

A G E N D A
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MEDFORD CITY COUNCIL MEETING

**March 19, 2015
Noon**

**Council Chambers, Medford City Hall
411 W. 8th Street, Medford**

10. Roll Call

Employee Recognition

20. Approval or correction of the minutes of the March 5, 2015 regular meeting

30. Oral requests and communications from the audience

Comments will be limited to 3 minutes per individual or 5 minutes if representing a group or organization. PLEASE SIGN IN.

30.1 Housing & Community Development Commission

40. Consent calendar

50. Items removed from consent calendar

60. Ordinances and resolutions

60.1 COUNCIL BILL 2015-22 An ordinance awarding a contract in the amount of \$199,858.41 to Blackline, Inc. to perform slurry seal on various city streets.

70. Council Business

80. City Manager and other staff reports

80.1 Capital Improvement Project Update Report – Greg McKown

80.2 Further reports from City Manager

90. Propositions and remarks from the Mayor and Councilmembers

90.1 Proclamations issued:
Fair Housing Month, April 2015

90.2 Further Council committee reports.

90.3 Further remarks from Mayor and Councilmembers.

100. Adjournment to the evening session

EVENING SESSION
7:00 P.M.

Roll call

110. Oral requests and communications from the audience

Comments will be limited to 3 minutes per individual or 5 minutes if representing a group or organization. PLEASE SIGN IN.

120. Public hearings

Comments are limited to a total of 30 minutes for applicants and/or their representatives. You may request a 5-minute rebuttal time. Appellants and/or their representatives are limited to a total of 30 minutes and if the applicant is not the appellant they will also be allowed a total of 30 minutes. All others will be limited to 3 minutes per individual or 5 minutes if representing a group or organization. PLEASE SIGN IN.

120.1 COUNCIL BILL 2014-23 A resolution authorizing the City Manager to proceed with the sale of surplus City-owned real property consisting of .79 acres currently utilized for access to the former City-managed Table Rock Road Park.

120.2 Consider an appeal of the Building Safety Director's denial of a business license for Patients Helping Patients.

120.3 COUNCIL BILL 2015-24 An ordinance approving the assessment of properties identified in the final plan for the Downtown Economic Improvement District.

120.4 COUNCIL BILL 2015-25 An ordinance amending Sections 10.03, 10.250 and 10.294 of the Medford Code pertaining to revisions to conditional use permits and Site Plan and Architectural review. (Legislative) (DCA-14-133)

130. Ordinances and resolutions

140. Council Business

150. Further reports from the City Manager and staff

160. Propositions and remarks from the Mayor and Councilmembers

160.1 Further Council committee reports.

160.2 Further remarks from Mayor and Councilmembers.

170. Adjournment



CITY OF MEDFORD
AGENDA ITEM COMMENTARY

Item No: **60.1**

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DEPARTMENT: Public Works
PHONE: (541) 774-2100
STAFF CONTACT: Cory Crebbin, Director

AGENDA SECTION: Ordinances & Resolutions
MEETING DATE: March 19, 2015

COUNCIL BILL 2015-22

An ordinance awarding a contract in the amount of \$199,858.41 to Blackline, Inc. to perform slurry seal on various city streets.

ISSUE STATEMENT & SUMMARY:

Blackline Inc. is the low bidder for a contract to perform slurry seal on various streets in the City of Medford. The City contracts for a large portion of pavement maintenance because it does not have the specialized equipment or expertise to perform this work.

BACKGROUND:

Timely maintenance of streets decreases long-term costs by postponing the need for more costly reconstructions and produces a smoother ride for the traveling public. Slurry Seal is a cost-effective option for preserving the structural integrity of a sound street section.

A. Council Action History
None.

B. Analysis
The existing pavement condition has been analyzed and it has been determined that this maintenance action will preserve the existing pavement and produce a smoother and safer ride for the traveling public at the lowest life-cycle cost.

C. Financial and/or Resource Considerations
Expenditure of \$199,858.41 which is included in the 2013/2015 biennium budget for the Street Utility Fund (Fund 24).

D. Timing Issues
The work will start after May 18, 2015 and is scheduled to be complete by the end of June 2015.

STRATEGIC PLAN:

Theme: Responsive Leadership.

Goal 12: Ensure adequate long-term municipal financial stability for City services, assets and facilities.

Objective 12.2: Provide Public Works infrastructure (streets, sewer, and storm drainage) construction and maintenance at the lowest life-cycle costs.

Action 12.2b: Increase pavement restoration to match deterioration rate.

COUNCIL OPTIONS:

1. Approve the ordinance.
2. Modify the ordinance.
3. Deny the ordinance.



STAFF RECOMMENDATIONS:

Approve the ordinance for a contract with Blackline Inc.

SUGGESTED MOTION:

I move to approve the ordinance for a contract in the amount of \$199,858.41 to Blackline Inc., for slurry seal.

EXHIBITS:

Bid Tabulation.

List of streets

Complete contract documents are available in the City Recorder's office.

SPECIAL PROVISIONS

WORK TO BE DONE

The Work to be done under this Contract consists of the following all materials, labor, and equipment necessary to place a Type II latex modified Slurry Seal as specified; on eight (8) collector street section and thirty six (36) residential street sections in the City of Medford, to total approximately 113,887 S.Y.

1. Remove vegetation from cracks
2. Sweep Street prior to Slurry Seal
3. Install Type II Latex Modified Slurry Seal
4. Perform additional and incidental Work as called for by the Specifications.

