

# Notice of Public Meeting

# Notice of Council Meeting

## AGENDA

### CITY COUNCIL - CITY OF FALLS CITY, OREGON

Meeting Location: 320 N Main Street, Falls City

Thursday October 8, 2015 7:00 p.m.

Posted on October 2, 2015

- 1) **Call to Order**  
A) Roll Call: Julee Bishop \_\_\_\_ Dennis Sickles \_\_\_\_ Lori Jean Sickles \_\_\_\_ Jennifer Drill \_\_\_\_  
Tony Meier \_\_\_\_ Gerald Melin \_\_\_\_ Terry Ungricht, Mayor \_\_\_\_
- 2) **Pledge of Allegiance**
- 3) **Motion to Adopt the Entire Agenda**
- 4) **Consent Agenda: Motion Action Approving Consent Agenda Items**  
A) Approval of the Bills ..... pages 1 - 6  
B) Approval of September 10, 2015 Council Meeting Minutes.....pages 7 - 30
- 4) **Public Comments:** Citizens may address the Council or introduce items for Council consideration on any matters. Council may not be able to provide an immediate answer or response, but may direct staff to follow up on any questions raised. Out of respect to the Council and others in attendance, please limit your comment to five (5) minutes. Please state your name and city of residence for the record.
- 5) **New Business:**  
A) Request for Qualifications (RFQ) for Master Water Plan.....pages 31  
B) Marijuana update.....pages 32-69
- 6) **Correspondence, Comments, and Ex-Officio Reports**  
A) Council Reports  
B) Mayor Reports ..... pages 70-72  
    Fire Department Monthly Report,  
    Public Works Department Monthly Report  
    Library Monthly Report .....page 73
- 7) **Council Announcements**  
A)  
B)
- 8) **Adjourn**

The City of Falls City does not discriminate in providing access to its programs, services, and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government. Should a person need special accommodations or interpretation services, contact the City at 503.787.3631 at least one working day prior to the need for services and every reasonable effort to accommodate the need will be made.

**City of Falls City**  
**Paid Bills Report**  
As of September 8, 2015

Date	Memo	Account	Class	Amount
<b>City of Dallas</b>				
09/08/2015	INV# 201508251393	Accounts Payable		-300.00
09/08/2015	Inv#201508251393	Professional Services	11 STREET FUND	300.00
Total City of Dallas				0.00
<b>Dallas Glass &amp; Window</b>				
09/08/2015	inv. 11951	Accounts Payable		-185.00
09/08/2015	Inv # 11951	Community Center M...	01 GENERAL FUND:01.0...	185.00
Total Dallas Glass & Window				0.00
<b>Edge Analytical</b>				
09/08/2015	15-17590	Accounts Payable		-120.00
09/08/2015	Lab Service 15-17590	Lab Analysis Services	13 SEWER FUND	120.00
Total Edge Analytical				0.00
<b>MINET</b>				
09/08/2015	INV: 186	Accounts Payable		-680.60
09/08/2015	Dell Desktop PC 50%, i...	Computer Hardware	01 GENERAL FUND:01.0...	340.30
09/08/2015	Dell Desktop PC 50%	Computer Hardware	20 WATER OPERATING ...	340.30
Total MINET				0.00
<b>Net Assets Corporation</b>				
09/08/2015	66-201508	Accounts Payable		-11.00
09/08/2015	50% Lien service -66-2...	Professional Services	13 SEWER FUND	5.50
09/08/2015	50% Lien service -66-2...	Professional Services	20 WATER OPERATING ...	5.50
Total Net Assets Corporation				0.00
<b>Rural Community Assistance Corporation</b>				
09/08/2015	EVN-9623	Accounts Payable		-30.00
09/08/2015	Funding workshop, EV...	Education & Training	13 SEWER FUND	15.00
09/08/2015	Funding workshop	Education & Training	20 WATER OPERATING ...	15.00
Total Rural Community Assistance Corporation				0.00
<b>Van Well Building Supply</b>				
09/08/2015	1008826l, 1011507i, 1...	Accounts Payable		-1,670.01
09/08/2015	August Statement, rep...	Building Maintenance ...	20 WATER OPERATING ...	556.70
09/08/2015	August Statement	Building Maintenance ...	13 SEWER FUND	556.70
09/08/2015	August Statement	Building Maintenance ...	11 STREET FUND	556.61
Total Van Well Building Supply				0.00
<b>Xerox Capital</b>				
09/08/2015	081177037	Accounts Payable		-209.05
09/08/2015	lease Sept. 65%	Copier Lease/Mainten...	01 GENERAL FUND:01.0...	135.88
09/08/2015	lease Sept. 10%	Copier Lease/Mainten...	11 STREET FUND	20.90
09/08/2015	lease Sept. 10%	Copier Lease/Mainten...	13 SEWER FUND	20.90
09/08/2015	lease Sept. 15%	Copier Lease/Mainten...	20 WATER OPERATING ...	31.37
Total Xerox Capital				0.00
<b>TOTAL</b>				<b>0.00</b>

14253

City of Falls City  
**Paid Bills Report**  
 As of September 12, 2015

Date	Memo	Account	Class	Amount
<b>Buhler &amp; Meyer CPA's LLP</b>				
09/12/2015	August	Accounts Payable		-969.60
09/12/2015	35% Admin	Professional Services	01 GENERAL FUND:01.0...	339.36
09/12/2015	5% Court	Professional Services	01 GENERAL FUND:01.0...	48.48
09/12/2015	10% Street	Professional Services	11 STREET FUND	96.96
09/12/2015	15% Sewer	Professional Services	13 SEWER FUND	145.44
09/12/2015	35% Water	Professional Services	20 WATER OPERATING ...	339.36
Total Buhler & Meyer CPA's LLP				0.00
<b>City of Dallas</b>				
09/12/2015	INV# 3987	Accounts Payable		-275.00
09/12/2015	Inv#201508251393	Equipment Maintenanc...	01 GENERAL FUND:01.0...	275.00
Total City of Dallas				0.00
<b>City of Salem</b>				
09/12/2015	inv#2303666	Accounts Payable		-1,704.33
09/12/2015	Inv #2303418	911 Fee - Fire Depart...	01 GENERAL FUND:01.0...	1,136.22
09/12/2015	Inv #2303418	911 Fee - Law Enforc...	01 GENERAL FUND:01.0...	568.11
Total City of Salem				0.00
<b>Pacific Power</b>				
09/12/2015	multiple accounts	Accounts Payable		-1,446.28
09/12/2015	Sept	Power/Heat	01 GENERAL FUND:01.0...	377.60
09/12/2015	Sept	Power/Heat	01 GENERAL FUND:01.0...	90.22
09/12/2015	Sept	Power/Heat	01 GENERAL FUND:01.0...	67.23
09/12/2015	Sept	Power/Heat	13 SEWER FUND	238.53
09/12/2015	Sept	Street Lights	11 STREET FUND	619.30
09/12/2015	Sept	Power/Heat	20 WATER OPERATING ...	53.40
Total Pacific Power				0.00
<b>Petro Card</b>				
09/12/2015	C974363	Accounts Payable		-110.55
09/12/2015	20%C974363	Vehicle Operation	11 STREET FUND	22.11
09/12/2015	20%C974363	Vehicle Operation	13 SEWER FUND	22.11
09/12/2015	60%C974363	Vehicle Operation	20 WATER OPERATING ...	66.33
Total Petro Card				0.00
<b>Speer Hoyt LLC</b>				
09/12/2015	32269	Accounts Payable		-228.00
09/12/2015	INV: 32269	Attorney/Special Cou...	01 GENERAL FUND:01.0...	228.00
Total Speer Hoyt LLC				0.00
<b>Verizon Wireless</b>				
09/12/2015	9751206363	Accounts Payable		-71.82
09/12/2015	July	Telephone	01 GENERAL FUND:01.0...	35.91
09/12/2015	July	Telephone	20 WATER OPERATING ...	35.91
Total Verizon Wireless				0.00

PAGE 2

City of Falls City  
**Paid Bills Report**  
As of September 12, 2015

<u>Date</u>	<u>Memo</u>	<u>Account</u>	<u>Class</u>	<u>Amount</u>
<b>Waterlab Corp</b>				
09/12/2015	67339	Accounts Payable		-30.00
09/12/2015	Inv: 67339	Lab Analysis Services	20 WATER OPERATING ...	30.00
Total Waterlab Corp				0.00
<b>TOTAL</b>				<b>0.00</b>

3

City of Falls City  
**Paid Bills Report**  
As of September 15, 2015

Date	Memo	Account	Class	Amount
<b>CenturyLink</b>				
09/15/2015	multiple phone bills	Accounts Payable		-421.78
09/15/2015	September	Telephone	01 GENERAL FUND:01.0...	183.15
09/15/2015	September	Telephone	20 WATER OPERATING ...	66.26
09/15/2015	September	Telephone	01 GENERAL FUND:01.0...	172.37
Total CenturyLink				0.00
<b>Consumers Power Inc</b>				
09/15/2015	Account # 1155301	Accounts Payable		-154.96
09/15/2015	September Power	Power/Heat	20 WATER OPERATING ...	154.96
Total Consumers Power Inc				0.00
<b>Frink's General Store</b>				
09/15/2015	invoice 3	Accounts Payable		-189.82
09/15/2015	stairway	Miscellaneous	01 GENERAL FUND:01.0...	5.16
09/15/2015	invoice 3	Small Tools & Supplies	20 WATER OPERATING ...	13.73
09/15/2015	invoice 3	Vehicle Maintenance/...	01 GENERAL FUND:01.0...	170.93
Total Frink's General Store				0.00
<b>Mid Willamette Valley COG</b>				
09/15/2015	1516099	Accounts Payable		-616.00
09/15/2015	COG Land Use	Professional Services	01 GENERAL FUND:01.0...	616.00
Total Mid Willamette Valley COG				0.00
<b>Portland Cummins, inc</b>				
09/15/2015	quote # 16960 mainten...	Accounts Payable		-2,393.19
09/15/2015	Water Plant Generator	Equipment Maintenanc...	20 WATER OPERATING ...	2,393.19
Total Portland Cummins, inc				0.00
<b>Terry Ungricht</b>				
09/15/2015	August Expenses	Accounts Payable		-230.00
09/15/2015	July Expenses	Travel/Meeting Expense	01 GENERAL FUND:01.0...	230.00
Total Terry Ungricht				0.00
<b>US Bank Visa</b>				
09/15/2015	Account Number: 4798 ...	Accounts Payable		-1,285.70
09/15/2015	Water Operation supply...	Equipment Maintenanc...	20 WATER OPERATING ...	241.22
09/15/2015	Karl recert	Travel/Meeting Expense	20 WATER OPERATING ...	249.50
09/15/2015	Water Professional ser...	Maintenance Supplies	11 STREET FUND	120.60
09/15/2015	web site and gov domain	Computer Software	01 GENERAL FUND:01.0...	424.88
09/15/2015	ship meter for calibration	Postage & Freight	13 SEWER FUND	21.96
09/15/2015	bridge	Equipment Maintenanc...	13 SEWER FUND	120.61
09/15/2015	Karl recert	Travel/Meeting Expense	13 SEWER FUND	106.93
Total US Bank Visa				0.00
<b>TOTAL</b>				<b>0.00</b>

City of Falls City  
**Paid Bills Report**  
As of September 15, 2015

Date	Memo	Account	Class	Amount
<b>CenturyLink</b>				
09/15/2015	multiple phone bills	Accounts Payable		-421.78
09/15/2015	September	Telephone	01 GENERAL FUND:01.0...	183.15
09/15/2015	September	Telephone	20 WATER OPERATING ...	66.26
09/15/2015	September	Telephone	01 GENERAL FUND:01.0...	172.37
Total CenturyLink				0.00
<b>Consumers Power Inc</b>				
09/15/2015	Account # 1155301	Accounts Payable		-154.96
09/15/2015	September Power	Power/Heat	20 WATER OPERATING ...	154.96
Total Consumers Power Inc				0.00
<b>Frink's General Store</b>				
09/15/2015	invoice 3	Accounts Payable		-189.82
09/15/2015	stairway	Miscellaneous	01 GENERAL FUND:01.0...	5.16
09/15/2015	invoice 3	Small Tools & Supplies	20 WATER OPERATING ...	13.73
09/15/2015	invoice 3	Vehicle Maintenance/...	01 GENERAL FUND:01.0...	170.93
Total Frink's General Store				0.00
<b>Mid Willamette Valley COG</b>				
09/15/2015	1516099	Accounts Payable		-616.00
09/15/2015	COG Land Use	Professional Services	01 GENERAL FUND:01.0...	616.00
Total Mid Willamette Valley COG				0.00
<b>Portland Cummins, inc</b>				
09/15/2015	quote # 16960 mainten...	Accounts Payable		-2,393.19
09/15/2015	Water Plant Generator	Equipment Maintenanc...	20 WATER OPERATING ...	2,393.19
Total Portland Cummins, inc				0.00
<b>Terry Ungricht</b>				
09/15/2015	August Expenses	Accounts Payable		-230.00
09/15/2015	July Expenses	Travel/Meeting Expense	01 GENERAL FUND:01.0...	230.00
Total Terry Ungricht				0.00
<b>US Bank Visa</b>				
09/15/2015	Account Number: 4798 ...	Accounts Payable		-1,285.70
09/15/2015	Water Operation supply...	Equipment Maintenanc...	20 WATER OPERATING ...	241.22
09/15/2015	Karl recert	Travel/Meeting Expense	20 WATER OPERATING ...	249.50
09/15/2015	Water Professional ser...	Maintenance Supplies	11 STREET FUND	120.60
09/15/2015	web site and gov domain	Computer Software	01 GENERAL FUND:01.0...	424.88
09/15/2015	ship meter for calibration	Postage & Freight	13 SEWER FUND	21.96
09/15/2015	bridge	Equipment Maintenanc...	13 SEWER FUND	120.61
09/15/2015	Karl recert	Travel/Meeting Expense	13 SEWER FUND	106.93
Total US Bank Visa				0.00
<b>TOTAL</b>				<b>0.00</b>

