



TO: Planning Commission and City Commission

FROM: Pete Walter, AICP, Planner

RE: Work Session on Marijuana Regulations, 5/10/2016

Date: 5/2/2016

Background and History

On November 4, 2014, Oregon voters approved Ballot Measure 91, which legalizes personal possession of certain amounts of marijuana for people 21 years of age or older. The measure also creates a regulatory system for the production, distribution and sale of recreational marijuana and marijuana products. Most provisions of Measure 91 became operative on July 1, 2015.

It is also important to keep in mind the Oregon Medical Marijuana Act (OMMA), which was adopted by initiative in 1998 and amended since that time. The OMMA allows individuals with a medical history of one or more qualifying illnesses and a doctor's recommendation to apply for registration with the program. Measure 91, for recreational use of marijuana, and the OMMA, allowing medical use of marijuana, operate concurrently and, while the laws regulating the two programs are similar, there are some differences that are important.

During the 2015 legislative session, the Legislature passed four laws relating to medical and recreational marijuana:

- [HB 3400](#), the omnibus bill that amends the Oregon Medical Marijuana Act (OMMA) and Measure 91;
- [HB 2041](#), which revises the state tax structure for recreational marijuana;
- [SB 460](#), which authorizes early sales of recreational marijuana by medical marijuana dispensaries; and
- [SB 844](#), which contains miscellaneous provisions.

For more information about Measure 91 and what it means for Oregon Cities and Clackamas County, please visit the following useful websites:

- <http://whatslegaloregon.com/>
- [Oregon Liquor Control Commission \(Marijuana Information\)](#)
- [League of Oregon Cities \(Marijuana Information\)](#)
- [Clackamas County \(Marijuana Information\)](#)

Tax

Pursuant to Ord. 14-1014, codified in [OCMC 3.06](#), the City has adopted a 10% tax on the sale of recreational marijuana and marijuana-infused products, and a 5% sales tax on medical marijuana and marijuana-fused products. This preceded Measure 91, which allows cities and counties a 3% tax on recreational marijuana. According to the [OLCC FAQ's page](#):

When recreational marijuana is sold in recreational stores, the taxes will range from 17 to 20 percent. The legislature set the base tax rate at 17 percent, however, they made provisions under certain circumstances for cities and counties to add up to an additional 3 percent tax. The retailer can retain 2 percent of the tax to cover their expenses. The temporary tax will be 25 percent for the limited time that recreational marijuana will be sold in medical dispensaries. Recreational sales in medical dispensaries are slated to start on October 1, 2015, and end on December 31, 2016. The tax will be imposed on sales after January 4, 2016.

The OLCC estimates \$10.7 million in revenue for the 2015-2017 biennium. Measure 91 provides distribution of revenue after costs to the following:

- 40 percent to Common School Fund
- 20 percent to Mental Health Alcoholism and Drug Services
- 15 percent to State Police
- 10 percent to Cities for enforcement of the measure
- 10 percent to Counties for enforcement of the measure
- 5 percent to Oregon Health Authority for alcohol and drug abuse prevention

Oregon City Business License Ordinance

Prior to the passage of Measure 91, Oregon City modified its business license ordinance to state that *"No person shall carry on any business within the City without first obtaining a license therefor. Nor shall any person carry on any such business without complying with the provisions of this chapter. No license shall [be issued] to any business prohibited by local, state or **federal** law."* This prohibits the City from issuing business licenses to a business, such as the production, processing, wholesale and retail or marijuana, which do not comply with federal law.

Oregon City Opt-Out Ordinance

The City Commission passed Ordinance 15-1017 on November 4, 2015 declaring a ban on marijuana facilities. Section 134 of House Bill 3400 provides that a City Commission 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.

The City Commission referred the question of whether to prohibit recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and medical marijuana dispensaries to the voters of Oregon City. This shall be referred to the electors of the City of Oregon City at the next statewide general election on Tuesday, November 8, 2016.