This project includes work at the following locations:

Slurry Seal 2015

	Street	From	To		
1	E 11Th St	Portland Av	Ashland Av	3210	SY
2	Alameda St	Murphy Rd	Olympic Av	2053	SY
3	Alameda St	Olympic Av	Golf View Dr	2861	SY
4	Appleton Cr	Eastwood Dr	Cul-De-Sac	1333	SY
5	Aspen St	Vail Dr	S Peach St	2482	SY
6	Bateman Dr	Bierson Way	City Limits	1547	SY
7	Bierson Way	S End	N End	4840	SY
8	Blackthorn Dr	Delta Waters Rd	Silver Palm Dr	4693	SY
9	Bounty Ln	Bateman Dr	Mutiny Way	1745	SY
10	Burgundy Dr	Greenbrook Dr	Cul-De-Sac	1467	SY
11	Calle Vista Dr	N Phoenix Rd	Canterwood Dr	4983	SY
12	Cashmere Cir	Greenbrook Dr	Cul-De-Sac	660	SY
13	Centurion Cr	Golf View Dr	Cul-De-Sac	967	SY
14	Chantal Ct	Greenbrook Dr	Cul-De-Sac	1037	SY

Slurry Seal Various Streets in the City of Medford

15	Corona Av	E Mcandrews Rd	Grand Av	2837	SY
16	Corona Av	Grand Av	Johnson St	2690	SY
17	Dove Ln	S Holly St	Sparrow Wy	4154	SY
18	Eastwood Dr	Eastwood Ln	Siskiyou Blvd	5133	SY
19	Edgevale Av	Lone Pine Rd	Silverbirch Ct	3245	SY
20	Enterprise Dr	Industry Dr	W End	601	SY
21	Enterprise Dr	Industry Dr	E End	2229	SY
22	S Holly St	Dove Ln	Sparrow Wy	3520	SY
23	Industry Dr	E Vilas Rd	S End	4620	SY
24	Ingrid St	Kelly St	E End	2310	SY
25	Iowa St	Cedar St	Narregan St	1137	SY
26	Jasper St	Holmes Av	N End	4498	SY
27	Kenyon St	Holmes Av	Garfield St	4971	SY
28	King St	Dakota Av	Stewart Av	4811	SY
29	Leland St	Loal St	Ingrid St	2574	SY
30	Lear Wy	Coker Butte Rd	1054' S of Coker Butte Rd	5270	SY
31	Loal St	Stewart Ave	Ingrid St	2860	SY
32	Menlo Ct	Cul-De-Sac	Pennington Dr	967	SY
33	Misty Ln	La Loma Dr	West End	1173	SY
34	Mutiny Way	Bierson Way	Bounty Ln	715	SY
35	Nellie Ettinger Ln	Owen Dr	Cul-De-Sac	69	SY
36	Nieto Wy	Misty Ln	Mira Mar Ave	1415	SY
37	Park Av	Dakota Av	Stewart Av	4496	SY
38	Peebler Wy	Dove Ln	Sandpiper Dr	1781	SY
39	Sandpiper Dr	Dove Ln	Peebler Wy	1747	SY
40	Scarlett Cr	Greenbrook Dr	Cul-De-Sac	1162	SY

~~Slurry-Seal-Various-Streets in the City of Medford~~

41	Seckel Ct	Murphy Rd	Cul-De-Sac	1675	SY
42	Sparrow Wy	S Holly St	Dove Ln	4096	SY
43	Thrasher Ln	Lone Pine Rd	120' S of Rolling Meadows Ln	2161	SY
44	Wren Ct	Dove Ln	Cul-De-Sac	1088	SY
				113,887	Total SY

APPLICABLE SPECIFICATIONS

The Specification that is applicable to the Work on this Project is the 2008 edition of the "Oregon Standard Specifications for Construction".

All number references in these Special Provisions shall be understood to refer to the Sections and subsections of the Standard Specifications and Supplemental Specifications bearing like numbers and to Sections and subsections contained in these Special Provisions in their entirety.

CLASS OF PROJECT

This is a City of Medford Project

AGENDA ITEM 80.1

Capital Improvement Projects Update



***City of Medford
Capital Improvement
Projects Update***

March 12, 2015



Our Mission:
On Time & Under Budget

City of Medford – Capital Improvement Projects Update
March 12, 2015

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Bond Projects:

BR0071 – Fire Station #2

Project Goal: Construction of a new Fire Station #2.

Recent Project Milestones:

- Corrected and Completed SPAC package re-submitted.
- Long-lead Tap-Out alert system ordered from Motorola. Coming from Israel.

Upcoming Project Milestones:

- 100% Design Development (DD), construction cost estimate, Value Engineering Session.
- Construction Drawing Phase (CD) delayed due to incomplete DD phase.
- SPAC Review and Approval (March 2015).
- Planning, permitting and GMP phases.
- June 2015 Construction scheduled to begin as a result of delays in DD and other design processes.

Funds Budgeted	\$2,976,800
Funds Expended	(\$94,580)
Encumbrances	(\$171,555)
Balance Remaining	\$2,710,665

BR0072 – Fire Station #3

Project Goal: Construction of a new Fire Station #3.

Recent Project Milestones:

- Corrected and Completed SPAC package re-submitted.
- Long-lead Tap-Out alert system ordered from Motorola. Coming from Israel.

Upcoming Project Milestones:

- 100% Design Development (DD), construction cost estimate, Value Engineering Session.
- Construction Drawing Phase (CD) delayed due to incomplete DD phase.
- SPAC Review and Approval (March 2015).
- Planning, permitting and GMP phases.
- June 2015 Construction scheduled to begin as a result of delays in DD and other design processes.