City of Falls City  
**Paid Bills Report**  
As of September 28, 2015

Date	Memo	Account	Class	Amount
<b>Department of Administrative Services</b>				
09/28/2015	membership, invoice #...	Accounts Payable		-200.00
09/28/2015	membership, invoice #...	Operational Supplies	01 GENERAL FUND:01.0...	100.00
09/28/2015	membership, invoice #...	Operational Supplies	01 GENERAL FUND:01.0...	100.00
Total Department of Administrative Services				0.00
<b>Edge Analytical</b>				
09/28/2015	15-20047	Accounts Payable		-120.00
09/28/2015	Lab Service 15-20047	Lab Analysis Services	13 SEWER FUND	120.00
Total Edge Analytical				0.00
<b>Ferguson Enterprises, Inc</b>				
09/28/2015	Customer # 50936, inv...	Accounts Payable		-410.86
09/28/2015	Inv #0482395	Maintenance Supplies	20 WATER OPERATING ...	410.86
Total Ferguson Enterprises, Inc				0.00
<b>Government Ethics Commission</b>				
09/28/2015	dues, invoice #AIE2311	Accounts Payable		-316.88
09/28/2015	dues, invoice #AIE2311	Education/Training/Du...	01 GENERAL FUND:01.0...	316.88
Total Government Ethics Commission				0.00
<b>King's Pumping Service</b>				
09/28/2015	12091	Accounts Payable		-96.95
09/28/2015	Inv 12091	Professional Services	13 SEWER FUND	96.95
Total King's Pumping Service				0.00
<b>Petro Card</b>				
09/28/2015	C979581	Accounts Payable		-97.46
09/28/2015	20%C979581	Vehicle Operation	11 STREET FUND	19.49
09/28/2015	20%C979581	Vehicle Operation	13 SEWER FUND	19.49
09/28/2015	60%C979581	Vehicle Operation	20 WATER OPERATING ...	58.48
Total Petro Card				0.00
<b>Pitney Bowes</b>				
09/28/2015	Acct# 19659466866	Accounts Payable		-301.50
09/28/2015	July 35%	Postage & Freight	13 SEWER FUND	105.52
09/28/2015	July 50%	Postage & Freight	20 WATER OPERATING ...	150.75
09/28/2015	July 15%	Postage & Freight	01 GENERAL FUND:01.0...	45.23
Total Pitney Bowes				0.00
<b>UL LLC</b>				
09/28/2015	Invoice #72020103186	Accounts Payable		-425.00
09/28/2015	Fire truck Inspections, I...	Equipment Maintenanc...	01 GENERAL FUND:01.0...	425.00
Total UL LLC				0.00
<b>Walter E. Nelson Co.</b>				
09/28/2015	Inv: 28652	Accounts Payable		-249.92
09/28/2015	Invoice #28652	Maintenance Supplies	01 GENERAL FUND:01.0...	249.92
Total Walter E. Nelson Co.				0.00
<b>TOTAL</b>				<b>0.00</b>

**City of Falls City  
City Council Regular Meeting  
Thursday September 10, 2015  
Meeting Location: 320 N Main Street, Falls City, Oregon 97344**

**Council Present:** Mayor Terry Ungricht, Lori Jean Sickles, Jennifer Drill, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop

**Staff Present:** Domenica Protheroe, City Clerk; JoHanna Hewitt, City Clerk; Don Poe, Public Works Lead

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

**1) Roll Call**

Clerk Protheroe took roll call. Lori Jean Sickles arrived 7:02 PM and Julee Bishop arrived at 7:05PM.

**2) Pledge of Allegiance**

Mayor Ungricht led the pledge.

**3) Motion to adopt the entire Agenda**

A motion was made by Councilor Sickles and seconded by Councilor Meier to adopt the entire Agenda with the addition of Items F; Infrastructure Finance Authority (IFA) financing contract and G; Frink's Store Liquor License Application permitting off-site sales. Motion carried 5-1-0. Ayes: Lori Jean Sickles, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop. Nays: Jennifer Drill

**4) Consent Agenda: Motion Action Approving Consent Agenda Items**

A motion was made by Councilor Meier and seconded by Councilor D. Sickles to approve the Consent Agenda. Motion carried 6-0-0. Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop.

**5) Public Comments:**

None

**6) New Business:**

**A) Resignation of Jim Miner from Parks and Recreation Committee-**

A motion was made by Councilor Gerald Melin and seconded by Julie Bishop to accept the resignation of Jim Miner from the Parks and recreation Committee. Motion carried 6-0-0-. Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop

**B) Falls City/Bureau of Land Management (BLM) Cooperative Agreement-**

A motion was made by Councilor Sickles and seconded by Councilor Meier to approve Resolution 11-2015, Falls City/Bureau of Land Management (BLM) Cooperative Agreement, L15Ac00118 for aid in funding the Dutch Creek Crossing project. Motion carried 6-0-0 Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop

**C) Water Plant Agreement/HACH-**

Councilor Drill wanted to pursue additional vendor bids for testing water sensors, but as Mayor Ungricht pointed out, the City is in an ongoing agreement with HACH for another 7 years. Don Poe, Public Works Lead added HACH is the only company that can test our water sensors and make PCL cards for treatment plant sensors. He informed Councilor Drill that HACH has the advantage on the Pacific Northwest market due to their punctuality, documentation and providing inspection technician initials every three months.

A motion was made by Councilor Meier, and seconded by Councilor L. Sickles to allow staff to enter into a maintenance agreement for the Water Treatment Plant with HACH. Motion carried 5-1-0 Ayes: Lori Jean Sickles, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop. Nays: Jennifer Drill

**D) Wastewater System Report-**

The existing Sewer Facility Plan can be "tweaked" with an engineer at an additional cost. Problems have been identified as follows; pump failure, issues with Carey Ct. and S. Main Streets. The City has not been pumping its sewer tanks as often as they should be due to cost. . Mayor Ungricht pointed out that the Sewer Fund margin is too close. He stated a \$3.00 increase on sewer billing would provide additional income to cover expenditures. Water testing alone is \$6,300 annually. Mayor Ungricht added that the City of Coburg just did a pond system servicing 900 users with a minimum charge of \$87.00. Mayor Ungricht invited Councilors to come to his office to look at number data he has compiled for his findings. He would like to see an annual Cost of Living increase for each utility service charge. Councilor D. Sickles agreed. Councilor Bishop agreed it has been an ongoing problem for a long time; she stated she was told, "If rates were increased and became unaffordable, people could move out." Mayor Ungricht said he ran for office to keep rate increases away, and then added his time in office has been a harsh learning experience. Councilor Drill would like to gather more input from citizens. She requested the sewer fee increase be added to the next Town Hall agenda accompanied by a Power Point presentation.

A motion was made by Councilor Melin and seconded by Councilor Drill that the City of Falls City direct the Public Works Committee to study the current rate system and propose suggestions to Council on their findings. Motion carried 6-0-0 Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop

**E) Infrastructure Finance Authority Award Letter-**

A congratulatory letter to Falls City on an award for \$20,000 to be put toward the Water Master Plan, Project #V16001.

**F) Infrastructure Finance Authority (IFA) Financing Contract-**

Agenda Report IFA Financing Contract was distributed at the beginning of the meeting. (Exhibit A)

A motion was made by Councilor Sickles and seconded by Councilor Meier to approve Resolution 12-2015, a Resolution entering into the contract with IFA for \$20,000. Motion carried 6-0-0 Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop.

**G) Frink's General Store Liquor License Application permitting off-site sales-**

The liquor license reapplication became required due to Frink's General Store moving locations. (Exhibit B)

A motion was made by Councilor Meier and seconded by Councilor L. Sickles that the liquor license be granted. Motion carried 5-1-0 Ayes: Lori Jean Sickles, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop. Nays: Jennifer Drill.

**7) Correspondence, Comments and Ex-Officio Reports-**

Councilor Drill requested the sandwich sign be placed outside the community Center during City Council meetings to encourage increased public participation. Councilor Drill brought everyone up to date on the Emergency and Disaster Preparedness Plan. She and representatives from the community, including the Fire Department, churches, City and school had met and drafted a base plan. The Falls City Basic Emergency Preparedness Plan (FCBEPP) has been based on the most likely

plan. The Falls City Basic Emergency Preparedness Plan (FCBEPP) has been based on the most likely natural disaster to strike the area, an earthquake. She would like copies of FCBEPP to go out with the City's utility statements, posted in churches, the school and on Facebook. The FCBEPP consists of two alternate plans; Plan A- designed for area bridges remaining intact. Plan B- designed for use if the bridges are out. Mayor Ungricht suggested that Councilor Drill bring the FCBEPP before City Council for their final approval on the special project prior to distribution of flyers. He reminded all present that individual Council and committees members cannot act on their own. Councilor Drill agreed to speak with Mayor Ungricht before sending the information out. Councilor Drill announced the Town Hall Meeting on September 29 at 7PM. They will be discussing water and sewer rates along with emergency preparedness.

Councilor Meier called a number of places in regards to the surplus fire truck and ambulance. He found someone interested and will get an ad on Craigslist, in the City's newsletter and get bids. Mayor Ungricht suggested getting their weight at Cherry City and making that scrap price the bottom line for an acceptable bid.

Councilor Melin voiced concern regarding the possible closing of the library. The Wagner Trust Fund will be depleted in approximately early 2017. Councilor Sickles gave assurance the school would not evict the library from the building and that closing of the library was only a remote possibility but added that neither the school nor the City have the funds to keep it running. The possibility of having the RARE Candidate part time was discussed.

Councilor D. Sickles would like to cover the stands (bleachers) and run a water line to the concession stand at the school. He asked Public Works if they would use their equipment and dig the trench to put in the line. Don Poe, Public Works Lead asked when this project would take place. Councilor D. Sickles replied it would take place after the 2016 Football season. The school's water bill was mentioned. Mayor Ungricht suggested that the water bill be discussed with Council after the statement is received.

Councilor Bishop was concerned about trees hanging over the street near Sheldon & S. Main St. Don Poe offered to help take them down.

## 8) Mayors Report

- a) Republic Services will have a 1.8% increase as per contract.
- b) Volunteer Tommy Russell painted the stairway.
- c) Councilor J. Drill will clean up the weeds for Councilor T. Meier's wife to plant.
- d) Public Works has been working Dayton St. Bridge, built in 1963, making repairs. So far, over \$2600 from the Street Fund had been used toward the cost of repair. Grants are being researched to apply for and secure. This requires a plan executed by an engineer with an estimated cost of \$3000. If not, the Dayton St. Bridge will have to be closed due the safety risks. In addition, a pole may be set to prevent golf carts and ATV's from using the pedestrian bridge.
- e) There was a chlorine leak at the Waste Water Plant. This was fixed however, the pump failed. The water pump was shut down and off the reservoir for two and one half days. No leakage charges will be issued to customers during August due to the 48 hours to repair the Plant.
- f) Request For Proposal (RFP) process- Is in final draft and Domenica, City Clerk, is going over it.
- g) The Rite Aid flu clinic was announced.
- h) Councilor Sickles thanked Mayor Ungricht for bringing issues before Council.

A motion was made by Councilor L. Sickles and seconded by Councilor Bishop to appoint a review panel to hire an engineer for the Master Water Plan. The panel consists of Councilor D. Sickles, Domenica Protheroe,

Guy Mack, Don Poe and Mayor Ungricht. All of whom have expertize with aspects of this project. Motion carried 6-0-0 Ayes: Lori Jean Sickles, Jennifer Drill, Tony Meier, Gerald Melin, Dennis Sickles, Julee Bishop.

**9) Council Announcements**

**10) Adjourn**

The meeting adjourned at 8:10 pm.