HB 3400

House Bill 3400 (HB 3400) establishes restrictions on the location and operation of marijuana facilities. It also authorizes cities to impose certain types of “reasonable regulations” beyond those imposed by state law. Cities also arguably have home rule authority to impose restrictions beyond the types of local regulations authorized by HB 3400.

This means that the City may adopt reasonable time, place and manner regulations associated with marijuana.

Public Health and Safety Impacts

Staff has attached two recent reports published by the States of Colorado and Washington regarding the impact of marijuana legalization. Both states legalized recreational marijuana before Oregon. Both reports are lengthy and rely on a variety of data sources. In most cases it is too early to draw any realistic comparisons for Oregon City, however, the Washington State Executive Summary is a relatively quick read (See page 7-10) with some summary statistics.

Public Opinion / Feedback

In March and April 2016, staff prepared two web-based surveys regarding marijuana regulations via the project website at www.orcity.org. The first survey was a set of 7 open –ended questions regarding where people feel marijuana production, processing and retail should be allowed. The second survey provided multiple choice answers to the first set of questions to which respondents could select more than one response.

Neither of these surveys was designed to obtain statistically reliable responses, but instead to inform further discussion about how reasonable regulations regarding time, place and manner of marijuana businesses might be structured for Oregon City if the voters decide not to continue the ban on such businesses in November. The Survey #2 responses did provide some general feedback regarding where, how and when marijuana related business may be permitted.

Responses to Survey #1 and 2 are attached as Exhibits. A summary of Survey #2 follows.

Staff Summary of Survey #2 Results

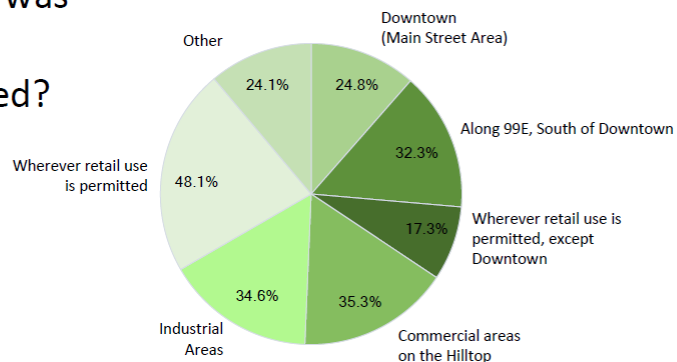
Retail

A high percentage of respondents (almost 50%) appear to indicate a preference to allow retail sale of marijuana wherever retail sales are already permitted. A slight smaller percentage would prefer to see it in commercial areas, but not downtown.

If retail sale of marijuana was permitted in Oregon City, where should it be allowed?

Retail sale of marijuana is defined as an entity licensed by OLCC to sell marijuana items to a consumer in this state.

Note: Respondents were allowed to choose multiple preferences.



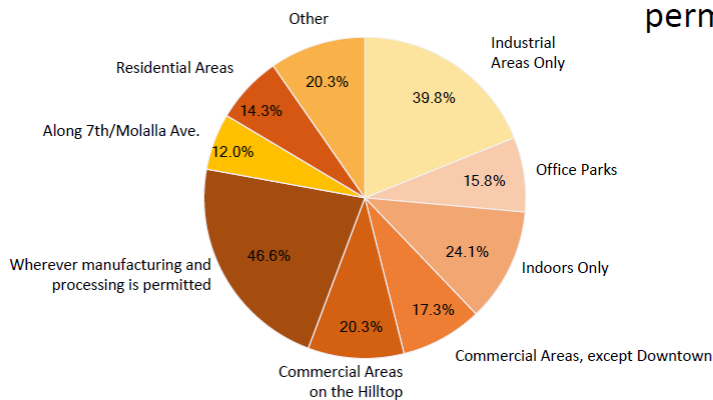
Production

A high percentage of respondents preferred that the production of marijuana be permitted wherever industrial, manufacturing and processing is permitted.

If production of marijuana was permitted in Oregon City, where should it be allowed?