Funds Budgeted	\$3,827,330
Funds Expended	(\$123,244)
Encumbrances	(\$204,031)
Balance Remaining	\$3,500,055

BR0073 – Fire Station #4

Project Goal: Construction of a new Fire Station #4.

Recent Project Milestones:

- Corrected and Completed SPAC package re-submitted.
- Long-lead Tap-Out alert system ordered from Motorola. Coming from Israel.

Upcoming Project Milestones:

- 100% Design Development (DD), construction cost estimate, Value Engineering Session.
- Construction Drawing Phase (CD) delayed due to incomplete DD phase.
- SPAC Review and Approval (March 2015).
- Planning, permitting and GMP phases.
- June 2015 Construction scheduled to begin as a result of delays in DD and other design processes.

Funds Budgeted	\$3,827,330
Funds Expended	(\$123,774)
Encumbrances	(\$199,841)
Balance Remaining	\$3,503,715

PD0076 – Police Station

Project Goal: Construction of a new police department facility with associated secure parking and storage areas.

Recent Project Milestones:

- **February 25 - IGA use of County swale approved by County Commission.**
- **Design Development construction cost estimate and Value Engineering session completed.**
- **March 3, 2015 - Early work package proposals received (building shell, Long-lead items, earthwork, and utilities).**

Upcoming Project Milestones:

- **March 10, 2015 – Early Work proposal evaluations completed.**
- **April 27, 2015 – Ground Breaking Ceremony**
- **Construction design phase completion for final work package.**
- Planning, permitting, and GMP phases.
- April 2015 construction scheduled to begin.

Funds Budgeted	\$14,574,580
Funds Expended	(\$438,361)
Encumbrances	(\$564,013)
Balance Remaining	\$13,572,206

PD0077 – Police Station Secured Garage

Project Goal: Construction of a new police department facility with attached secure parking and storage areas.

Recent Project Milestones:

- February 25 - IGA use of County swale approved by County Commission.
- Design Development construction cost estimate and Value Engineering session completed.
- March 3, 2015 - Early work package proposals received (building shell, Long-lead items, earthwork, and utilities).

Upcoming Project Milestones:

- March 10, 2015 – Early Work proposal evaluations completed.
- April 27, 2015 – Ground Breaking Ceremony
- Construction design phase completion for final work package.
- Planning, permitting, and GMP phases.
- Final work package construction scheduled to begin.

Funds Budgeted	\$7,508,120
Funds Expended	(\$225,307)
Encumbrances	(\$290,552)
Balance Remaining	\$6,992,261

PR0056 - U.S. Cellular Community Park – Phase IV (5-47)

Project Goal: The completion of three additional playing fields along with associated parking and infrastructure as described in the approved master plan.

Recent Project Milestones:

- February 23, 2015 – Initiated landscape and irrigation construction to complete the Phase IV project work
- February 27, 2015 – completed rough grading and topsoil placement from stockpile area
- March 2, 2015 Executed Change orders 2 through 4 for various improvements to the drainage system and concrete entry plaza.

Upcoming Project Milestones:

- March 2015 – Complete finish grading, landscape and irrigation, as weather permits.
- March 2015 – Project completed, contingent on weather.
- June 2015 – Completion of dog park and trail connecting east side of project.

Funds Budgeted	\$6,385,540
Funds Expended	(\$5,854,427)
Encumbrances	(\$60,112)
Balance Remaining	\$471,001

General Fund Projects:

BR0062 – Cemetery Improvements (5-30)

Project Goal: To provide renovations and repairs to the Mausoleum located at the IOOF/Eastwood Cemetery.

Recent Project Milestones:

- February 2015 – Mausoleum lighting cancelled to proceed with painting.

Upcoming Project Milestones:

- May 2015 – Mausoleum building exterior paint

Funds Budgeted	\$75,000
Funds Expended	(\$48,324)
Encumbrances	(\$0)
Balance Remaining	\$26,676

BR0064 – Annex Energy Management Replacement (5-31)

Project Goal: Replace antiquated Energy Management System (EMS) for building automation of HVAC at the Lausmann Annex.

Recent Project Milestones:

- August 25, 2014 - Construction/Project Begin.

Upcoming Project Milestones:

- April 2015 – Completion.

Funds Budgeted	\$110,000
Funds Expended	(\$97,163)
Encumbrances	(\$7,550)
Balance Remaining	\$5,287

BR0068 – City Hall Electrical Modifications (5-33)

Project Goal: To provide general electrical modifications to departments requiring space upgrades.

Recent Project Milestones:

Upcoming Project Milestones:

- On-going throughout the biennium for City Hall offices.
- June 2015 – Project completed.

Funds Budgeted	\$15,000
Funds Expended	(\$3,703)
Encumbrances	(\$0)
Balance Remaining	\$11,297

BR0070 – Citywide Card Access Upgrade (5-35)

Project Goal: Upgrade and expand automatic locking systems on all administrative buildings to a windows based system.

Recent Project Milestones:

- February 2015 – Long lead equipment received and building installation begins.

Upcoming Project Milestones:

- April 2015 – Completion.

Funds Budgeted	\$446,000
Funds Expended	(\$98,803)
Encumbrances	(\$329,865)
Balance Remaining	\$17,332

BR0074 – Fire Station #5 (5-40)

Project Goal: Provide renovations to Fire Station 5 building in order to address multiple maintenance items necessary for operational sustainability.

Upcoming Project Milestones:

- April 2015 – Bid project.
- June 2015 – Award contract.
- Project will be carried forward to the 2015/17 biennium.

