirez for serving on the Historic Preservation Commission for two years. Ms. Ramirez was graduating this year from Newberg High School.

PROCLAMATIONS:

Mayor Andrews proclaimed May 15-21, 2016, as National Public Works Week and presented the proclamation to PWS Maintenance Supervisor Russ Thomas.

MOTION: Bacon/Essin moved to proclaim May 15-21, 2016, as National Public Works Week. Motion carried (6 Yes/0 No/1 Absent [Corey]).
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APPOINTMENTS:

Mayor Andrews recommended the appointment of Noelle Torres to the Planning Commission

MOTION: Johnson/Bacon moved to appoint Noelle Torres to the Planning Commission for a term of May 16, 2016 to December 31, 2016. Motion carried (6 Yes/0 No/1 Absent [Corey]).

CITY MANAGER PRO TEM'S REPORT: CMPT Stephen Rhodes had nothing to report.

CONSENT CALENDAR:

MOTION: Johnson/Bacon moved to approve minutes from April 18, 2016 as amended and April 23, 2016; approved Resolution 2016- 3276, A Resolution rejecting all bids for the Blaine Street Stormwater improvements; approved Resolution 2016-3300, A Resolution accepting the storm drainage and access easements for the Blaine Street stormwater improvements project, Approving noise variance for the Oregon Department of Transportation for the Oregon Highway 99w and Highway 219 reconstruction as part of the Highway 99W Bypass project from May 17, 2016 to December 31, 2017 that would allow for nighttime work as needed during the hours of 7 p.m. and 7 a.m.; Approving a noise variance for the Northside Community Church Fireworks for July 2, 2016 from 6:00 p.m. to 10:00 p.m.; Resolution 2016-3280, A Resolution authorizing the City Manager Pro Tem to enter into a contract with Sungard Public Sector, LLC for TRAKiT, a permitting software system and Resolution 2016-3303, A Resolution approving a lease of city owned property located at 305 W. Illinois Street. Motion carried (6 Yes/0 No/1 Absent [Corey]).

PUBLIC HEARING - ADMINISTRATIVE: Resolution 2016-3287:

Mayor Andrews opened the hearing and called for any abstentions or conflicts of interest on the part of the Council. There were none.

PWS Director Harris said this was a dedication of two easements to an adjacent property owner. In 2009 the City purchased a single family home at 305 W. Illinois Street to construct the Highway 240 pump station. The property was partitioned into two different lots, one for the pump station site and the other one for the existing single family residence. After the partition was complete, it was found the property corners were in the adjacent neighbor's side yard. The dedication of two easements would remedy this situation. An exclusive easement would go along the rear yard of the existing house along the fence and the wall which would allow for the yard furniture and landscaping. The other easement along the pump station would also allow for the landscaping. The fiscal impact was minimal and staff recommended adoption of the resolution.

Proponents: None.

Opponents: None.

Mayor Andrews closed the public hearing.

MOTION: Woodruff/Essin moved to approve Resolution 2016-3287, A Resolution approving the dedication of two permanent easements on city owned property located at 305 W. Illinois Street. Motion carried (6 Yes/0 No/1 Absent [Corey]).

Resolution 2016-3301:

Mayor Andrews opened the hearing and called for any abstentions or conflicts of interest on the part of the Council. There were none.

FD Zook said a request was received from Waste Management to increase their rates due to an increase in operation costs and system conversion of the commercial collection system. Staff reviewed the criteria against the franchise agreement and provided justification for the request, which staff thought was reasonable. It would be a 3.34% general rate increase effective July 1, 2016. A typical customer would see about a \$0.69 per month increase. The City would receive more money in their franchise fee as a result from the increase. He clarified there was no curbside glass recycling. Staff recommended approval of the resolution.

Proponents: None

Opponents: None

Mayor Andrews closed the public hearing.

Deliberations:

MOTION: McKinney/Essin moved to approve Resolution 2016-3301, A Resolution approving Adjusted Solid Waste and Recycling Services Rates for Waste Management effective July 1, 2016. Motion carried (6 Yes/0 No/1 Absent [Corey]).

PUBLIC HEARING – LEGISLATIVE: Ordinance 2016-2801

Mayor Andrews opened the hearing and called for any abstentions or conflicts of interest on the part of the Council. There were none.

CDD Rux submitted the staff report, its attachments and the supplemental material that came out on Friday into the record (Exhibit B). This proposal added recreational marijuana laboratories, research certificates, and retailers as a permitted use in the commercial and industrial districts and subdistricts. There would be a 1,000 foot buffer from parks and schools for retailers, 1,000 foot separation between marijuana retailers, 1,000 foot separation between retailers and medical dispensaries, and limited the operating hours to 9 a.m. and 8 p.m. It added recreational wholesalers as a conditional use in the C-2 district with a footnote that they were allowed indoors only and there would be a 1,000 foot buffer from parks and schools. Recreational wholesalers were permitted in the industrial districts and subdistricts with a 1,000 foot buffer from parks and schools. Wholesalers, laboratories, research certificates, and retailers were prohibited in the stream corridor, bypass interchange overlay, and interim industrial overlay, and wholesalers and retailers were prohibited in the civic corridor overlay. Definitions were added for laboratories, retailers, and wholesalers.

He explained the Marijuana Subcommittee recommendations and OLCC rules for recreational marijuana. The Planning Commission reviewed the subcommittee's recommendations in April. No OLCC licenses had been issued in Newberg yet. Two public comments had been received, one from Mr. Patterson who wanted to allow retailers in Newberg and one from the Canna Bros who had an issue with the 1,000 foot separation between marijuana retailers. He explained where the uses were not allowed, including the fact that OLCC would not issue licenses for a primary residence. He said regulations for place, time, and manner included not allowing retailers in residential zones, but to allow them in all commercial zones except the civic corridor and have 1,000 foot buffers from parks and schools. Retail outlets would not be allowed in industrial areas or sub-districts. The hours of operation from 9 a.m. to 8 p.m. for retailers would be consistent with Medical Marijuana dispensaries. The subcommittee discussed allowing wholesalers in all residential zones, operating the business like a home occupation. However, OLCC would not allow a wholesaler as a home occupation due to it being a primary residence. Wholesalers would be a conditional use in the C-2 only with a 1,000 foot buffer from parks and schools and not allowed in the community facilities or institutional. Wholesalers were allowed in industrial districts with a 1,000 foot buffer from parks and schools. Laboratories were allowed in all commercial, institutional, and industrial districts except Airport Industrial. The Planning Commission largely agreed with the subcommittee's recommendations, but they changed one with recommending not allowing wholesale operations in any of the residential districts. He discussed the definitions of a laboratory, retailer, and wholesaler and the tables that showed the allowed and prohibited uses in all of the districts. For the findings, there were two public hearings on this issue, one at the Planning Commission and the one tonight and notices were posted as required. The City was providing the opportunity for sale of marijuana products, which was legal in the state of Oregon. The City could regulate time, place, and manner. If any one of the categories were banned, the City could not participate in the State Shared Revenue program.

A petition was submitted to the City that was distributed on Friday. It was identifying a request that retailers be located on a lot or parcel with frontage along Portland Road and that there be a 300 foot separation from residential areas. He explained what areas would be allowed for retailers on Portland Road and the residential boundaries. Councilor Bacon said there was another request regarding parking downtown. CDD Rux said parking could be considered a manner regulation and in the Code there was a list of predetermined uses. A retail operation prescribed one parking space per 300 square feet of retail space, but it did not have a standard by type of retail. Parking might be a problem depending on the popularity of a store. A landlord could also rent parking spaces. He said in C-3 there were no parking requirements except for residential.

Proponents: None.

Opponents: Doug Heuer was requesting the Council remove parks from the 1,000 foot buffer. He thought they were treating this new industry as criminals that were being discriminated against. He gave a history of the use of the term marijuana and how it should be called cannabis. The 1,000 foot buffer implied that this was an illegal drug sold by criminals. He did not think it served a purpose.

Undecided: Sarah Lowe, representing the River Glass Shop and local businesses of the western portion of downtown, said she had passed around a petition and got 30 local businesses to agree. She wanted further restrictions on the sale of recreational marijuana. The reason she would prefer a marijuana business located on Portland Road and not closer than 300 feet from a residential area was to prevent a parking issue. This would not affect medical dispensaries. Recreational stores got a lot more business and would significantly increase the parking issues that were already in downtown.

Councilor Bacon said if she wanted the Council to regulate parking downtown, the Council would have to regulate all business parking downtown. It sounded like the problem was this business might be more successful than the other businesses and might take the parking. Ms. Lowe said this would keep the future of Newberg's downtown area healthier and more communal. There was an issue of people parking on residential streets. If they allowed a bunch of new businesses to open, there would be a lot more employees parking in the residential areas to allow for customer parking at the businesses. Councilor Bacon thought they should want people to come downtown, as it would bring success to everyone. She thought it was offensive to pick one business type that they did not want downtown. Ms. Lowe thought if there was an issue with parking, customers would pass going to downtown. She encouraged Councilor Bacon to talk to the downtown business owners.

Councilor Johnson said he had researched parking downtown. There was a study going on that discussed peak parking times and it showed there was parking available even during peak times. He did not think the facts backed up the petition. He questioned the motivation. Ms. Lowe said the motivation was to prevent what was happening in other cities and wanted to replicate Tigard where the businesses on Main Street came together regarding these concerns. Councilor McKinney said there was not a problem with parking west of the railroad tracks, which was where a recreational facility could be located. They could only deal with the issues in Newberg and he did not think there was a problem.

Larry Brock, Canna Bros. owner, said he was looking to open up a marijuana shop on the west side of town. If they could not move there, he was planning to expand their current location to be able to sell recreational marijuana. He anticipated having 200 customers per day.

CDD Rux said staff recommended adoption of the ordinance. One solution to the issues regarding the west side of town was not allowing retailers in the C-3 zone.

Councilor McKinney asked what would be available if C-3 was eliminated. CDD Rux explained under the proposal from the Planning Commission, there could be six to eight retail and/or dispensary operations in Newberg and he described the locations in the C-2 and C-3 zones. Based on the testimony the Council heard, one way to address the concerns was to prohibit retail stores in C-3.

Mayor Andrews closed the public hearing.

CA Stone said the Council had the ability to waive the second reading under the City Charter, Section 17 if the ordinance was available to the public at least a week before the Council meeting. This ordinance had not been available a week before the meeting. Mayor Andrews asked how critical it was to take action this evening since the ordinance had an emergency clause. CDD Rux said it would be acceptable to do a first reading that night and the second reading on June 6. With the emergency clause, after approval of the second reading it would take effect the next day.

Mayor Andrew said the record would remain closed and the ordinance would be brought back on June 6 for the second reading and vote.

NEW BUSINESS: Resolution 2016-3279:

CA Stone said there had been an extensive City Manager recruitment process and the Council directed staff to enter into negotiations with Joe Hannan as City Manager. He had drafted the contract with some modifications over prior contracts and Mr. Hannan was in agreement with the terms. The salary was \$140,000 annually. Councilor Johnson asked if there were concerns about the testimony Robert Soppe had submitted regarding the contract.

CA Stone said he did not interpret the language the same way as Mr. Soppe and he did not think it was a concern. The Council could approve the resolution with an amendment that the paragraph be rewritten to address the concerns expressed. In his opinion he thought it was defensible.

MOTION: Bacon/Essin moved to approve Resolution 2016-3279, A Resolution appointing Joe Hannan as City Manager. Motion carried (6 Yes/0 No/1 Absent [Corey]).

Resolution 2016-3288:

AP Jessica Pelz said this was a request from George Fox University to allow a change to the design of the downtown banners for a one-year period to celebrate their 125th anniversary. She explained the proposed design. The banners would be up for one year barring other events that necessitated they be taken down such as the Special Olympics, holiday decorations, and Relay for Life. Rob Felton, George Fox University, requested support for putting up the banners. The Newberg Downtown Coalition was in support. He described how George Fox was an important part of the community, both in employment, volunteering, and offering community programs and events.

MOTION: Johnson/McKinney moved to approve Resolution 2016-3288, A Resolution approving a new design and replacement of the existing downtown banners with new banners celebrating George Fox University's 125th anniversary. Motion carried (6 Yes/0 No/1 Absent [Corey]).

Resolution 2016-3292:

IHRD Nancy McDonald said staff was recommending a change in the existing private retirement system for non-represented employees. Currently the Newberg Employees Retirement Plan was with the Principal Finance Group. The rest of the employees were in the PERS system. For four years, the City had been looking at ways to save money by changing the retirement system. The Pension Subcommittee of the Council convened May 11 and recommended this proposal to bring to the Council. Changes had to be submitted to the PERS Board who only met every other month and the first opportunity was their meeting in July. When the resolution was first prepared, it included the AFSCME union, but the union declined to take the City up on this now and would discuss it further during labor negotiations in the fall of 2017. There were seven positions that would be coming on in August that would go into the Principal plan, and staff was trying to get them into the PERS plan instead.

Councilor Essin asked if the new City Manager was aware this was coming up and was on board with it. CMPT Rhodes did not know if they had talked to Mr. Hannan about it. As the City Manager Pro Tem, it was his job to complete these items and that was what he had been working towards. Councilor Essin said there was a significant cost in putting people into PERS and he would like to make Mr. Hannan aware of it. CMPT Rhodes said this was intended to save the City money and if it was delayed they would miss the window for PERS consideration. He clarified it had to be brought to PERS by June 1 to be on their July agenda.

Councilor Bacon said as the chair of the subcommittee they had been working on it through three city managers. They wanted to get it finished now. Councilor Johnson asked if this was delayed, would they have to amend the budget. CMPT Rhodes said no, they had budgeted to cover either scenario. Mayor Andrews asked FD Zook if the employer cost for PERS was 19%. FD Zook said the employer's rates for PERS ranged from 7 to 15 percent depending upon the class. He said if they went into the NERPS program it was 29%.

MOTION: Bacon/Woodruff moved to approve Resolution 2016-3292, A Resolution authorizing the City Manager Pro Tem to initiate the process for participation in the Public Employees Retirement System (PERS) for all eligible non-represented employees hired on or after August 1, 2016. Motion carried (6 Yes/0 No/1 Absent [Corey]).

COUNCIL BUSINESS:

Mayor Andrews had received a letter from CMPT Rhodes concerning an amendment to his contract. The letter stated that since he had been employed by the City for less than nine months the provision under the contract requiring the City pay his lease was no longer applicable. In place of that section, CMPT Rhodes was requesting the City pay half of his relocation costs at \$1,600.

MOTION: Andrews/Bacon moved to reimburse CMPT Rhodes his relocation cost request of \$1,600.

AMENDMENT TO THE MOTION: Johnson/McKinney moved to amend the motion for the full amount of his relocation costs at \$3,200. Andrews and Bacon agreed to the amendment of the motion.

Motion carried (6 Yes/0 No/1 Absent [Corey]).

Mayor Andrews announced the Newberg Old-Fashioned Festival parade would be held on July 30 and asked Council to let him know who would attend. The delegation from the City's sister city in Poysdorf, Austria, would also be visiting during the festival. He said the League of Oregon Cities would be announcing its priorities for the upcoming legislative session. He said the Council would select which priorities they wanted to focus on from the list and then let the League know for the 2017 session.

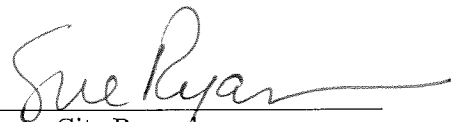
CA Stone said he helped organize Emancipation Day at the high school to give graduating seniors a legal briefing on issues they might face as young adults.

Executive Session pursuant to ORS 192.660 (2) i Performance Evaluations of Public Officers.

Council entered executive Session at 9:07 p.m. Council exited Executive Session at 10:28 p.m.
Staff present included City Attorney Truman Stone. They discussed the City Attorney's evaluation.

ADJOURNMENT: The meeting was adjourned at 10:29 p.m.

ADOPTED by the Newberg City Council this 20th day of June, 2016.


Sue Ryan, City Recorder

ATTESTED by the Mayor this 23rd day of June, 2016.

 Bob Andrews, Mayor

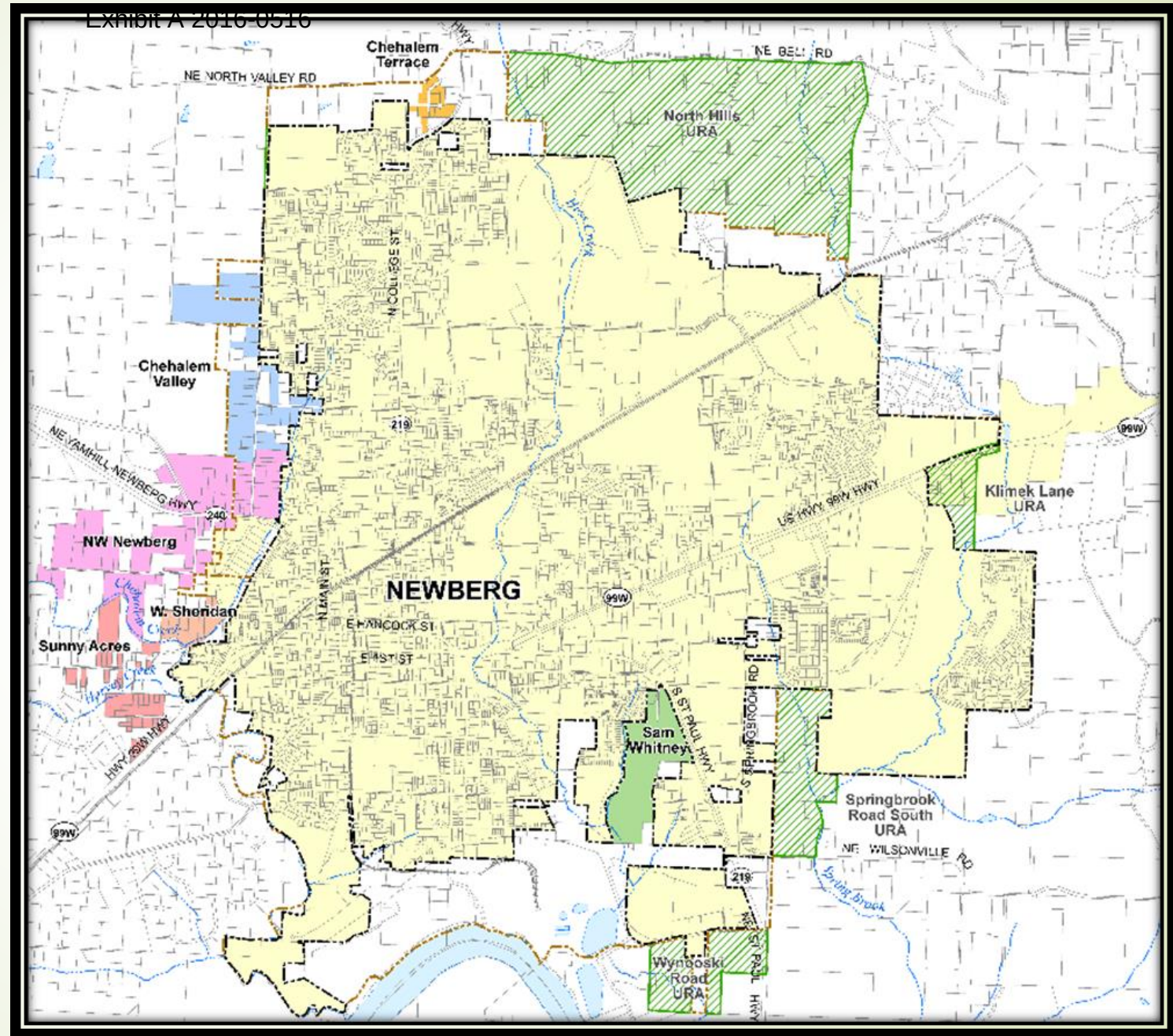


GROUP WATER CONNECTIONS

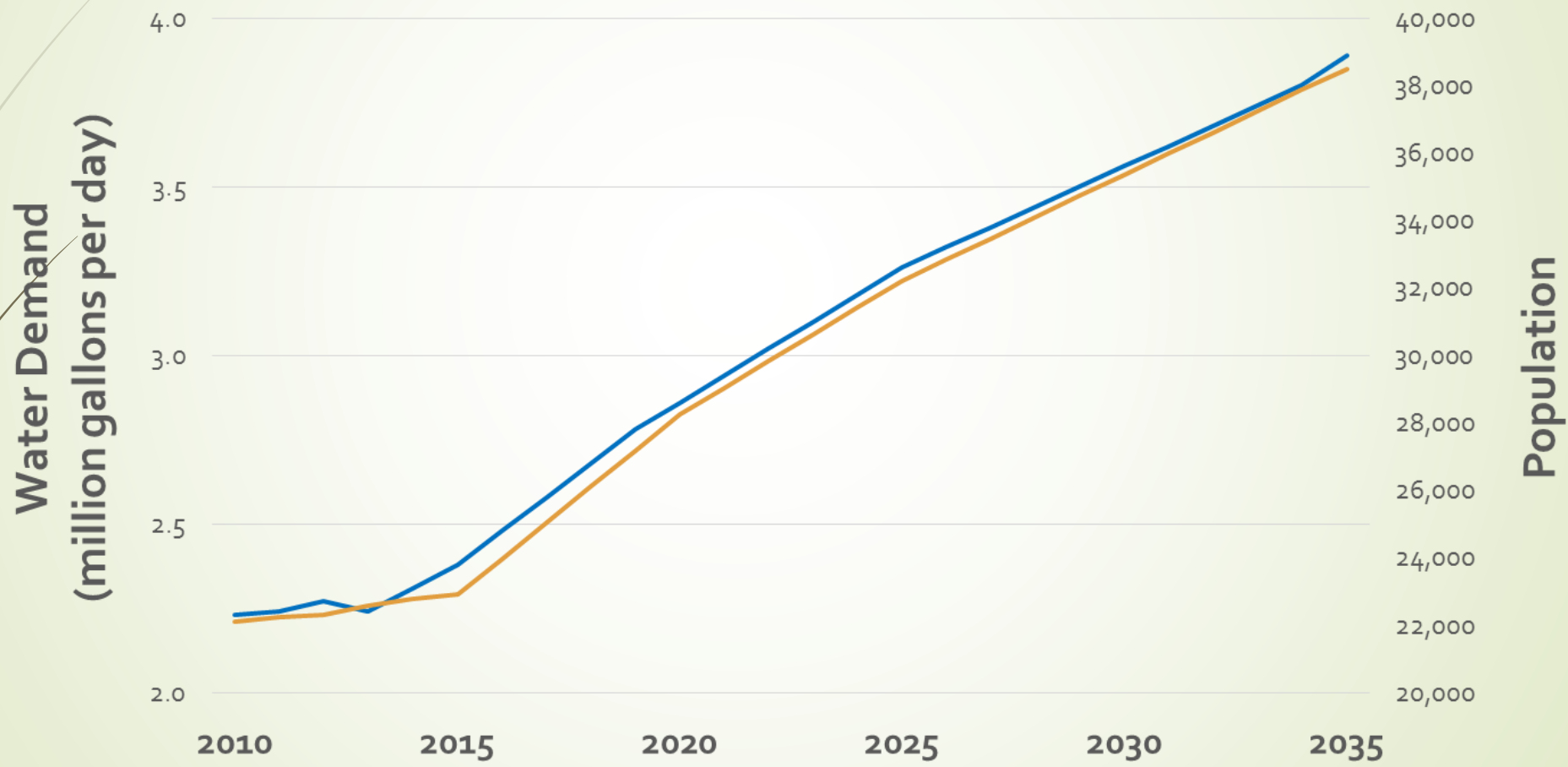
CITY COUNCIL WORK SESSION

MAY 16, 2016

WATER SERVICE AREA



Water Demand



History/Policy

- Ord. 1398 (May, 1965)
- Intention of the City is to not supply water to any additional users outside the City limits
- After December 1, 1965 there will be no new or additional water connections allowed to either individuals or as an additional connection to a group customer line
- Group Customers were to provide a sworn statement of the list of connections to the group system by July 1, 1965
- Property must have been ready for use by that December 1 date



History (cont.)