Production of marijuana is defined as an entity licensed by the OLCC to manufacture, plant, cultivate, grow or harvest marijuana.

Note: Respondents were allowed to choose multiple preferences



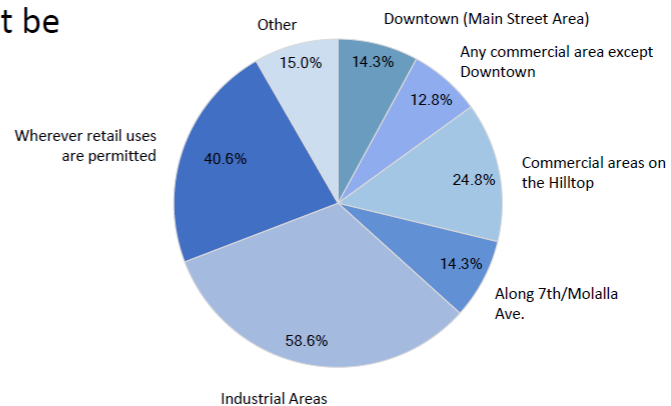
Processing

A high percentage of respondents indicated a preference for processing to be confined to industrial areas.

If processing of marijuana was permitted in Oregon City, where should it be allowed?

Processing of marijuana is defined as an entity licensed by the OLCC to process marijuana - for example, processing marijuana into usable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and selling usable marijuana and marijuana-infused products at wholesale to marijuana retailers

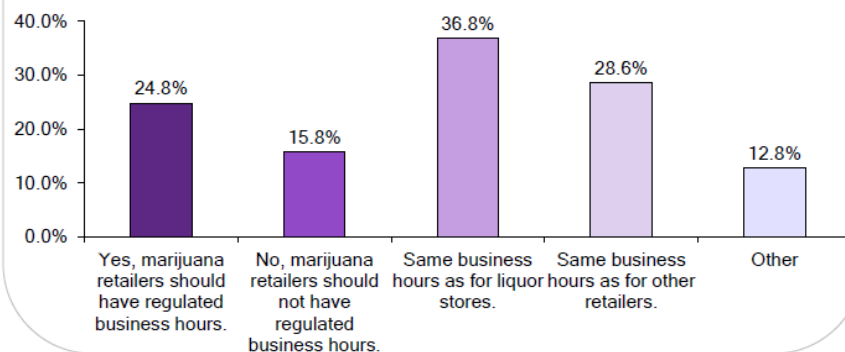
Note: Respondents were allowed to choose multiple preferences



Hours of Operation

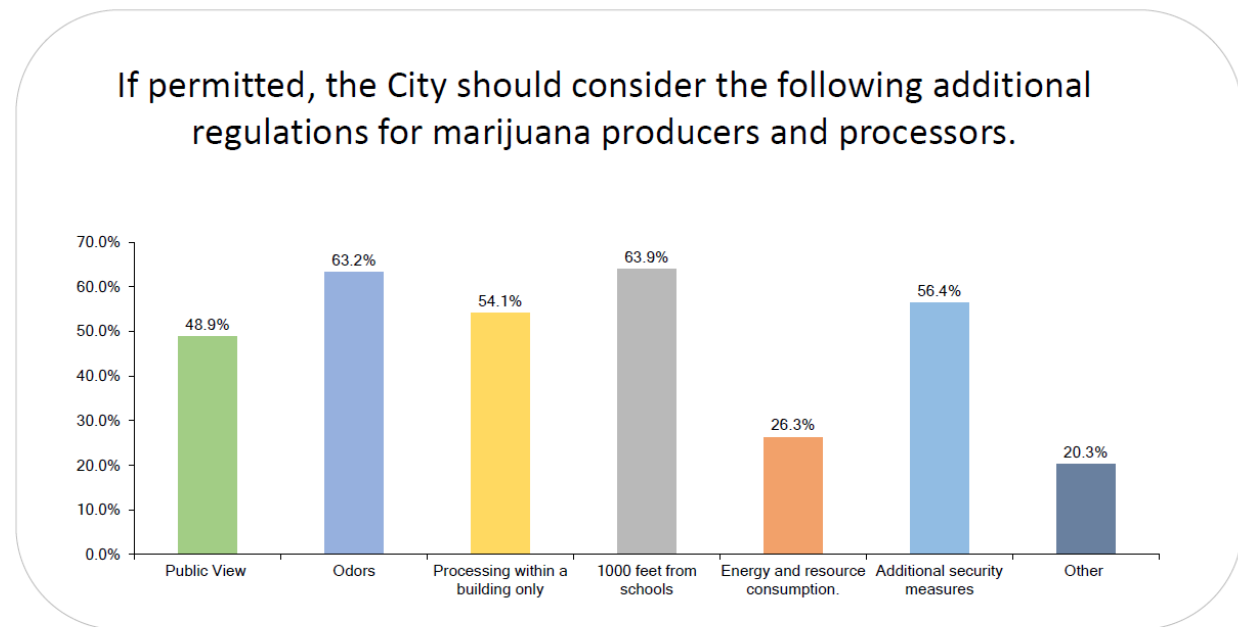
Most respondents felt that hours of operation for marijuana retail should be the same as for liquor stores (Operating hours for liquor stores are regulated by the OLCC). According to OLCC staff, the hours of operation set by the OLCC for liquor stores vary depending on various factors. Clackamas County sets the opening hours for licensed marijuana retailers from 10:00 a.m. and 9 p.m.