\_\_\_\_\_ Mayor Terry Ungricht

Attested: \_\_\_\_\_ City Clerk JoHanna Hewitt

---

## AGENDA REPORT

---

**TO:** CITY COUNCIL  
**FROM:** MAYOR TERRY UNGRICHT  
**SUBJECT:** IFA FINANCING CONTRACT  
**DATE:** 08/20/2015

---

### **SUMMARY**

Falls City applied for a \$20,000.00 grant from the Infrastructure Finance Authority (IFA).

### **BACKGROUND**

Staff has been working with State and Federal financing agencies to secure money to help with the Master Water Plan. Staff had notified Council that we had submitted for \$20,000.00 from IFA, staff submitted letter of acceptance from IFA of the award of \$20,000.00 in the current Council packet.

This award comes with the stipulation that Falls City include a Water rate study and a water management and Conservation plan. Staff had planned on a rate study, which Council was informed about. In research on the water management And Conservation plan; these are needed before the beginning of most projects that will be identified in the Master Water Plan, the City is regulated to have this plan by 2017, and this might help secure the Berry Creek water rights mandate.

Since the time the packet was delivered, staff received the Financing Contract from IFA. Staff would like to move forward on official acceptance of the contract and brings this issue to Council for their approval.

### **PREVIOUS COUNCIL/COMMITTEE ACTION**

City staff has reported on applying for funding.

### **ALTERNATIVES/FINANCIAL IMPLICATIONS**

This will reduce our portion of funding the Master Water Plan by \$20,000.00, but will require the mandated addition of a rate study and a water management and Conservation plan.

### **STAFF RECCOMENDATION**

Accept motion entering into agreement.

### **EXHIBIT**

Exhibit A – IFA Financing Contract

### **PROPOSED MOTIONS**

I move the City Council of the City of Falls City approve Resolution 12-2015 A Resolution entering into a Finance Contract with the State of Oregon Infrastructure Finance Authority for a grant of \$20,000.00 to be used towards a Master Water Plan.

**RESOLUTION 12 - 2015**

A RESOLUTION AUTHORIZING A CONTRACT BETWEEN THE City of Falls City AND THE STATE OF OREGON INFRASTRUCTURE FINANCE AUTHORITY.

FINDINGS:

1. The City of Falls City desires to accept a contract with the Infrastructure Finance Authority to help with the completion of a new Master Water Plan.

NOW THEREFORE;

THE COMMON COUNCIL OF THE CITY OF FALLS CITY RESOLVES AS FOLLOWS:

Section 1. The contract, which is attached hereto and incorporated herein by this reference is hereby approved and adopted by this Resolution.

Section 2. This Resolution was duly PASSED and ADOPTED by the Falls City Council this Tenth (10) day of September, 2015, and takes affect upon signing by the Mayor.

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Terry Ungricht, Mayor

Attest:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Domenica Protheroe, City Clerk

WATER FUND TECHNICAL ASSISTANCE PROJECT  
FINANCING CONTRACT

Project Name: Falls City Water Master Plan

Project Number: V16001

This financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through the Oregon Infrastructure Finance Authority ("IFA"), and the City of Falls City ("Recipient") for financing of the project referred to above and described in Exhibit D ("Project"). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

- Exhibit A: General Definitions
- Exhibit B: NOT APPLICABLE
- Exhibit C: NOT APPLICABLE
- Exhibit D: Project Description; Project Special Conditions
- Exhibit E: Project Budget

**SECTION 1 - KEY TERMS**

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$80,000.

"Grant Amount" means \$20,000.

"Project Closeout Deadline" means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

"Project Completion Deadline" means 24 months after the date of this Contract.

**SECTION 2 - FINANCIAL ASSISTANCE**

Commitment. The IFA shall provide Recipient, and Recipient shall accept from IFA, financing for the Project as a grant in an aggregate amount not to exceed the Grant Amount (the "Grant").

**SECTION 3 - DISBURSEMENTS**

- A. Reimbursement Basis. The Financing Proceeds shall be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an IFA-provided or IFA-approved disbursement request form ("Disbursement Request").
- B. Financing Availability. The IFA's obligation to make and Recipient's right to request disbursements under this Contract terminates on the Project Closeout Deadline.

#### SECTION 4 - CONDITIONS PRECEDENT

- A. Conditions Precedent to IFA's Obligations. The IFA's obligations are subject to the receipt of the following items, in form and substance satisfactory to IFA and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
  - (2) Such other certificates, documents, opinions and information as IFA may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, IFA has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
  - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
  - (3) The IFA, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
  - (4) The IFA (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as IFA may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
  - (5) The Recipient has delivered documentation satisfactory to IFA that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
  - (6) Any conditions to disbursement elsewhere in this Contract are met.

#### SECTION 5 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit D and according to the budget in Exhibit E. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of IFA.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act, and Oregon law as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit D.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project from another State of Oregon agency or any third party.

#### SECTION 6 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to IFA:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in section 1, and the Project is fully funded.

B. Organization and Authority.

- (1) The Recipient is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon.
- (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract, (b) incur and perform its obligations under this Contract, and (c) receive financing for the Project.
- (3) This Contract has been duly executed by Recipient, and when executed by IFA, is legal, valid and binding, and enforceable in accordance with its terms.

C. Full Disclosure. The Recipient has disclosed in writing to IFA all facts that materially adversely affect the Project, or the ability of Recipient to perform all obligations required by this Contract. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract is true and accurate in all respects.

D. Pending Litigation. The Recipient has disclosed in writing to IFA all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.

E. No Defaults.

- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to perform all obligations required by this Contract.

F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract will not: (i) cause a breach of any agreement to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

**SECTION 7 - COVENANTS OF RECIPIENT**

The Recipient covenants as follows:

A. Notice of Adverse Change. The Recipient shall promptly notify IFA of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to perform all obligations required by this Contract.

B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract, the Project and the operation of the drinking water system to which the Project is associated. In particular, but without limitation, Recipient shall comply with the following, as applicable:

- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.

- (2) OAR 123-043-0095 (4) requirements for signs and notifications.

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide IFA with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
- (3) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the IFA in writing.
- (4) No later than the Project Closeout Deadline, provide IFA with a final project completion report on a form provided by IFA, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, IFA will be the final judge of the Project's completion.

D. Inspections; Information. The Recipient shall permit IFA and any party designated by IFA: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as IFA may reasonably require.

E. Records Maintenance. Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds until the date that is three years following the later of the final maturity of the Lottery Bonds, or the final maturity or redemption date of any obligation, or series of obligations, that refinanced the Lottery Bonds, or such longer period as may be required by other provisions of this Contract or applicable law.

F. Economic Benefit Data. The IFA may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by IFA.

G. Minority, Women & Emerging Small Business. ORS 200.090 requires all public agencies to "aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses..." The IFA encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045. Additional resources are provided by the Director of Economic & Business Equity in the Oregon Governor's Office. Also, the Office of Minority, Women, and Emerging Small Business at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

H. Professional Responsibility. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.

I. Notice of Default. The Recipient shall give IFA prompt written notice of any Default as soon as any senior administrative or financial officer of Recipient becomes aware of its existence or reasonably believes a Default is likely.

J. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless IFA and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.

K. Exclusion of Interest from Federal Gross Income and Compliance with Code.

- (1) The Recipient shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Lottery Bonds from gross income for purposes of federal income taxation, as governed by Section 103(a) of the Code. IFA may decline to disburse the Financing Proceeds if it finds that the federal tax exemption of the Lottery Bonds cannot be assured.
- (2) The Recipient shall not take any action (including but not limited to the execution of a management agreement for the operation of the Project) or omit to take any action that would cause any Lottery Bonds to be "private activity bonds" within the meaning of Section 141(a) of the Code. Accordingly, unless Recipient receives the prior written approval of IFA, Recipient shall not permit in excess of ten percent (10%) of either (a) the Financing Proceeds or (b) the Project financed or refinanced with the Financing Proceeds to be directly or indirectly used in any manner that would constitute "private business use" within the meaning of Section 141(b)(6) of the Code, including not permitting more than one half of any permitted private business use to be "disproportionate related business use" or private business use unrelated to the government use of the Financing Proceeds. Unless Recipient receives the prior written approval of IFA, Recipient shall not directly or indirectly use any of the Financing Proceeds to make or finance loans to persons other than governmental units, as that term is used in Section 141(c) of the Code.
- (3) The Recipient shall not directly or indirectly use or permit the use of any of the Financing Proceeds or any other funds, or take any action or omit to take any action, which would cause any Lottery Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code.
- (4) The Recipient shall not cause any Lottery Bonds to be treated as "federally guaranteed" for purposes of Section 149(b) of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to "federally guaranteed" obligations described in Section 149(b) of the Code. For purposes of this paragraph, any Lottery Bonds will be treated as "federally guaranteed" if: (a) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (b) five percent (5%) or more of the proceeds of the Lottery Bonds will be (i) used in making loans if the payment of principal or interest is guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (ii) invested directly or indirectly in federally insured deposits or accounts, and (c) none of the exceptions described in Section 149(b)(3) of the Code apply.
- (5) The Recipient shall assist IFA to ensure that all required amounts are rebated to the United States of America pursuant to Section 148(f) of the Code. The Recipient shall pay to IFA such amounts as may be directed by IFA to satisfy the requirements of Section 148(f) applicable to the portion of the proceeds of any tax-exempt bonds, including any Financing Proceeds or other amounts held in a reserve fund. The Recipient further shall reimburse IFA for the portion of any expenses

it incurs related to the Project that is necessary to satisfy the requirements of Section 148(f) of the Code.

- (6) Upon IFA's request, Recipient shall furnish written information regarding its investments and use of Financing Proceeds, and of any facilities financed or refinanced therewith, including providing IFA with any information and documentation that IFA reasonably determines is necessary to comply with the arbitrage and private use restrictions that apply to the Lottery Bonds.
- (7) Notwithstanding anything to the contrary, so long as is necessary to maintain the exclusion from gross income for purposes of federal income taxation of interest on any Lottery Bonds, the covenants contained in this subsection will survive the Project, including the application of any unexpended Financing Proceeds. The Recipient acknowledges that the Project may be funded with proceeds of the Lottery Bonds and that failure to comply with the requirements of this subsection could adversely affect any exclusion of the interest on the Lottery Bonds from gross income for federal income tax purposes.
- (8) Neither Recipient nor any related party to Recipient, within the meaning of 26 C.F.R. §1.150-1(b), shall purchase any Lottery Bonds, from which proceeds were used to finance the Project, in an amount related to the amount of the Grant.

#### SECTION 8 - DEFAULTS

Any of the following constitutes an "Event of Default":

- A. Any false or misleading representation is made by or on behalf of Recipient, in this Contract or in any document provided by Recipient related to the Project or in regard to compliance with the requirements of Section 103 and Sections 141 through 150 of the Code.
- B.
  - (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
  - (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
  - (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
  - (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
  - (5) The Recipient takes any action for the purpose of effecting any of the above.
- C. The Recipient fails to perform any obligation required under this Contract, other than those referred to in subsections A through B of this section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by IFA. The IFA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

## SECTION 9 - REMEDIES

- A. Remedies. Upon any Event of Default, IFA may pursue any or all remedies in this Contract and any other remedies available at law or in equity to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating IFA's commitment and obligation to make the Grant or disbursements under the Contract.
  - (2) Barring Recipient from applying for future awards.
  - (3) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.599; however, this provision is not to be construed in a way that Recipient's obligations would constitute debt that violates Section 10, Article XI of the Oregon Constitution.
  - (4) Requiring repayment of the Grant and all interest earned by Recipient on those Grant funds.
- B. Application of Moneys. Any moneys collected by IFA pursuant to section 9.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by IFA; then, as applicable, to repay any Grant proceeds owed; and last, to pay any other amounts due and payable under this Contract.
- C. No Remedy Exclusive: Waiver: Notice. No remedy available to IFA is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The IFA is not required to provide any notice in order to exercise any right or remedy, other than notice required in section 8 of this Contract.
- D. Default by IFA. In the event IFA defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of IFA's obligations.

## SECTION 10 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract.
- B. Relationship of Parties: Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
  - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
  - (3) This Contract will be binding upon and inure to the benefit of IFA, Recipient, and their respective successors and permitted assigns.
  - (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract without the prior written consent of IFA. The IFA may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to IFA, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of IFA's Counsel and Bond Counsel. Any approved assignment



party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON  
acting by and through the  
Oregon Infrastructure Finance Authority



CITY OF FALLS CITY

By: \_\_\_\_\_  
Paulina Layton, Manager  
Program Services Division

By: Terry D. Ungricht  
The Honorable Terry Ungricht  
Mayor of Falls City

Date: \_\_\_\_\_

Date: 09-09-2015

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not required per OAR 137-045-0030

## EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285B.560 through 285B.599, as amended.

“Award” means the award of financial assistance to Recipient by IFA dated 28 Aug 2015.

“C.F.R.” means the Code of Federal Regulations.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, IFA or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Proceeds” means the proceeds of the Grant.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Grant.