- Ord. 1912 (July, 1978)
- Maintains City's intent not to service properties outside the City
- Provides an Exception due to Hardships
- Creates criteria to prove a hardship and a process for the City Council to grant a hardship exception
- May connect as an individual or as an additional connection to a private group customer line
- Hardship comes with conditions under which exception was granted to be recorded against the property

History (cont.)

- September 20, 1988
- Presentation at the Council meeting indicates that the City has discovered several illegal connections in the water districts served by the City
- The Council through its goal setting process asked staff to review the existing water policy
- There was some interest in selling excess water to out of City residents
- Staff recommended policy change to the following:
 1. No hardship required for existing residences
 2. Residence must exist as of January 1, 1988
 3. Residence be in UGB or existing water district
 4. Properties agree to annex
 5. Water for domestic purpose only
 6. Water district make joint application with property owner and new agreement between water district and City be established
 7. Water district submit engineering study showing compliance with State Regulations

History (cont.)

- September 20, 1988 (cont.)
- A Councilor asked that the policy include not only existing residences, but any property that is abutting and can be subdivided and that there be a six month window to decide whether to hook up to system
- The remaining Council expressed concern that this would encourage development outside the City
- The City Attorney was directed to prepare an ordinance regarding water policy for Council consideration

History (cont.)

- October 3, 1988
- Council adopts an Interim Policy until an Ordinance can be fully vetted and revised
- Ord. 88-2247
- Applies to water districts/group customers only
- Requires residence to be in existence January 1, 1988
- District makes joint application and enter into agreement with City
- Expressly preempts Hardship provisions for those connecting to group customer lines
- Requires a 6 month Council review on policy

History (cont.)

- June 20, 1989
- Back before Council
- City Manager states that one request to connect during the grace period provided by Ord. 88-2247
- City Attorney reports that the City has not entered into any agreements with water districts and the City has not gone out and solicited agreements with the water districts due to personnel changes and other priorities
- Ord. 89-2264, slightly modifies 2247 to accommodate the single request by allowing request for service by January 1, 1988 or residence in existence by that date
- Maintains language that expressly preempts Hardship process for those connecting to group customer lines

Land Use

- Newberg Comprehensive Plan
 - Public Facilities and Services, Goal: To Plan and develop a timely, orderly and efficient arrangement of public facilities and service to serve as a framework for urban development
 - Policies: 2.d. – Sewer and water service shall not be provided outside the city limits except for cases of health hazards, where no other alternative exists, and where property owners agree to annex upon request of the City
 - Urbanization, Goals: 1. To provide for the orderly and efficient transition from rural to urban land uses
 - Policies: 1.a. The conversion of lands from rural to urban uses within the Urban Growth Boundary will be based on a specific plan for the extension of urban services

Land Use (cont.)

- Newberg Comprehensive Plan
 - Policies: 1.e. The City will support development within areas outside of the City limits but within the Newberg Urban Growth Boundary or Urban Reserve Area based on the following standards or restrictions:
 - Residential development will be allowed on the basis of one house per 10 acres, or any lot of record created prior to January 1, 1989
 - ... The following strategies will be used to ensure that interim rural development does not inhibit long-term urbanization of lands within the Newberg UGB and Urban Reserve area (these include but are not limited to): 1) shadow plats, 2) cluster development, 3) redevelopment plans, 4) non-remonstrance agreements for annexation and provision of urban facilities

Land Use (cont.)

➤ Comprehensive Plan

- III. Plan Classifications, 2. Residential Land Use, a. Low Density Residential (LDR) – The objective of this designation is to provide a wide range of housing types and styles, while allowing for an overall density of up to 4.4 units per acre
- b. High Density Residential (HDR) – The objective of this designation is to provide multi-family housing of different types while maintaining an overall density of up to 21.8 units to the acre

Land Use (cont.)

- Newberg Urban Area Growth Management Agreement
 - V. Urban Services, d. Service Expansion Plans – City to share updated utility plans for services within UGB with Yamhill County
- Comprehensive Plan Designations:
 - 1208 NE Chehalem Drive – HDR
 - 1650 NE Chehalem Drive – LDR



Current Status

- There are seven known water associations/districts served by meters
- The number of current accounts served by the water associations/districts is unknown
- Number or properties connected to group customer lines is also unknown
- Number of connections since 1989 is unknown
- The City has not entered into a single agreement with ANY group customer or district
- There are 81 private customers (not associations/districts) served by the City outside of the City limits
- The hardships that have been granted by the Council have not been reviewed to determine if any of the conditions have been triggered

Current Issues

- 1208 NE Chehalem Drive
 - NW Newberg Water Association
 - Currently undeveloped – wants to add an additional water services to serve a new structure
 - Would like a water connection
 - Hardship criteria not applicable
 - **WOULD NOT QUALIFY AS HARDSHIP**



Vicinity of 1208 NE Chehalem Dr



Current Issues

- 1650 NE Chehalem Drive
 - Chehalem Valley Water Association
 - Has a house (built after 1988)
 - Existing well is going dry– the property owners have exhausted all measures to rehabilitate the well
 - Has requested a hardship to connect to a group line – MEETS THE INTENT OF HARDSHIP
 - HARDSHIP CRITERIA NOT APPLICABLE



WHERE DO WE GO FROM HERE?

- ➡ The Council should not entertain hardship requests to group customer lines per the Code.
- ➡ We need additional information from the current status list in order to develop a recommendation on the policy direction.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 16, 2016

Order ____	Ordinance <u>XX</u>	Resolution ____	Motion ____	Information ____
No.	No. 2016-2801	No.		

SUBJECT: An ordinance amending the Newberg development code regarding recreational marijuana wholesalers, laboratories, research certificates producers and retailers; and declaring an emergency.

**Contact Person (Preparer) for this Motion: Doug Rux, Director
Dept.: Community Development
File No.: DCA-16-001**

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

RECOMMENDATION:

Adopt Ordinance No. 2016-2801 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:

- Adds Recreational Marijuana Laboratories as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Adds Recreational Marijuana Research Certificates as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Adds Recreational Marijuana Retailers as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H with footnotes for a 1,000 foot buffer from parks and schools, 1,000 foot separation between marijuana retailers and marijuana retailers to marijuana dispensaries, and operating hours limited to the hours between 9 AM and 8 PM.
- Adds Recreational Marijuana Wholesalers as a conditional use in C-2 with footnotes allowed indoors only and 1,000 foot buffer from parks and schools.
- Adds Recreational Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II with footnote 1,000 foot buffer from parks and schools.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers in the Stream Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers and Retailers in the Civic Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers

in the Bypass Interchange Overlay.

- Prohibits Recreational Marijuana Wholesalers, Laboratories and Research Certificates in the Interim Industrial Overlay.
- Prohibits Recreational Marijuana Retailers in the Interim Industrial Overlay.

B. 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.

At the January 12, 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 for recreational marijuana wholesale, laboratory, research certificate and retail regulations to bring forward for Council consideration on February 1. The City Council adopted Resolution No. 2015-3253 on February 1, 2016 initiating the Development Code amendment process (Attachment 1).

The Subcommittee met again on February 4, 2016 and developed recommendations on recreational marijuana wholesalers, laboratories, research certificates and retailers.

C. 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. 2/1/16: The Newberg City Council initiated the Development Code amendment.
2. 2/4/16: The City Council Marijuana Subcommittee met and developed recommendations to the Planning Commission.
3. 4/14/16: After proper notice, the Planning Commission held a legislative

Exhibit B 2016-0516

hearing to consider the item, took public comment, and approved Resolution 2016-314.

4. 5/16/16: 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 received two comments on the application. The comments indicate recreational marijuana sales should be allowed in Newberg and a request to consider a 1,000 foot separation between retail operations (Attachment 2). If the city receives additional written comments by the comment deadline, Planning staff will forward them to the City Council.

E. ANALYSIS:

PLACE

Oregon Revised Statutes 475B.015 provides the following definitions:

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

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

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

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

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

Oregon Administrative Rule, Division 25 provides the following definitions:

**GENERAL REQUIREMENTS APPLICABLE TO
ALL MARIJUANA LICENSES**

845-025-1015

Definitions

(38) "Premises" or "licensed premises" includes the following areas of a location licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015:

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

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

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

(d) “Premises” or “licensed premises” does not include a primary residence.

(39) “Primary Residence” means real property inhabited for the majority of a calendar year by an owner, renter or tenant, including manufactured homes and vehicles used as domiciles.

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the location of recreational marijuana wholesale and retail operations. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 59. *[(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.]*

[(2) The authority granted to cities and counties by this section is in addition to, and not in lieu

of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]

(1) For purposes of this section, “reasonable regulations” includes:

(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;

(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;

(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;

(d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;

(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;

(f) Reasonable requirements related to the public’s access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and

(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.

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

HB 3400, Section 15 (ORS 575B.100) allows local governments to regulate the location of recreational marijuana wholesale operations. The law reads:

(License Holders)

SECTION 15. Section 21, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 21. (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, [kept,] 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 section 28, chapter 1, Oregon Laws 2015;**

(b) **Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, 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 section 92 of this 2015 Act; and**

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

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

(a) **May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana wholesalers; and**

(b) **Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.**

HB 3400, Sections 16 and 17 (ORS 475B.110) allows local governments to regulate the location of recreational marijuana retail operations. The law reads:

SECTION 16. Section 22, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 22. (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 section 28, chapter 1, Oregon Laws 2015;**

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

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

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

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

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

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

(3) The commission shall adopt rules that:

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

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

(c) Require marijuana items sold by a marijuana retailer to be tested in accordance with section 92 of this 2015 Act; and

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

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

(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana retailers; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

SECTION 17. If a school described in section 22 (2)(d), chapter 1, Oregon Laws 2015, that has not previously been attended by children is established within 1,000 feet of a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, the marijuana retailer located at that premises may remain at that location unless the Oregon Liquor Control Commission revokes the license of the marijuana retailer under section 30, chapter 1, Oregon Laws 2015.

HB 3400, Section 34 (ORS 475B.370 and ORS 475B.063) establishes a requirement for a land use compatibility statement for recreational marijuana wholesale and retail uses. The law reads:

SECTION 34. (1) Notwithstanding any other provision of law, marijuana is:

(a) A crop for the purposes of “farm use” as defined in ORS 215.203;

(b) A crop for purposes of a “farm” and “farming practice,” both as defined in ORS 30.930;

(c) A product of farm use as described in ORS 308A.062; and

(d) The product of an agricultural activity for purposes of ORS 568.909.

(2) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use:

(a) A new dwelling used in conjunction with a marijuana crop;

(b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; and

(c) A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a),

carried on in conjunction with a marijuana crop.

(3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.

(4)(a) Prior to the issuance of a license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

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

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

or

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

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

Oregon Administrative Rule, Division 25 establishes a requirement for a land use compatibility statement for recreational marijuana wholesale and retail uses. The rule reads:

845-025-1090

Application Review

(1) Once the Commission has determined that an application is complete it must review the application to determine compliance with chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, and these rules.

(2) The Commission:

(a) Must, prior to acting on an application, request a land use compatibility statement from the city or county that authorizes land use in the city or county in which the applicant's proposed premises is located or request verification that a land use compatibility statement submitted by an applicant is valid and accurate

(b) May, in its discretion, prior to acting on an application:

(A) Contact any applicant or individual with a financial interest and request additional documentation or information; and

(B) Verify any information submitted by the applicant.

(3) The Commission must inspect the proposed premises prior to issuing a license.

(4) If during an inspection the Commission determines the applicant is not in compliance with these rules, the applicant will be provided with a notice of the failed inspection and the requirements that have not been met.

(a) An applicant that fails an inspection will have 15 calendar days from the date the notice was sent to submit a written response that demonstrates the deficiencies have been corrected.

(b) An applicant may request in writing one extension of the 15-day time limit in subsection (a) of this section, not to exceed 30 days.

(5) If an applicant does not submit a timely plan of correction or if the plan of correction

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does not correct the deficiencies in a manner that would bring the applicant into compliance, the Commission may deny the application.

(6) If the plan of correction appears, on its face, to correct the deficiencies, the Commission will schedule another inspection.

(7) If an applicant fails a second inspection, the Commission may deny the application unless the applicant shows good cause for the Commission to perform additional inspections.

Oregon Administrative Rule, Division 25 establishes requirements and limitations for denial of a license by the Oregon Liquor Control Commission for wholesale and retail recreational marijuana uses. The rule reads:

845-025-1115

Denial of Application

(1) The Commission must deny an initial or renewal application if:

(a) An applicant is under the age of 21 or, until January 1, 2020, has not been a resident of Oregon for at least two years. If the Commission determines that an applicant is a non-resident the Commission will hold that application under review until 30 days after the 2016 Oregon Legislature adjourns.

(b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

(c) The proposed licensed premises is located:

(A) On federal property.

(B) At the same physical location or address as a:

(i) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon laws 2015;

(ii) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or

(iii) Medical marijuana dispensary registered under ORS 475.314.

(C) At the same physical location or address as a liquor licensee licensed under ORS chapter 471 or as a retail liquor agent appointed by the Commission.

(d) The proposed licensed premises of a producer applicant is:

(A) On public land; or

(B) On the same tax lot or parcel as another producer licensee under common ownership.

(e) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.

(f) The proposed licensed premises of a retail applicant is located:

(A) Within 1,000 feet of:

(i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or (ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(B) In an area that is zoned exclusively for residential use.

(g) The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.

(h) A city or county has prohibited the license type for which the applicant is applying, in accordance with sections 133 or 134, chapter 614, Oregon Laws 2015.

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(2) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if it has reasonable cause to believe that:

(a) The applicant:

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

(B) Has made false statements to the Commission.

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

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

(E) Does not have a good record of compliance with sections 3 to 70, chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules, prior to or after licensure including but not limited to:

(i) The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of section 49, chapter 614, Oregon Laws 2015; (ii) Providing marijuana items to an individual without checking that the individual is 21 or older;

(iii) Unlicensed transfer of marijuana items for financial consideration; or (iv) Violations of local ordinances adopted under section 33, chapter 614, Oregon Laws 2015, pending or adjudicated by the local government that adopted the ordinance.

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

(G) Is unable to understand the laws of this state relating to marijuana or these rules, including but not limited to ORS 475.300 to 475.346 and sections 91 to 99, chapter 614, Oregon Laws 2015. Inability to understand laws and rules of this state related to marijuana may be demonstrated by violations documented by the Oregon Health Authority.

(b) Any individual listed on the application has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in Section 29(3), chapter 1, Oregon Laws 2015.

(c) Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.

(3) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant or licensee. However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling financial interest in the business shall be considered persons having a financial interest within the meaning of this subsection.

(4) The Commission will not deny an application under subsections (1) (c) (B) of this rule if the applicant surrenders the registration issued by the Authority prior to being issued an OLCC license.

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- (5) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.
- (6) A notice of denial must be issued in accordance with ORS 183.

Oregon Administrative Rule, Division 25 establishes restrictions and requirements for wholesale and retail recreational marijuana uses. The rule reads:

845-025-1230

Licensed Premises Restrictions and Requirements

(1) A licensed premises may not be located:

- (a) On federal property; or
- (b) At the same physical location or address as a:
 - (A) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon Laws 2015;
 - (B) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or
 - (C) Medical marijuana dispensary registered under ORS 475.314.
 - (D) Liquor licensee licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.

(2) The licensed premises of a producer applicant may not be on:

- (a) Public land; or
- (b) The same tax lot or parcel as another producer licensee under common ownership.

(3) The licensed premises of a retailer may not be located:

- (a) 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.
- (b) In an area that is zoned exclusively for residential use.

(4) The licensed premises of a processor who has an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.

(5) The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.

(6) A licensee may not permit:

- (a) Any minor on a licensed premises except as described in section (7) and (8) of this rule; or
 - (b) On-site consumption of a marijuana item, alcohol, or other intoxicant by any individual, except that an employee who has a current registry identification card issued under ORS 475.309 may consume marijuana during his or her work shift on the licensed premises as necessary for his or her medical condition, if the employee is alone, in a closed room and not visible to others outside the room. An employee who consumes a marijuana item as permitted under this subsection may not be intoxicated while on duty.
- (7) Notwithstanding section (6)(a) of this rule, a minor, other than a licensee's employee, who has a legitimate business purpose for being on the licensed premises, may be on the premises for a limited period of time in order to accomplish the legitimate business purpose. For example, a minor plumber may be on the premises in order to make a repair.

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(8) Notwithstanding section (6)(a) of this rule, a minor who resides on the tax lot or parcel where a marijuana producer is licensed may be present on those portions of a producer's licensed that do not contain usable marijuana or cut and drying marijuana plants.

(9) A licensee must clearly identify all limited access areas in accordance with OAR 845-025- 1245.

(10) A licensee must keep a daily log of all employees, contractors and licensee representatives who perform work on the licensed premises. All employees, contractors and licensee representatives must wear clothing or a badge issued by the licensee that easily identifies the individual as an employee, contractor or licensee representative.

(11) The general public is not permitted in limited access areas on a licensed premises, except for the licensed premises of a retailer and as provided by section (14) of this rule. In addition to licensee representatives, the following individuals are permitted to be present in limited access areas on a licensed premises, subject to the requirements in section (12) of this rule:

(a) Laboratory personnel, if the laboratory is licensed by the Commission;

(b) A contractor, vendor or service provider authorized by a licensee representative to be on the licensed premises;

(c) Another licensee or that licensee's representative;

(d) Up to seven invited guests per week subject to requirements of section (12) of this rule; or

(e) Tour groups as permitted under section (14) of this rule.

(12) Prior to entering a licensed premises all visitors permitted by section (11) of this rule must be documented and issued a visitor identification badge from a licensee representative that must remain visible while on the licensed premises. A visitor badge is not required for government officials. All visitors described in subsection (11) of this rule must be accompanied by a licensee representative at all times.

(13) A licensee must maintain a log of all visitor activity. The log must contain the first and last name and date of birth of every visitor and the date they visited.

(14) A marijuana producer or research certificate holder may offer tours of the licensed premises, including limited access areas, to the general public if the licensee submits a control plan in writing and the plan is approved by the Commission.

