



**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date:</b>  December 7, 2015	<b>Subject: Ordinance No. 778</b> Opt-Out Ordinances for Recreational and Medical Marijuana Activities  <b>Staff Member:</b> Barbara Jacobson/Mike Kohlhoff <b>Department:</b> Legal	
<b>Action Required</b>  <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b>  <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b>	
<b>Staff Recommendation:</b>		
<b>Recommended Language for Motion:</b>		
<b>Project / Issue Relates To:</b> <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

**ISSUE BEFORE COUNCIL:**

Consideration of an ordinance that would authorize the City of Wilsonville to ban recreational and medical marijuana facilities within Wilsonville’s city limits, subject to voter referral for concurrence or rejection in the November 2016 General Election.

**EXECUTIVE SUMMARY:**

Pursuant to Oregon House Bill 3400 (HB 3400), passed last session, cities may prohibit, within the city limits, the establishment of recreational marijuana producers, processors, wholesalers, and retailers. Medical marijuana processors, wholesalers, and retail establishments may also be banned unless they are grandfathered. Wilsonville has no grandfathered medical marijuana operations. HB 3400 is silent on whether a city can ban medical marijuana growers from

operating within city limits. This allowed prohibition under HB 3400, however, has one catch: Cities that are not located within a county that voted NO on Measure 91 by 55 percent or more may enact such a ban only by referral to the voters at the next statewide general election of November 2016. In the meantime, however, the city may enact an ordinance temporarily banning all or any of the above, to be effective immediately and until the results of the general election are in. In light of Wilsonville's effective ban on marijuana-related operations through its business license requirements, the Council must now determine whether it wishes to take advantage of this state-sanctioned process or continue to rely on the business license ban, the legality of which is disputed by the state but is supported by the current federal law prohibition of all marijuana use.

Last month in work session, Council discussed options with respect to the above-described ban, referral to voters, and the implications with respect to tax revenue. A copy of the work session staff report is attached hereto for your reference and contains an executive summary applicable to this action. At work session, Council directed that an ordinance be drafted banning all allowable marijuana facilities for public hearing at the December 7 Council meeting.

In addition, during work session a concern was raised by Councilor Lehan regarding the banking issues that face the marijuana industry. Basically, most banks will not deal with marijuana businesses for fear of running afoul of federal law. There are a few credit unions, however, in the State of Washington that have recently elected to take the risk but have reported there are numerous hoops to jump through and, if anything goes awry, the bank can lose its charter, as well as any pledged security. In a recent article found in the *Credit Union Times* magazine, it is noted that a primary reason these credit unions decided to take a chance is that the Washington Liquor Control and Cannabis Control Board regulations were specifically written and adopted to address the U.S. Attorney General's "Cole Memo" priorities for enforcement of the Controlled Substance Act. (Note: the Cole Memo is a document issued by the prior attorney general, who has since been replaced, about enforcement priorities and, although the new attorney general has not repealed it, there is some indication that she may not be entirely in agreement with it.) The article does go on to state that in neighboring Oregon, financial institutions are staying away from serving the pot business. In Colorado, even though the State of Colorado itself chartered the Fourth Corner Credit Union last year as a dedicated bank for marijuana companies, the Federal Reserve rejected its application to open a master account (which is necessary for a bank to function). The Federal Reserve also rejected its application to establish an electronic payment system that would have allowed customers to buy marijuana products with a credit card. As a result, in December, the federal court is scheduled to hear a case brought by Fourth Corner seeking to force the Federal Reserve to give it access to a master account.