Should Oregon City regulate the hours of operation of marijuana retailers?



Additional Regulations for Marijuana Producers and Processors

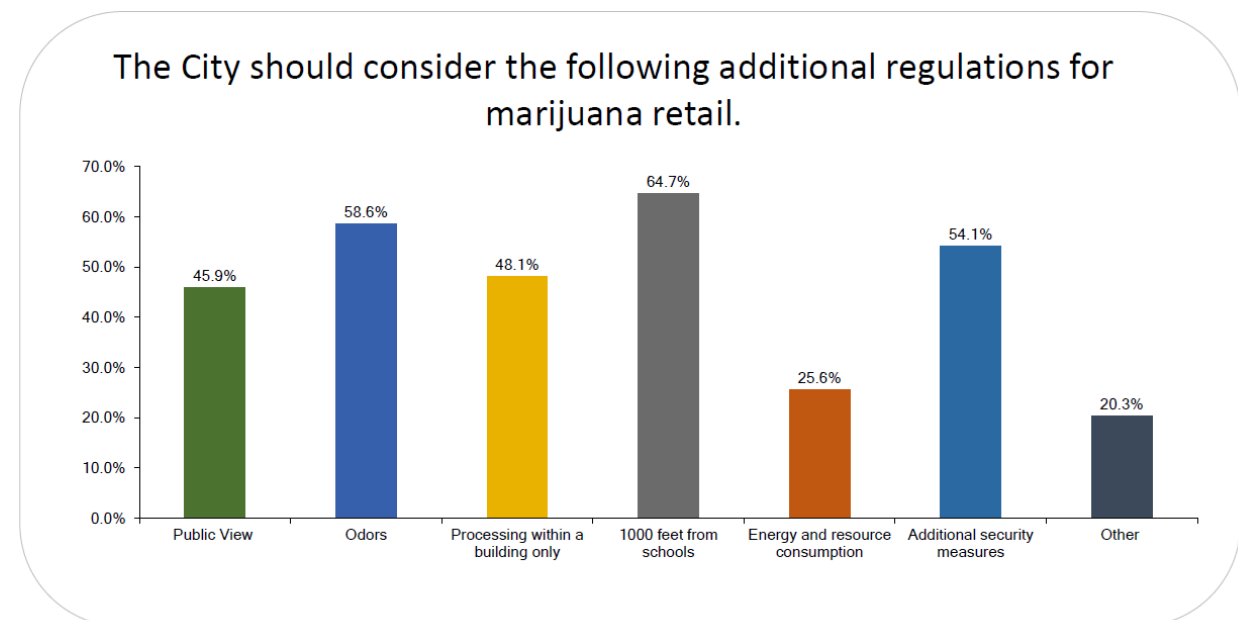
Respondents generally favored additional regulations to limit public view, odors, confined to indoors only, school separation and security measures for producers and processors.