(a) The plan must describe how conduct of the individuals on the tour will be monitored, how access to usable marijuana will be limited, and what steps the licensee will take to ensure that no minors are permitted on the licensed premises.

(b) The Commission may withdraw approval of the control plan if the Commission finds there is poor compliance with the plan. Poor compliance may be indicated by, for example, individuals on the tour not being adequately supervised, an individual on the tour obtaining a marijuana item while on the tour, a minor being part of a tour, or the tours creating a public nuisance.

(15) Nothing in this rule is intended to prevent or prohibit Commission employees or contractors, or other state or local government officials that have jurisdiction over some aspect of the licensed premises or licensee from being on the licensed premises.

(16) A licensee may not sublet any portion of a licensed premises.

(17) A licensed premises may receive marijuana items only from a marijuana producer, marijuana processor, or marijuana wholesaler for whom a premises has been licensed by the Commission.

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(18) A licensed wholesaler or retailer who sells or handles food, as that term is defined in ORS 616.695, or cannabinoid edibles must also be licensed by the Oregon Department of Agriculture under ORS 616.706.

Oregon Administrative Rule, Division 25 establishes restrictions on the location of recreational marijuana retail uses. The rule reads:

845-025-2840

Retailer Premises

(1) The licensed premises of a retailer:

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

(b) 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.

(c) Must be enclosed on all sides by permanent walls and doors.

(2) A retailer must post in a prominent place signs at every:

(a) Point of sale that read:

(A) "No Minors Permitted Anywhere on the Premises"; and

(B) "No On-Site Consumption".

(b) Exit from the licensed premises that reads: "Marijuana or Marijuana Infused Products May Not Be Consumed In Public".

(3) A retailer must designate a consumer sales area on the licensed premises where consumers are permitted. The area shall include the portion of the premises where marijuana items are displayed for sale to the consumer and sold and may include other contiguous areas such as a lobby or a restroom. The consumer sales area is the sole area of the licensed premises where consumers are permitted.

(4) All inventory must be stored on the licensed premises.

(5) For purposes of determining the distance between a retailer and a school referenced in subsection (1)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising a school to the closest point of the licensed premises of a retailer. If any portion of the licensed premises is within 1,000 feet of a school as described subsection (1)(b) of this rule an applicant will not be licensed.

HB 3400 and Oregon Administrative Rule, Division 25 have no specific provisions for the location of testing laboratories and research certificate facilities. Research certificates can be issued to qualifying private and public researchers. The City Council may want to consider limiting these two uses. One option is to allow testing laboratories as a permitted use in industrial districts. For research certificates an option is to allow the activity as a permitted use in industrial districts. The City Council may also want to consider if research certificate activities should be allowed in the Institutional District. The rules for testing laboratories and research certificates reads as follows:

MARIJUANA TESTING LABORATORIES

845-025-5000

Laboratory License Privileges

A licensed marijuana testing laboratory may:

- (1) Obtain samples of marijuana items from licensees for purposes of performing testing as provided in these rules and OAR 333-007-0300 to 333-007-0490;
- (2) Transport and dispose of samples as provided in these rules; and
- (3) Perform testing on marijuana items in a manner consistent with the laboratory's accreditation by the Oregon Health Authority, these rules and OAR 333-007-0300 to 333-007-0490.

845-025-5030

Laboratory Licensing Requirements

(1) General Requirements

- (a) A laboratory that intends to test marijuana items for producer, processor, wholesale or retail licensees must be licensed by the Commission.
- (b) An applicant for a license under this rule must comply with all applicable application requirements in OAR 845-025-1030 and pay the required application and license fees, except that a laboratory licensee is not subject to any residency requirements.
- (c) A laboratory application is subject to the same application review procedures as other applicants.
- (d) In addition to the denial criteria in OAR 845-025-1115, the Commission may refuse to issue a laboratory license for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules.
- (e) Laboratory application and license fees are established in OAR 845-025-1060.

(2) Accreditation by the Oregon Health Authority

- (a) In addition to the requirements listed in section (1) of this rule, an applicant for a laboratory license must be accredited by the Authority with a scope of accreditation that includes the sampling and testing analysis required in OAR 333-007-0300 to 333-007-0490 prior to exercising the licensed privileges in OAR 845-025-5000.
- (b) An applicant for a license under this rule may apply for licensure prior to receiving accreditation, but the Commission will not issue a license until proof of accreditation is received.
- (c) The Commission may make efforts to verify or check on an applicant's accreditation status during the licensing process, but an applicant bears the burden of taking all steps needed to secure accreditation and present proof of accreditation to the Commission.
- (d) In addition to the denial criteria in OAR 845-025-1115, the Commission may consider an application incomplete if the applicant does not obtain accreditation from the Authority within six months of applying for a license. The Commission shall give an applicant an opportunity to be heard if an application is declared incomplete under this section, but an applicant is not entitled to a contested case proceeding under ORS chapter 183. An applicant whose application is declared incomplete may reapply at any time.
- (e) A licensed laboratory must maintain accreditation by the Authority at all times while licensed by the Commission. If a laboratory's accreditation lapses, is canceled or is suspended at any time for any reason while licensed by the Commission, the laboratory may not engage in any activities permitted under the license until accreditation is reinstated.
- (f) Exercising license privileges while accreditation is suspended or canceled is a Category I violation and could result in license cancellation.

(3) Renewal.

(a) A laboratory must renew its license annually and pay the required renewal fees in accordance with OAR 845-025-1190.

(b) A laboratory renewal application may be denied for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules.

845-025-5045

Laboratory Tracking and Reporting

(1) A laboratory licensee is required to utilize CTS and follow all requirements established by OAR 845-025-7500 to OAR 845-025-7590.

(2) A laboratory licensee is responsible for tracking and entering the following information into CTS:

(a) Receipt of samples for testing, including:

(A) Size of the sample;

(B) Name of licensee from whom the sample was obtained;

(C) Date the sample was collected; and

(D) UID tag information associated with the harvest or process lot from which the sample was obtained.

(b) Tests performed on samples, including:

(A) Date testing was performed;

(B) What samples were tested for;

(C) Name of laboratory responsible for testing; and

(D) Results of all testing performed. (c) Disposition of any testing sample material.

845-025-5060

Laboratory Transportation and Waste Disposal

(1) A laboratory licensee must follow all rules regarding transportation of marijuana items established in OAR 845-025-7700.

(2) A laboratory licensee must follow all rules regarding disposal of samples from marijuana items established in OAR 845-025-7750.

845-025-5075

Laboratory Licensee Prohibited Conduct

(1) In addition to the prohibitions set forth in OAR 845-025-8520, a laboratory licensee may not: (a) Perform any required marijuana testing using any testing methods or equipment not permitted under the laboratory's accreditation through the Authority;

(b) Perform any required marijuana testing for any licensed marijuana producer, processor, wholesaler or retailer in which the laboratory licensee has a financial interest; or

(c) Engage in any activity that violates any provision of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, OAR 333-007-0300 through OAR 333-007-0490 or OAR 333, Division 64 as applicable or these rules.

(2) The Commission may suspend or cancel a laboratory license for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, or these rules. The licensee has a right to a hearing under the procedures of ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.

(2) A violation of this rule is a Category I violation and could result in license revocation.

RESEARCH CERTIFICATE

845-025-5300

Application for Marijuana Research Certificate

- (1) The Commission shall issue Marijuana Research Certificates to qualifying public and private researchers who present research proposals that demonstrate:
- (a) The proposed research would benefit the state's cannabis industry, medical research or public health and safety; and
 - (b) The proposed operation and methodology complies with all applicable laws and administrative rules governing marijuana licensees and licensee representatives.
- (2) The process for applying for, receiving and renewing a certificate shall be the same as the process for applying for, receiving and renewing a marijuana license under OAR 845-025-1030 to 845-025-1115 except that an applicant for a Marijuana Research Certificate is not subject to the residency requirements in OAR 845-025-1045(2)(b).
- (3) In addition to the application requirements in OAR-025-1030 the applicant must also provide:
- (a) A clear description of the research proposal;
 - (b) A description of the researchers' expertise in the scientific substance and methods of the proposed research;
 - (c) An explanation of the scientific merit of the research plan, including a clear statement of the overall benefit of the applicant's proposed research to Oregon's cannabis industry, medical research, or to public health and safety;
 - (d) Descriptions of key personnel, including clinicians, scientists, or epidemiologists and support personnel who would be involved in the research, demonstrating they are adequately trained to conduct this research;
 - (e) A clear statement of the applicant's access to funding and the estimated cost of the proposed research;
 - (f) A disclosure of any specific conflicts of interest that the researcher or other key personnel have regarding the research proposal;
 - (g) A description of the research methods demonstrating an unbiased approach to the proposed research; and
 - (h) If the applicant intends to research the use of pesticides, an experimental use permit issued by Oregon Department of Agriculture pursuant to OAR 603-057-0160.
- (4) Research certificates will be granted for up to a three-year term.
- (5) The Commission may request that the research certificate holder submit information and fingerprints required for a criminal background check at any time within the research certificate term.
- (6) A certificate holder may, in writing, request that the Commission waive one or more of these rules. The request must include the following information:
- (a) The specific rule and subsection of a rule that is requested to be waived;
 - (b) The reason for the waiver;
 - (c) A description of an alternative safeguard the licensee can put in place in lieu of the requirement that is the subject of the waiver, or why such a safeguard is not necessary; and
 - (d) An explanation of how and why the alternative safeguard or waiver of the rule protects public health and safety, prevents diversion of marijuana, and provides for accountability.
- (7) The Commission may, in its discretion, and on a case-by-case basis, grant the waiver in whole or in part if it finds:

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- (a) The reason the certificate holder is requesting the waiver is because another state or local law prohibits compliance; or
 - (b) The certificate holder cannot comply with the particular rule, for reasons beyond the certificate holder's control or compliance with the rule is cost prohibitive; or
 - (c) Because of the nature of the research, the Commissions finds that compliance with a particular rule is not necessary and that even with the waiver public health and safety can be protected, there is no increased opportunity for diversion of marijuana, and the certificate holder remains accountable.
- (8) The Commission must notify the certificate holder in writing whether the request has been approved. If the request is approved the notice must specifically describe any alternate safeguards that are required and, if the waiver is time limited, must state the time period the waiver is in effect.
- (9) The Commission may withdraw approval of the waiver at any time upon a finding that the previously approved waiver is not protecting public health and safety or the research certificate holder has other issues with compliance. If the Commission withdraws its approval of the waiver the certificate holder will be given a reasonable period of time to come into compliance with the requirement that was waived.

845-025-5350

Marijuana Research Certificate Privileges and Prohibitions

- (1) A certificate holder may receive marijuana items from a licensee or a registrant under ORS 475.300 to 475.346.
- (2) A certificate holder may not sell or otherwise transfer marijuana items to any other person except when disposing of waste pursuant to OAR 845-025-7750, or transferring to another certificate holder.
- (3) A certificate holder may not conduct any human subject research related to marijuana unless the certificate holder has received approval from an institutional review board that has adopted the Common Rule, 45 CFR Part 46.
- (4) All administrative rules adopted by Commission for the purpose of administering and enforcing chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2015; and any rules adopted thereunder with respect to licensees and licensee representatives apply to certificate holders except for those which are inconsistent with this rule.

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:

“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.

	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	P (15) (21)	P		P (23)								
500	INDUSTRIAL USES																			

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	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
	Wholesale and industry sales							C (31)			P (31)	P	P	P					P(33)	
	Warehouse, storage and distribution										P (32)	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.

TIME

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the hours of operation (time) of marijuana retail operations. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 59. *[(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.]*

[(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]

(1) For purposes of this section, “reasonable regulations” includes:

- (a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;**
- (b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;**
- (c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;**
- (d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;**
- (e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;**

(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and

(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.

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

Oregon Administrative Rule, Division 25 establishes hours of retail sales to consumers. The rule reads:

845-025-2820

Retailer Operational Requirements

(1) A retailer may:

- (a) Only receive marijuana items from a producer, wholesaler, processor or laboratory;
- (b) Only sell marijuana items to a consumer from the licensed premises, unless sale is made pursuant to a bona fide order as described in OAR 845-025-2880;
- (c) Only sell up to the following amounts at any one time to a consumer within one day:
 - (A) One ounce of usable marijuana;
 - (B) 16 ounces of a cannabinoid product in solid form;
 - (C) 72 ounces of a cannabinoid product in liquid form;
 - (D) Five grams of cannabinoid extracts or concentrate, whether sold alone or contained in an inhalant delivery system;
 - (E) Four immature marijuana plants; and
 - (F) Ten marijuana seeds;
- (d) Refuse to sell marijuana items to a consumer; and

(e) Only sell to consumers between the hours of 7:00 a.m. and 10 p.m. local time.

(2) A retailer may not:

- (a) Provide free samples of a marijuana item to a consumer;
- (b) Sell or give away pressurized containers of butane or other materials that could be used in the home production of marijuana extracts;
- (c) Require a consumer to purchase other products or services as a condition of purchasing a marijuana item or receiving a discount on a marijuana item;
- (d) Sell a marijuana item for less than the cost of acquisition;
- (e) Provide coupons or offer discounts, except that uniform volume discounts are permitted;
- (f) Permit consumers to be present on the licensed premises or sell to a consumer between the hours of 10:00 p.m. and 7:00 a.m. local time the following day; or

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- (g) Sell any product derived from industrial hemp, as that is defined in ORS 571.300, that is intended for human consumption, ingestion, or inhalation, unless it has been tested, labeled and packaged in accordance with these rules.
- (3) A retailer's pricing on marijuana items must remain consistent during each day.
- (4) Prior to completing the sale of a marijuana item to a consumer, a retailer must verify that the consumer has a valid, unexpired government-issued photo identification and must verify that the consumer is 21 years of age or older by viewing the consumer's:
- (a) Passport;
 - (b) Driver license, whether issued in this state or by any other state, as long as the license has a picture of the person;
 - (c) Identification card issued under ORS 807.400;
 - (d) United States military identification card; or
 - (e) Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.
- (5) Marijuana items offered for sale by a retailer must be stored in such a manner that the items are only accessible to authorized representatives until such time as the final sale to the consumer is completed.
- (6) For purposes of this rule, "coupon" means any coupon, ticket, certificate token or any other material that a person may use to obtain a price reduction or rebate in connection with the acquisition or purchase of a marijuana item.

There are no additional provisions in ORS or OAR's regarding hours of operation for wholesalers, laboratories or research certificates. For laboratories and research facilities if they were permitted in industrial districts they could be considered to be similar to an industrial operation. The Development Code does not limit hours of operation for industrial type uses. For Medical Marijuana Dispensaries Council adopted operational hours of 9 AM - 8 PM.

MANNER

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the manner of recreational marijuana wholesale and retail uses. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 59. *[(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.]*

[(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]

(1) For purposes of this section, "reasonable regulations" includes:

(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;

(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;

(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed

under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;

(d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;

(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;

(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and

(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.

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

HB 3400, Sections 19 and 20 (ORS 475B.215 and ORS 475B.218) establishes requirements for marijuana handlers in recreational marijuana retail operations. The law reads:

(Marijuana Handlers)

SECTION 19. (1) An individual who performs work for or on behalf of a person who holds a license under section 22, chapter 1, Oregon Laws 2015, must have a valid permit issued by the Oregon Liquor Control Commission under section 20 of this 2015 Act if the individual participates in:

(a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;

(b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued; or

(c) The verification of any document described in section 16, chapter 1, Oregon Laws 2015.

(2) A person who holds a license under section 22, chapter 1, Oregon Laws 2015, must verify that an individual has a valid permit issued under section 20 of this 2015 Act before allowing the individual to perform any work described in subsection (1) of this section at the premises for which the license has been issued.

SECTION 20. (1) The Oregon Liquor Control Commission shall issue permits to qualified applicants to perform work described in section 19 of this 2015 Act. The commission shall adopt rules establishing:

(a) The qualifications for performing work described in section 19 of this 2015 Act;

(b) The term of a permit issued under this section;

(c) Procedures for applying for and renewing a permit issued under this section;

and

(d) Reasonable application, issuance and renewal fees for a permit issued under this section.

(2)(a) The commission may require an individual applying for a permit under this section to successfully complete a course, made available by or through the commission, through which the individual receives training on:

(A) Checking identification;

(B) Detecting intoxication;

(C) Handling marijuana items;

(D) The content of sections 3 to 70, chapter 1, Oregon Laws 2015, and rules adopted under sections 3 to 70, chapter 1, Oregon Laws 2015; and

(E) Any matter deemed necessary by the commission to protect the public health and safety.

(b) The commission or other provider of the course may charge a reasonable fee for the course.

(c) The commission may not require an individual to successfully complete the course more than once, except that:

(A) As part of a final order suspending a permit issued under this section, the commission may require a permit holder to successfully complete the course as a condition of lifting the suspension; and

(B) As part of a final order revoking a permit issued under this section, the commission shall require an individual to successfully complete the course prior to applying for a new permit.

(3) The commission shall conduct a criminal records check under ORS 181.534 on an individual applying for a permit under this section.

(4) Subject to the applicable provisions of ORS chapter 183, the commission may suspend, revoke or refuse to issue or renew a permit if the individual who is applying for or who holds the permit:

(a) Is convicted of a felony, except that the commission may not consider a conviction for the manufacture or delivery of marijuana if the date of the conviction is two or more years before the date of the application or renewal;

(b) Violates any provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or any rule adopted under sections 3 to 70, chapter 1, Oregon Laws 2015; or

(c) Makes a false statement to the commission.

(5) A permit issued under this section is a personal privilege and permits work described under section 19 of this 2015 Act only for the individual who holds the permit.

Oregon Administrative Rule, Division 25 establishes requirements for handlers in recreational marijuana retail operations. The rule reads:

MARIJUANA HANDLER PERMITS

845-025-5500

Marijuana Handler Permit and Retailer Requirements

(1) A marijuana handler permit is required for any individual who performs work for or on behalf of a marijuana retailer if the individual participates in:

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- (a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;
 - (b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued;
 - (c) The verification of any document described in section 16, chapter 1, Oregon Laws 2015; or
 - (d) The direct supervision of a person described in subsections (a) to (c) of this section.
- (2) An individual who is required by section (1) of this rule to hold a marijuana handler permit must carry that permit on his or her person at all times when performing work on behalf of a marijuana retailer.
- (3) A person who holds a marijuana handler permit must notify the Commission in writing within 10 days of any conviction for a misdemeanor or felony. (4) A marijuana retailer must verify that an individual has a valid marijuana handler permit issued in accordance with OAR 845-025-5500 to 845-025-5590 before allowing the individual to perform any work at the licensed premises.

845-025-5520

Marijuana Handler Applications

- (1) In order to obtain a marijuana handler permit an individual must submit an application on a form prescribed by the Commission. The application must contain the applicant's:
- (a) Name;
 - (b) Mailing address;
 - (c) Date of birth;
 - (d) Signature; and
 - (e) Response to conviction history questions.
- (2) In addition to the application an applicant must submit:
- (a) A copy of a driver's license or identification card issued by one of the fifty states in the United States of America or a passport;
 - (b) The applicable fee as specified in OAR 845-025-1060; and
 - (c) Proof of having completed a marijuana handler education course and passed the examination.
- (3) If an application does not contain all the information requested or if the information and fee required in section (2) of this rule is not provided to the Commission, the application will be returned to the individual as incomplete, along with the fee.
- (4) If an application is returned as incomplete, the individual may reapply at any time.

845-025-5540

Marijuana Handler Permit Denial Criteria

- (1) The Commission must deny an initial or renewal application if the applicant:
- (a) Is not 21 years of age or older; or
 - (b) Has not completed the marijuana handler education course and passed the examination.
- (2) The Commission may deny a marijuana handler permit application, unless the applicant shows good cause to overcome the denial criteria, if the applicant:
- (a) Has been convicted of a felony, except for a felony described in section 20(4)(a), chapter 614, Oregon Laws 2015;
 - (b) Has violated a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules; or
 - (c) Makes a false statement to the Commission.
- (3) If the Commission denies an application under subsection (2)(b) or (c) of this rule the individual may not reapply within two years of the date the Commission received the

application. (4) A Notice of Denial must be issued by the Commission in accordance with ORS 183. Stat.

845-025-5560

Marijuana Handler Course Education and Examination Requirements

- (1) An individual must, prior to applying for a marijuana handler permit, complete an approved marijuana handler education course, pass the required examination, and pay the fee specified in OAR 845-025-1060.
- (2) An individual must score at least 70 percent on the marijuana handler course examination in order to pass.
 - (a) An individual who does not pass the examination may retake the examination up to two times within 90 days of the date the individual took the course. If the individual fails to pass both retake examinations the individual must retake the handler education course.
- (3) An individual must take a marijuana handler education course at least every five years prior to applying for renewal of a marijuana handler permit.
- (4) The Commission may require additional education or training for permit holders at any time, with adequate notice to permit holders.

845-025-5580

Marijuana Handler Renewal Requirements

- (1) An individual must renew his or her marijuana handler permit every five years by submitting a renewal application, on a form prescribed by the Commission and the applicable fee specified in OAR 845-025-1060.
- (2) Renewal applications will be reviewed in accordance with OAR 845-025-5520 and 845-025-5540.