Councilor Lehan also asked about the tax revenue that might be lost. As noted, if the City elects to ban either one or all of the listed Marijuana Facilities, it will get no state tax revenue share. The tax revenue for recreational marijuana sold by OLCC retailers will be collected by the Department of Revenue and distributed according to the formula found in the statute (HB 2041, Section 14). Until July 1, 2017, 10% of the Marijuana Fund is distributed to cities based on population. After July 1, 2017, 5% of the Fund will be distributed based on the number of producing and processing licenses cities have granted, and the other 5% will be distributed based on the number of retail licenses cities have granted. Again, cities that ban marijuana are not

eligible to receive any distributions from the fund. Medical marijuana is tax free. Given how easy it is to obtain a medical marijuana card, however, it will be interesting to see how many more people opt to go that direction. That situation has been an issue in the State of Washington in terms of lost tax revenue.

**EXPECTED RESULTS:**

If an ordinance banning some or all of the marijuana operations was to be enacted and the people voted to support the ban, the issue would be resolved and the chances of legal challenges to the City’s ban would be greatly reduced. If, on the other hand, the vote was in favor of allowing the operations, then the City Council would then need to decide whether to follow the direction of the voters or stand by the business license ban.

**TIMELINE:**

Recreational licenses will begin to be issued in January, and cities are therefore advised the wisest course of action is to get a ban in place prior to that date to avoid greater potential for legal disputes and disgruntled applicants. Because there is only one meeting in December, our second reading will occur on the first business day of the month of January. As a result, we have made the Ordinance an emergency so we can quickly get word to the OLCC, as they begin receiving and processing applications in January.

**CURRENT YEAR BUDGET IMPACTS:**

None immediately, but if a city elects to ban any of the marijuana operations legalized by state law, the city will not get any of the tax revenue collected from the sale of marijuana, nor can it impose a local tax. For the first year, revenue is distributed based on population. Thereafter, the formula is changed based on the number of marijuana facilities located in the city, as outlined above. Additionally, HB 3400 allows a local tax of up to 3%, if approved by voter referral. Although the City already passed a higher local tax than is included in HB 3400, the belief is that the taxation formula of HB 3400 is most likely preemptive.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: SCole Date: 11/30/15

**LEGAL REVIEW / COMMENT:**

Reviewed by: Mike Kohlhoff Date: November 20, 2015

The legal department prepared this Report.

**COMMUNITY INVOLVEMENT PROCESS:**

This matter has been of ongoing discussion during past City Council meetings open to the public, including most recently at a work session held on November 16, 2015. There was also a town hall meeting conducted by Representative John Davis and Senator Kim Thatcher.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

If an ordinance ban is enacted and referred to the citizens for a vote in November 2016, there will be clarity for both citizens and the Council as to the will of the people on this issue. The issue of the conflict between state and federal law will, however, remain. Opting out precludes the City from collecting the marijuana tax at both the state and local level.

**ALTERNATIVES:**

The Council has the following options, or a combination thereof, for consideration:

- 1) Elect to enact an ordinance banning all or some of the above-listed operations and refer to the voters to determine the will of the people on this issue;
- 2) Take no action and rely solely on the business license ordinance to limit marijuana operations within the City;
- 3) Take other action, such as enacting reasonable time, place, and manner restrictions, if the Council elects to allow some marijuana operations to occur, which will also generate some tax revenue.
- 4) Regardless of which election is made above, including a local tax election on the November 2016 ballot is another option, keeping in mind that as long as marijuana facilities are not allowed to operate in Wilsonville, there will be no tax to collect. The alternative for taxation is to wait until the next general election to do this, if the ban is referred to the voters in November 2016, to avoid additional cost and possible voter confusion.

**CITY MANAGER COMMENT:****ATTACHMENTS:**

- A. Proposed Ordinance (banning all facilities allowed to be banned under HB 3400)
- B. Staff Report from November 2, 2015 Work Session

**ORDINANCE NO. 778**

**AN ORDINANCE OF THE CITY OF WILSONVILLE DECLARING A BAN ON MEDICAL MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS, RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA WHOLESALERS, AND 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; and

WHEREAS, Measure 91, which the voters adopted in November 2014, and as amended by HB 3400 (2015), directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana; and

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 medical and recreational marijuana businesses in the area subject to the jurisdiction of the city; and