Note: Respondents were allowed to choose multiple preferences

Additional Regulations for Marijuana Retail

Respondents generally favored additional regulations to limit public view, odors, confined to indoors only, school separation and security measures for marijuana retail.



Other Considerations

Child Care Uses

The City of Lake Oswego is considering requiring buffers of 500-feet from state-registered child care uses for marijuana facilities. Please refer to the Lake Oswego Planning Commission packet on pages 6-8 for a detailed discussion of considerations relating to this issue. By comparison, Clackamas County applies buffers of 500 ft. from child care uses, 2,000 feet from schools, and 1,000 feet from parks and playgrounds.

One of the primary concerns related to proximity of marijuana retail businesses to child care uses and similar areas appears to be the potential for increased street crime, including violent crime, associated with the businesses reliance on cash transactions, according to some sources. Additional concerns, including loitering, security, improper trash disposal, public view, odors, and other maintenance and nuisance issues, are issues that can be potentially be regulated through site design regulations, policing and enforcement.

If the City were to apply 1,500 ft. buffers around child care uses, similar to those applying around schools, the options for siting marijuana retail uses would be more limited.

Liquor Stores

Where are liquor stores and pharmacies presently located? How do the marijuana restrictions relate to these retail locations?

Marijuana licensing by the OLCC is subject to different rules than for liquor stores and any existing liquor store would have to apply for a separate marijuana retailing license in order to also sell marijuana. OLCC regulates the locations of liquor stores and based on population, demographics, transportation access, zoning, and distance to existing liquor stores, among other factors.

Recreational Marijuana retail locations require a separate OLCC licenses, and is are subject to state separation requirements, and applicable local zoning requirements.

Oregon City currently has one liquor store, which is located at 1678 Beavercreek Road, behind the Bi-Mart between Beavercreek Road and Molalla Ave. The site has General Commercial zoning.

Employment Land

The City should consider the effect of marijuana production, processing, wholesale and retail use on local job creation, both directly and indirectly. While there is a clear tax revenue boost associated with recreational marijuana, it is unknown how much employment could be generated from such uses. Staff will seek further information from the Economic Development Director regarding this issue.

Staff has heard some concerns that traditional business uses in commercial, industrial and employment zoned lands might be taken up or permanently displaced by marijuana related uses. In particular, the Beavercreek Road Concept Plan area, which currently does not have implementing city zoning, would potentially be an area of consideration for this concern.

Survey results indicate that marijuana production and processing within the City would be an appropriate use in the General Industrial zone, and that processing should be permitted wherever manufacturing and processing is currently permitted.

Enterprise Zones

It is not clear at this point whether marijuana facilities would be eligible for tax emptions under Oregon City's enterprise zone <http://www.orcity.org/economicdevelopment/enterprise-zone>. Staff will continue to research this question prior to the next work session.

Direction from Planning Commission and City Commission

City staff would like direction from the Planning and City Commissions as to which regulations to pursue.

Please review the information enclosed and send the following questionnaire to Pete Walter by Tuesday, May 9, 2016 so the results may be tabulated and presented for the Work Session on Wednesday, May 10th, 2016.

Pete Walter, AICP, Planner

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Marijuana Production

For the purposes of the discussion regarding production, staff is treating production of medical and recreational marijuana as the same thing, although there are different rules for medical marijuana under the Oregon Medical Marijuana Program, which is administered by the Oregon Health Authority and not by the Oregon Liquor Control Commission.

Under state law marijuana production is defined as (a) Planting, cultivating, growing, trimming or harvesting marijuana; or (b) Drying marijuana leaves or flowers. State law does not restrict the location for medical or recreational marijuana grow sites. However, the State does limit *medical* grow sites to 12 mature plants in a residential zone, and 48 mature plants in other zones.