845-025-5590

Suspension or Revocation

- (1) The Commission may suspend or cancel the permit of any marijuana handler if the handler:
 - (a) Has been convicted of a felony, except for a felony described in section 20, chapter 614, Oregon Laws 2015(4)(a);
 - (b) Has violated a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules; or (c) Makes a material false statement to the Commission.
- (2) If an individual's permit is canceled under sections (1)(b) or (c) of this rule the individual may not reapply within two years from the date a final order of revocation is issued.
- (3) A notice of suspension or revocation must be issued by the Commission in accordance with ORS 183.

There are a variety of other operational requirements for recreational marijuana retail operations. These include Bonds and Liability Insurance (HB 3400, Sections 21 and 22); Tracking system for sales (HB 3400, Section 23 and OAR 845-025-7500 thru 845-025-7590); Identification requirements (HB 3400, Section 24); Protect Individuals Under the Age of 21 (HB 3400, Sections 25 - 28); Testing of Marijuana Products (HB 3400, Sections 91- 99 and OAR 845-025-5700 thru 845-025-5740); Labeling and Packaging (HB 3400, Sections 100 – 112 and 845-025-7000 thru 845-025-760); Delivery (OAR 845-025-7700); Advertising (OAR 845-025-8000 thru 845-025-8080); Security and Alarm System (OAR 845-025-1400 thru 845-025-1460); Prizes and Giveaways (HB 3400, Section 49).

Staff therefore proposes the following code amendments for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers:

- Add Recreational Marijuana Laboratories as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Add Recreational Marijuana Research Certificates as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Add Recreational Marijuana Retailers as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H with footnotes for a 1,000 foot buffer from parks and schools, 1,000 foot separation between marijuana retailers and marijuana retailers to marijuana dispensaries, and operating hours limited to the hours between 9 AM and 8 PM.
- Add Recreational Marijuana Wholesalers as a conditional use in C-2 with footnotes allowed indoors only and 1,000 foot buffer from parks and schools.
- Add Recreational Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II with footnote 1,000 foot buffer from parks and schools.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers in the Stream Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers and Retailers in the Civic Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers in the Bypass Interchange Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories and Research Certificates in the Interim Industrial Overlay.
- Prohibits Recreational Marijuana Retailers in the Interim Industrial Overlay.

Attachments 3 through 5 are maps 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.

Retail

- a. Not allow retail as a permitted use in residential districts R-1, R-2, R-3, R- 4, AR, RP, and all residential subdistricts.
- b. Allow retail as a permitted use in all commercial zones except Civic Corridor with a footnote regarding the 1,000 foot buffer from schools and parks as noted on the third map in the packet.

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- c. Not allow retail in industrial districts and subdistricts.
- d. Not allow wholesale or retail in community facilities and institutional.
- e. Change the hours of operation for retail to 9 am to 8 pm.

Wholesale

- a. Allow wholesale as a permitted use in all residential categories including the subdistricts with no product allowed on the premises.
- b. Allow wholesale as a conditional use in C-2 only with a footnote regarding indoor use only and new footnote regarding the 1,000 foot buffer from schools and parks.
- c. Not allow wholesale or retail in community facilities and institutional.
- d. Allow wholesale as a permitted use in all industrial districts and subdistricts, except Airport Industrial, with a footnote regarding the 1,000 foot buffer from schools and parks.
- e. Not allow retail or wholesale in the other subdistricts.

Laboratories and Research Certificates

- a. Allow laboratories and research in all commercial districts and sub-districts, institutional districts, and all industrial districts and sub-districts, except AI. They are not allowed in all other districts, such as residential, community facilities, and other.

G. PLANNING COMMISSION RECOMMENDATION: The Newberg Planning Commission held a public hearing on April 14, 2016, heard public testimony, and approved Resolution 2015-314, which recommends that the City Council:

- Add Recreational Marijuana Laboratories as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Add Recreational Marijuana Research Certificates as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Add Recreational Marijuana Retailers as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H with footnotes for a 1,000 foot buffer from parks and schools, 1,000 foot separation between marijuana retailers and marijuana retailers to marijuana dispensaries, and operating hours limited to the hours between 9 AM and 8 PM.
- Add Recreational Marijuana Wholesalers as a conditional use in C-2 with footnotes allowed indoors only and 1,000 foot buffer from parks and schools.
- Add Recreational Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II with footnote 1,000 foot buffer from parks and schools.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers

in the Stream Corridor Overlay.

- Prohibits Recreational Marijuana Wholesalers and Retailers in the Civic Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers in the Bypass Interchange Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories and Research Certificates in the Interim Industrial Overlay.
- Prohibits Recreational Marijuana Retailers in the Interim Industrial Overlay.

The Planning Commission modified the recommendation from the Subcommittee by removing wholesalers as a permitted use in residential districts and subdistricts based on the Oregon Liquor Control Commission definition of a premises and understanding that licenses will not be issued where it is a primary residence. They also added a requirement for a 1,000 separation between retail marijuana businesses and a 1,000 foot separation between retail marijuana businesses and medical marijuana dispensaries.

FISCAL IMPACT: The fiscal impact of allowing recreational marijuana wholesalers, laboratories, research certificates and retailers is unknown at this time, but it is anticipated the State would provide State shared revenue from taxes collected to the City.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): Recreational Marijuana wholesalers, laboratories, research certificates and retailers are legal activities under state law, and the city wishes to allow businesses the opportunity to operate in the city. Zoning restrictions on the uses are appropriate to address potential adverse impacts on adjacent uses.

ATTACHMENTS:

Ordinance 2016-2801 with

Exhibit "A": Proposed Development Code Text Amendment

Exhibit "B": Findings

1. City Council Resolution 2015-3253
2. Public Comments
3. 1,000 foot Schools Buffer Map
4. 1,000 foot Parks Buffer Map
5. 1,000 foot Schools/Parks Buffer Map
6. Planning Commission Resolution No. 2016-314



ORDINANCE No. 2016-2801

**AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE
REGARDING RECREATIONAL MARIJUANA WHOLESALERS,
LABORATORIES. RESEARCH CERTIFICATES PRODUCERS AND
RETAILERS; AND DECLARING AN EMERGENCY**

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.
4. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana wholesalers, laboratories, research certificates and retailers on February 1, 2016, under City Council Resolution 2015-3253.
5. The Marijuana Subcommittee met on February 4, 2016 and developed recommendations to the Planning Commission on recreational marijuana wholesalers, laboratories, research certificates and retailers.
6. After proper notice, the Newberg Planning Commission held a hearing on April 14, 2016 to consider the amendment for recreational marijuana wholesalers, laboratories, research certificates and retailers. The Commission considered testimony, deliberated, and found that adding regulations for recreational marijuana wholesalers, laboratories, research certificates and retailers would be in the best interests of the city. The Planning Commission approved Resolution 2016-314, which recommends that the City Council adopt the proposed amendments to the Newberg Development Code.
7. After proper notice, the Newberg City Council held a hearing on May 16, 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 recreational marijuana wholesalers, laboratories, research certificates and retailers would be in the best interests of the city. The Council adopts

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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.
3. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect immediately upon passage by the council and signature of the mayor.

➤ **EFFECTIVE DATE** of this ordinance is of this ordinance is May 17, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of May, 2016, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this 19th day of May, 2016.

Bob Andrews, Mayor

**Exhibit “A” to Ordinance 2016-2801
Development Code Amendments –File DCA-16-001
Recreational Marijuana Wholesalers,
Laboratories, Research Certificates and
Retailers**

Section 1. The Newberg Development Code 15.05.030 shall be amended to read as follows:

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

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:

“Marijuana Laboratory” means a laboratory certified by the Oregon Health Authority under ORS 438.605 to 438.620 and authorized to test marijuana items for purposes specified in these rules.

“Marijuana Retailer” means a marijuana retailer licensed by the Oregon Liquor Control Commission.

“Marijuana Wholesaler” means a marijuana wholesaler licensed by the Oregon Liquor Control Commission.

Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:

See Exhibit A, Attachment 1

Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:

See Exhibit A, Attachment 2

Section 4. 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:

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- 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 5. 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.

Section 6. 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.

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 7. 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.

Section 8. 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.

**Exhibit “B” to Ordinance 2016-2801
Findings –File DCA-16-001
Recreational Marijuana Wholesalers,
Laboratories, Research Certificates and Retailers**

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 February 1, 2016. The Marijuana Subcommittee meet on February 4, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers. The Planning Commission, after proper notice, held a public hearing on April 14, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on May 16, 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.

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 Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers 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 February 1, 2016. The Marijuana Subcommittee meet on February 4, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Wholesalers, Laboratories, Research Certificates and Retailers. The Planning Commission, after proper notice, held a public hearing on April 14, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on May 16, 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 Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers 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. A Recreational Marijuana Wholesale, Laboratory, Research Certificate and Retail operations are a legal operation under State law. Allowing Recreational Marijuana Wholesale, Laboratory, Research Certificate and Retail operations as a 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.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 16, 2016

Order ____	Ordinance <u>XX</u>	Resolution ____	Motion ____	Information ____
No.	No. 2016-2801	No.		

SUBJECT: An ordinance amending the Newberg development code regarding recreational marijuana wholesalers, laboratories, research certificates producers and retailers; and declaring an emergency.

**Contact Person (Preparer) for this Motion: Doug Rux, Director
Dept.: Community Development
File No.: DCA-16-001**

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

RECOMMENDATION:

Adopt Ordinance No. 2016-2801 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:

- Adds Recreational Marijuana Laboratories as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Adds Recreational Marijuana Research Certificates as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Adds Recreational Marijuana Retailers as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H with footnotes for a 1,000 foot buffer from parks and schools, 1,000 foot separation between marijuana retailers and marijuana retailers to marijuana dispensaries, and operating hours limited to the hours between 9 AM and 8 PM.
- Adds Recreational Marijuana Wholesalers as a conditional use in C-2 with footnotes allowed indoors only and 1,000 foot buffer from parks and schools.
- Adds Recreational Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II with footnote 1,000 foot buffer from parks and schools.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers in the Stream Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers and Retailers in the Civic Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers

in the Bypass Interchange Overlay.

- Prohibits Recreational Marijuana Wholesalers, Laboratories and Research Certificates in the Interim Industrial Overlay.
- Prohibits Recreational Marijuana Retailers in the Interim Industrial Overlay.

B. 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.

At the January 12, 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 for recreational marijuana wholesale, laboratory, research certificate and retail regulations to bring forward for Council consideration on February 1. The City Council adopted Resolution No. 2015-3253 on February 1, 2016 initiating the Development Code amendment process (Attachment 1).

The Subcommittee met again on February 4, 2016 and developed recommendations on recreational marijuana wholesalers, laboratories, research certificates and retailers.

C. 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. 2/1/16: The Newberg City Council initiated the Development Code amendment.
2. 2/4/16: The City Council Marijuana Subcommittee met and developed recommendations to the Planning Commission.
3. 4/14/16: After proper notice, the Planning Commission held a legislative

Exhibit B 2016-0516

hearing to consider the item, took public comment, and approved Resolution 2016-314.

4. 5/16/16: 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 received two comments on the application. The comments indicate recreational marijuana sales should be allowed in Newberg and a request to consider a 1,000 foot separation between retail operations (Attachment 2). If the city receives additional written comments by the comment deadline, Planning staff will forward them to the City Council.

E. ANALYSIS:

PLACE

Oregon Revised Statutes 475B.015 provides the following definitions:

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

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

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

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

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

Oregon Administrative Rule, Division 25 provides the following definitions:

**GENERAL REQUIREMENTS APPLICABLE TO
ALL MARIJUANA LICENSES**

845-025-1015

Definitions

(38) "Premises" or "licensed premises" includes the following areas of a location licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015:

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

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

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

(d) “Premises” or “licensed premises” does not include a primary residence.

(39) “Primary Residence” means real property inhabited for the majority of a calendar year by an owner, renter or tenant, including manufactured homes and vehicles used as domiciles.

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the location of recreational marijuana wholesale and retail operations. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 59. *[(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.]*

[(2) The authority granted to cities and counties by this section is in addition to, and not in lieu

of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]

(1) For purposes of this section, “reasonable regulations” includes:

(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;

(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;

(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;

(d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;

(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;

(f) Reasonable requirements related to the public’s access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and

(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.

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

HB 3400, Section 15 (ORS 575B.100) allows local governments to regulate the location of recreational marijuana wholesale operations. The law reads:

(License Holders)

SECTION 15. Section 21, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 21. (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, [kept,] 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 section 28, chapter 1, Oregon Laws 2015;

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, 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 section 92 of this 2015 Act; and

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

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

(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana wholesalers; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

HB 3400, Sections 16 and 17 (ORS 475B.110) allows local governments to regulate the location of recreational marijuana retail operations. The law reads:

SECTION 16. Section 22, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 22. (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 section 28, chapter 1, Oregon Laws 2015;

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

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

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

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

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

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

(3) The commission shall adopt rules that:

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

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

(c) Require marijuana items sold by a marijuana retailer to be tested in accordance with section 92 of this 2015 Act; and

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

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

(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana retailers; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

SECTION 17. If a school described in section 22 (2)(d), chapter 1, Oregon Laws 2015, that has not previously been attended by children is established within 1,000 feet of a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, the marijuana retailer located at that premises may remain at that location unless the Oregon Liquor Control Commission revokes the license of the marijuana retailer under section 30, chapter 1, Oregon Laws 2015.

HB 3400, Section 34 (ORS 475B.370 and ORS 475B.063) establishes a requirement for a land use compatibility statement for recreational marijuana wholesale and retail uses. The law reads:

SECTION 34. (1) Notwithstanding any other provision of law, marijuana is:

(a) A crop for the purposes of “farm use” as defined in ORS 215.203;

(b) A crop for purposes of a “farm” and “farming practice,” both as defined in ORS 30.930;

(c) A product of farm use as described in ORS 308A.062; and

(d) The product of an agricultural activity for purposes of ORS 568.909.

(2) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use:

(a) A new dwelling used in conjunction with a marijuana crop;

(b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; and

(c) A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a),

carried on in conjunction with a marijuana crop.

(3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.

(4)(a) Prior to the issuance of a license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

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

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

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

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

Oregon Administrative Rule, Division 25 establishes a requirement for a land use compatibility statement for recreational marijuana wholesale and retail uses. The rule reads:

845-025-1090

Application Review

(1) Once the Commission has determined that an application is complete it must review the application to determine compliance with chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, and these rules.

(2) The Commission:

(a) Must, prior to acting on an application, request a land use compatibility statement from the city or county that authorizes land use in the city or county in which the applicant's proposed premises is located or request verification that a land use compatibility statement submitted by an applicant is valid and accurate

(b) May, in its discretion, prior to acting on an application:

(A) Contact any applicant or individual with a financial interest and request additional documentation or information; and

(B) Verify any information submitted by the applicant.

(3) The Commission must inspect the proposed premises prior to issuing a license.

(4) If during an inspection the Commission determines the applicant is not in compliance with these rules, the applicant will be provided with a notice of the failed inspection and the requirements that have not been met.

(a) An applicant that fails an inspection will have 15 calendar days from the date the notice was sent to submit a written response that demonstrates the deficiencies have been corrected.

(b) An applicant may request in writing one extension of the 15-day time limit in subsection (a) of this section, not to exceed 30 days.

(5) If an applicant does not submit a timely plan of correction or if the plan of correction

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does not correct the deficiencies in a manner that would bring the applicant into compliance, the Commission may deny the application.

(6) If the plan of correction appears, on its face, to correct the deficiencies, the Commission will schedule another inspection.

(7) If an applicant fails a second inspection, the Commission may deny the application unless the applicant shows good cause for the Commission to perform additional inspections.

Oregon Administrative Rule, Division 25 establishes requirements and limitations for denial of a license by the Oregon Liquor Control Commission for wholesale and retail recreational marijuana uses. The rule reads:

845-025-1115

Denial of Application

(1) The Commission must deny an initial or renewal application if:

(a) An applicant is under the age of 21 or, until January 1, 2020, has not been a resident of Oregon for at least two years. If the Commission determines that an applicant is a non-resident the Commission will hold that application under review until 30 days after the 2016 Oregon Legislature adjourns.

(b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

(c) The proposed licensed premises is located:

(A) On federal property.

(B) At the same physical location or address as a:

(i) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon Laws 2015;

(ii) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or

(iii) Medical marijuana dispensary registered under ORS 475.314.

(C) At the same physical location or address as a liquor licensee licensed under ORS chapter 471 or as a retail liquor agent appointed by the Commission.

(d) The proposed licensed premises of a producer applicant is:

(A) On public land; or

(B) On the same tax lot or parcel as another producer licensee under common ownership.

(e) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.

(f) The proposed licensed premises of a retail applicant is located:

(A) Within 1,000 feet of:

(i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or (ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(B) In an area that is zoned exclusively for residential use.

(g) The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.

(h) A city or county has prohibited the license type for which the applicant is applying, in accordance with sections 133 or 134, chapter 614, Oregon Laws 2015.

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(2) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if it has reasonable cause to believe that:

(a) The applicant:

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

(B) Has made false statements to the Commission.

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

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

(E) Does not have a good record of compliance with sections 3 to 70, chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules, prior to or after licensure including but not limited to:

(i) The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of section 49, chapter 614, Oregon Laws 2015; (ii) Providing marijuana items to an individual without checking that the individual is 21 or older;

(iii) Unlicensed transfer of marijuana items for financial consideration; or (iv) Violations of local ordinances adopted under section 33, chapter 614, Oregon Laws 2015, pending or adjudicated by the local government that adopted the ordinance.

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

(G) Is unable to understand the laws of this state relating to marijuana or these rules, including but not limited to ORS 475.300 to 475.346 and sections 91 to 99, chapter 614, Oregon Laws 2015. Inability to understand laws and rules of this state related to marijuana may be demonstrated by violations documented by the Oregon Health Authority.

(b) Any individual listed on the application has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in Section 29(3), chapter 1, Oregon Laws 2015.

(c) Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.

(3) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant or licensee. However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling financial interest in the business shall be considered persons having a financial interest within the meaning of this subsection.

(4) The Commission will not deny an application under subsections (1) (c) (B) of this rule if the applicant surrenders the registration issued by the Authority prior to being issued an OLCC license.

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- (5) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.
- (6) A notice of denial must be issued in accordance with ORS 183.

Oregon Administrative Rule, Division 25 establishes restrictions and requirements for wholesale and retail recreational marijuana uses. The rule reads:

845-025-1230

Licensed Premises Restrictions and Requirements

(1) A licensed premises may not be located:

- (a) On federal property; or
- (b) At the same physical location or address as a:
 - (A) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon Laws 2015;
 - (B) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or
 - (C) Medical marijuana dispensary registered under ORS 475.314.
 - (D) Liquor licensee licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.

(2) The licensed premises of a producer applicant may not be on:

- (a) Public land; or
- (b) The same tax lot or parcel as another producer licensee under common ownership.

(3) The licensed premises of a retailer may not be located:

- (a) 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.
- (b) In an area that is zoned exclusively for residential use.

(4) The licensed premises of a processor who has an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.

(5) The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.

(6) A licensee may not permit:

- (a) Any minor on a licensed premises except as described in section (7) and (8) of this rule; or
 - (b) On-site consumption of a marijuana item, alcohol, or other intoxicant by any individual, except that an employee who has a current registry identification card issued under ORS 475.309 may consume marijuana during his or her work shift on the licensed premises as necessary for his or her medical condition, if the employee is alone, in a closed room and not visible to others outside the room. An employee who consumes a marijuana item as permitted under this subsection may not be intoxicated while on duty.
- (7) Notwithstanding section (6)(a) of this rule, a minor, other than a licensee's employee, who has a legitimate business purpose for being on the licensed premises, may be on the premises for a limited period of time in order to accomplish the legitimate business purpose. For example, a minor plumber may be on the premises in order to make a repair.

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(8) Notwithstanding section (6)(a) of this rule, a minor who resides on the tax lot or parcel where a marijuana producer is licensed may be present on those portions of a producer's licensed that do not contain usable marijuana or cut and drying marijuana plants.

(9) A licensee must clearly identify all limited access areas in accordance with OAR 845-025- 1245.

(10) A licensee must keep a daily log of all employees, contractors and licensee representatives who perform work on the licensed premises. All employees, contractors and licensee representatives must wear clothing or a badge issued by the licensee that easily identifies the individual as an employee, contractor or licensee representative.

(11) The general public is not permitted in limited access areas on a licensed premises, except for the licensed premises of a retailer and as provided by section (14) of this rule. In addition to licensee representatives, the following individuals are permitted to be present in limited access areas on a licensed premises, subject to the requirements in section (12) of this rule:

(a) Laboratory personnel, if the laboratory is licensed by the Commission;

(b) A contractor, vendor or service provider authorized by a licensee representative to be on the licensed premises;

(c) Another licensee or that licensee's representative;

(d) Up to seven invited guests per week subject to requirements of section (12) of this rule; or

(e) Tour groups as permitted under section (14) of this rule.