Funds Budgeted	\$25,000
Funds Expended	(\$0)
Encumbrances	(\$0)
Balance Remaining	\$25,000

BR0075 – Fire Station #6 (5-40)

Project Goal: Provide renovations to Fire Station 6 building in order to address multiple maintenance items necessary for operational sustainability.

Upcoming Project Milestones:

- April 2015 – Bid project.
- June 2015 – Award contract.
- Project will be carried forward to the 2015/17 biennium.

Funds Budgeted	\$395,000
Funds Expended	(\$143)
Encumbrances	(\$0)
Balance Remaining	\$394,857

BR0076 – Police Property Control (5-41)

Project Goal: Construction of an addition to the existing property control area located at the Service Center.

Recent Project Milestones:

- **February 27, 2015 – Project substantial completion**

Upcoming Project Milestones:

- **March 13, 2015 – Building punch list items to be completed.**
- **March 18, 2015 – Certificate of Occupancy request.**
- **April 2015 – Delayed sidewalk dedication finalized.**
- **April 2015 – Equipment elevator received and installed. (Item delay due to company going out of business after initial order).**

Funds Budgeted	\$523,400
Funds Expended	(\$451,808)
Encumbrances	(\$71,592)
Balance Remaining	\$0

BR0081 – New Oakdale West Parking Lot

Project Goal: Completion of an expansion of the Red Parking Lot to replace parking that will be lost due to the construction of the new police facilities.

Recent Project Milestones:

- **February 2015 – Asphalt and concrete Installation completed.**

Upcoming Project Milestones:

- **April 2015 Completion.**

Funds Budgeted	\$450,000
Funds Expended	(\$279,885)
Encumbrances	(\$140,657)
Balance Remaining	\$29,458

BR0086 – Fire Station #4 Temporary Bay

Project Goal: Construction of a metal facility to house fire trucks and equipment during the construction of a new Fire Station #4. Facility will be utilized as a logistic center after construction is complete for the new station.

Recent Project Milestones:

Upcoming Project Milestones:

- March 2015 – SPAC review/approval
- April 2015 - Apparatus building construction to begin.
- May 2015 - Apparatus building completed.

Funds Budgeted	\$250,000
Funds Expended	(\$0)
Encumbrances	(\$0)
Balance Remaining	\$250,000

BR0087 – Fire Station #4 Temporary Living Quarters

Project Goal: Installation of temporary living quarters that will be utilized during the construction of the new Fire Station #4. Once the new station is completed, the living quarters will be relocated to U.S. Cellular Community Park and utilized as a resident caretaker facility.

Recent Project Milestones:

- January/February 2015 modular building procurement.

Upcoming Project Milestones:

- **April 2015 – modular installation scheduled (Start date tied to installation of utilities as part of BR0086 project).**
- **May 2015 - modular building scheduled for installation.**

Funds Budgeted	\$67,200
Funds Expended	(\$250)
Encumbrances	(\$66,950)
Balance Remaining	\$0

PR0071 – Fichtner-Mainwaring Tennis Court Renovation (5-51)

Project Goal: Rebuild four (4) courts and resurface all eight (8) tennis courts at Fichtner-Mainwaring Park.

Recent Project Milestones:

- December 2014 – Grant to be awarded by Medford Parks & Recreation Foundation.

Upcoming Project Milestones:

- March 2015 – Surface coating and striping.
- April 2015 - Scheduled completion.

Funds Budgeted	\$265,000
Funds Expended	(\$207,895)
Encumbrances	(\$56,166)
Balance Remaining	\$939

PR0093 – Neighborhood Street Tree Program (5-58)

Project Goal: Identify and coordinate the planting of trees within planter strips and rights-of-ways in partnership with private homeowners.

Recent Project Milestones:

- September 2014 – Identify additional areas for planting.
- December 13, 2015 – Street tree planting on two streets.

Upcoming Project Milestones:

- **May 2015** – Complete plantings for the fiscal period.

Funds Budgeted	\$25,000
Funds Expended	(\$20,425)
Encumbrances	(\$0)
Balance Remaining	\$4,575

PR0094 – Hilfiker Wall Replacement (5-59)

Project Goal: Continue with restoration necessary to the Hilfiker wall located just south of U.S. Cellular Community Park, along the Bear Creek Greenway.

Recent Project Milestones:

- **January 2015** – Galli Group provided cost estimates for revised project work.

Upcoming Project Milestones:

- **February/March** – Funding will be sought for project through various grants and requests in the 2015/17 Biennial Budget.

Funds Budgeted	\$20,000
Funds Expended	(\$10,009)
Encumbrances	(\$0)
Balance Remaining	\$9,991

PR0098 – Howard & Jackson Parking Lot Repave (5-63)

Project Goal: Upgrades to the parking lots located at Howard and Jackson Parks.

Upcoming Project Milestones:

- March 2015 – Develop bid documents.
- April 2015 – Advertise and award bid.
- May 2015 – Construction\Project Begin.
- June 2015 – Completion.

Funds Budgeted	\$60,000
Funds Expended	(\$0)
Encumbrances	(\$0)
Balance Remaining	\$60,000

PR0099 – Railroad Park Improvements (5-64)

Project Goal: Complete necessary repairs to the parking lot, lighting and signage.

Recent Project Milestones:

- January 2015 – Added parking lot lighting.

Upcoming Project Milestones:

- May 2015 – Completed Irrigation, electrical and lighting modifications.

Funds Budgeted	\$20,000
Funds Expended	(\$4,970)
Encumbrances	(\$9,840)
Balance Remaining	\$5,190

PR0105 (MUR018) – Hawthorne Park

Project Goal: Implementation of master plan items in order to rehabilitate Hawthorne Park.