“Municipality” means any entity described in ORS 285B.410(8).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

## EXHIBIT D - PROJECT DESCRIPTION; PROJECT SPECIAL CONDITIONS

The Recipient shall, with the assistance of a licensed engineer:

1. Prepare a water master plan in accordance with the “Guidelines for Preparation of Planning documents for development of Community Water System Projects” and OAR 333-061-0060(5), and must receive Oregon Health Authority (OHA) Drinking Water Program approval for such plan.
2. Create a water management and conservation plan in accordance with the Oregon Water Resources Department (OWRD) requirements, and must receive OWRD approval for such plan.
3. Prepare a water rate study.

---

## AGENDA REPORT

---

**TO:** CITY COUNCIL  
**FROM:** MAYOR TERRY UNGRICHT  
**SUBJECT:** FRINK'S GENERAL STORE OFF-PREMISES SALES LIQUOR LICENSE APPLICATION  
**DATE:** 09/10/2015

---

### **SUMMARY**

Frink's General Store has applied for an off-premises liquor license for their new location.

### **BACKGROUND**

The Oregon Liquor Control Commission requires licensing for different types of liquor sales.

### **PREVIOUS COUNCIL/COMMITTEE ACTION**

City Council previously approved a liquor license for Frink's General Store for their prior location. An off-premises liquor license would allow the market to sell factory-sealed containers of malt beverages in containers holding not more than 2¼ gallons, wine, and cider at retail for drinking off site.

### **ALTERNATIVES/FINANCIAL IMPLICATIONS**

N/A

### **STAFF RECCOMENDATION**

N/A

### **EXHIBIT**

Exhibit A – Liquor License Application

### **PROPOSED MOTIONS**

I move that the City Council of the City of Falls City allow staff to approve Frink's General Store Off-Premises Sales Liquor License.



# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

Application is being made for:

### LICENSE TYPES

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

### ACTIONS

- Change Ownership
- New Outlet
- Greater Privilege
- Additional Privilege
- Other \_\_\_\_\_

### 90-DAY AUTHORITY

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

### APPLYING AS:

- Limited Partnership
- Corporation
- Limited Liability Company
- Individuals

### CITY AND COUNTY USE ONLY

Date application received: \_\_\_\_\_

The City Council or County Commission:

(name of city or county)

recommends that this license be:

- Granted
- Denied

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

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

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

### OLCC USE ONLY

Application Rec'd by: MT

Date: 6/18/15

90-day authority:  Yes  No

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

① Cathy Louise Frink ③ \_\_\_\_\_

② Kirby Kent Frink ④ \_\_\_\_\_

2. Trade Name (dba): Frink's General Store

3. Business Location: 319 N. main St. Falls City Polk OR 97344  
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: 319 N. main St. Falls City OR 97344  
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-787-8036 503-787-8036  
(phone) (fax)

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

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

8. Former Business Name: Home town Grocery or United market

9. Will you have a manager?  Yes  No Name: \_\_\_\_\_  
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? Falls City  
(name of city or county) 503 787 3535

11. Contact person for this application: Cathy Frink 503 787-8036 or 503-787-1403  
(name) (phone number(s))  
319 N. main St 503-787-8036 KirbyKent@live.com  
(address) (fax number) (e-mail address)

**RECEIVED**

OREGON LIQUOR CONTROL COMMISSION

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

Applicant(s) Signature(s) and Date:

① Cathy Louise Frink Date 6/10/15 ③ \_\_\_\_\_ Date \_\_\_\_\_

② Kirby Kent Frink Date 6/10/15 ④ \_\_\_\_\_ Date \_\_\_\_\_

JUN 12 2015

SALEM REGIONAL OFFICE



# OREGON LIQUOR CONTROL COMMISSION INDIVIDUAL HISTORY

1. Trade Name FRINKS General Store 2. City Falls City  
 3. Name Frink Cathy Louise  
 (Last) (First) (Middle)  
 4. Other names used (maiden, other) Ogden  
 5. [REDACTED] Place of Birth [REDACTED] [REDACTED] [REDACTED] 8. Sex M  F   
 (State or Country) (mm) (dd) (yyyy)

**\*SOCIAL SECURITY NUMBER DISCLOSURE:** As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). If you are an applicant or licensee and fail to provide your SSN, the OLCC may refuse to process your application. Your SSN will be used only for child support enforcement purposes unless you sign below.

Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your voluntary consent to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a). If you consent to these uses, please sign here:

Applicant Signature: Cathy Louise Frink

9. Driver License or State ID # [REDACTED] 10. State OR  
 11. Residence Address 58 N. Main St Falls City OR 97344  
 (number and street) (city) (state) (zip code)  
 12. Mailing Address (if different) \_\_\_\_\_  
 (number and street) (city) (state) (zip code)  
503-787-8036 - Store  
 13. Contact Phone 503-302-8698 - cell 14. E-Mail address (optional) Kirby Kent @ live.com

15. Do you have a spouse or domestic partner?  Yes  No  
 If yes, list his/her full name: Kirby Kent Frink

**OSP/DMV**

16. If yes to #15, will this person work at or be involved in the operation or management of the business?  Yes  No

JUN 16 2015

17. List all states, other than Oregon, where you have lived during the past ten years:  
None INITIALS: (NF)

18. In the past 12 years, have you been **convicted** ("convicted" includes paying a fine) in Oregon or any other state of driving a car with a suspended driver's license or driving a car with no insurance?  
 Yes  No  Unsure If yes, list the date(s), or approximate dates, and type(s) of convictions.  
 If unsure, explain. You may include the information on a separate sheet.

19. In the past 12 years, have you been **convicted** ("convicted" includes paying a fine) in Oregon or any other state of a misdemeanor or a felony?  Yes  No  Unsure  
 If yes, list the date(s), or approximate dates, and type(s) of convictions. If unsure, explain. You may include the information on a separate sheet.

20. Trade Name Frink's General Store 21. City Falls City

22. Do you have any arrests or citations that have not been resolved?  Yes  No  Unsure  
If yes or unsure, explain here or include the information on a separate sheet.

23. Have you ever been in a drug or alcohol **diversion program** in Oregon or any other state? (A diversion program is where you are required, usually by the court or another government agency, to complete certain requirements in place of being convicted of a drug or alcohol-related offense.)  Yes  No  Unsure  
If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

24. Do you, or any legal entity that you are a part of, **currently hold** or **have previously held** a liquor license in Oregon or another US state? (Note: a service permit is not a liquor license.)  Yes  No  Unsure  
If yes, list the name(s) of the business, the city (or cities) and state (or states) where located, and the date(s) of the license(s). If unsure, explain. You may include the information on a separate sheet.  
Frink's General Store 401 N. Main, Falls City  
2012 to present

25. Have you, or any legal entity that you are a part of, ever had an application for a license, permit, or certificate **denied or cancelled** by the OLCC or any other governmental agency in the US?  
 Yes  No  Unsure If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

Questions 26 and 27 apply if you, or any legal entity that you are part of, are applying for a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license. If you are not applying for one of those licenses, mark "N/A" on Questions 26 & 27.

26. Do you have any ownership interest in any other business that makes, wholesales, or distributes alcohol?  N/A  Yes  No  Unsure If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

27. Does, or will, a maker, wholesaler, or distributor of alcohol have any ownership interest in your business?  
 N/A  Yes  No  Unsure If yes or unsure, explain:

Question 28 applies if you, or any legal entity that you are part of, are applying for a Brewery, Brewery-Public House, Distillery, Grower Sales Privilege, Warehouse, Wholesale Malt Beverage & Wine, or Winery license. If you are not applying for one of those licenses, mark "N/A" on Question 28.

28. Do you, or any legal entity that you are part of, have any ownership interest in any other business that sells alcohol at retail in Oregon?  N/A  Yes  No  Unsure If yes or unsure, explain:

You must sign your own form (you can't have your attorney or a person with power of attorney sign your form).

I affirm that my answers are true and complete. I understand the OLCC will use the above information to check my records, including but not limited to, criminal history. I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Cathy Louise Frink Date: 6/10/15



OREGON LIQUOR CONTROL COMMISSION  
**INDIVIDUAL HISTORY**

1. Trade Name Frink's General Store 2. City Falls City

3. Name Frink Kirby Kent  
 (Last) (First) (Middle)

4. Other names used (maiden, other) \_\_\_\_\_

5. \*SSN [REDACTED] Place of Birth [REDACTED] 7. [REDACTED] 8. Sex M  F   
 (State or Country) (mm) (dd) (yyyy)

**\*SOCIAL SECURITY NUMBER DISCLOSURE:** As part of your application for an initial or renewal license, Federal and State laws require you to provide your Social Security Number (SSN) to the Oregon Liquor Control Commission (OLCC) for child support enforcement purposes (42 USC § 666(a)(13) & ORS 25.785). If you are an applicant or licensee and fail to provide your SSN, the OLCC may refuse to process your application. Your SSN will be used only for child support enforcement purposes unless you sign below.

Based on our authority under ORS 471.311 and OAR 845-005-0312(6), we are requesting your voluntary consent to use your SSN for the following administrative purposes only: to match your license application to your Alcohol Server Education records (where applicable), and to ensure your identity for criminal records checks. OLCC will not deny you any rights, benefits or privileges otherwise provided by law if you do not consent to use of your SSN for these administrative purposes (5 USC § 552(a). If you consent to these uses, please sign here:

Applicant Signature: \_\_\_\_\_

9. Driver License or State ID # [REDACTED] 10. State OR

11. Residence Address 58 N main st Falls City OR 97344  
 (number and street) (city) (state) (zip code)

12. Mailing Address (if different) \_\_\_\_\_  
 (number and street) (city) (state) (zip code)

13. Contact Phone 503-787-1403 14. E-Mail address (optional) KirbyKent@live.com

15. Do you have a spouse or domestic partner?  Yes  No  
 If yes, list his/her full name: Cathy Louise Frink

**OSP/DMV**  
 Search Completed

16. If yes to #15, will this person work at or be involved in the operation or management of the business?  
 Yes  No **JUN 10 2015**

17. List all states, other than Oregon, where you have lived during the past ten years. INITIALS: [Signature]  
none

18. In the past 12 years, have you been **convicted** ("convicted" includes paying a fine) in Oregon or any other state of driving a car with a suspended driver's license or driving a car with no insurance?  
 Yes  No  Unsure If yes, list the date(s), or approximate dates, and type(s) of convictions.  
 If unsure, explain. You may include the information on a separate sheet.

19. In the past 12 years, have you been **convicted** ("convicted" includes paying a fine) in Oregon or any other state of a misdemeanor or a felony?  Yes  No  Unsure  
 If yes, list the date(s), or approximate dates, and type(s) of convictions. If unsure, explain. You may include the information on a separate sheet.

20. Trade Name Frink's General Store 21. City Falls City

22. Do you have any arrests or citations that have not been resolved?  Yes  No  Unsure  
If yes or unsure, explain here or include the information on a separate sheet.

23. Have you ever been in a drug or alcohol diversion program in Oregon or any other state? (A diversion program is where you are required, usually by the court or another government agency, to complete certain requirements in place of being convicted of a drug or alcohol-related offense.)  Yes  No  Unsure  
If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

24. Do you, or any legal entity that you are a part of, currently hold or have previously held a liquor license in Oregon or another US state? (Note: a service permit is not a liquor license.)  Yes  No  Unsure  
If yes, list the name(s) of the business, the city (or cities) and state (or states) where located, and the date(s) of the license(s). If unsure, explain. You may include the information on a separate sheet.

Frink's General Store 401 N. Main St, Falls City  
2012 to present

25. Have you, or any legal entity that you are a part of, ever had an application for a license, permit, or certificate denied or cancelled by the OLCC or any other governmental agency in the US?  
 Yes  No  Unsure If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

Questions 26 and 27 apply if you, or any legal entity that you are part of, are applying for a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license. If you are not applying for one of those licenses, mark "N/A" on Questions 26 & 27.

26. Do you have any ownership interest in any other business that makes, wholesales, or distributes alcohol?  N/A  Yes  No  Unsure If yes, list the date(s), or approximate dates. If unsure, explain. You may include the information on a separate sheet.

27. Does, or will, a maker, wholesaler, or distributor of alcohol have any ownership interest in your business?  
 N/A  Yes  No  Unsure If yes or unsure, explain:

Question 28 applies if you, or any legal entity that you are part of, are applying for a Brewery, Brewery-Public House, Distillery, Grower Sales Privilege, Warehouse, Wholesale Malt Beverage & Wine, or Winery license. If you are not applying for one of those licenses, mark "N/A" on Question 28.

28. Do you, or any legal entity that you are part of, have any ownership interest in any other business that sells alcohol at retail in Oregon?  N/A  Yes  No  Unsure If yes or unsure, explain:

You must sign your own form (you can't have your attorney or a person with power of attorney sign your form).

I affirm that my answers are true and complete. I understand the OLCC will use the above information to check my records, including but not limited to, criminal history. I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant Signature: Kirby Just Date: 6/10/15



# OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: Cathy Frink Phone: 503-787-8036

Trade Name (dba): Frinks General Store

Business Location Address: 319 N. Main St.