(12) Prior to entering a licensed premises all visitors permitted by section (11) of this rule must be documented and issued a visitor identification badge from a licensee representative that must remain visible while on the licensed premises. A visitor badge is not required for government officials. All visitors described in subsection (11) of this rule must be accompanied by a licensee representative at all times.

(13) A licensee must maintain a log of all visitor activity. The log must contain the first and last name and date of birth of every visitor and the date they visited.

(14) A marijuana producer or research certificate holder may offer tours of the licensed premises, including limited access areas, to the general public if the licensee submits a control plan in writing and the plan is approved by the Commission.

(a) The plan must describe how conduct of the individuals on the tour will be monitored, how access to usable marijuana will be limited, and what steps the licensee will take to ensure that no minors are permitted on the licensed premises.

(b) The Commission may withdraw approval of the control plan if the Commission finds there is poor compliance with the plan. Poor compliance may be indicated by, for example, individuals on the tour not being adequately supervised, an individual on the tour obtaining a marijuana item while on the tour, a minor being part of a tour, or the tours creating a public nuisance.

(15) Nothing in this rule is intended to prevent or prohibit Commission employees or contractors, or other state or local government officials that have jurisdiction over some aspect of the licensed premises or licensee from being on the licensed premises.

(16) A licensee may not sublet any portion of a licensed premises.

(17) A licensed premises may receive marijuana items only from a marijuana producer, marijuana processor, or marijuana wholesaler for whom a premises has been licensed by the Commission.

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(18) A licensed wholesaler or retailer who sells or handles food, as that term is defined in ORS 616.695, or cannabinoid edibles must also be licensed by the Oregon Department of Agriculture under ORS 616.706.

Oregon Administrative Rule, Division 25 establishes restrictions on the location of recreational marijuana retail uses. The rule reads:

845-025-2840

Retailer Premises

(1) The licensed premises of a retailer:

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

(b) 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.

(c) Must be enclosed on all sides by permanent walls and doors.

(2) A retailer must post in a prominent place signs at every:

(a) Point of sale that read:

(A) "No Minors Permitted Anywhere on the Premises"; and

(B) "No On-Site Consumption".

(b) Exit from the licensed premises that reads: "Marijuana or Marijuana Infused Products May Not Be Consumed In Public".

(3) A retailer must designate a consumer sales area on the licensed premises where consumers are permitted. The area shall include the portion of the premises where marijuana items are displayed for sale to the consumer and sold and may include other contiguous areas such as a lobby or a restroom. The consumer sales area is the sole area of the licensed premises where consumers are permitted.

(4) All inventory must be stored on the licensed premises.

(5) For purposes of determining the distance between a retailer and a school referenced in subsection (1)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising a school to the closest point of the licensed premises of a retailer. If any portion of the licensed premises is within 1,000 feet of a school as described subsection (1)(b) of this rule an applicant will not be licensed.

HB 3400 and Oregon Administrative Rule, Division 25 have no specific provisions for the location of testing laboratories and research certificate facilities. Research certificates can be issued to qualifying private and public researchers. The City Council may want to consider limiting these two uses. One option is to allow testing laboratories as a permitted use in industrial districts. For research certificates an option is to allow the activity as a permitted use in industrial districts. The City Council may also want to consider if research certificate activities should be allowed in the Institutional District. The rules for testing laboratories and research certificates reads as follows:

MARIJUANA TESTING LABORATORIES

845-025-5000

Laboratory License Privileges

A licensed marijuana testing laboratory may:

- (1) Obtain samples of marijuana items from licensees for purposes of performing testing as provided in these rules and OAR 333-007-0300 to 333-007-0490;
- (2) Transport and dispose of samples as provided in these rules; and
- (3) Perform testing on marijuana items in a manner consistent with the laboratory's accreditation by the Oregon Health Authority, these rules and OAR 333-007-0300 to 333-007-0490.

845-025-5030

Laboratory Licensing Requirements

(1) General Requirements

- (a) A laboratory that intends to test marijuana items for producer, processor, wholesale or retail licensees must be licensed by the Commission.
- (b) An applicant for a license under this rule must comply with all applicable application requirements in OAR 845-025-1030 and pay the required application and license fees, except that a laboratory licensee is not subject to any residency requirements.
- (c) A laboratory application is subject to the same application review procedures as other applicants.
- (d) In addition to the denial criteria in OAR 845-025-1115, the Commission may refuse to issue a laboratory license for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules.
- (e) Laboratory application and license fees are established in OAR 845-025-1060.

(2) Accreditation by the Oregon Health Authority

- (a) In addition to the requirements listed in section (1) of this rule, an applicant for a laboratory license must be accredited by the Authority with a scope of accreditation that includes the sampling and testing analysis required in OAR 333-007-0300 to 333-007-0490 prior to exercising the licensed privileges in OAR 845-025-5000.
- (b) An applicant for a license under this rule may apply for licensure prior to receiving accreditation, but the Commission will not issue a license until proof of accreditation is received.
- (c) The Commission may make efforts to verify or check on an applicant's accreditation status during the licensing process, but an applicant bears the burden of taking all steps needed to secure accreditation and present proof of accreditation to the Commission.
- (d) In addition to the denial criteria in OAR 845-025-1115, the Commission may consider an application incomplete if the applicant does not obtain accreditation from the Authority within six months of applying for a license. The Commission shall give an applicant an opportunity to be heard if an application is declared incomplete under this section, but an applicant is not entitled to a contested case proceeding under ORS chapter 183. An applicant whose application is declared incomplete may reapply at any time.
- (e) A licensed laboratory must maintain accreditation by the Authority at all times while licensed by the Commission. If a laboratory's accreditation lapses, is canceled or is suspended at any time for any reason while licensed by the Commission, the laboratory may not engage in any activities permitted under the license until accreditation is reinstated.
- (f) Exercising license privileges while accreditation is suspended or canceled is a Category I violation and could result in license cancellation.

(3) Renewal.

(a) A laboratory must renew its license annually and pay the required renewal fees in accordance with OAR 845-025-1190.

(b) A laboratory renewal application may be denied for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules.

845-025-5045

Laboratory Tracking and Reporting

(1) A laboratory licensee is required to utilize CTS and follow all requirements established by OAR 845-025-7500 to OAR 845-025-7590.

(2) A laboratory licensee is responsible for tracking and entering the following information into CTS:

(a) Receipt of samples for testing, including:

(A) Size of the sample;

(B) Name of licensee from whom the sample was obtained;

(C) Date the sample was collected; and

(D) UID tag information associated with the harvest or process lot from which the sample was obtained.

(b) Tests performed on samples, including:

(A) Date testing was performed;

(B) What samples were tested for;

(C) Name of laboratory responsible for testing; and

(D) Results of all testing performed. (c) Disposition of any testing sample material.

845-025-5060

Laboratory Transportation and Waste Disposal

(1) A laboratory licensee must follow all rules regarding transportation of marijuana items established in OAR 845-025-7700.

(2) A laboratory licensee must follow all rules regarding disposal of samples from marijuana items established in OAR 845-025-7750.

845-025-5075

Laboratory Licensee Prohibited Conduct

(1) In addition to the prohibitions set forth in OAR 845-025-8520, a laboratory licensee may not: (a) Perform any required marijuana testing using any testing methods or equipment not permitted under the laboratory's accreditation through the Authority;

(b) Perform any required marijuana testing for any licensed marijuana producer, processor, wholesaler or retailer in which the laboratory licensee has a financial interest; or

(c) Engage in any activity that violates any provision of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, OAR 333-007-0300 through OAR 333-007-0490 or OAR 333, Division 64 as applicable or these rules.

(2) The Commission may suspend or cancel a laboratory license for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, or these rules. The licensee has a right to a hearing under the procedures of ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.

(2) A violation of this rule is a Category I violation and could result in license revocation.

RESEARCH CERTIFICATE

845-025-5300

Application for Marijuana Research Certificate

- (1) The Commission shall issue Marijuana Research Certificates to qualifying public and private researchers who present research proposals that demonstrate:
- (a) The proposed research would benefit the state's cannabis industry, medical research or public health and safety; and
 - (b) The proposed operation and methodology complies with all applicable laws and administrative rules governing marijuana licensees and licensee representatives.
- (2) The process for applying for, receiving and renewing a certificate shall be the same as the process for applying for, receiving and renewing a marijuana license under OAR 845-025-1030 to 845-025-1115 except that an applicant for a Marijuana Research Certificate is not subject to the residency requirements in OAR 845-025-1045(2)(b).
- (3) In addition to the application requirements in OAR-025-1030 the applicant must also provide:
- (a) A clear description of the research proposal;
 - (b) A description of the researchers' expertise in the scientific substance and methods of the proposed research;
 - (c) An explanation of the scientific merit of the research plan, including a clear statement of the overall benefit of the applicant's proposed research to Oregon's cannabis industry, medical research, or to public health and safety;
 - (d) Descriptions of key personnel, including clinicians, scientists, or epidemiologists and support personnel who would be involved in the research, demonstrating they are adequately trained to conduct this research;
 - (e) A clear statement of the applicant's access to funding and the estimated cost of the proposed research;
 - (f) A disclosure of any specific conflicts of interest that the researcher or other key personnel have regarding the research proposal;
 - (g) A description of the research methods demonstrating an unbiased approach to the proposed research; and
 - (h) If the applicant intends to research the use of pesticides, an experimental use permit issued by Oregon Department of Agriculture pursuant to OAR 603-057-0160.
- (4) Research certificates will be granted for up to a three-year term.
- (5) The Commission may request that the research certificate holder submit information and fingerprints required for a criminal background check at any time within the research certificate term.
- (6) A certificate holder may, in writing, request that the Commission waive one or more of these rules. The request must include the following information:
- (a) The specific rule and subsection of a rule that is requested to be waived;
 - (b) The reason for the waiver;
 - (c) A description of an alternative safeguard the licensee can put in place in lieu of the requirement that is the subject of the waiver, or why such a safeguard is not necessary; and
 - (d) An explanation of how and why the alternative safeguard or waiver of the rule protects public health and safety, prevents diversion of marijuana, and provides for accountability.
- (7) The Commission may, in its discretion, and on a case-by-case basis, grant the waiver in whole or in part if it finds:

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- (a) The reason the certificate holder is requesting the waiver is because another state or local law prohibits compliance; or
 - (b) The certificate holder cannot comply with the particular rule, for reasons beyond the certificate holder's control or compliance with the rule is cost prohibitive; or
 - (c) Because of the nature of the research, the Commissions finds that compliance with a particular rule is not necessary and that even with the waiver public health and safety can be protected, there is no increased opportunity for diversion of marijuana, and the certificate holder remains accountable.
- (8) The Commission must notify the certificate holder in writing whether the request has been approved. If the request is approved the notice must specifically describe any alternate safeguards that are required and, if the waiver is time limited, must state the time period the waiver is in effect.
- (9) The Commission may withdraw approval of the waiver at any time upon a finding that the previously approved waiver is not protecting public health and safety or the research certificate holder has other issues with compliance. If the Commission withdraws its approval of the waiver the certificate holder will be given a reasonable period of time to come into compliance with the requirement that was waived.

845-025-5350

Marijuana Research Certificate Privileges and Prohibitions

- (1) A certificate holder may receive marijuana items from a licensee or a registrant under ORS 475.300 to 475.346.
- (2) A certificate holder may not sell or otherwise transfer marijuana items to any other person except when disposing of waste pursuant to OAR 845-025-7750, or transferring to another certificate holder.
- (3) A certificate holder may not conduct any human subject research related to marijuana unless the certificate holder has received approval from an institutional review board that has adopted the Common Rule, 45 CFR Part 46.
- (4) All administrative rules adopted by Commission for the purpose of administering and enforcing chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2015; and any rules adopted thereunder with respect to licensees and licensee representatives apply to certificate holders except for those which are inconsistent with this rule.

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:

“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.

	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	P (15) (21)	P		P (23)								
500	INDUSTRIAL USES																			

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	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
	Wholesale and industry sales							C (31)			P (31)	P	P	P					P(33)	
	Warehouse, storage and distribution										P (32)	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.

TIME

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the hours of operation (time) of marijuana retail operations. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 59. [(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.]

[(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]

(1) For purposes of this section, “reasonable regulations” includes:

- (a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;**
- (b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;**
- (c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;**
- (d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;**
- (e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;**

(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and

(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.

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

Oregon Administrative Rule, Division 25 establishes hours of retail sales to consumers. The rule reads:

845-025-2820

Retailer Operational Requirements

(1) A retailer may:

- (a) Only receive marijuana items from a producer, wholesaler, processor or laboratory;
- (b) Only sell marijuana items to a consumer from the licensed premises, unless sale is made pursuant to a bona fide order as described in OAR 845-025-2880;
- (c) Only sell up to the following amounts at any one time to a consumer within one day:
 - (A) One ounce of usable marijuana;
 - (B) 16 ounces of a cannabinoid product in solid form;
 - (C) 72 ounces of a cannabinoid product in liquid form;
 - (D) Five grams of cannabinoid extracts or concentrate, whether sold alone or contained in an inhalant delivery system;
 - (E) Four immature marijuana plants; and
 - (F) Ten marijuana seeds;
- (d) Refuse to sell marijuana items to a consumer; and

(e) Only sell to consumers between the hours of 7:00 a.m. and 10 p.m. local time.

(2) A retailer may not:

- (a) Provide free samples of a marijuana item to a consumer;
- (b) Sell or give away pressurized containers of butane or other materials that could be used in the home production of marijuana extracts;
- (c) Require a consumer to purchase other products or services as a condition of purchasing a marijuana item or receiving a discount on a marijuana item;
- (d) Sell a marijuana item for less than the cost of acquisition;
- (e) Provide coupons or offer discounts, except that uniform volume discounts are permitted;
- (f) Permit consumers to be present on the licensed premises or sell to a consumer between the hours of 10:00 p.m. and 7:00 a.m. local time the following day; or

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- (g) Sell any product derived from industrial hemp, as that is defined in ORS 571.300, that is intended for human consumption, ingestion, or inhalation, unless it has been tested, labeled and packaged in accordance with these rules.
- (3) A retailer's pricing on marijuana items must remain consistent during each day.
- (4) Prior to completing the sale of a marijuana item to a consumer, a retailer must verify that the consumer has a valid, unexpired government-issued photo identification and must verify that the consumer is 21 years of age or older by viewing the consumer's:
- (a) Passport;
 - (b) Driver license, whether issued in this state or by any other state, as long as the license has a picture of the person;
 - (c) Identification card issued under ORS 807.400;
 - (d) United States military identification card; or
 - (e) Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.
- (5) Marijuana items offered for sale by a retailer must be stored in such a manner that the items are only accessible to authorized representatives until such time as the final sale to the consumer is completed.
- (6) For purposes of this rule, "coupon" means any coupon, ticket, certificate token or any other material that a person may use to obtain a price reduction or rebate in connection with the acquisition or purchase of a marijuana item.

There are no additional provisions in ORS or OAR's regarding hours of operation for wholesalers, laboratories or research certificates. For laboratories and research facilities if they were permitted in industrial districts they could be considered to be similar to an industrial operation. The Development Code does not limit hours of operation for industrial type uses. For Medical Marijuana Dispensaries Council adopted operational hours of 9 AM - 8 PM.

MANNER

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the manner of recreational marijuana wholesale and retail uses. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:

Sec. 59. *[(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.]*

[(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]

(1) For purposes of this section, "reasonable regulations" includes:

(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;

(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;

(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed

under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;

(d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;

(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;

(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and

(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.

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

HB 3400, Sections 19 and 20 (ORS 475B.215 and ORS 475B.218) establishes requirements for marijuana handlers in recreational marijuana retail operations. The law reads:

(Marijuana Handlers)

SECTION 19. (1) An individual who performs work for or on behalf of a person who holds a license under section 22, chapter 1, Oregon Laws 2015, must have a valid permit issued by the Oregon Liquor Control Commission under section 20 of this 2015 Act if the individual participates in:

(a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;

(b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued; or

(c) The verification of any document described in section 16, chapter 1, Oregon Laws 2015.

(2) A person who holds a license under section 22, chapter 1, Oregon Laws 2015, must verify that an individual has a valid permit issued under section 20 of this 2015 Act before allowing the individual to perform any work described in subsection (1) of this section at the premises for which the license has been issued.

SECTION 20. (1) The Oregon Liquor Control Commission shall issue permits to qualified applicants to perform work described in section 19 of this 2015 Act. The commission shall adopt rules establishing:

(a) The qualifications for performing work described in section 19 of this 2015 Act;

(b) The term of a permit issued under this section;

(c) Procedures for applying for and renewing a permit issued under this section;

and

(d) Reasonable application, issuance and renewal fees for a permit issued under this section.

(2)(a) The commission may require an individual applying for a permit under this section to successfully complete a course, made available by or through the commission, through which the individual receives training on:

(A) Checking identification;

(B) Detecting intoxication;

(C) Handling marijuana items;

(D) The content of sections 3 to 70, chapter 1, Oregon Laws 2015, and rules adopted under sections 3 to 70, chapter 1, Oregon Laws 2015; and

(E) Any matter deemed necessary by the commission to protect the public health and safety.

(b) The commission or other provider of the course may charge a reasonable fee for the course.

(c) The commission may not require an individual to successfully complete the course more than once, except that:

(A) As part of a final order suspending a permit issued under this section, the commission may require a permit holder to successfully complete the course as a condition of lifting the suspension; and

(B) As part of a final order revoking a permit issued under this section, the commission shall require an individual to successfully complete the course prior to applying for a new permit.

(3) The commission shall conduct a criminal records check under ORS 181.534 on an individual applying for a permit under this section.

(4) Subject to the applicable provisions of ORS chapter 183, the commission may suspend, revoke or refuse to issue or renew a permit if the individual who is applying for or who holds the permit:

(a) Is convicted of a felony, except that the commission may not consider a conviction for the manufacture or delivery of marijuana if the date of the conviction is two or more years before the date of the application or renewal;

(b) Violates any provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or any rule adopted under sections 3 to 70, chapter 1, Oregon Laws 2015; or

(c) Makes a false statement to the commission.

(5) A permit issued under this section is a personal privilege and permits work described under section 19 of this 2015 Act only for the individual who holds the permit.

Oregon Administrative Rule, Division 25 establishes requirements for handlers in recreational marijuana retail operations. The rule reads:

MARIJUANA HANDLER PERMITS

845-025-5500

Marijuana Handler Permit and Retailer Requirements

(1) A marijuana handler permit is required for any individual who performs work for or on behalf of a marijuana retailer if the individual participates in:

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- (a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;
 - (b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued;
 - (c) The verification of any document described in section 16, chapter 1, Oregon Laws 2015; or
 - (d) The direct supervision of a person described in subsections (a) to (c) of this section.
- (2) An individual who is required by section (1) of this rule to hold a marijuana handler permit must carry that permit on his or her person at all times when performing work on behalf of a marijuana retailer.
- (3) A person who holds a marijuana handler permit must notify the Commission in writing within 10 days of any conviction for a misdemeanor or felony. (4) A marijuana retailer must verify that an individual has a valid marijuana handler permit issued in accordance with OAR 845-025-5500 to 845-025-5590 before allowing the individual to perform any work at the licensed premises.

845-025-5520

Marijuana Handler Applications

- (1) In order to obtain a marijuana handler permit an individual must submit an application on a form prescribed by the Commission. The application must contain the applicant's:
- (a) Name;
 - (b) Mailing address;
 - (c) Date of birth;
 - (d) Signature; and
 - (e) Response to conviction history questions.
- (2) In addition to the application an applicant must submit:
- (a) A copy of a driver's license or identification card issued by one of the fifty states in the United States of America or a passport;
 - (b) The applicable fee as specified in OAR 845-025-1060; and
 - (c) Proof of having completed a marijuana handler education course and passed the examination.
- (3) If an application does not contain all the information requested or if the information and fee required in section (2) of this rule is not provided to the Commission, the application will be returned to the individual as incomplete, along with the fee.
- (4) If an application is returned as incomplete, the individual may reapply at any time.

845-025-5540

Marijuana Handler Permit Denial Criteria

- (1) The Commission must deny an initial or renewal application if the applicant:
- (a) Is not 21 years of age or older; or
 - (b) Has not completed the marijuana handler education course and passed the examination.
- (2) The Commission may deny a marijuana handler permit application, unless the applicant shows good cause to overcome the denial criteria, if the applicant:
- (a) Has been convicted of a felony, except for a felony described in section 20(4)(a), chapter 614, Oregon Laws 2015;
 - (b) Has violated a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules; or
 - (c) Makes a false statement to the Commission.
- (3) If the Commission denies an application under subsection (2)(b) or (c) of this rule the individual may not reapply within two years of the date the Commission received the

application. (4) A Notice of Denial must be issued by the Commission in accordance with ORS 183. Stat.