Please see separate questions regarding the OMMP program on Page 13.

Yes	No	Question	Comments
_____	_____	Should the City limit medical and recreational marijuana production to the GI – General Industrial Zone?	
_____	_____	Should the City allow medical and recreational marijuana production in residential zones?	
_____	_____	Should marijuana production be allowed in other zoning designations?	

Marijuana Processing

Marijuana processing is defined under state law as the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts. The definition of processing for medical marijuana is very similar. State law prohibits medical marijuana processors in residential zones, but does not restrict them elsewhere. The State law for recreational marijuana

processors is slightly different; these uses are prohibited in “exclusively” residential zones only if marijuana extracts are processed.

Yes	No	Question	Comments
_____	_____	Should the City limit medical and recreational marijuana processing to the GI – General Industrial Zone?	
_____	_____	Should the City allow medical and recreational marijuana processing in residential zones?	
_____	_____	Should the City permit Marijuana Processing in the MUE - Mixed Use Employment zone? Note: The MUE zone permits industrial uses limited to the design, light manufacturing, processing, assembly, packaging, fabrication and treatment of products made from previously prepared or semi-finished materials.	
_____	_____	Should marijuana processing be allowed in other zoning designations?	

Marijuana Wholesale

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. Similar to recreational marijuana processors, State law prohibits recreational marijuana wholesalers in areas zoned “exclusively” for residential use (as opposed to mixed-use zones).

Wholesaling, distribution and warehousing are currently permitted uses in the GI General Industrial and MUE Mixed Use Employment zones. Such uses are a Conditional Use in the MUD zone, and are listed as prohibited in the C- General Commercial, MUC – Mixed Use Corridor and the WFD – Willamette Falls Downtown district.

Yes	No	Question	Comments
_____	_____	Should the City restrict the location of both medical and recreational marijuana wholesale to the GI – General Industrial Zone? Note this generally includes land on Fir Street and on Clackamas River Drive.	
_____	_____	Should the City permit both medical and recreational marijuana wholesale in the MUE – Mixed Use Employment Zone? Note this generally includes land on the hilltop near Beaver Creek and Molalla Avenue as well as land near the hospital.	

		Should marijuana processing be allowed in other zoning designations?	
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Marijuana Dispensaries and Retail Sales (Retail)

Marijuana sales is defined as a business establishment where goods are sold in small quantities to the ultimate consumer per OCMC 17.04.1050.

Medical marijuana dispensaries and recreational marijuana retailers would both be classified as “retail” under the city code. Retail is an allowed use within all of the city’s commercial and mixed use commercial zones, as well as the Mixed Use Employment, Campus Industrial, General Industrial, and Institutional zones, subject to size limitations and special use standards.

Medical Marijuana Dispensaries

State law prohibits medical marijuana dispensaries in residential zones. Further, a medical dispensary may not be within 1,000 feet of most elementary and secondary schools (specifically public schools teaching children between ages five and 18 who have not completed 12th grade, or private schools teaching children in courses of study usually taught in grades 1 through 12 in public schools). Medical dispensaries also may not be within 1,000 feet of an existing dispensary, or at the same address as a grow site.

Recreational Marijuana Retailers

The State law prohibits recreational marijuana retailers (selling to consumers) in areas zoned “exclusively” for residential use (as opposed to mixed-use zones). Like medical dispensaries, recreational retailers may not be within 1,000 feet of the described schools. However, there is no state prohibition against being within 1,000 feet of another retailer.

The City may consider whether the proposed marijuana facility regulations should further restrict marijuana retail. Examples include more than 1,000 feet from a school, active-use park (e.g., sports facilities and playgrounds), or other civic uses where children congregate (e.g., library, parks and recreation department); and 500 feet from a State-registered childcare use, as well as more than 1,000 feet from another retailer.