City: Falls City ZIP Code: OR

### DAYS AND HOURS OF OPERATION

#### Business Hours:

Sunday	<u>6</u>	to	<u>10</u>
Monday	<u>6</u>	to	<u>10</u>
Tuesday	<u>6</u>	to	<u>10</u>
Wednesday	<u>6</u>	to	<u>10</u>
Thursday	<u>6</u>	to	<u>10</u>
Friday	<u>6</u>	to	<u>10</u>
Saturday	<u>6</u>	to	<u>10</u>

#### Outdoor Area Hours:

Sunday	_____	to	_____
Monday	_____	to	_____
Tuesday	_____	to	_____
Wednesday	_____	to	_____
Thursday	_____	to	_____
Friday	_____	to	_____
Saturday	_____	to	_____

The outdoor area is used for:

- Food service Hours: \_\_\_\_\_ to \_\_\_\_\_
- Alcohol service Hours: \_\_\_\_\_ to \_\_\_\_\_
- Enclosed, how \_\_\_\_\_

The exterior area is adequately viewed and/or supervised by Service Permittees.

\_\_\_\_\_ (Investigator's Initials)

Seasonal Variations:  Yes  No If yes, explain: Summer hrs 6-10-  
winter hrs Sunday-thurs 6-9, Fri & Sat 6-10

### ENTERTAINMENT

Check all that apply:

- |  |   |
|--|---|
| <input type="checkbox"/> Live Music        | <input type="checkbox"/> Karaoke                |
| <input type="checkbox"/> Recorded Music    | <input type="checkbox"/> Coin-operated Games    |
| <input type="checkbox"/> DJ Music          | <input type="checkbox"/> Video Lottery Machines |
| <input type="checkbox"/> Dancing           | <input type="checkbox"/> Social Gaming          |
| <input type="checkbox"/> Nude Entertainers | <input type="checkbox"/> Pool Tables            |
|  | <input type="checkbox"/> Other: _____           |

### DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday	_____	to	_____
Monday	_____	to	_____
Tuesday	_____	to	_____
Wednesday	_____	to	_____
Thursday	_____	to	_____
Friday	_____	to	_____
Saturday	_____	to	_____

### SEATING COUNT

Restaurant: \_\_\_\_\_ Outdoor: \_\_\_\_\_  
 Lounge: \_\_\_\_\_ Other (explain): \_\_\_\_\_  
 Banquet: \_\_\_\_\_ Total Seating: \_\_\_\_\_

OLCC USE ONLY	
Investigator Verified Seating: _____ (Y) _____ (N)	
Investigator Initials: <u>N/A</u>	
Date: _____	

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

Applicant Signature: Cathy Frink Date: 6/10/15



---

---

## AGENDA REPORT

---

---

**TO:** CITY COUNCIL  
**FROM:** MAYOR TERRY UNGRICHT  
**SUBJECT:** RFQ  
**DATE:** 09/28/2015

---

### **SUMMARY**

The City is issuing an RFQ for engineering firms to bid on our Master Water Plan.

### **BACKGROUND**

The Falls City Council passed a motion at the September 10, 2015 meeting on setting up a review panel to work on issuing a RFQ for the Master Water Plan. The review of the RFQ will be done for Councils acceptance and input.

### **PREVIOUS COUNCIL/COMMITTEE ACTION**

Directed Staff and review panel to submit an RFQ for the Council's approval.

### **ALTERNATIVES/FINANCIAL IMPLICATIONS**

The RFQ will set the process for the City to start receiving bids for the Master Water Plan project.

### **STAFF RECCOMENDATION**

Accept motion to issue the RFQ for bids.

### **EXHIBIT**

RFQ will be provided to Council before meeting

### **PROPOSED MOTIONS**

I move the City Council of the City of Falls City approve the RFQ for the Master Water Plan and direct staff to publish the RFQ for bids.

---

## AGENDA REPORT

---

**TO:** CITY COUNCIL  
**FROM:** MAYOR TERRY UNGRICHT  
**SUBJECT:** MARIJUANA UPDATE  
**DATE:** 09/30/2015

---

### **SUMMARY**

The Council adopted Ordinance 539-2014 adding Chapter 34, Marijuana Tax to the Falls City Code and latter modified Ordinance 539-2014 with Ordinance 541-2015 to take the tax rates out, and set new tax rates at 0% by resolution 11-2015.

### **BACKGROUND**

With the passage of Recreational Marijuana by Measure 91, the Legislature has been setting regulatory measures regarding the taxing of Marijuana. Measure 91 banned local taxing of Marijuana, but it was recommended to Council to apply a tax before the measure went into effect to possibly be grandfathered in. HB 3400 allows Cities to impose a 3% local tax on Recreational, but not Medical Marijuana. The legislation sets up a process to be able to apply the 3% tax; a City needs to submit it on the 2016 Election Ballot to be approved by our citizens and a City cannot collect any tax if they ban any type of medical or recreational Marijuana. Falls City does not ban dispensaries, but we are upholding Federal regulations to prohibit the licensing of a dispensary. This issue is being decided in the Court system now. Our City Attorney has recommended repealing our Ordinance and resolution on the taxing of Marijuana and to amend the Falls City development Code to allow dispensaries but with restrictions that would accomplish Councils goal of regulating where dispensaries can be located or to pursue a ban on licensing under HB 3400, section 134 that would be referred to the voters.

### **PREVIOUS COUNCIL/COMMITTEE ACTION**

Passed Ordinance 539-2014 and 541-2015, did not pass Ordinance 537-2014, and passed resolution 11-2015.

### **ALTERNATIVES/FINANCIAL IMPLICATIONS**

Without changing the land use process Falls City could be subject to a lawsuit and Legislation has voided our procedure for taxing Marijuana.

### **STAFF RECCOMENDATION**

Communicate to staff how Council would like to proceed on zoning and taxing of Marijuana.

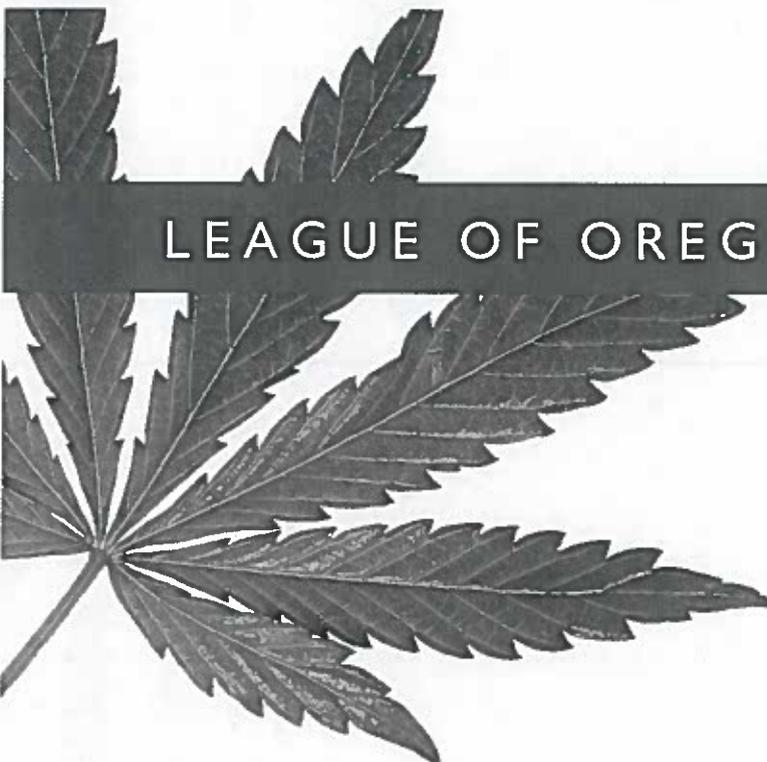
### **EXHIBIT**

Exhibit A, Falls City Map

Exhibit B, LOC- Local Government Regulation of Marijuana in Oregon

### **PROPOSED MOTIONS**





LEAGUE OF OREGON CITIES

---

**LOCAL GOVERNMENT  
REGULATION OF  
MARIJUANA IN  
OREGON**

---

**REVISED  
AUGUST 2015**

*Exhibit B*

34



Published by the League of  
Oregon Cities

# Table of Contents

<b>Introduction and A Word of Caution</b> .....	1
<b>Home Rule in Oregon</b> .....	2
Federal Law .....	3
An Overview of Oregon’s Marijuana Laws .....	4
Oregon Medical Marijuana Act .....	4
Recreational Marijuana .....	5
Taxation of Recreational Marijuana .....	5
Early Sales of Recreational Marijuana .....	6
<b>Local Government Options for Regulation of Marijuana</b> .....	6
Registration and Licenses .....	7
Oregon’s Seven Regulated Marijuana Activities .....	7
State Restrictions on the Location of Medical and Recreational Marijuana Activities .....	7
Medical Grow Sites and Recreational Producers .....	8
Medical Processing Sites and Recreational Processors .....	8
Medical Marijuana Dispensaries .....	8
Recreational Wholesalers and Retailers .....	9
Local Tax .....	9
Ban on Early Sales .....	10
Ban on State-Registered and Licensed Activities .....	10
Business License Ordinance .....	11
Development Code .....	12
Land Use Code .....	12
Time, Place and Manner Regulations .....	13
<b>Appendix A: Early Sales Opt Out</b> .....	15
<b>Appendix B: Council Opt Out</b> .....	18
<b>Appendix C: Opt Out by Voter Referral</b> .....	22
<b>Appendix D: Local Tax by Voter Referral</b> .....	29

## Introduction and A Word of Caution

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

The League published the first edition of this guide in the spring of 2015. Its original focus was medical marijuana. In November 2014, Oregon voters adopted Measure 91, legalizing the growing, distribution, possession and use of marijuana in certain amounts for non-medical personal use. In 2015, the state Legislature made comprehensive reforms to Measure 91 and addressed issues of local control. Specifically, the Legislature adopted the following bills:

- HB 3400 (Or Laws 2015, ch 614), the omnibus bill that amends the Oregon Medical Marijuana Act (OMMA) and the Control and Regulation of Marijuana Act (also known as Measure 91, which the voters passed in November 2014 legalizing recreational marijuana use in Oregon);
- HB 2041 (Or Laws 2015, ch 699), which revises the state tax structure for recreational marijuana;
- SB 460 (Or Laws 2015, ch 784), which authorizes early sales of recreational marijuana by medical marijuana dispensaries; and
- SB 844 (awaiting governor's signature), which creates a marijuana task force, provides for expungement of certain offenses, adds a new qualifying debilitating medical condition, and allows certain hospice and residential facilities to be designated as an additional caregiver.

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

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

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

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

## Home Rule in Oregon

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

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

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

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

A home rule charter operates like a state constitution in that it vests all government power in the governing body of a municipality, except as expressly stated in that charter, or preempted by state or federal law. According to the League’s records, all of Oregon’s 242 incorporated cities have adopted home rule charters.

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

The leading court case interpreting Oregon’s home rule amendment is *La Grande/Astoria v. PERB*, 281 Or 137, 148-49, 576 P2d 1204, *aff’d on reh’g*, 284 Or 173, 586 P2d 765 (1978). In that case, the Oregon Supreme Court said that home rule municipalities have authority to enact substantive policies, even in an area also regulated by state statute, as long as the local enactment is not “incompatible” with state law, “either because both cannot operate concurrently or because the Legislature meant its law to be exclusive.” In addition, the court said that where there is a local enactment and state enactment on the same subject, the courts should attempt to harmonize state statutes and local regulations whenever possible.<sup>2</sup>

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

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

## Federal Law

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

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

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

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

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

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

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

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

### *Oregon Medical Marijuana Act*

Oregon has had a medical marijuana program since 1998, when voters approved Ballot Measure 67, the Oregon Medical Marijuana Act (OMMA) (codified at ORS 475.300 – ORS 475.346). Since that time, the Legislature has amended the OMMA on a number of occasions. Generally, under the OMMA, a person suffering from a qualifying debilitating health condition must get a written statement from a physician that the medical use of marijuana may mitigate the symptoms or effects of that condition. The person may then obtain a medical marijuana card from the Oregon Health Authority, which is the agency charged with regulating medical marijuana. The patient may designate a caregiver and a grower if the patient decides not to grow his or her own marijuana, each of whom may also get a medical marijuana card. Patients, caregivers and growers with medical marijuana cards, who act in compliance with the OMMA, are immune from state criminal prosecution for any criminal offense in which possession, delivery or manufacture of marijuana is an element. Those without medical marijuana cards may also claim immunity from state criminal prosecution if they are in compliance with the OMMA and, within 12 months prior to the arrest at issue, had received a diagnosis of a debilitating medical condition for which a physician had advised medical marijuana could mitigate the symptoms or effects.

The OMMA also provides protection from state criminal prosecution for medical marijuana processors and medical marijuana dispensaries acting in compliance with the law. Although the OMMA did not originally envision dispensaries, in 2013 the Legislature created a system for state-registered facilities to lawfully transfer marijuana between growers and patients or caregivers. In its original form, the dispensary system failed to address many local government concerns, some of which the Legislature addressed in HB 3400 (2015).