845-025-5560

Marijuana Handler Course Education and Examination Requirements

- (1) An individual must, prior to applying for a marijuana handler permit, complete an approved marijuana handler education course, pass the required examination, and pay the fee specified in OAR 845-025-1060.
- (2) An individual must score at least 70 percent on the marijuana handler course examination in order to pass.
 - (a) An individual who does not pass the examination may retake the examination up to two times within 90 days of the date the individual took the course. If the individual fails to pass both retake examinations the individual must retake the handler education course.
- (3) An individual must take a marijuana handler education course at least every five years prior to applying for renewal of a marijuana handler permit.
- (4) The Commission may require additional education or training for permit holders at any time, with adequate notice to permit holders.

845-025-5580

Marijuana Handler Renewal Requirements

- (1) An individual must renew his or her marijuana handler permit every five years by submitting a renewal application, on a form prescribed by the Commission and the applicable fee specified in OAR 845-025-1060.
- (2) Renewal applications will be reviewed in accordance with OAR 845-025-5520 and 845-025-5540.

845-025-5590

Suspension or Revocation

- (1) The Commission may suspend or cancel the permit of any marijuana handler if the handler:
 - (a) Has been convicted of a felony, except for a felony described in section 20, chapter 614, Oregon Laws 2015(4)(a);
 - (b) Has violated a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules; or (c) Makes a material false statement to the Commission.
- (2) If an individual's permit is canceled under sections (1)(b) or (c) of this rule the individual may not reapply within two years from the date a final order of revocation is issued.
- (3) A notice of suspension or revocation must be issued by the Commission in accordance with ORS 183.

There are a variety of other operational requirements for recreational marijuana retail operations. These include Bonds and Liability Insurance (HB 3400, Sections 21 and 22); Tracking system for sales (HB 3400, Section 23 and OAR 845-025-7500 thru 845-025-7590); Identification requirements (HB 3400, Section 24); Protect Individuals Under the Age of 21 (HB 3400, Sections 25 - 28); Testing of Marijuana Products (HB 3400, Sections 91- 99 and OAR 845-025-5700 thru 845-025-5740); Labeling and Packaging (HB 3400, Sections 100 – 112 and 845-025-7000 thru 845-025-760); Delivery (OAR 845-025-7700); Advertising (OAR 845-025-8000 thru 845-025-8080); Security and Alarm System (OAR 845-025-1400 thru 845-025-1460); Prizes and Giveaways (HB 3400, Section 49).

Staff therefore proposes the following code amendments for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers:

- Add Recreational Marijuana Laboratories as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Add Recreational Marijuana Research Certificates as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Add Recreational Marijuana Retailers as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H with footnotes for a 1,000 foot buffer from parks and schools, 1,000 foot separation between marijuana retailers and marijuana retailers to marijuana dispensaries, and operating hours limited to the hours between 9 AM and 8 PM.
- Add Recreational Marijuana Wholesalers as a conditional use in C-2 with footnotes allowed indoors only and 1,000 foot buffer from parks and schools.
- Add Recreational Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II with footnote 1,000 foot buffer from parks and schools.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers in the Stream Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers and Retailers in the Civic Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers in the Bypass Interchange Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories and Research Certificates in the Interim Industrial Overlay.
- Prohibits Recreational Marijuana Retailers in the Interim Industrial Overlay.

Attachments 3 through 5 are maps 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.

Retail

- a. Not allow retail as a permitted use in residential districts R-1, R-2, R-3, R- 4, AR, RP, and all residential subdistricts.
- b. Allow retail as a permitted use in all commercial zones except Civic Corridor with a footnote regarding the 1,000 foot buffer from schools and parks as noted on the third map in the packet.

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- c. Not allow retail in industrial districts and subdistricts.
- d. Not allow wholesale or retail in community facilities and institutional.
- e. Change the hours of operation for retail to 9 am to 8 pm.

Wholesale

- a. Allow wholesale as a permitted use in all residential categories including the subdistricts with no product allowed on the premises.
- b. Allow wholesale as a conditional use in C-2 only with a footnote regarding indoor use only and new footnote regarding the 1,000 foot buffer from schools and parks.
- c. Not allow wholesale or retail in community facilities and institutional.
- d. Allow wholesale as a permitted use in all industrial districts and subdistricts, except Airport Industrial, with a footnote regarding the 1,000 foot buffer from schools and parks.
- e. Not allow retail or wholesale in the other subdistricts.

Laboratories and Research Certificates

- a. Allow laboratories and research in all commercial districts and sub-districts, institutional districts, and all industrial districts and sub-districts, except AI. They are not allowed in all other districts, such as residential, community facilities, and other.

G. PLANNING COMMISSION RECOMMENDATION: The Newberg Planning Commission held a public hearing on April 14, 2016, heard public testimony, and approved Resolution 2015-314, which recommends that the City Council:

- Add Recreational Marijuana Laboratories as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Add Recreational Marijuana Research Certificates as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Add Recreational Marijuana Retailers as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H with footnotes for a 1,000 foot buffer from parks and schools, 1,000 foot separation between marijuana retailers and marijuana retailers to marijuana dispensaries, and operating hours limited to the hours between 9 AM and 8 PM.
- Add Recreational Marijuana Wholesalers as a conditional use in C-2 with footnotes allowed indoors only and 1,000 foot buffer from parks and schools.
- Add Recreational Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II with footnote 1,000 foot buffer from parks and schools.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers

in the Stream Corridor Overlay.

- Prohibits Recreational Marijuana Wholesalers and Retailers in the Civic Corridor Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers in the Bypass Interchange Overlay.
- Prohibits Recreational Marijuana Wholesalers, Laboratories and Research Certificates in the Interim Industrial Overlay.
- Prohibits Recreational Marijuana Retailers in the Interim Industrial Overlay.

The Planning Commission modified the recommendation from the Subcommittee by removing wholesalers as a permitted use in residential districts and subdistricts based on the Oregon Liquor Control Commission definition of a premises and understanding that licenses will not be issued where it is a primary residence. They also added a requirement for a 1,000 separation between retail marijuana businesses and a 1,000 foot separation between retail marijuana businesses and medical marijuana dispensaries.

FISCAL IMPACT: The fiscal impact of allowing recreational marijuana wholesalers, laboratories, research certificates and retailers is unknown at this time, but it is anticipated the State would provide State shared revenue from taxes collected to the City.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): Recreational Marijuana wholesalers, laboratories, research certificates and retailers are legal activities under state law, and the city wishes to allow businesses the opportunity to operate in the city. Zoning restrictions on the uses are appropriate to address potential adverse impacts on adjacent uses.

ATTACHMENTS:

Ordinance 2016-2801 with

Exhibit "A": Proposed Development Code Text Amendment

Exhibit "B": Findings

1. City Council Resolution 2015-3253
2. Public Comments
3. 1,000 foot Schools Buffer Map
4. 1,000 foot Parks Buffer Map
5. 1,000 foot Schools/Parks Buffer Map
6. Planning Commission Resolution No. 2016-314



ORDINANCE No. 2016-2801

**AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE
REGARDING RECREATIONAL MARIJUANA WHOLESALERS,
LABORATORIES. RESEARCH CERTIFICATES PRODUCERS AND
RETAILERS; AND DECLARING AN EMERGENCY**

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.
4. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana wholesalers, laboratories, research certificates and retailers on February 1, 2016, under City Council Resolution 2015-3253.
5. The Marijuana Subcommittee met on February 4, 2016 and developed recommendations to the Planning Commission on recreational marijuana wholesalers, laboratories, research certificates and retailers.
6. After proper notice, the Newberg Planning Commission held a hearing on April 14, 2016 to consider the amendment for recreational marijuana wholesalers, laboratories, research certificates and retailers. The Commission considered testimony, deliberated, and found that adding regulations for recreational marijuana wholesalers, laboratories, research certificates and retailers would be in the best interests of the city. The Planning Commission approved Resolution 2016-314, which recommends that the City Council adopt the proposed amendments to the Newberg Development Code.
7. After proper notice, the Newberg City Council held a hearing on May 16, 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 recreational marijuana wholesalers, laboratories, research certificates and retailers would be in the best interests of the city. The Council adopts

Exhibit B 2016-0516

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.
3. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect immediately upon passage by the council and signature of the mayor.

➤ **EFFECTIVE DATE** of this ordinance is of this ordinance is May 17, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of May, 2016, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this _____ day of _____, 2016.

Bob Andrews, Mayor

**Exhibit “A” to Ordinance 2016-2801
Development Code Amendments –File DCA-16-001
Recreational Marijuana Wholesalers,
Laboratories, Research Certificates and
Retailers**

Section 1. The Newberg Development Code 15.05.030 shall be amended to read as follows:

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

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:

“Marijuana Laboratory” means a laboratory certified by the Oregon Health Authority under ORS 438.605 to 438.620 and authorized to test marijuana items for purposes specified in these rules.

“Marijuana Retailer” means a marijuana retailer licensed by the Oregon Liquor Control Commission.

“Marijuana Wholesaler” means a marijuana wholesaler licensed by the Oregon Liquor Control Commission.

Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:

See Exhibit A, Attachment 1

Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:

See Exhibit A, Attachment 2

Section 4. 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:

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- 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 5. 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.

Section 6. 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.

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 7. 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.

Section 8. 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.

**Exhibit “B” to Ordinance 2016-2801
Findings –File DCA-16-001
Recreational Marijuana Wholesalers,
Laboratories, Research Certificates and Retailers**

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 February 1, 2016. The Marijuana Subcommittee meet on February 4, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers. The Planning Commission, after proper notice, held a public hearing on April 14, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on May 16, 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.

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 Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers 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 February 1, 2016. The Marijuana Subcommittee meet on February 4, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Wholesalers, Laboratories, Research Certificates and Retailers. The Planning Commission, after proper notice, held a public hearing on April 14, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on May 16, 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 Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers 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. A Recreational Marijuana Wholesale, Laboratory, Research Certificate and Retail operations are a legal operation under State law. Allowing Recreational Marijuana Wholesale, Laboratory, Research Certificate and Retail operations as a 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.

Exhibit A, Attachment 1

**Chapter
15.305
ZONING
USE**

15.305.020 Zoning use table - Use Districts.

Newberg Development Code – Zoning Use Table

#	Use	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
100	AGRICULTURAL USES																			
Def.	Horticulture	P	P	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	
Def.	Livestock and poultry farming	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Def.	Home gardening	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Home livestock and poultry raising	S	S															S		NMC Title 6
200	RESIDENTIAL USES																			
Def.	Dwelling, single-family detached	P(2)	P	P(3)		P		C(4)	C(5)								P	P(6)		Subject to density limits of NMC15.405.010(B).
Def.	Dwelling, single-family attached	S(2)	S	S(3)		S		C(4)	C(5)								P	P(6)		NMC15.415.050; subject to density limits of NMC15.405.010(B)
Def.	Manufactured home on individual lot	S(2)	S	S(3)	P(7)	S												P(6)		NMC15.445.050 –15.445.070; subject to density limits of NMC15.405.010(B)
Def.	Manufactured dwelling park		S	S	S															NMC15.445.075 –15.445.160
Def.	Mobile home park		S	S	S															NMC15.445.075 –15.445.160
Def.	Manufactured home subdivision		S		S															NMC15.445.075 –15.445.160
Def.	Dwelling, two-family (duplex)	P(2)	P	P	C	P		C(4)	P(8)/C(5)								P			Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, multifamily	C	P	P	C	P		C(4)	P(8)/C(5)								P			Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, accessory	C	S	S		S											S			Chapter 15.445 NMC, Article V
Def.	Dwelling, mixed use						P(9)	P(10)	P(8)/C(5)	P(11)	C	C								
Def.	Dwelling, caretaker										P	P	P	C					P(12)	Limited to one per lot, and allowed whenever the use requires the on-site residence of such person.
Def.	Dormitory		C	P		P											P			
Def.	Home occupation(no more than one outside paid employee)	S	S	S(13)	S	S	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S	S	S(13)	NMC15.415.060
Def.	Home occupation(more than one outside paid employee)	C	C	C(13)	C	C	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C	C	C(13)	NMC15.415.060
300	INSTITUTIONAL AND PUBLIC USES																			
310	INSTITUTIONAL CARE AND HOUSING																			
Def.	Family child care home	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		Chapter 657A ORS
312	Day care	P	P	P	C	P	P	P	P		C	C	C	C	P		P		P(14)	Chapter 657A ORS
Def.	Residential care home (5 or fewer people)	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		ORS 197.665
Def.	Residential care facility (6 – 15 people)	C	P	P	C	P		C	C								P			ORS 197.665
315	Group care facility(16+ people)	C	C	C		C		C									P			
316	Hospital	C	C	C		C		P	P								P			
Def.	Prison										C	C	C	C						
320	ASSEMBLY																			
321	Religious institution, place of worship	P	P	P	P	P	P	P	P	P		P(29)				C	P			
322	Private club, lodge, meeting hall			C	C			P	P	C							P			
330	SCHOOLS																			

Exhibit B 2016-0516

330	School, primary or secondary	P	P	P		P										C				
331	College	P	P	P		P	P	P	P(15)							C	P			
332	Commercial educational services	C	C	C		C	P	P	P								C			
340	PARKS AND OPEN SPACES																			
341	Open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
342	Park	P	P	P	P	P	P	P	P	P				P(16)		P(17)	P			
Def.	Golf course	P	P	P												P(17)				
350	PUBLIC SERVICES																			
351	Community services	C	C	C	C	P		P	P	P						C	P			
352	Emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Pound, dog or cat							C	C		C	P	P	C	C					
Def.	Cemetery	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	Chapter 97.46ORS
360	TRANSPORTATION																			
Def.	Transportation facilities and improvements	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Transit center							P	P	P	P	P	P							
Def.	Parking facility			P		C	C	P	P(18)	C	P	P	P		P		P			
Def.	Airport, landing field											C	C						P	
Def.	Heliport, helipad	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	
Def.	Marina									C										
	Pilings, piers, docks, and similar in-water structures									C										
370	UTILITIES																			
Def.	Basic utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Utility distribution plant or yard											P	P	P						
Def.	Wastewater treatment plant											C	P	C						
Def.	Telecommunication facility incorporated into existing structure/utility pole and no taller than 18 feet above existing structure/utility pole	C	C	C	C	C	S	S	S	S	S	S	S	S	S		S			Chapter 15.445 NMC, Article IV
Def.	Telecommunication facility, including radio towers and transmitters, which are 100 feet or less in height, except those incorporated into an existing structure no taller than 18 feet above that structure.						C	C	C		C	S(19)	S(19)	P	C		C			Chapter 15.445 NMC, Article IV
Def.	Telecommunication facility, including radio towers and transmitters, which are over 100 feet						C	C	C		C	C	C	C	C		C			Chapter 15.445 NMC, Article IV
400	COMMERCIAL USES																			
410	COMMERCIAL OFFICES																			
411	Medical office			C		P	P(20)	P	P(21)								P			
412	Local business office					P(22)	P(20)	P	P(21)											
420	COMMERCIAL SALES AND RENTALS																			
421	Retail sales – General						P(20)	P	P(15)(21)	P		P(23)								
422	Retail sales – Bulk outdoor							P	C			P								
423	Retail sales – Convenience						P(20)	P	P(21)	P		P(24)			P(25)					
Def.	Temporary merchant							S	S(21)											NMC 5.15.050 et seq.
	Medical marijuana dispensary							P(35)	P(35)											
425	Retail food and beverage production							S	S											Chapter 15.445 NMC, Article VIII
430	EATING AND DRINKING ESTABLISHMENTS																			
430	Eating and drinking – Alcohol-related							P	P(21)	P										Requires liquor license
430	Eating and drinking – Non-alcohol-related						P(20)	P	P(21)	P	P	P							C(26)	
440	COMMERCIAL SERVICES																			
441	Personal services					P	P(20)	P	P(21)	P										
442	Commercial services						P(20)	P	P(21)											
443	Commercial vehicle service							P	C		P(27)	P			P(28)					
Def.	Kennel, commercial							C	C		C	P	P	C	C					
450	COMMERCIAL RECREATION																			

451	Commercial recreation – Indoors							P	P(15)		P(29)	P(29)								
452	Commercial recreation – Outdoors							P				C								
453	Commercial recreation – Motor-vehicle-related											C							C(33)	
460	COMMERCIAL LODGING																			
Def.	Vacation rental home	C	C	S	S	S	S(13)	S(13)	S(13)	S(13)										Chapter15.445 NMC, Article VII
Def.	Bed and breakfast(2 or fewer rooms)	C	S	S		S	S	S	S	S										NMC15.445.010
Def.	Bed and breakfast(3 or more rooms)	C	C	C		C	C	S	S	S										NMC15.445.010
Def.	Hotel or motel							P	P(15)	P									C(26)	
Def.	Recreational vehicle park							C		C	C	C	C							NMC15.445.170
500	INDUSTRIAL USES																			
501	Traded sector industry office					P(30)	P(30)	P	P		P	P		P					P(33)	
502	Industrial services							C				P	P	P					P(33)	
503	Wholesale and industry sales							C(31)			P(31)	P	P	P					P(33)	
504	Warehouse, storage, and distribution										P(32)	P	P	P					P(33)	
505	Self-service storage							P			P	P	P	P						
506	Light manufacturing										P	P	P	P					P(33)	
507	Heavy manufacturing											P(34)	P	C						
508	Waste-related												C	C						
600	MISCELLANEOUS USES																			
Def.	Accessory building and use incidental to other permitted uses in the zone	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to permitted uses in the zone and not defined or categorized	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to conditional uses in the zone and not defined or categorized	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
	Medical Marijuana Processor										P	P	P	P						
	Medical Marijuana Grow Site	P(36)	P(36)	P(36)	C	C	C	C	C	C	C	C	C	C	C	C	C	C		
	Recreational Marijuana Processor	X	X	X	X	X	X	C(38)	X	X	P(37)	P(37)	P(37)	P(37)	X	X	X	X	X	
	Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	C	C	C	C	X	X	X	X	X	
	Recreational Marijuana Retailer	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P(38)/(39)/(40)</u>	<u>P(38)/(39)/(40)</u>	<u>P(38)/(39)/(40)</u>	<u>P(38)/(39)/(40)</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
	Recreational Marijuana Wholesaler	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>C(31)/(38)</u>	<u>X</u>	<u>X</u>	<u>P(38)</u>	<u>P(38)</u>	<u>P(38)</u>	<u>P(38)</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P(38)</u>	<u>X</u>	
	Recreational Marijuana Laboratories	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>P</u>	<u>X</u>	<u>X</u>	
	Recreational Marijuana Research Certificate	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>P</u>	<u>X</u>	<u>X</u>	

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.

- (1) Limited to sites with preexisting agricultural uses, including at time of annexation.
- (2) Limited to one per **lot** as a permitted **use**. More than one per **lot** allowed only through a **conditional use permit** or planned unit development, subject to density limits of NMC 15.405.010(B).
- (3) Permitted on individual **lots** created prior to November 17, 1992. Homes on individual **lots** created on or after November 17, 1992, will only be permitted through the planned unit development process.
- (4) The permitted density shall be stated on the conditional use permit.
- (5) The **dwelling units** must front onto Hancock or Second **Street**. No more than 30 percent of a single **street** frontage of a **block** may be occupied by residential **uses**. Contiguous residential **street** frontage must be less than 60 lineal feet. Density and parking standards for allowable **dwelling units** must be met.
- (6) One residence per **lot** with the addition of a tie-down or **hangar** for an airplane. At a minimum, a paved tie-down or **hangar** shall be provided on the property, or the property shall include permanent rights to a private **hangar** within the **subdivision**. See Chapter 15.336 NMC.
- (7) The homes are not subject to the development standards set forth in NMC 15.445.050 through 15.445.070.
- (8) The units must be located on the same **lots** as another **use** permitted or conditionally permitted in the C-3 zone and may not occupy the first floor storefront area (the portion of the **building** closest to the primary **street**). There shall be no density limitation. **Private parking areas** or garages are not required for **dwelling units** located within **buildings** in existence prior to and including June 30, 1999. Parking shall be provided for all new **dwelling units** within any **building** constructed after June 30, 1999, in **private parking areas** or garages on the basis of one **parking space** for each **dwelling unit**.