Retail use is currently allowed as a limited use in these zones, as follows:

- MUE - Mixed Use Employment: *“limited to twenty percent of the total gross floor area of all of the other permitted and conditional uses within the MUE development site or complex.”*
- GI - General Industrial: *“Retail sales and services, including eating establishments for employees (i.e. a cafe or sandwich shop), located in a single building or in multiple buildings that are part of*

*the same development shall be limited to a maximum of twenty thousand square feet or five percent of the building square footage, whichever is less and the retail sales and services **shall not occupy more than ten percent of the net developable portion of all contiguous industrial lands;***

- I - Campus Industrial: *“Retail sales and services, including eating establishments for employees (i.e. a cafe or sandwich shop), located in a single building or in multiple buildings that are part of the same development shall be limited to a maximum of twenty thousand square feet or five percent of the building square footage, whichever is less, and the retail sales and services **shall not occupy more than ten percent of the net developable portion of all contiguous industrial lands;**”*

Yes	No	Question	Comments
_____	_____	Should the City increase separation requirements for medical and recreational marijuana retail greater than the OLCC requirement of 1000 feet?	
_____	_____	Should the City require separation requirements for medical and recreational marijuana retail from child care facilities?	
_____	_____	Should the City require separation requirements for medical and recreational marijuana retail from parks?	
_____	_____	Should the City require separation requirements for medical and recreational marijuana retail from primary and secondary schools?	
_____	_____	Should the City require separation requirements for medical and recreational marijuana retail from residential?	
_____	_____	Should the City require separation requirements for medical and recreational marijuana retail from another use?	
_____	_____	Should the City require separation between marijuana retailers greater than 1,000 feet required by OLCC?	
_____	_____	Should marijuana retail be prohibited in the following four mixed use zone districts: Mixed Use Corridor (MUC) zone, and the Mixed Use Downtown (MUD) Zone, Historic Commercial (HC) zone, and Neighborhood Commercial (NC) Zone, since these zone also permit residential use?	
_____	_____	Should marijuana retail be permitted as a limited use within the Mixed Use Employment, General Industrial and Campus Industrial Zone Districts, assuming separation requirements are met?	

General Standards for Marijuana Businesses

In addition to the guidance above, should the City require the following for any type of marijuana facility?

Yes	No	Question	Comments
_____	_____	Should marijuana activities be limited to indoors?	
_____	_____	If allowed outdoors, should there be a minimum setback for marijuana activities?	
_____	_____	Should the City require marijuana activities include ventilation systems to reduce odor?	
_____	_____	Should the City require marijuana activities have requirements for security?	
_____	_____	Should the City limit the hours of marijuana businesses?	

Oregon Medical Marijuana Program

The Oregon Medical Marijuana Program (OMMP) is administered by the Oregon Health Authority (OHA), not the Oregon Liquor Control Commission (OLCC). Card holding patients, growers, processors and dispensaries licensed by the OHA under the OMMP are subject to certain requirements under the State Law. However under section 89(2) of HB 3400, the City can adopt “reasonable regulations” on medical marijuana grow operations. Reasonable regulations are defined as follows:

- (a) Reasonable limitations on the hours during which the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may operate;
- (b) Reasonable conditions on the manner in which a marijuana processing site or medical marijuana dispensary may transfer usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts, immature marijuana plants and seeds;
- (c) Reasonable requirements related to the public’s access to the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary; and
- (d) Reasonable limitations on where the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may be located.

Yes	No	Question	Comments
_____	_____	Should the City require that growers for OMMP cardholders be confined to non-residential areas?	

Yes	No	Question	Comments
_____	_____	If allowed outdoors, should there be a minimum setback for marijuana activities?	
_____	_____	Should OMMP grower be confined indoors to the principal building or a permitted accessory structure?	
_____	_____	Should the city require an owner-occupancy requirement for OMMP growers in residential zones?	
		Should OMMP growers be subject to limitations and measures to control odor, lighting, flammable or explosive substances, public view and other security and safety measures?	

Thank you for taking the time to complete the survey!

Pete Walter

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