Recent Project Milestones:

- **February 17, 2015 – Dog park path paving completed.**
- **February 27, 2015 – Executed Phase II contract for parking lot, restroom and courts.**

Upcoming Project Milestones:

- **March 2015 – complete dog park lighting system installation.**
- **March – Develop phase III construction drawings for water play, playground, landscaping and irrigation**
- **March 30, 2015 - Develop phase III contract**
- June 2015– Completion of funded items.

Funds Budgeted	\$1,800,000
Funds Expended	(\$155,290)
Encumbrances	(\$1,054,094)
Balance Remaining	\$590,616

BR0083 (MUR023) – Riverside South Parking Lot – (Dollar GMC)

Project Goal: Acquisition and development of a parking lot to increase parking in downtown.

Recent Project Milestones:

- December 2014 – Awarded contract to Vitus Construction.
- **Construction on-going, approximately 10% completed.**

Upcoming Project Milestones:

- **May 2015 – Construction to be completed.**

Funds Budgeted	\$674,000
Funds Expended	(\$168,284)
Encumbrances	(\$478,972)
Balance Remaining	\$26,744

BR0084 (MUR025) – Riverside North Parking Lot – (Red Lion)

Project Goal: Acquisition and development of a parking lot to increase parking in downtown.

Recent Project Milestones:

- **March 2015 – Design completed and awaiting ODFW approval.**

Upcoming Project Milestones:

- **April 2015 – Scheduled for bid.**
- **August 2015 – Scheduled completion date.**

Funds Budgeted	\$975,000
Funds Expended	(\$12,298)
Encumbrances	(\$15,226)
Balance Remaining	\$947,476

CA1823 - 4th & Central Intersection Improvements – Public Works

Project Goal: Renovation of 4th and Central intersection.

Recent Project Milestones:

- December 2014 – Construction complete (striping, and punch-list will be weather dependent).

Upcoming Project Milestones:

- TBD – Final Striping.

Funds Budgeted	\$990,000
Funds Expended	(\$678,794)
Encumbrances	(\$72,503)
Balance Remaining	\$238,703

Completed General Fund Projects:

Project #	Project	Completed	Budget	Actual	Savings
BR0065	Server Room HVAC Replacement	06/06/14	\$28,000	\$27,954	\$46
BR0069	SC Floor Replacement	03/20/14	\$40,000	\$29,043	\$10,957
BR0077	CMO Interior Modifications	01/02/15	\$25,000	\$24,448	\$552
BR0078	Alba/Medford Room Floors	10/31/13	\$25,000	\$12,408	\$12,592
BR0079	HR Floor & Updates	10/31/13	\$15,000	\$10,267	\$4,733
BR0085	Fire Transaction Window	09/30/14	\$16,000	\$15,648	\$352
PR0061	Pedestrian Path Repairs	09/30/14	\$60,000	\$60,000	\$0
PR0097	Holmes Park Sewer Line	04/11/14	\$20,000	\$18,307	\$1,693
		Totals	\$229,000	\$188,075	\$30,925

Park Dedication Fund Projects:

PR0022 – Leisure Services Plan Update

Project Goal: Begin update to various components of the department’s Leisure Services Plan. This phase is to develop recommendations from the University of Oregon Sustainability program regarding cost recovery for Recreation Division programming.

Recent Project Milestones:

- **January 2015 – Parks & Recreation Commission approved six-year Capital Improvement Plan update.**

Upcoming Project Milestones:

- **February/March – Final development of Community Needs Survey.**
- **April-June – Community Needs Survey conducted.**
- **Project will be carried forward to 2015/17 biennium.**

Funds Budgeted	\$20,000
Funds Expended	(\$143)
Encumbrances	(\$0)
Balance Remaining	\$19,857

PR0069 – Prescott Park (5-50)

Project Goal: Continue with the implementation of the master plan that was approved in January 2009. Funding will be used to obtain proper land-use approvals and designs for trail construction.

Recent Project Milestones:

- **February 5, 2015 – Anticipated acceptance of grant award by Council.**

Upcoming Project Milestones:

- **On-Going – Fundraising for construction by Rogue Valley Mountain Bike Association.**
- **March-June 2015 – Land use approvals sought via Jackson County.**

Funds Budgeted	\$75,000
Funds Expended	(\$3,278)
Encumbrances	(\$0)
Balance Remaining	\$71,722

PR0073 - Playground Development/Replacement (5-52)

Project Goal: Remove and replace outdated play structures at Union Park and Donahue-Frohnmayr Park.

Recent Project Milestones:

- January 2015 Contract award for Donahue-Frohn Mayer park play structure installation
- **March 6, 2015 – Donahue-Frohn Mayer play structure installation began.**

Upcoming Project Milestones:

- March 2015 Playground installations complete

Funds Budgeted	\$133,000
Funds Expended	(\$100,910)
Encumbrances	(\$32,340)
Balance Remaining	(\$250)

PR0076 - Chrissy Park (5-53)

Project Goal: Begin development of the current Chrissy Park property as outlined in the community development master plan completed by staff and approved by the Parks & Recreation Commission in 2006.

Upcoming Project Milestones:

- Staff does not anticipate action on this project during the current biennium.

Funds Budgeted	\$290,000
Funds Expended	(\$0)
Encumbrances	(\$0)
Balance Remaining	\$290,000

PR0079 – Trail & Pathway Development (5-54)

Project Goal: Continue development of phases for trail development within current or to be constructed facilities as outlined by the Leisure Services Plan.