WHEREAS, HB 3400 also directs that a city council that desires to adopt such an ordinance shall also refer 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; and

WHEREAS, the City believes Enrolled House Bill 3400 is not the only source of authority for the City to prohibit the establishment of marijuana facilities, and by enactment of this Ordinance the City expressly preserves all other authority and all other existing Ordinances that also regulate marijuana within the City limits, including the growing of marijuana for sale; and

WHEREAS, the City finds that the public health, safety, and general welfare of the City, its residents, and its visitors necessitates and requires the adoption of this Ordinance prohibiting the establishment and operation of marijuana facilities within City limits, in accordance with the requirements of HB 3400, and for it to take effect immediately upon its adoption;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. The following is added to **Chapter 6** of the Wilsonville City Code under the heading of:

**“PROHIBITION OF MARIJUANA FACILITIES**

**6.600 Definitions.**

For the purposes of this Section, and in accordance with HB 3400, the following definitions apply:

(1) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae, and the seeds of the plant Cannabis family Cannabaceae.

(2) A “Marijuana Facility” includes all of the following:

- (a) Marijuana processing sites registered with the Oregon Health Authority;
- (b) Medical marijuana dispensaries registered with the Oregon Health Authority;
- (c) Marijuana producers licensed by the Oregon Liquor Control Commission;
- (d) Marijuana processors licensed by the Oregon Liquor Control Commission;
- (e) Marijuana wholesalers licensed by the Oregon Liquor Control Commission.
- (f) Marijuana retailers licensed by the Oregon Liquor Control Commission.

**6.605 Ban Declared.**

As described in Section 134 of House Bill 3400 (2015), the City of Wilsonville hereby prohibits the establishment and operation of all of the above-listed Marijuana Facilities in all areas subject to the jurisdiction of the City.

**6.610 Violation.**

The City may prosecute a violation of this Section pursuant to Chapter 1 of the Wilsonville Municipal Code or it may pursue any other remedies available to it, including but not limited to an action seeking declaratory relief and/or injunctive relief.

### **6.615 Remedies.**

The establishment, maintenance, or operation of a marijuana facility by a person, business, or any other entity within the City in violation of the requirements of this Section will be subject to any and all enforcement remedies available to the City under law and/or the Wilsonville Municipal Code. A first offense will be enforced as a violation of Wilsonville Municipal Code Chapter 1.013, with a fine not to exceed \$500. Thereafter, any further violation may be enforced as a misdemeanor pursuant to Chapter 1.014 of the Wilsonville Municipal Code and/or the filing of an appropriate action and pursuit of an appropriate remedy in a court of competent jurisdiction.”

2. Unless otherwise repealed or modified in the interim, this Ordinance shall be referred to the electors of the City of Wilsonville at the next statewide general election on Tuesday, November 8, 2016, in accordance with the requirements of HB 3400.
3. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Ordinance shall be in full force and effect on January 4, 2016.
4. In accordance with HB 3400, the City Recorder is directed to provide a copy of this Ordinance to the Oregon Health Authority and to the Oregon Liquor Control Commission in a form and manner that those entities may require.
5. The City Recorder is directed to add Wilsonville Code Sections 6.600 through 6.615, as approved above, and to make such format, style, and conforming changes to match the format and style of the Public Health and Welfare section of the Wilsonville Code.
6. Except as set forth above, Chapter 6 of the Wilsonville Municipal Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 7<sup>th</sup> day of December, 2015, and scheduled for the second and final reading on January 4, 2016, commencing at the hour of 7 p.m., at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

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Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 4th day of January, 2016, by the following votes:

Yes: -5-

No: -0-

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Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this 5th day of January, 2016.

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TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Fitzgerald	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes

## 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.

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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;

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<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}.

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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  
WHOLESALEERS, 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

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<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.

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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

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<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.

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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

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<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

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.

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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}.

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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

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<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.

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.

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**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

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<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>

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### 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.}

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<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.