HB 3400 amends the OMMA in a number of ways, including limiting the number of plants at a medical marijuana grow site; allowing medical marijuana growers to possess the amount of usable marijuana harvested from their mature plants, within certain limits; allowing medical marijuana growers to apply for a recreational grow license; changing the amount which a patient

may reimburse his or her grower; adding a new registration category for medical marijuana processors; adding testing, labeling, inspection and reporting requirements; and changing and adding limitations on where dispensaries and processors can locate.

### *Recreational Marijuana*

In November 2014, Oregon voters approved Ballot Measure 91, which decriminalized the personal growing and use of certain amounts of recreational marijuana by persons 21 years of age or older. Measure 91 also designated the Oregon Liquor Control Commission (OLCC) as the agency charged with licensing and regulating the growing, processing and sale of recreational marijuana. In particular, the OLCC was directed to administer a license program for producers, processors, wholesalers and retailers, and under that program, a person may hold more than one type of license.

HB 3400 preserves the general structure of Measure 91, but also makes important changes, including: allowing for personal making, processing or storing of up to 16 ounces of homemade marijuana concentrates; adding a requirement that those who work for recreational marijuana retailers hold a handlers permit; directing the OLCC to develop and maintain a seed-to-sale tracking system; directing the OLCC to adopt restrictions on the size of recreational marijuana grows; adding testing, labeling, inspection and reporting requirements for licensees; and changing and adding certain land use standards as they relate to marijuana.

### **Taxation of Recreational Marijuana**

Originally under Measure 91, the state tax on recreational marijuana would have been imposed on growers at a rate of \$35 per ounce of marijuana flowers, \$10 per ounce of marijuana leaves, and \$5 per immature marijuana plant. Under HB 2041 (2015), the Legislature revised the state tax structure to impose a 17 percent tax on the retail sale of marijuana, to be collected by marijuana retailers. Early sales of recreational marijuana from medical marijuana dispensaries, discussed below, will be taxed at a higher rate. Starting January 4, 2016, early sales of recreational marijuana from medical marijuana dispensaries will be taxed at a rate of 25 percent.

As was the case under Measure 91, 10 percent of the state tax will be transferred to cities to “assist local law enforcement in performing its duties” under Measure 91.<sup>6</sup> That 10 percent will be distributed using different metrics before and after July 1, 2017. Before July 1, 2017, tax revenues will be distributed proportionately to all Oregon cities based on their population. After July 1, 2017, those revenues will be distributed proportionately based on the number of licenses issued for premises located in each city. Fifty percent of revenues will be distributed based on the number of production, processor and wholesale licenses issued in the city, and the other 50 percent will be distributed based on the number of retail licenses issued in the city. However,

---

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

under HB 2041, if a city adopts an ordinance prohibiting the establishment of any registered or licensed marijuana activities, the city will not be eligible to receive state marijuana tax revenues.

HB 3400 preempts local governments from imposing more than a 3 percent tax on the production, processing or sale of recreational marijuana by a retail licensee.

## Early Sales of Recreational Marijuana

As of July 1, 2015, people 21 years of age and older may possess limited amounts of recreational marijuana under state law. However, the OLCC does not expect to issue licenses for the retail sale of recreational marijuana until sometime in 2016. To allow the OLCC time to implement its licensing system, while also providing an avenue for people to purchase recreational marijuana in compliance with state law, the Legislature authorized medical marijuana dispensaries to sell limited quantities of recreational marijuana.

In particular, starting October 1, 2015, medical marijuana dispensaries will be able to sell the following to a person who is 21 or older and presents proof of age:

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

Sales of recreational marijuana from medical dispensaries currently are set to end on December 31, 2016. At that time, recreational retail facilities likely will be operating. In the meantime, cities can opt out of early sales by ordinance.

## Local Government Options for Regulation of Marijuana

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

As set out in HB 3400 and under their home rule authority, cities have a number of options for regulating marijuana activities. Whether to regulate is a local choice. What follows is an overview of the options available to cities. However, before embarking on any form of regulation, cities should begin by examining the seven types of marijuana activities authorized by state statute and the restrictions state law (including administrative regulations adopted by the OLCC and OHA) places on each type of activity to determine whether a gap exists between what state law allows and what the community desires to further restrict.

## Registration and Licenses

Under HB 3400, there are seven marijuana activities that require registration or a license from the state. This guide focuses on regulation of those activities. Although some cities may be interested in regulating individual conduct involving personal growing, possession, and use of marijuana, those regulations are beyond the scope of this guide.

### Oregon's Seven Regulated Marijuana Activities

Marijuana Type	Grow	Make Products	Wholesale	Transfer to User
Medical <i>OHA Registration</i>	<b>Marijuana Grow Site:</b> Location for planting, cultivating, growing, trimming, or harvesting marijuana or drying marijuana leaves or flowers <i>Register under ORS 475.304</i>	<b>Marijuana Processing Site:</b> Location for compounding or converting marijuana into medical products, concentrates or extracts <i>Register under section 85 of HB 3400</i>	None	<b>Medical Marijuana Dispensary:</b> Transfer usable marijuana, immature marijuana plants, seed, and medical products, concentrates and extracts to patients and caregivers <i>Register under ORS 475.314</i>
Recreational <i>OLCC License</i>	<b>Producers:</b> Manufacture, plant, cultivate, grow, harvest <i>Obtain license under section 12 of HB 3400</i>	<b>Processors:</b> Process, compound or convert marijuana into products, concentrates or extracts, but does not include packaging or labeling <i>Obtain license under section 14 of HB 3400</i>	<b>Wholesalers:</b> Purchase marijuana items for resale to a person other than a consumer <i>Obtain license under section 15 of HB 3400</i>	<b>Retailers:</b> Sell marijuana items to a consumer <i>Obtain license under section 16 of HB 3400</i>  *Certain employees must obtain an OLCC handlers permit under section 19 of HB 3400

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

Before regulating or prohibiting state-registered or licensed marijuana activities, cities should examine the restrictions in state law. It is important to know about any state restrictions that create a regulatory “floor.” In other words, although the courts generally have upheld a city’s authority to impose more stringent restrictions than those described in state law, a city likely cannot impose restrictions that are more lenient than those described in state law. So, for

example, where state law requires a 1,000-foot buffer between medical marijuana dispensaries, a city could not allow dispensaries to locate within 500 feet of each other. Moreover, some cities may determine that state regulation of marijuana activities is sufficient and that local regulation is therefore unnecessary.

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

### *Medical Grow Sites and Recreational Producers*

HB 3400 does not restrict where medical marijuana grow sites or recreational marijuana producers can locate. However, it does place more stringent limitations on the number of plants that a medical marijuana grower can grow in residential zones and directs the OLCC to adopt rules restricting the size of recreational marijuana grow canopies.

Generally, a medical marijuana grow site may have up to 12 mature plants if it is located in a residential zone, and up to 48 mature plants if it is located in any other zone. However, there are exceptions for certain existing grow sites. If all growers at a site had registered with the state by January 1, 2015, the grow site is limited to the number of plants that were at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in a residential zone and 96 mature plants per grow site in all other zones. A grower loses the right to claim those exceptions, however, if the grower's registration is suspended or revoked.

### *Medical Processing Sites and Recreational Processors*

Processors that make marijuana extracts may not be located in an area zoned for residential use.

### *Medical Marijuana Dispensaries*

Prior to HB 3400, state law provided that dispensaries had to be located in areas zoned for commercial, industrial, mixed use or agricultural land. Some dispensary owners argued that, as a result, local governments had to allow dispensaries to locate in those zones. The Legislature has now revised that provision to remove the list of allowable zones and replace it with a restriction: dispensaries may not be located in residential zones.

Prior to HB 3400, dispensaries could not locate within 1,000 feet of a public or private elementary, secondary or career school attended primarily by minors. The Legislature has now revised that restriction so that a dispensary may not locate within 1,000 feet of a public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in

ORS 339.030(1)(a).<sup>7</sup> As a practical matter, that means that dispensaries cannot locate within 1,000 feet of most public and private elementary, middle and high schools. However, if a school is established within 1,000 feet of an existing dispensary, the dispensary may remain where it is unless the OHA revokes its registration.

In addition, the Legislature retained the requirement that dispensaries may not be located at the same address as a grow site and may not be located within 1,000 feet of another dispensary.

### *Recreational Wholesalers and Retailers*

Wholesale and retail licensees may not locate in an area that is zoned exclusively for residential use. The same requirements that apply to medical marijuana dispensaries regarding their proximity to schools apply to retail licensees. As a practical matter, a retail licensee may not locate within 1,000 feet of most public and private elementary, middle and high schools. However, if a school is established within 1,000 feet of an existing retail licensee, the licensee may remain where it is unless the OLCC revokes its license.

### **Local Tax**

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

Under HB 3400, the Legislature has vested authority to “impose a tax or fee on the production, processing or sale of marijuana items” solely in the Legislative Assembly, except as provided by law. The Legislature has also provided that a city may not “adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items,” except as provided by law. HB 3400 goes on to provide that cities may adopt an ordinance, which must be referred to the voters, imposing a tax or fee of up to 3 percent on the sale of marijuana items by a retail licensee. The ordinance must be referred to the voters in a statewide general election, meaning an election in November of an even-numbered year. However, if a city has adopted an ordinance

---

<sup>7</sup> ORS 339.020 provides, “Except as provided in ORS 339.030:

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

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

prohibiting the establishment of any recreational marijuana licensees or any medical marijuana registrants in the city, the city may not impose a local tax under this provision of the legislation.

Although HB 3400 provides that cities may impose a tax on sales by retail licensees, it remains unclear whether a city can tax medical marijuana. In particular, cities should consult their attorney on whether the authority to impose a tax or fee on “the production, processing or sale of marijuana items,” vested solely in the Legislature except as provided in HB 3400, includes the authority to tax medical marijuana.

For those cities that enacted taxes on medical or recreational marijuana prior to the Legislature’s adoption of HB 3400, the status of those taxes remains an open question. Arguably, cities that had “adopt[ed] or enact[ed]” taxes prior to the effective date of HB 3400 are grandfathered in under the law. However, the issue is not free from doubt, and cities that decide to collect on pre-HB 3400 taxes should be prepared to defend their ability to do so against legal challenge. Consequently, cities that plan to continue to collect taxes imposed prior to the passage of HB 3400 should work closely with their city attorney to discuss the implications and risks of that approach.

### **Ban on Early Sales**

Starting October 1, 2015, medical marijuana dispensaries may begin selling limited quantities of recreational marijuana. Cities may adopt an ordinance prohibiting those early sales without referring the ordinance to voters and likely without tax implications. Although a city adopting an ordinance “prohibiting the establishment” of certain marijuana activities is not eligible to receive state marijuana tax revenues, an ordinance prohibiting early sales would merely limit the activities at an existing medical marijuana dispensary. As a result, cities would likely remain eligible to receive state tax revenues.

However, cities likely cannot impose a local tax on early sales. Under HB 3400, cities may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items, except as provided in that legislation. HB 3400 further stipulates that cities may refer an ordinance to voters imposing a tax of up to 3 percent on sales by a person that holds a retail license issued by the OLCC. Because early sales of recreational marijuana will be made by medical marijuana dispensaries, and not by a retail licensee, a city likely is preempted from imposing a tax on early sales of recreational marijuana. However, cities interested in imposing a local tax on early sales should consult their city attorney.

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

Under HB 3400, cities may prohibit within the city the operation of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and medical marijuana dispensaries. HB 3400 is silent on whether a city can ban medical marijuana growers from operating in the city. However, HB 3400 does not indicate that the bill’s process for banning marijuana activities is the exclusive means to do so. Cities considering banning

medical marijuana grow sites should talk to their city attorney about whether they can do so under either home rule, federal preemption or both legal theories.

The method for imposing the ban under HB 3400 will depend on when the city imposes the ban and whether the city is located in a county that voted against Measure 91 by 55 percent or more.

Before December 24, 2015, cities located in counties that voted against Measure 91 by 55 percent or more (Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler Counties) can enact a ban through council adoption of an ordinance prohibiting any of the six activities listed above. After that time, and for cities not located in those counties, the city council may adopt an ordinance banning any of the six activities listed above, but that ordinance must be referred to the voters at a statewide general election, meaning an election in November of an even-numbered year. Medical marijuana dispensaries and medical marijuana processors that have registered with the state by the time their city adopts a prohibition ordinance are not subject to the ban if they have successfully completed a city or county land use application process.

Under either procedure, as soon as the city council adopts the ordinance, it must submit it to the Oregon Health Authority (OHA) for medical bans and the Oregon Liquor Control Commission (OLCC) for recreational bans, and those agencies will stop registering and licensing the banned facilities. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election occurs.

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

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

It is also important to note that HB 3400 does not provide an avenue for cities to ban the personal use and growing of marijuana. As a result, cities interested in enacting such a ban should consult with their city attorney to discuss whether the city can do so under either home rule, federal preemption or both legal theories.