Recent Project Milestones:

- **November 12 – Notification of intent to award a \$75,000 grant through the Recreational Trails Program for trail development at Prescott Park.**

Upcoming Project Milestones:

Funds Budgeted	\$112,500
Funds Expended	(\$0)
Encumbrances	(\$0)
Balance Remaining	\$112,500

PR0080 – Oregon Hills Park (5-55)

Project Goal: Continue with the implementation of the approved master plan for this East Medford park site, as outlined in the Leisure Services Plan.

Upcoming Project Milestones:

- Project will be carried forward to 2015/17 biennium.

Funds Budgeted	\$400,000
Funds Expended	(\$88,399)
Encumbrances	(\$2,525)
Balance Remaining	\$309,076

PR0092 – Aquatic Facilities (5-57)

Project Goal: To develop aquatic facilities as outlined in the Leisure Services Plan.

Upcoming Project Milestones:

- Staff is does not anticipate action on this project during the current biennium.

Funds Budgeted	\$6,800
Funds Expended	(\$0)
Encumbrances	(\$0)
Balance Remaining	\$6,800

PR0095 – SE Area Plan (5-60)

Project Goal: Acquisition and development of parks and trails within the SE Area Plan.

Upcoming Project Milestones:

- Staff is does not anticipate additional action on this project during the current biennium.

Funds Budgeted	\$387,000
Funds Expended	(\$399,434)
Encumbrances	(\$0)
Balance Remaining	(\$12,434)

PR0096 - Cedar Links Park (5-61)

Project Goal: Development of a community based master plan and approval of a Conditional Use Permit for future construction of this neighborhood park.

Upcoming Project Milestones:

- **Project will be carried forward to 2015/17 Biennium.**

Funds Budgeted	\$33,500
Funds Expended	(\$23,934)
Encumbrances	(\$1,473)
Balance Remaining	\$8,093

Completed Park Dedication Fund Projects:

Project #	Project	Completed	Budget	Actual	Savings
PR0007	Kennedy Park	09/30/14	\$30,000	\$13,850	\$16,150
PR0063 & PH0072	Liberty Park	06/30/14	\$262,115	\$241,599	\$20,516
PR0102 & PH0067	Union Park	08/01/14	\$190,500	\$191,274	(\$774)
PR0104	Pear Blossom Park	07/15/14	\$150,000	\$156,007	(\$6,007)
		Totals	\$632,615	\$603,423	\$29,885



CITY OF MEDFORD
AGENDA ITEM COMMENTARY

Item No: **120.1**

www.cityofmedford.org

DEPARTMENT: Parks and Recreation
STAFF PHONE: 541-774-2400
STAFF CONTACT: Brian Sjothun, Director

AGENDA SECTION: Public Hearing
MEETING DATE: March 19, 2015

COUNCIL BILL 2015-23

A resolution authorizing the City Manager to proceed with the sale of surplus City-owned real property consisting of .79 acres currently utilized for access to the former City-managed Table Rock Road Park.

ISSUE STATEMENT & SUMMARY:

This item is for consideration of a request to sell .79 acres of current City of Medford property to Grace Christian School. The property is located adjacent to Cascade Christian High School (CCHS).

BACKGROUND:

A. Council Action History

On March 5, 2015, the Council approved a motion to direct staff to initiate the process for a public hearing to sell property to Grace Christian School.

B. Analysis

The property being requested for transfer is currently utilized for access to the former City managed Table Rock Road Park. The lot is adjacent to CCHS and is not needed by the City for any future park access use. CCHS is currently in negotiations to purchase the former park from Jackson County.

A search of Jackson County records reveal that this property was purchased by the City of Medford in 1959 from R.W. and Mae R. Denman for \$1. Warranty Deed Vol. 471, Page 350 is attached for review and that there are no restrictions noted for this property.

The Parks and Recreation Commission reviewed the request to donate the property at their January 20, 2015 meeting. The Commission requested that staff negotiate a purchase price for the property and such proceeds be directed to the Medford Parks and Recreation Foundation Play Every Day Scholarship Fund.

The Parks and Recreation Commission approved a recommendation to the Council at their February 17, 2015 on the following terms presented by Grace Christian Schools:

- \$3,750 cash payment to the Medford Parks and Recreation Foundation
- A future matching amount would be provided by CCHS for restoration along Bear Creek that is adjacent to the school property

The current real market value of the property as listed on Jackson County website is \$22,690.



C. Financial and/or Resource Considerations

There would be no cash consideration provided to the City of Medford.

D. Timing Issues

There is no immediate timing issue with this agenda item.

STRATEGIC PLAN:

Theme: Responsive Leadership

Goal 12: Ensure financial stewardship and long-term municipal financial stability for City services, assets and facilities

COUNCIL OPTIONS:

1. Approve the sale of the property.
2. Deny the sale and direct staff to negotiate further with Grace Christian School.
3. Deny the sale.

STAFF RECOMMENDATIONS:

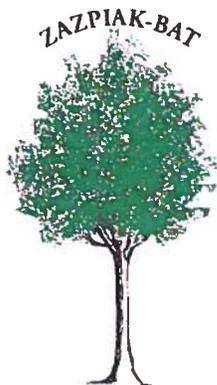
Staff recommends the approval as per the recommendation to Council by the Parks and Recreation Commission.

SUGGESTED MOTION:

I move to recommend to Council a purchase and sale agreement for Tax Lot 5100 totaling .79 acres to Grace Christian School for the terms outlined in the exhibit provided.