- (9) Permitted on the ground floor, one per **lot** in conjunction with any other **use** permitted or conditional **use** in the C-1 zone. On upper floors, **dwelling units** are unlimited and one **parking space** per **dwelling unit** is required.
- (10) Permitted above any permitted **use** in the C-2 zone. There shall be no density limitation. Parking shall be provided in **private parking areas** or garages on the basis of one **parking space** for each **dwelling unit**.
- (11) Must be located above ground floor commercial uses.
- (12) One residence of area not more than 40 percent of the area of the **hangar** floor, up to a maximum of 1,500 square feet, for an **airport** caretaker or security officer on each separate **parcel**.
- (13) Permitted in existing **dwelling units** only. New **dwelling units** may not be created for this **use** unless the **dwelling unit** would otherwise be allowed.
- (14) Allowed exclusively for employers or employees of businesses located within this district.
- (15) Facility over 40,000 square feet **gross floor area** requires a **conditional use permit**.
- (16) Allowed in areas designated in industrial area plans.
- (17) Limited to facilities owned or operated by a public agency.
- (18) Parking garages are a conditional **use**, and must have first floor **street** frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
- (19) A **conditional use permit** is required if the facility is less than 2,000 feet from the nearest **telecommunication facility**.
- (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.
- (22) Retail sales of goods on site not allowed.
- (23) Limited to secondhand stores.
- (24) Store size is limited to 2,000 square feet gross floor area.
- (25) Store size is limited to 5,000 square feet gross floor area.
- (26) **Use** must demonstrate that it is compatible with **airport** operations.
- (27) Limited to service stations.
- (28) Limited to card lock fueling only. Retail services are limited to self-vending services.
- (29) Permitted provided the **structure** is designed for easy conversion to industrial **use**, including not having fixed seating.
- (30) Limited to 10,000 square feet maximum floor area.
- (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.
- (34) Limited to expansion or change of existing heavy manufacturing uses.
- (35) Shall not be located at the same address as a state-registered marijuana grow site, or within 1,000 feet of the real property comprising a public park, 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). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a dispensary. The premises consist of the dispensary building, or the portion of the building used for a dispensary. Shall not be located within 1,000 feet of another medical marijuana dispensary. Operating hours are limited to the hours between 9:00 a.m. and 8:00 p.m.
- (36) Allows up to 12 mature plants; indoor operations only.
- (37) Indoor use only.
- (38) The use is not allowed within 1,000 feet of the real property comprising a public park, 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). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a recreational processor, wholesaler or retailer.
- (39) 1,000 foot separation between retailer to retailer premises and 1,000 foot separation between retailer to dispensary premises.
- (40) Operating hours limited to the hours between 9:00 a.m. and 8:00 p.m.

1 Code reviser's note: Section 25 of Ordinance 2763 provides:

SECTION 25: Grace period for previously permitted or conditional uses. Where an **applicant** demonstrates that a particular **use** was a permitted or conditional **use** on a specific property immediately prior to adoption of this ordinance, but that the **use** is no longer either a permitted or conditional **use** on that property due to this ordinance, the **applicant** may establish the **use** as either a permitted or conditional **use**, as provided in the prior **code**, provided the **use** is legally commenced prior to January 1, 2018.

600	MISCELLANEOUS USES	R-1/PD	R-1/0.1	R-1/0.4	R-1/6.6	R-1/SP	R-2/PD	R-2/SP	SD/LDR	SD/MMR	R-3/PD	RP/SP	RP/LU	AO	ARO	C-1/SP	C-2/LU	C-2/PD	C-2/SP	C-3/LU	SD/V	SD/NC	SD/H	CC	CF/RF	RF	IO	M-1/SP	SD/E	FHO	II	AIO	H	SC	BI
	Medical Marijuana Processor																										P	P							
	Medical Marijuana Grow Site	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
	Recreational Marijuana Processor	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	X	X	X	X
	Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	X	P	X	X	X	X	
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	C	C	X	C	X	X	X	X	
	<u>Recreational Marijuana Retailer</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P(1)/(2)/(3)</u>	<u>P(1)/(2)/(3)</u>	<u>P(1)/(2)/(3)</u>	<u>P(1)/(2)/(3)</u>	<u>P(1)/(2)/(3)</u>	<u>P(1)/(2)/(3)</u>	<u>P(1)/(2)/(3)</u>	<u>P(1)/(2)/(3)</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
	<u>Recreational Marijuana Wholesaler</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P(1)</u>	<u>P(1)</u>	<u>X</u>	<u>P(1)</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
	<u>Recreational Marijuana Laboratories</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	
	<u>Recreational Marijuana Research Certificate</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	

(#): See notes for limitations

(3) Operating hours limited to the hours between 9:00 a.m. and 8:00 p.m.

RESOLUTION No. 2016-3253

**A RESOLUTION INITIATING AN AMENDMENT TO THE NEWBERG
MUNICIPAL CODE, TITLE 15 DEVELOPMENT CODE FOR PLACE, TIME
AND MANNER REGULATIONS FOR RECREATIONAL MARIJUANA
WHOLESALEERS, LABORATORIES, RESEARCH CERTIFICATES AND
RETAILERS**

RECITALS:

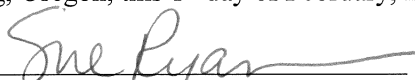
1. The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program.
2. On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At its Business Session on September 8th the City Council established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews.
3. The Subcommittee held its third meeting on January 12, 2016. A proposed timeline was included in their packet of material to address recreational marijuana place, time and manner for recreational wholesalers, laboratories, research certificates and retailers. The Oregon Liquor Control Commission has indicated they will start issuing licenses for retailers in the 3rd Quarter of 2016.
4. The Subcommittee subsequently passed a motion 3-0 directing staff to create a Request for Council Action to initiate the Development Code amendment process for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers to bring forward for Council consideration on February 1, 2016.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

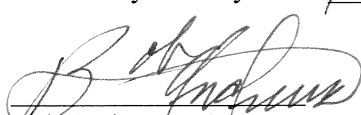
1. The City Council initiates an amendment to the Newberg Municipal Code, Title 15 Development Code for Place, Time and Manner Regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers. This starts the public process to study the proposed amendments.
2. By initiating this amendment, the council does not commit to taking any specific action on the proposal. It only wishes to give the amendment full consideration in a public hearing.



EFFECTIVE DATE of this resolution is the day after the adoption date, which is: February 2, 2016
ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of February, 2016.


Sue Ryan, City Recorder

ATTEST by the Mayor this 4th day of February, 2016.


Bob Andrews, Mayor

Doug Rux

From: Sue Ryan
Sent: Tuesday, January 19, 2016 11:33 AM
To: Doug Rux
Subject: FW: Recreational sales

Please advise
sue

From: Steve Rhodes
Sent: Tuesday, January 19, 2016 11:29 AM
To: Sue Ryan
Subject: Re: Recreational sales

Check with Doug.

Sent from my iPad

On Jan 19, 2016, at 10:38 AM, Sue Ryan <Sue.Ryan@newbergoregon.gov> wrote:

Do you want me to forward this to Council ?
Sue

Sue Ryan
City Recorder
City of Newberg
cityrecorder@newbergoregon.gov
(503) 537-1283

OREGON PUBLIC RECORD

Messages to and from this email address may be subject to the Oregon Public Records Law.

From: Leif Patterson [<mailto:leifer956@gmail.com>]
Sent: Monday, January 18, 2016 5:18 PM
To: Sue Ryan
Subject: Recreational sales

Hello, as a Newberg resident I feel compelled to offer my two cents that we should allow recreational marijuana sales. Most of the neighboring towns are benefiting from this program and the tax revenue it generates. Currently, I drive into Portland a few times a week to purchase products there. I spend money on food, gas etc that would all be spent in Newberg if rec sales were allowed. Lets stop sending revenue elsewhere and start keeping it here for our schools, roads and other public services.

Thanks for your time,
Leif

Canna Bros. Dispensary

2316 E Portland Rd Unit C-2 • Newberg, OR 97132 • Phone: (503)487-6184
E-Mail: oregoncannabros@gmail.com

Date: 04.14.2016

Dear Members of the Newberg Planning Commission,

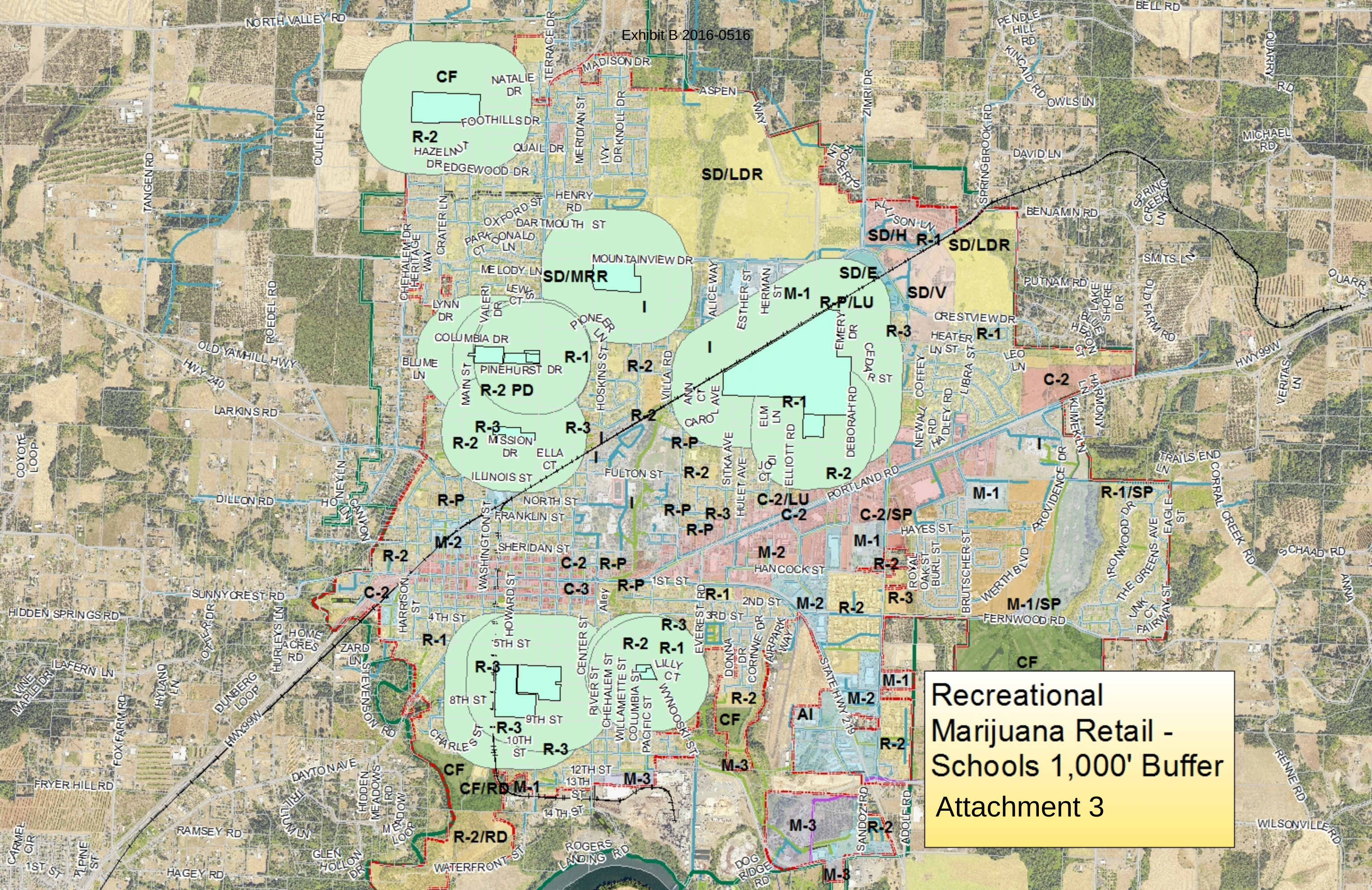
I would like to bring to your attention the strong reasoning to follow the direction of many Oregon cities in opting to require a 1000' buffer between medical marijuana dispensaries and recreation marijuana stores locations. For example the City of Portland is requiring such a 1000' buffer, and giving existing dispensaries a grandfathered in right for priority over new recreational stores, since the vast majority will all become OLCC stores by 2017.

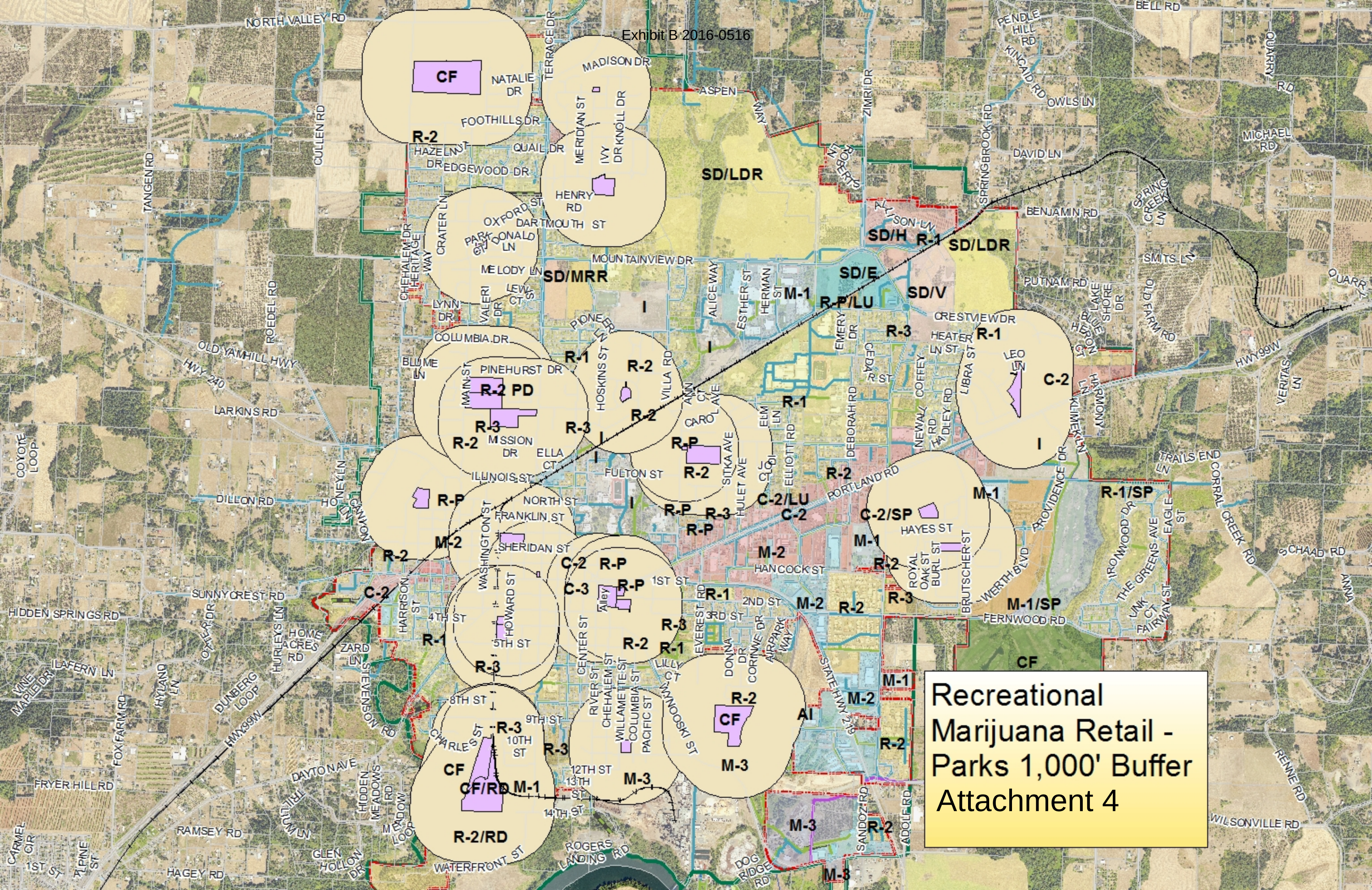
The reason pot friendly Portland has created additional regulations comes down to the continuing influx of investors from across the country wishing to profit on the "green rush." Portland has allowed dispensaries for some time now, going from 68 locations in late 2014 to an incredible 164 locations currently, according to the OHA online directory. The result is many of Portland's commercial corridors are now "green" light districts. Without the extra limiting factor of a 1000' buffer between OLCC stores, Portland neighborhoods would become even more inundated with this over-saturated abundance of marijuana businesses serving the 21 & over adult market. This would displace family friendly businesses (cafes, bookstores, restaurants, etc) to the point where it has a negative impact on the livability and quality of neighborhoods. With Portland requiring a 1000' buffer, locations are becoming scarce, prospective storeowners are looking elsewhere. It is fair to say without additional limiting factors like Portland, the 3-miles of 99 W through Newberg could be a strip of green crosses and pot leafs. As a comparison, the 3-mile stretch of Barbur Blvd coming in SW Portland has 6 marijuana dispensaries. This has occurred with a 1000' buffer, imagine without a buffer!

How many marijuana dispensaries and marijuana stores do the citizens of Newberg really need or want? Access should be fair and legal for marijuana, similar to liquor, lotto, etc. However, this must be balanced with the over all needs of the community. Thus Newberg should error on the side of caution and enact a 1000' buffer between retail locations, so the citizens are not bombarded by marijuana for sale on every block and the number of marijuana stores isn't a blight on the city. It would be easier to relax the rules in the future if necessary then to retroactively reduce the number of marijuana retailers. As an analogy, I appreciate there being a liquor store in the city for the convenience, but I would not want to live with my family in a city that allowed a liquor store on every corner.

Sincerely,

Lester Brock
Owner





Recreational
Marijuana Retail -
Parks 1,000' Buffer
Attachment 4

Exhibit B 2016-0516
Attachment 6



PLANNING COMMISSION RESOLUTION 2016-314

**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL AMEND THE
NEWBERG DEVELOPMENT CODE REGARDING RECREATIONAL MARIJUANA
WHOLESALEERS, LABORATORIES, RESEARCH CERTIFICATES AND RETAILERS**

RECITALS

1. In November 2014 voters in Oregon approved Ballot Measure 91 related to recreational marijuana.
2. House Bill (HB) 3400 was passed in the 2015 Oregon Legislative session related to recreational marijuana and is now part of Oregon Revised Statutes Chapter 475B – Cannabis Regulation.
3. 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.
4. 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.
5. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana wholesalers, laboratories, research certificates and retailers on February 1, 2016 by Resolution No. 2015-3253.
6. The Marijuana Subcommittee met on February 4, 2016 and developed recommendations to the Planning Commission on recreational marijuana wholesalers, laboratories, research certificates and retailers.
7. After proper notice, the Newberg Planning Commission held a hearing on April 14, 2016 to consider the amendment. The Commission considered testimony and deliberated.

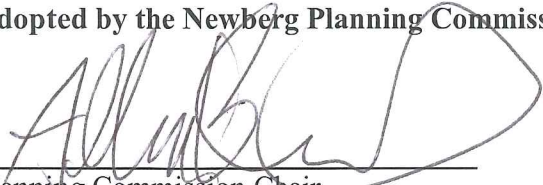
The Newberg Planning Commission resolves as follows:

1. The Commission finds that adding regulations for recreational marijuana wholesalers, laboratories, research certificates and retailers, and adding definitions for recreational marijuana wholesalers, laboratories and retailers, would be in the best interests of the city and recommends that the City Council adopt 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.

"Working Together For A Better Community-Serious About Service"

Z:\MISC\WP5\FILES\FILES.DCA\2016\DCA-16-001 Marijuana Wholesal-Labs-Certificates-Retail\PC 4-14-16\DCA-16-001 Recreational Marijuana Wholesale-Labs-Certificates-Retail PC staff report.docx.doc

Adopted by the Newberg Planning Commission this 14th day of April, 2016.



Planning Commission Chair

ATTEST: 



Planning Commission Secretary

List of Exhibits:

- Exhibit "A": Development Code Text Amendments
- Exhibit "B": Findings

**Exhibit “A” to Planning Commission Resolution 2016-314
Development Code Amendments –File DCA-16-001
Recreational Marijuana Wholesalers, Laboratories, Research Certificates and
Retailers**

Section 1. The Newberg Development Code 15.05.030 shall be amended to read as follows:

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

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:

“Marijuana Laboratory” means a laboratory certified by the Oregon Health Authority under ORS 438.605 to 438.620 and authorized to test marijuana items for purposes specified in these rules.

“Marijuana Retailer” means a marijuana retailer licensed by the Oregon Liquor Control Commission.

“Marijuana Wholesaler” means a marijuana wholesaler licensed by the Oregon Liquor Control Commission.

Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:

See Exhibit A, Attachment 1

Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:

See Exhibit A, Attachment 2

“Working Together For A Better Community-Serious About Service”

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Section 4. 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 5. 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.**

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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.

Section 6. 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.

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 7. 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.

Section 8. 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.

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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.

Exhibit "B" to Planning Commission Resolution 2016-314

Findings –File DCA-16-001
Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers

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 February 1, 2016. The Marijuana Subcommittee met on February 4, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers. The Planning Commission, after proper notice, held a public hearing on April 14, 2016. The City Council will consider the recommendation of the Planning Commission at a future public hearing date, and decide whether or not to adopt the development code amendment. 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 Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers 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 February 1, 2016. The Marijuana Subcommittee met on February 4, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Wholesalers, Laboratories, Research Certificates and Retailers. The Planning Commission, after proper notice, held a public hearing on April 14, 2016. The City Council will consider the recommendation of the Planning Commission at a future public hearing date, and decide 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.

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Finding: The Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers 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. A Recreational Marijuana Wholesale, Laboratory, Research Certificate and Retail operations are a legal operation under State law. Allowing Recreational Marijuana Wholesale, Laboratory, Research Certificate and Retail operations as a 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.