### **Business License Ordinance**

Although HB 3400 provides an avenue for cities to ban certain marijuana activities, nothing in the legislation makes that the exclusive means for prohibiting marijuana activities. As a result, some cities may not need to go through the procedures outlined in HB 3400 to ban marijuana

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

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

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

## Development Code

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

## Land Use Code

As noted above, state law places restrictions on where certain marijuana activities can locate, including prohibiting certain processors, dispensaries and retail establishments from locating in residential zones. In addition, under HB 3400, a land use compatibility statement is required as part of the OLCC's licensing process for all recreational licensees. In particular, before issuing a producer, processor, wholesaler or retailer license, the OLCC must request a statement from the city that the requested license is for a location where the proposed use of the land is a permitted or conditional use. If the proposed use is prohibited in the zone, the OLCC may not issue a license. A city has 21 days to act on the OLCC's request, but when that 21 days begins varies.

If the land use is allowed as an outright permitted use, the city has 21 days from receipt of the request; if the land use is a conditional use, the city has 21 days from the final local permit approval. The city's response to the OLCC is not a land use decision. In addition to those state requirements, cities can impose their own more stringent land use requirements and restrictions.

Moreover, cities that desire to prohibit marijuana facilities altogether might also do so through amendments to their land use codes. Before considering this option, cities should work with their legal counsel to first determine if the wording of their zoning codes already prohibits marijuana operations, and if not, to identify the appropriate land use procedures and the amount of time it would take to comply with them. If the wording in a city's zoning codes does not prohibit marijuana operations, the city has different options. One option is to add wording such as "an allowed use is one that does not violate local, state or federal law" to the city's zoning code. Cities that adopt a prohibition that references federal law would then rely on existing mechanisms in their ordinances for addressing zoning violations.<sup>8</sup>

### Time, Place and Manner Regulations

HB 3400 provides that local governments may impose reasonable regulations on the time, place and manner of operation of marijuana facilities. The League believes that, under the home rule provisions of the Oregon Constitution, local governments do not need legislative authorization to impose time, place and manner restrictions, and that the Legislature's decision to expressly confirm local authority to impose certain restrictions does not foreclose cities from imposing other restrictions not described in state law.

HB 3400 provides that cities may regulate marijuana facilities by imposing reasonable restrictions on:

- The hours of operation of recreational marijuana retailers and medical marijuana grow sites, processing sites and dispensaries;
- The location of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana grow sites, processing sites and dispensaries, except that a city may not impose more than a 1,000-foot buffer between recreational marijuana retailers;
- The manner of operation of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and dispensaries; and

---

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

- The public's access to the premises of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana grow sites, processing sites and dispensaries.

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

Although the law does not provide for regulation of the hours of operation for recreational producers, processors or wholesalers, or for regulation of the manner of operation of medical marijuana grow sites, the League believes that cities could regulate those aspects of operation under their home rule authority. However, a city considering regulating those activities should consult with their legal counsel on the risks of litigation and the likelihood of prevailing.

What regulations a city ultimately adopts will depend on community wants and needs, as well as on the rules adopted by the OHA and the OLCC. HB 3400 authorizes, and in some cases requires, those agencies to adopt rules implementing the law, and those rules may address many of the issues concerning local governments. As a result, although cities may want to begin considering the types of regulations that they want to impose, cities should be aware that local needs may change with experience and as new administrative rules go into effect.

# Appendix A

## Early Sales Opt Out

## APPENDIX A

### Early Sales Opt Out

As of July 1, 2015, people aged 21 and older may possess certain amounts of recreational marijuana under Oregon law. However, the Oregon Liquor Control Commission, which is the state agency charged with licensing the retail sale of recreational marijuana, does not expect to begin licensing retail stores until sometime in 2016. To address the gap between the date when people can possess recreational marijuana under Oregon law and the date when people will be able to purchase recreational marijuana from a retail store, the Legislature enacted Senate Bill 460, which allows for limited sales of recreational marijuana from medical marijuana dispensaries starting October 1, 2015. Under SB 460, cities can adopt an ordinance prohibiting those limited recreational sales. Although not required by the statute, the League recommends the city submit its early sales opt out ordinance to Oregon Health Authority so that they may aid in any enforcement of the ban.

\*\*\*\*\*

#### AN ORDINANCE OF THE CITY OF {NAME} DECLARING A BAN ON THE SALE OF RECREATIONAL MARIJUANA BY MEDICAL MARIJUANA DISPENSARIES, AND DECLARING AN EMERGENCY

Whereas, the Oregon Medical Marijuana Act created a system for the transfer of medical marijuana between growers and patients and caregivers through medical marijuana dispensaries;

Whereas, the voters adopted Measure 91 in November 2014, which provides criminal immunity for people aged 21 or older who possess certain amounts of marijuana and directs the Oregon Liquor Control Commission to license the retail sale of marijuana;

Whereas, the Oregon Liquor Control Commission has not yet licensed the retail sale of recreational marijuana;

Whereas, the Legislature enacted Senate Bill 460 (2015) to allow medical marijuana dispensaries to sell limited marijuana retail product starting October 1, 2015;

Whereas, Senate Bill 460 (2015) provides that a city may adopt ordinances prohibiting the sale of limited marijuana retail product from medical marijuana dispensaries;

Whereas, the City Council wants to prohibit the sale of marijuana retail products from medical marijuana dispensaries in the city to protect and benefit the public health, safety and welfare of existing and future residents and businesses in the city;

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

**BAN DECLARED.** The City of {Name} hereby prohibits the sale of limited marijuana retail product in any area subject to the jurisdiction of City of {Name} as described in section 2 of Senate Bill 460 (2015).

**DURATION OF BAN.** The ban imposed by this ordinance will be effective until December 31, 2016, or until the Legislature ends sales of limited marijuana retail product by medical marijuana dispensaries, whichever comes later.

**ENFORCEMENT.** {Cities need to think about how to enforce a ban, with mechanisms such as revocation or suspension of a business license, revocation of a marijuana activities registration, injunction, or civil penalty. Cities that consider imposing a criminal penalty should work closely with their city attorney to assess their ability to do so under SB 460 and HB 3400.}

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

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

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

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

# Appendix B

## Council Opt Out

## APPENDIX B

### Council Opt Out

*Note: This option is available only for certain cities and only until December 24, 2015.*

Under HB 3400, cities may prohibit within the city the establishment of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and medical marijuana dispensaries. Medical marijuana dispensaries are grandfathered and are able to operate despite a ban if they: (1) have applied to be registered by July 1, 2015 or were registered prior to the date on which the ordinance is adopted, and (2) successfully completed the land use application process (if applicable). Medical marijuana processors are grandfathered and are able to operate despite a ban if they: (1) were registered under ORS 475.300 to 475.346 and were processing usable marijuana on or before July 1, 2015 or (2) are registered under section 85 of HB 3400 prior to the date on which the ordinance is adopted by the governing body, and (3) have successfully completed a local land use application process (if applicable).

HB 3400 is silent on whether a city can ban medical marijuana growers from operating, consequently, this model does not address the banning of medical marijuana growers. Cities interested in banning medical marijuana growers should consult with their city attorney about whether they could do so under the city's home rule authority and/or federal legal theories.

Cities located in counties that voted against Measure 91 by 55 percent or more (Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler Counties) can enact a ban through council adoption of an ordinance prohibiting any of the six activities listed above. However, the city council must do so prior to December 24, 2015. After that date a ban can only be effectuated using the referral process set out in Appendix C.

After adopting a prohibition ordinance, the council must submit the ordinance to the Oregon Health Authority (if banning medical marijuana businesses) and/or the Oregon Liquor Control Commission (if banning recreational marijuana businesses) and those agencies will then stop registering and licensing the prohibited businesses. Each agency has a form for submitting the ordinances.

Cities that adopt an ordinance prohibiting the establishment of medical or recreational marijuana businesses are not eligible to receive a distribution of state marijuana tax revenues or to impose a local tax under section 34a of HB 3400.

\*\*\*\*\*

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

Whereas, the Oregon Medical Marijuana Act, as amended by House Bill 3400 (2015) provides that the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries;

Whereas, Measure 91, which the voters adopted in November 2014, directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana;

Whereas, section 133 of HB 3400 provides that a qualifying city may prohibit, within its jurisdiction, the establishment of certain state-registered and state-licensed marijuana businesses by adopting an ordinance within 180 days of the effective date of HB 3400;<sup>9</sup>

Whereas, {City} is a “qualifying city” as defined in section 133 of House Bill 3400 (2015) because {City} is located in a county in which not less than 55 percent of the votes cast in the county on Measure 91 in November 2014 were against the measure;

Whereas, the City Council wants to prohibit the operation of {type of marijuana activity} in the city to protect and benefit the public health, safety and welfare of existing and future residents and businesses;

Whereas, the City Council believes that the public benefits from prohibiting the operation of {type of marijuana activity} in the city outweigh the benefit the city would receive from state or local tax revenues;

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

#### DEFINITIONS.

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

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

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

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

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

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

---

<sup>9</sup> Those counties include the following: Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler.

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

**BAN DECLARED.** As provided in section 133 of House Bill 3400 (2015), the City of {Name} hereby prohibits the establishment of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

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

**EXCEPTION.** The prohibition set out in this ordinance does not apply to a marijuana processing site or medical marijuana dispensary that meets the conditions set out in subsections 6 or 7 of section 133, section 136, or section 137 of House Bill 3400 (2015).

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

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

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

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

# Appendix C

## Opt Out by Voter Referral

## APPENDIX C

### Opt Out by Voter Referral

Cities that are not in a county that voted no on Measure 91 by 55 percent or more, or cities that desire to ban certain marijuana activities after December 24, 2015, may do so only by referral at a statewide general election, meaning an election in November of an even-numbered year. Cities should consult the Secretary of State's referral manual and work with the city recorder or similar official to determine the procedures necessary to refer an ordinance to the voters.

Once adopted, the city must submit the ordinance to the Oregon Health Authority (if banning medical marijuana businesses) and/or the Oregon Liquor Control Commission (if banning recreational marijuana businesses), and those agencies will then stop registering and licensing the prohibited businesses until the next statewide general election. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election. Each agency has a form for submitting the ordinances.

Medical marijuana dispensaries are grandfathered and are able to operate despite a ban if they: (1) have applied to be registered by July 1, 2015 or were registered prior to the date on which the ordinance is adopted by the city council, and (2) successfully completed the land use application process (if applicable). Medical marijuana processors are grandfathered and are able to operate despite a ban if they: (1) were registered under ORS 475.300 to 475.346 and were processing usable marijuana on or before July 1, 2015 or (2) are registered under section 85 of HB 3400 prior to the date on which the ordinance is adopted by the governing body, and (3) have successfully completed a local land use application process (if applicable).

Cities that adopt an ordinance prohibiting the establishment of medical or recreational marijuana businesses are not eligible to receive a distribution of state marijuana tax revenues or to impose a local tax under section 34a of HB 3400.

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

\*\*\*\*\*

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

Whereas, the Oregon Medical Marijuana Act, as amended by House Bill 3400 (2015) provides that the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries;

Whereas, Measure 91, which the voters adopted in November 2014, directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana;

Whereas, section 134 of HB 3400 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

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

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

DEFINITIONS.

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

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

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

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

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

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

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

BAN DECLARED. As described in section 134 of House Bill 3400 (2015), the City of {Name} hereby prohibits the establishment {and operation}<sup>10</sup> of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

- (a) Marijuana processing sites;

<sup>10</sup> Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

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

**EXCEPTION.** The prohibition set out in this ordinance does not apply to a marijuana processing site or medical marijuana dispensary that meets the conditions set out in subsections 6 or 7 of section 134, section 136, or section 137 of House Bill 3400 (2015).

**REFERRAL.** This ordinance shall be referred to the electors of the city of {name} at the next statewide general election on {date – Tuesday, November 8, 2016 is the next statewide general election}.

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

\*\*\*\*\*

**A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME} THE QUESTION OF BANNING {MEDICAL MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS, RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA WHOLESALERS, AND/OR RECREATIONAL MARIJUANA RETAILERS} WITHIN THE CITY<sup>11</sup>**

Whereas, section 134 of HB 3400 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

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

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

**MEASURE.** A measure election is hereby called for the purpose of submitting to the electors of the CITY OF {NAME} a measure prohibiting the establishment of certain marijuana activities in the area subject to the jurisdiction of the city, a copy of which is attached hereto as “Exhibit 1,” and incorporated herein by reference.<sup>12</sup>

**ELECTION CONDUCTED BY MAIL.** The measure election shall be held in the CITY OF {NAME} on {date – November 8, 2016 for the next general election}. As required by ORS

<sup>11</sup> Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.

<sup>12</sup> Exhibit 1 should include the question and summary.

254.465, the measure election shall be conducted by mail by the County Clerk of {county name} County, according to the procedures adopted by the Oregon Secretary of State.