EXHIBITS:

Grace Christian School Offer for Property
Jackson County Tax Detail for Tax Lot 5100
Map of Property Location



SMITHWESTCO.

February 9, 2015

Mr. Brian Sjothun
Parks & Recreation Director
City of Medford, Oregon

Dear Brian,

Thank you for your help in coordinating a potential property transaction between the City of Medford and Grace Christian Schools (GCS) and for representing our proposal with the Parks and Recreation Commission.

I have contacted officials at GCS and conveyed your message regarding 372W12D tax lot 5100. While we appreciate the Parks and Recreation Commissions proposition, GCS would like to counter with an agreement that we think would meet the needs of the citizens of the City of Medford, GCS students, parents, and staff as well as the many generous donors that contribute to the Grace Christian Schools family. This proposal includes a cash payment of \$3,750 with an understanding that we would seek funding to match that amount for the Bear Creek restoration project that is occurring along our property boundary.

We feel this agreement would be removing a potential liability for the city with some cash going to the Parks and Recreation Foundation. Our students, staff and community will benefit from this important environmental project. We are also convinced that we are in a better position to manage the liability that comes with tax lot 5100 as we have a daily presence on-site.

Thanks again for your help with this matter.

Best regards,

Chris

Crystal L. Palmerton

From: Nicolas C. Petersen
Sent: Monday, March 09, 2015 11:53 AM
To: tkrempa@charter.net
Cc: Crystal L. Palmerton; Larry W. Masterman
Subject: Medford CERT March
Attachments: CERT announcement Medford.pdf; City of Medford March CERT Training.pdf

Mr. Krempa,

This is Nicolas Petersen from Medford CERT. I apologize for not getting in touch with you until now; the Tribune misprinted my name, and so the e-mail address you were attempting to contact does not exist. I will plug you into the March course that starts next Thursday, and I'm attaching a copy of our schedule and flyer with the correct contact info. If March does not work for you, I will plug you into the list for our May course. Again, my apologies for not getting your e-mails until now.

Sincerely,

Nicolas Petersen

Nicolas Petersen
AmeriCorps CERT Program Specialist
City of Medford
411 W. 8th Street, #310
Medford, OR 97501
Office: 541-774-2090
Cell: 503-820-1950

Account Sequence	Map TL Sequence	Assessment Year <input type="text" value="2014"/>	Print Window	Close Window
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Assessment Info for Account 1-042761-2 Map 372W12D Taxlot 5100

Report For Assessment Purposes Only Created March 03, 2015

Account Info		Tax Year 2014 Info		Land Info	
Account	1-042761-2	Pay Taxes Online		Tax Code	49-01
Map Taxlot	372W12D 5100	Tax Report	Details	Acreage	0.79
Owner	MEDFORD CITY OF	Tax History	Details	Zoning	
Situs Address		Tax Code 49-01		I-G	
LAWNSDALE RD MEDFORD R		Tax Rate	16.0716	Land Class	
Mailing Address	MEDFORD CITY OF CITY HALL MEDFORD OR, 97501	District Rates	Details	RT 0.79 Ac	
Appraiser	74	District Amounts	Details	Property Class	911
		Tax Rate Sheet	Details	Stat Class	000
				Unit ID	169128-1
				Maintenance Area	6
				Neighborhood	000
				Study Area	20
				Account Status	ACTIVE
				Tax Status	Non-Assessable
				Sub Type	NORMAL

Sales Data (AS 400)

Value Summary Detail (For Assessment Year 2014)

ID	Value Source	Code Area	SA	Stat Class	Rural Fire Dist.	Size	Size Type
1	RURAL TRACT	49-01	0		R	0.79	A
ID	Value Source	RMV	M5	Exception Value	Previous Max AV	Previous Max SAV	Max AV
1	RURAL TRACT	\$ 22,590	\$ 22,590	\$ 0	\$ 0	\$ 0	\$ 0

Market Value Summary (For Assessment Year 2014)

Improvements

Images / Plans

Image type	Item Number	Image Files
RESIDENTIAL	1	1 PDF

Appraisal Maintenance

2011 - HISTORY ONLY R.T.

Account Comments

(1) UNBUILDABLE AT THIS TIME DUE TO LOCATION (2) OF CREEK. NO ACCESS TO LAWNSDALE.>>>. 2/6/06 UPDATED EITHER RMV CLASS OR STUDY AREA THIS WILL REMOVE THE ACCOUNT FROM THE RECALC ERROR LIST #23>>>

Exemptions / Special Assessments / Notations / Potential Liability

Notations			
Description	Tax Amount	Year Added	Value Amount
CARTOGRAPHIC ACTIVITY		2011	
ADD/ REMOVE EXEMPTION		2009	
CARTOGRAPHIC ACTIVITY		2008	

Location Map





	Tax Lot 5100
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**CITY OF MEDFORD
AGENDA ITEM COMMENTARY**

AGENDA ITEM: 120.2

www.cityofmedford.org

DEPARTMENT: Building
PHONE: 541-774-2050
STAFF CONTACT: Samuel Barnum

AGENDA SECTION: Public Hearing
MEETING DATE: March 19, 2015

Consider an appeal of the Building Safety Director’s denial of a business license for Patients Helping Patients.

ISSUE STATEMENT & SUMMARY:

Council is being asked to consider an appeal of an administrative decision regarding the denial of the business license for Patients Helping Patients (license #16-40463). The Building Director ordered the denial of the business license application based on Medford Municipal Code Section 8.003(2) and 8.015(3) & (4), which prohibit businesses from operating in violation of local, state, or federal law, and specifically prohibit the operation of a marijuana business. On February 9th, 2015 the appellant waived oral requests and submitted written testimony. On February 10th, 2015, the Building Safety Director upheld the denial of the Business Licenses.