**Chapter
15.305
ZONING
USE**

15.305.020 Zoning use table - Use Districts.

Newberg Development Code – Zoning Use Table

[illegible]

Exhibit B 2016-0516

330	School, primary or secondary	P	P	P		P										C			
331	College	P	P	P		P	P	P	P(15)							C	P		
332	Commercial educational services	C	C	C		C	P	P	P							C			
340	PARKS AND OPEN SPACE																		
341	Open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
342	Park	P	P	P	P	P	P	P	P					P(16)		P(17)	P		
Def.	Golf course	P	P	P												P(17)			
350	PUBLIC SERVICES																		
351	Community services	C	C	C	C	P		P	P	P						C	P		
352	Emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Pound, dog or cat							C	C		C	P	P	C	C				
Def.	Cemetery	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	Chapter 97.46ORS
360	TRANSPORTATION																		
Def.	Transportation facilities and improvements	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Transit center							P	P	P	P	P	P						
Def.	Parking facility			P		C	C	P	P(18)	C	P	P	P		P		P		
Def.	Airport, landing field											C	C					P	
Def.	Heliport, helipad	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
Def.	Marina									C									
	Pilings, piers, docks, and similar in-water structures									C									
370	UTILITIES																		
Def.	Basic utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Utility distribution plant or yard											P	P	P					
Def.	Wastewater treatment plant											C	P	C					
Def.	Telecommunication facility incorporated into existing structure/utility pole and no taller than 18 feet above existing structure/utility pole	C	C	C	C	C	S	S	S	S	S	S	S	S	S		S		Chapter 15.445 NMC, Article IV
Def.	Telecommunication facility, including radio towers and transmitters, which are 100 feet or less in height, except those incorporated into an existing structure no taller than 18 feet above that structure.						C	C	C		C	S(19)	S(19)	P	C		C		Chapter 15.445 NMC, Article IV
Def.	Telecommunication facility, including radio towers and transmitters, which are over 100 feet						C	C	C		C	C	C	C	C		C		Chapter 15.445 NMC, Article IV
400	COMMERCIAL USES																		
410	COMMERCIAL OFFICES																		
411	Medical office			C		P	P(20)	P	P(21)							P			
412	Local business office					P(22)	P(20)	P	P(21)										
420	COMMERCIAL SALES AND RENTALS																		
421	Retail sales – General						P(20)	P	P(15)(21)	P		P(23)							
422	Retail sales – Bulk outdoor							P	C			P							
423	Retail sales – Convenience						P(20)	P	P(21)	P		P(24)			P(25)				
Def.	Temporary merchant							S	S(21)										NMC 5.15.050 et seq.
	Medical marijuana dispensary							P(35)	P(35)										
425	Retail food and beverage production							S	S										Chapter 15.445 NMC, Article VIII
430	EATING AND DRINKING ESTABLISHMENTS																		
430	Eating and drinking – Alcohol-related							P	P(21)	P									Requires liquor license
430	Eating and drinking – Non-alcohol-related						P(20)	P	P(21)	P	P	P						C(26)	
440	COMMERCIAL SERVICES																		
441	Personal services					P	P(20)	P	P(21)	P									
442	Commercial services						P(20)	P	P(21)										
443	Commercial vehicle service							P	C		P(27)	P			P(28)				
Def.	Kennel, commercial							C	C		C	P	P	C	C				
450	COMMERCIAL RECREATION																		

Exhibit B 2016-0516

451	Commercial recreation – Indoors							P	P(15)		P(29)	P(29)								
452	Commercial recreation – Outdoors							P				C								
453	Commercial recreation – Motor-vehicle-related											C							C(33)	
460	COMMERCIAL LODGING																			
Def.	Vacation rental home	C	C	S	S	S	S(13)	S(13)	S(13)	S(13)										Chapter 15.445 NMC, Article VII
Def.	Bed and breakfast (2 or fewer rooms)	C	S	S		S	S	S	S	S										NMC 15.445.010
Def.	Bed and breakfast (3 or more rooms)	C	C	C		C	C	S	S	S										NMC 15.445.010
Def.	Hotel or motel							P	P(15)	P									C(26)	
Def.	Recreational vehicle park							C		C	C	C	C							NMC 15.445.170
500	INDUSTRIAL USES																			
501	Traded sector industry office					P(30)	P(30)	P	P		P	P		P					P(33)	
502	Industrial services							C				P	P	P					P(33)	
503	Wholesale and industry sales							C(31)			P(31)	P	P	P					P(33)	
504	Warehouse, storage, and distribution										P(32)	P	P	P					P(33)	
505	Self-service storage							P			P	P	P	P						
506	Light manufacturing										P	P	P	P					P(33)	
507	Heavy manufacturing											P(34)	P	C						
508	Waste-related												C	C						
600	MISCELLANEOUS USES																			
Def.	Accessory building and use incidental to other permitted uses in the zone	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to permitted uses in the zone and not defined or categorized	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to conditional uses in the zone and not defined or categorized	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
	Medical Marijuana Processor										P	P	P	P						
	Medical Marijuana Grow Site	P(36)	P(36)	P(36)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
	Recreational Marijuana Processor	X	X	X	X	X	X	C(38)	X	X	P(37)	P(37)	P(37)	P(37)	X	X	X	X	X	
	Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	C	C	C	C	X	X	X	X	X	
	Recreational Marijuana Retailer	X	X	X	X	X	X	P(38)/(39)/(40)	P(38)/(39)/(40)	P(38)/(39)/(40)	P(38)/(39)/(40)	X	X	X	X	X	X	X	X	
	Recreational Marijuana Wholesaler	X	X	X	X	X	X	C(31)/(38)	X	X	P(38)	P(38)	P(38)	P(38)	X	X	X	X	P(38)	X
	Recreational Marijuana Laboratories	X	X	X	X	X	P	P	P	P	P	P	P	P	P	X	P	X	X	
	Recreational Marijuana Research Certificate	X	X	X	X	X	P	P	P	P	P	P	P	P	P	X	P	X	X	

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.

(1) Limited to sites with preexisting agricultural uses, including at time of annexation.

(2) Limited to one per lot as a permitted use. More than one per lot allowed only through a conditional use permit or planned unit development, subject to density limits of NMC 15.405.010(B).

(3) Permitted on individual lots created prior to November 17, 1992. Homes on individual lots created on or after November 17, 1992, will only be permitted through the planned unit development process.

(4) The permitted density shall be stated on the conditional use permit.

(5) The dwelling units must front onto Hancock or Second Street. No more than 30 percent of a single street frontage of a block may be occupied by residential uses. Contiguous residential street frontage must be less than 60 lineal feet. Density and parking standards for allowable dwelling units must be met.

(6) One residence per lot with the addition of a tie-down or hangar for an airplane. At a minimum, a paved tie-down or hangar shall be provided on the property, or the property shall include permanent rights to a private hangar within the subdivision. See Chapter 15.336 NMC.

(7) The homes are not subject to the development standards set forth in NMC 15.445.050 through 15.445.070.

(8) The units must be located on the same lots as another use permitted or conditionally permitted in the C-3 zone and may not occupy the first floor storefront area (the portion of the building closest to the primary street). There shall be no density limitation. Private parking areas or garages are not required for dwelling units located within buildings in existence prior to and including June 30, 1999. Parking shall be provided for all new dwelling units within any building constructed after June 30, 1999, in private parking areas or garages on the basis of one parking space for each dwelling unit.

Exhibit B 2016-0516

- (9) Permitted on the ground floor, one per lot in conjunction with any other use permitted or conditional use in the C-1 zone. On upper floors, dwelling units are unlimited and one parking space per dwelling unit is required.
- (10) Permitted above any permitted use in the C-2 zone. There shall be no density limitation. Parking shall be provided in private parking areas or garages on the basis of one parking space for each dwelling unit.
- (11) Must be located above ground floor commercial uses.
- (12) One residence of area not more than 40 percent of the area of the hangar floor, up to a maximum of 1,500 square feet, for an airport caretaker or security officer on each separate parcel.
- (13) Permitted in existing dwelling units only. New dwelling units may not be created for this use unless the dwelling unit would otherwise be allowed.
- (14) Allowed exclusively for employers or employees of businesses located within this district.
- (15) Facility over 40,000 square feet gross floor area requires a conditional use permit.
- (16) Allowed in areas designated in industrial area plans.
- (17) Limited to facilities owned or operated by a public agency.
- (18) Parking garages are a conditional use, and must have first floor street frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
- (19) A conditional use permit is required if the facility is less than 2,000 feet from the nearest telecommunication facility.
- (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.
- (22) Retail sales of goods on site not allowed.
- (23) Limited to secondhand stores.
- (24) Store size is limited to 2,000 square feet gross floor area.
- (25) Store size is limited to 5,000 square feet gross floor area.
- (26) Use must demonstrate that it is compatible with airport operations.
- (27) Limited to service stations.
- (28) Limited to card lock fueling only. Retail services are limited to self-vending services.
- (29) Permitted provided the structure is designed for easy conversion to industrial use, including not having fixed seating.
- (30) Limited to 10,000 square feet maximum floor area.
- (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.
- (34) Limited to expansion or change of existing heavy manufacturing uses.
- (35) Shall not be located at the same address as a state-registered marijuana grow site, or within 1,000 feet of the real property comprising a public park, 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). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a dispensary. The premises consist of the dispensary building, or the portion of the building used for a dispensary. Shall not be located within 1,000 feet of another medical marijuana dispensary. Operating hours are limited to the hours between 9:00 a.m. and 8:00 p.m.
- (36) Allows up to 12 mature plants; indoor operations only.
- (37) Indoor use only.
- (38) The use is not allowed within 1,000 feet of the real property comprising a public park, 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). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a recreational processor, wholesaler or retailer.
- (39) 1,000 foot separation between retailer to retailer premises and 1,000 foot separation between retailer to dispensary premises.
- (40) Operating hours limited to the hours between 9:00 a.m. and 8:00 p.m.

1 Code reviser's note: Section 25 of Ordinance 2763 provides:

SECTION 25: Grace period for previously permitted or conditional uses. Where an applicant demonstrates that a particular use was a permitted or conditional use on a specific property immediately prior to adoption of this ordinance, but that the use is no longer either a permitted or conditional use on that property due to this ordinance, the applicant may establish the use as either a permitted or conditional use, as provided in the prior code, provided the use is legally commenced prior to January 1, 2018.

Exhibit A, Attachment 2

15.305.030 Zoning use table - Use Subdistricts.

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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

(1) The use is not allowed within 1,000 feet of the real property comprising a public park, 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). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a recreational retailer or wholesaler.

(2) 1,000 foot separation between retailer to retailer premises and 1,000 foot separation between retailer to dispensary premises.

(3) Operating hours limited to the hours between 9:00 a.m. and 8:00 p.m.



RESOLUTION No. 2016-3253

A RESOLUTION INITIATING AN AMENDMENT TO THE NEWBERG MUNICIPAL CODE, TITLE 15 DEVELOPMENT CODE FOR PLACE, TIME AND MANNER REGULATIONS FOR RECREATIONAL MARIJUANA WHOLESALERS, LABORATORIES, RESEARCH CERTIFICATES AND RETAILERS

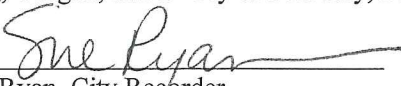
RECITALS:

1. 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.
2. On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At its Business Session on September 8th the City Council established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews.
3. The Subcommittee held its third meeting on January 12, 2016. A proposed timeline was included in their packet of material to address recreational marijuana place, time and manner for recreational wholesalers, laboratories, research certificates and retailers. The Oregon Liquor Control Commission has indicated they will start issuing licenses for retailers in the 3rd Quarter of 2016.
4. The Subcommittee subsequently passed a motion 3-0 directing staff to create a Request for Council Action to initiate the Development Code amendment process for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers to bring forward for Council consideration on February 1, 2016.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council initiates an amendment to the Newberg Municipal Code, Title 15 Development Code for Place, Time and Manner Regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers. This starts the public process to study the proposed amendments.
2. By initiating this amendment, the council does not commit to taking any specific action on the proposal. It only wishes to give the amendment full consideration in a public hearing.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 2, 2016
ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of February, 2016.


Sue Ryan, City Recorder

ATTEST by the Mayor this 1st day of February, 2016.

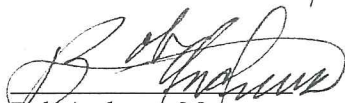

Bob Andrews, Mayor

Exhibit B 2016-0516
Attachment 2

Doug Rux

From: Sue Ryan
Sent: Tuesday, January 19, 2016 11:33 AM
To: Doug Rux
Subject: FW: Recreational sales

Please advise
sue

From: Steve Rhodes
Sent: Tuesday, January 19, 2016 11:29 AM
To: Sue Ryan
Subject: Re: Recreational sales

Check with Doug.

Sent from my iPad

On Jan 19, 2016, at 10:38 AM, Sue Ryan <Sue.Ryan@newbergoregon.gov> wrote:

Do you want me to forward this to Council ?
Sue

Sue Ryan
City Recorder
City of Newberg
cityrecorder@newbergoregon.gov
(503) 537-1283

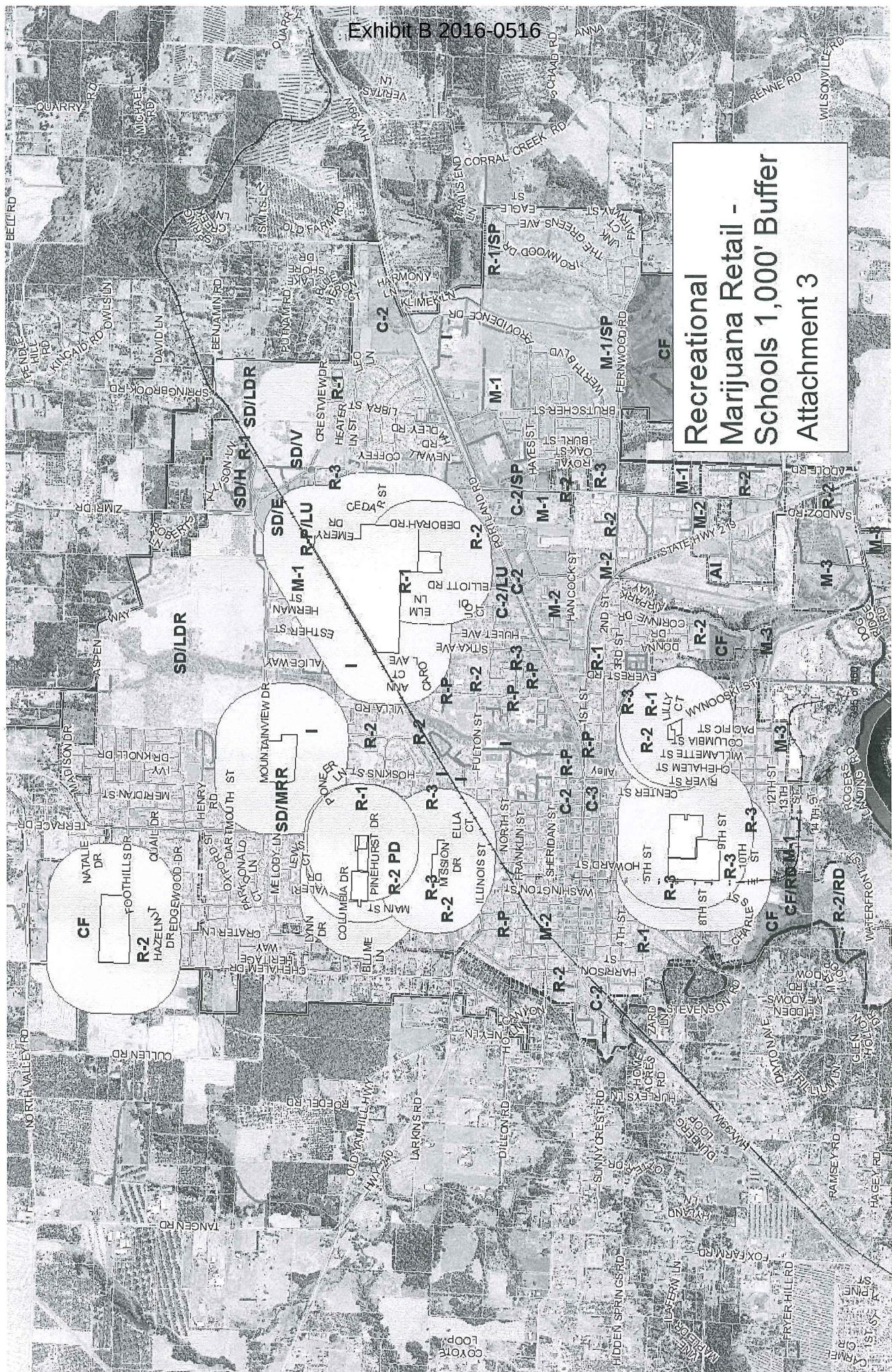
OREGON PUBLIC RECORD

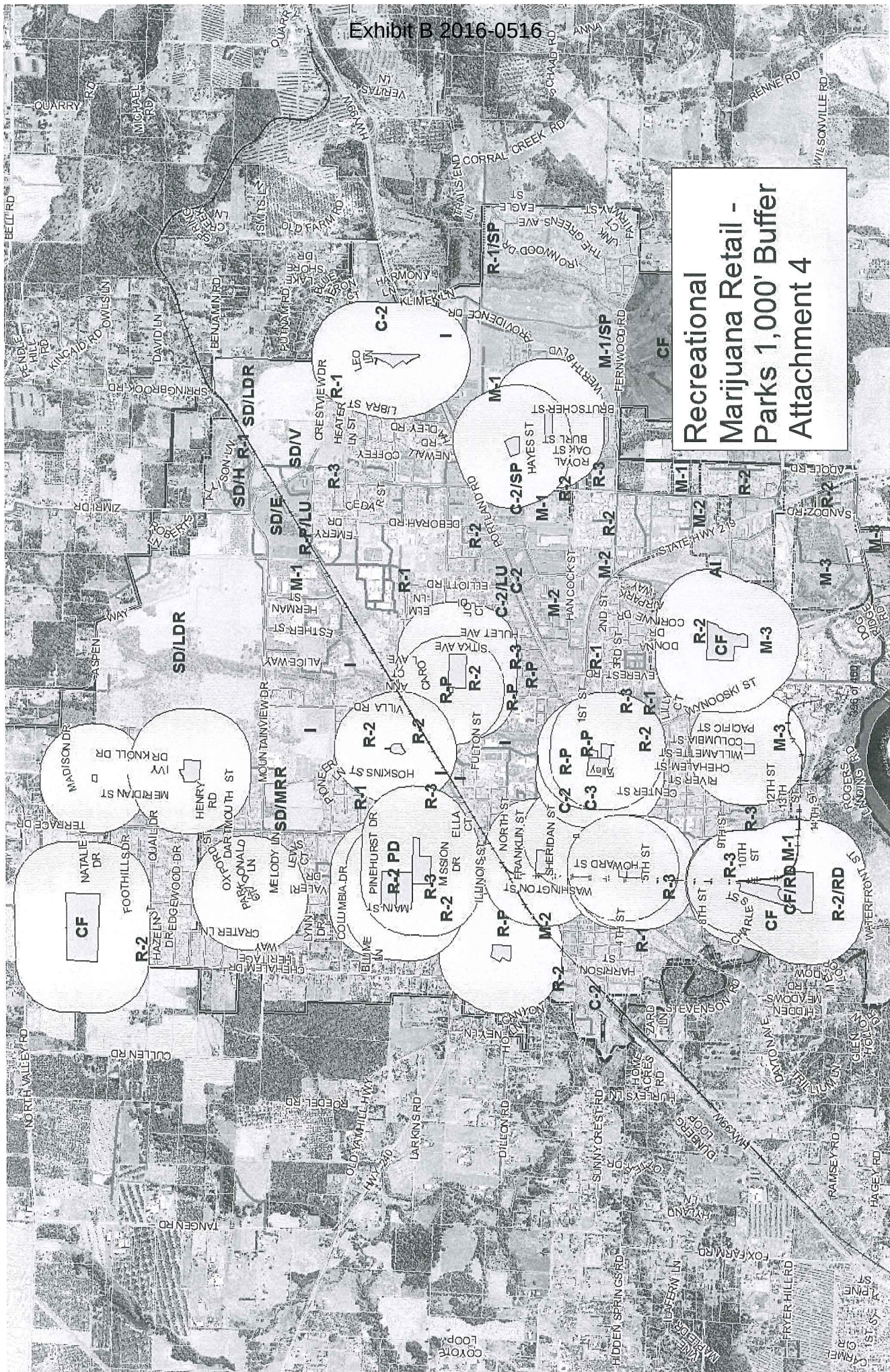
Messages to and from this email address may be subject to the Oregon Public Records Law.

From: Leif Patterson [<mailto:leifer956@gmail.com>]
Sent: Monday, January 18, 2016 5:18 PM
To: Sue Ryan
Subject: Recreational sales

Hello, as a Newberg resident I feel compelled to offer my two cents that we should allow recreational marijuana sales. Most of the neighboring towns are benefiting from this program and the tax revenue it generates. Currently, I drive into Portland a few times a week to purchase products there. I spend money on food, gas etc that would all be spent in Newberg if rec sales were allowed. Lets stop sending revenue elsewhere and start keeping it here for our schools, roads and other public services.

Thanks for your time,
Leif





Recreational
Marijuana Retail -
Parks 1,000' Buffer
Attachment 4