DELEGATION. The CITY OF {NAME} authorizes the {City Manager, City Administrator, City Recorder, or other appropriate city official} or the {City Manager, City Administrator, City Recorder, or other appropriate city official} designee, to act on behalf of the city and to take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.<sup>13</sup>

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

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

FILING WITH COUNTY ELECTIONS OFFICE. The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.<sup>14</sup>

EFFECTIVE DATE. This resolution is effective upon adoption.

\*\*\*\*\*

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

#### BALLOT TITLE

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

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

#### QUESTION

A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure

---

<sup>13</sup> Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, "The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted." A city's local rules may dictate who will prepare the ballot title.

<sup>14</sup> The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State's website at [www.sos.oregon.gov](http://www.sos.oregon.gov).

*20 word limit under ORS 250.035(1)(b)*

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

**SUMMARY**

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

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

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

Approval of this measure would prohibit the establishment {and operation}<sup>15</sup> of {medical marijuana processors, medical marijuana dispensaries, recreational marijuana producers, processors, wholesalers, and retailers} within the area subject to the jurisdiction of the city {provided that state law allows for continued operation of medical marijuana processors and medical marijuana dispensaries already registered – or in some cases, that have applied to be registered – and that have successfully completed a local land use application process}.

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

\*\*\*\*\*

**EXPLANATORY STATEMENT**

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

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

Approval of this measure would prohibit the establishment {and operation}<sup>16</sup> of certain marijuana activities within the city.

The Oregon Medical Marijuana Act, as amended by the Legislature in 2015, provides that the Oregon Health Authority will register medical marijuana processors and medical marijuana

<sup>15</sup> Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

<sup>16</sup> Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

dispensaries. Medical marijuana processors compound or convert marijuana into concentrates, extracts, edible products, and other products intended for human consumption and use. Medical marijuana dispensaries facilitate the transfer of marijuana and marijuana products between patients, caregivers, processors, and growers. Measure 91, approved by Oregon voters in 2014 and by the Legislature in 2015, provides that the Oregon Liquor Control Commission will license recreational marijuana producers (those who manufacture, plant, cultivate, grow or harvest marijuana), processors, wholesalers, and retailers.

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

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

Approval of this measure has revenue impacts. Currently, ten percent of state marijuana tax revenues will be distributed to cities to assist local law enforcement in performing their duties under Measure 91. If approved, this measure would make the city ineligible to receive distributions of state marijuana tax revenues.

Currently, under the 2015 legislation, a city may impose up to a three percent tax on the sale of marijuana items by a marijuana retailer in the city. However, a city that adopts an ordinance prohibiting the establishment of medical marijuana processors, medical marijuana dispensaries, or recreational marijuana producers, processors, wholesalers, or retailers may not impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. Approval of this measure would therefore prevent a city from imposing a local tax on those activities.

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

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

# Appendix D

## Local Tax by Voter Referral

## APPENDIX D

### Local Tax by Voter Referral

Under HB 3400, cities may impose up to a 3 percent tax on sales of marijuana items made by those with recreational retail licenses by referring an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year.<sup>17</sup>

However, sections 133 and 134 of HB 3400, which provide a mechanism for prohibiting the establishment of certain marijuana businesses, state that a city that adopts a prohibition under those sections may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. As a result, if a city refers a local tax ordinance to the voters at the same election that it refers a prohibition ordinance to the voters, the city will want to consult its attorney regarding the effect of those two ordinances. The sample below includes wording for cities that put both ordinances on that same ballot. However, a city planning to refer both measures to the ballot should work closely with its city attorney on preparing those ordinances and referral documents.

As with any revenue raising measure, it's important that the budget committee approve any proposed taxes as part of its approval of the budget. See the Department of Revenue "Tax Election Ballot Measures" manual for more information.

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

\*\*\*\*\*

AN ORDINANCE OF THE CITY OF {NAME} IMPOSING A {UP TO THREE} PERCENT TAX {OR FEE} ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE<sup>18</sup>

Whereas, section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

<sup>17</sup> Cities that imposed marijuana taxes prior to the effective date of HB 3400 (2015) should talk to their city attorney about the status of those taxes.

<sup>18</sup> No emergency clause is included in this ordinance because a city may not include an emergency clause in an ordinance regarding taxation. See *Advance Resorts v. City of Wheeler*, 141 Or App 166, 178, 917 P2d 61, rev den, 324 Or 322 (1996) (holding that a city may not include an emergency clause in an ordinance regarding taxation).

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

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

DEFINITIONS.

Marijuana item has the meaning given that term in Oregon Laws 2015, chapter 614, section 1.

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

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

TAX IMPOSED. As described in section 34a of House Bill 3400 (2015), the City of {Name} hereby imposes a tax {or fee} of {up to three} percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

COLLECTION. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.<sup>19</sup>

REFERRAL. This ordinance shall be referred to the electors of {city} at the next statewide general election on {date – Tuesday, November 8, 2016 is the next statewide general election}.

\*\*\*\*\*

A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME} THE QUESTION OF IMPOSING A {UP TO THREE} PERCENT TAX {OR FEE} ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER WITHIN THE CITY<sup>20</sup>

Whereas, section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

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

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

MEASURE. A measure election is hereby called for the purpose of submitting to the electors of the city of {name} a measure imposing a {up to three} percent tax on the sale of marijuana items

<sup>19</sup> Cities may want to include information about where, how, and when the tax must be remitted.

<sup>20</sup> Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.

66

by a marijuana retailer in the area subject to the jurisdiction of the city, a copy of which is attached hereto as “Exhibit 1,” and incorporated herein by reference.<sup>21</sup>

**ELECTION CONDUCTED BY MAIL.** The measure election shall be held in the city of {name} on {date – November 8, 2016 for the next general election}. As required by ORS 254.465, the measure election shall be conducted by mail by the County Clerk of {county name} County, according to the procedures adopted by the Oregon Secretary of State.

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

**PREPARATION OF BALLOT TITLE.** The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.<sup>22</sup>

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

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

**FILING WITH COUNTY ELECTIONS OFFICE.** The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.<sup>23</sup>

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

\*\*\*\*\*

**BALLOT TITLE**

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

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

<sup>21</sup> Exhibit 1 should include the question and summary.

<sup>22</sup> Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, “The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted.” A city’s local rules may dictate who will prepare the ballot title.

<sup>23</sup> The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State’s website at [www.sos.oregon.gov](http://www.sos.oregon.gov).

**QUESTION**

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

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

**SUMMARY**

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

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

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

{Under state law, a city that adopts an ordinance that prohibits the establishment in the area subject to the jurisdiction of the city of a medical marijuana processor, medical marijuana dispensary, or recreational marijuana producer, processor, wholesaler, or retailer may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. This measure would become operative only if the measure proposing to prohibit the establishment of any of those marijuana entities does not pass by a majority of votes.}<sup>24</sup>

\*\*\*\*\*

**EXPLANATORY STATEMENT**

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters' pamphlet  
*500 word limit under ORS 251.345 and OAR 165-022-0040(3)*

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

<sup>24</sup> Cities that desire to provide voters with the most options may wish to put both a measure banning certain activities and a tax measure before the voters at the same time. Cities that elect to do so should include this wording explaining the effect of the vote.

Under Measure 91, adopted by Oregon voters in November 2014 and amended by the Legislature in 2015, the Oregon Liquor Control Commission must license the retail sale of recreational marijuana. The 2015 Legislation provides that a city council may adopt an ordinance imposing up to a three percent tax on the sale of marijuana items (which include marijuana concentrates, extracts, edibles, and other products intended for human consumption and use) by retail licensees in the city, but the council must refer that ordinance to the voters at a statewide general election. The City of {name} city council has adopted an ordinance imposing a {up to three} percent tax on the sale of marijuana items by a retail licensee in the city, and, as a result, has referred this measure to the voters.

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

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

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

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

## OCTOBER MAYOR'S REPORT

It has been a busy month for staff; the training of Johanna is proceeding well and Domenica felt comfortable to take her long deserved vacation. Staff has been working on filing and records retention, a workers comp audit, the budget audit, and the usual day to day operations. Public Works had one main break and one service break, has been getting ready for the winter months, repairing Dayton Street Bridge, and auditing and inspecting catch basins. Public Works replaced 100 feet of the Mill Street water line; there have been 3 main breaks since I became Mayor, so we decided that before winter we would replace this weak spot in our system.

Public Works and I met with an Engineer, Bill Pavlich, from Pace Engineering. Bill was kind enough to come and give us some advice on a couple of ongoing issues. He checked an issue that came up with the Water Reservoir when we were cleaning it, the paint seems to be coming off and the hatch is rusted. We have contacted the paint company and are checking on the warranty. Bill also shot some pictures of our Dayton St. Bridge and a structural Engineer will try and give us a ball park figure on replacing. Bill thought we would be looking at close to \$200,000.00, but we will wait to hear the structure Engineer's opinion. We have inspected it in house and believe that with the repairs we made it should give us a few more years of service, but it is defiantly a project we want to start budgeting for and looking for grant money.

The Master Water Plan review panel, IFA, COG, and our Attorney, Ross, helped critique the RFQ and I believe we have a good document to send out for bids, Thanks to all that helped out.

I am expecting to be able to finish up the Workers Comp audit by mid-October and the Budget Auditors have set a date, the 15<sup>th</sup> of October, to start the onsite review. This will be a busy time for all of staff.

We have had a little bit of vandalism at the upper park. Public Works will be working on closing up some new trails/roads that have been made, winterizing, and shutting down the upper Park bathroom. All in all, we had a pretty good summer; there were very few park related complaints.

I am still working on setting up a code enforcement procedure; we were able to clear up three complaints. I will be doing letters of violation on complaints that are in violation of our code, as time permits. I will meet with the surrounding Cities to see about using their Court system, if not Johanna has volunteered to learn the Court Clerk duties. I still think that setting up a small panel, at the most three, to act as review of complaints and submit letters on non-complying properties. Then we can concentrate on training for this panel to work with our Prosecutor, Judge, and Court Clerk to start a citation process that will stand up in Court.

I was approached by Polk County Public Works that they were going to be stripping roads in our area. They were willing to do North Main for around \$200.00, so I told them to do it. I am going to approach Dallas to see if they have the templates and equipment to do cross walks, if so I will try and see if we can borrow the equipment to re-do our crosswalks.

# MONTHLY EXPENSE REPORT

## MAYOR UNGRICHT

09/02/2015: 25 Miles, Monmouth Bank.  
09/08/2015: 25 Miles, Monmouth Bank.  
09/09/2015: 25 Miles, Monmouth Bank, safety deposit box & deposit.  
09/11/2015: 65 Miles, Monmouth Bank, Edge Lab Corvallis, lead & copper samples  
09/15/2015: 25 Miles, Monmouth Bank.  
09/16/2015: 64 Miles, Corvallis, Edge Lab, lead & copper.  
09/17/2015: 124 Miles, Salem for TMDL meeting with DEQ, Emergency sample to Corvallis  
09/18/2015: 47 Miles, Dallas Polk County Breakfast, Monmouth Bank.  
09/22/2015: 25 Miles, Monmouth Bank  
09/23/2015: 22 Miles, Forbes plumbing  
09/25/2015: 25 Miles, Monmouth Bank

Total            472.0 Miles x .575 cents = \$271.40

## Library Director's Report

September, 2015

Attendance totals for the public library 366. The breakdown is as follows: Adults 177 and Youth 189, regular hours.

September, that month of new resolutions, contained the State Library Report, the Ready to Read final Grant Report, and the Chemeketa Lost Book Report. The last report in that series holds the potential of generating revenue. The elementary school library was the site of the September Day of Service. Twelve people labored to mark thousands of books to allow that system to revert to Dewey. The elementary library opened the doors again on 9/22/15. That library is less than perfectly organized, but I am adding pre-school stories to the other elementary library classes. The PYM Meetings resumed after the summer recess. Children's Librarians of Chemeketa also resume their meetings on 10/2/15.

The State Library Report, in part, included the following figures: Lending to other libraries, 2,610; interlibrary loan books, 2,199. According to the Chemeketa Contract, Wagner Library will net \$720. Number of new items catalogued = 17, plus 12 DVD donations were received as a result of the August report. Thank you. A reminder: while Wagner Library is affiliated with the school district, movies must be rated "PG".

Qualifying for library status requires five periodical subscriptions. The following titles have been ordered after the Advisory Board discussion: **National Geo Kids, Wired, Popular Science, Audubon, and Motorcyclist.** The dollar amount totals Forty-six (46.00) dollars. This is a considerable savings over last year.

The Library Advisory Committee met on 9/8/15. New officer elections will take place in October and the committee conducted a "library inspection". The board was pleased to note changes in simplifying the library floor plan as well as rotating puzzles, farms and mazes in the children's section.

Children's programming resumed on 9/26/15, the last Saturday of the month. September's program, **Mindgames**, was well attended (22). For October, there will be a Halloween-themed treasure hunt on 10/31/15 from 12:00 p. m. to 2:00 p.m.

Respectfully submitted,

Cynthia Hovind