BACKGROUND:

The appellants are exercising their rights under the Medford Municipal Code section 1.025 and are appealing the Building Director's decision. Building Safety Director ordered the denial of business license #16-40463 based on the unlawful nature of the business as defined in Medford Municipal Code Section 8.003(2) and 8.015(3) & (4).

A. Council Action History

None

B. Analysis

The Building Director properly found that Patients Helping Patients was in violation of 8.003(2). Patients Helping Patients practice of distributing medical marijuana to registered cardholders constitutes the distribution of marijuana in violation of the Medford Municipal Code and federal law.

C. Financial and/or Resource Considerations

None

D. Timing Issues

None

STRATEGIC PLAN:

Theme; Safe Community

Goal 1: Ensure a safe community by protecting people, property and the environment.



COUNCIL OPTIONS:

1. Confirm the denial of the business license for Patients Helping Patients.
2. Overturn and approve the business license for Patients Helping Patients.

STAFF RECOMMENDATIONS:

The Building Safety Director recommends the denial be confirmed.

SUGGESTED MOTION:

I move to confirm denial of the business license for Patients Helping Patients.

EXHIBITS:

- Exhibit A: Licensee's Opening Supplemental Submission
- Exhibit B: City's Supplemental Submission
- Exhibit C: Written Testimony
- Exhibit D: Building Director's Administrative Decision

RECEIVED

FEB 6 2015

CITY ATTORNEY'S OFFICE

BEFORE THE BUILDING DIRECTOR OF THE CITY OF MEDFORD

IN RE APPEAL OF NOTICE)	
OF REVOCATION OF BUSINESS)	
LICENSE FOR PATIENTS)	PHP's SUBMISSION
HELPING PATIENTS, LLC.)	

COMES NOW, Appellant, Patients Helping Patients, by and through their attorney, Phil Studenberg. It is Patients Helping Patient's (PHP) position that the moratorium passed by the City of Medford violates State law in that it is a permanent moratorium and is pre-empted by State Law. The federal law does not pre-empt the State law. The Consolidated and Further Continuing Appropriations Act of 2015 includes the Rohrbacker-Farr amendment which denies all funding to the U.S. Department of Justice regarding interfering implementation of state medical marijuana laws. It is a clear statement of Congressional intent.

The significance of this legislation simply cannot be understated and is best described in an article authored by Steph Sherer, Executive Director of Americans for Safe Access, available online at http://www.huffingtonpost.com/steph-sherer/the-federal-government-re_b_6341244.html and the text of which is appended hereto, and by this reference expressly incorporated as if set forth herein. PHP relies on this article generally, and on the Legislative history contained in floor statements of various members of Congress contained therein specifically.

DATED this 6th day of February, 2015.

Respectfully Submitted by:


 Phil Studenberg, OSB# 784468
 Attorney for the Appellant

[Steph Sherer](#)

Executive Director, Americans for Safe Access

The Federal Government Recognizes Battle Over Medical Marijuana

Posted: 12/18/2014 5:01 pm EST Updated: 12/18/2014 5:59 pm EST

VICTORY

TODAY PRESIDENT OBAMA SIGNED BILL TO END THE WAR ON PATIENTS!

Together We Accomplished:

- End of Federal Raids & Arrests
- End of Federal Civil Asset Forfeiture Lawsuits
- Allow Prisoners to Petition for Release
- Pass Comprehensive Medical Marijuana Legislation

WE DID IT!

Help us Accomplish the Next Goal

3 Ways to Get Involved

This is our chance to celebrate today's victory & build on our momentum in Congress to establish real change

3 JOIN THE MOVEMENT Help us continue the fight for safe care by becoming a member of ASA or donating TODAY!

2 ATTEND UNITY 15

saforpatients.org

saforpatients.org

Wednesday marked a milestone in the 18-year battle between state and federal law concerning medical marijuana. But to me, and thousands of other Americans, it marks a day that our country has finally acknowledged that our battle exists. I founded Americans for Safe Access (ASA) in 2002, with the explicit goal of stopping federal raids and prosecutions of medical marijuana (cannabis) patients and their providers. I was compelled to found ASA when I discovered that the Federal Government was trying to imprison people like me and those providing people like me with much-needed medicine despite California law. At the time, there were only a dozen or so medical cannabis distribution centers in the country and only about 40,000 legally qualified patients nationwide.

Over the last 12 years, we have accomplished a lot in changing the medical marijuana landscape. Over [two million Americans use medical cannabis legally](#), 34 states and the District of Columbia have adopted medical cannabis laws, comprehensive regulations have been established for a new industry, and policymakers are creating new medical cannabis programs each year in the U.S. All of this has been done in the midst of an often obscured, but very harmful federal war on medical cannabis.

I don't love using war metaphors, and try to avoid them when I can. However, there is really no other way to describe the costly and devastating actions of the federal government. During my 12 years at the helm of ASA, I have stood outside state-sanctioned medical cannabis facilities protesting, while federal agents broke down the doors and confiscated all of the medicine inside. I have comforted distraught patients as they wondered where they would now be able to obtain their necessary medicine. I have sat with families in their homes preparing for federal trials. I have consoled individuals who were forced to take plea bargains to avoid 10-year mandatory minimum sentences. I have gone with children to visit their parents in prison. I have sat in courtrooms watching people unable to defend themselves because of a set of federal laws that do not recognize medical use. For these survivors too numerous to count, "war" is the only way to describe our struggle.

After years of lobbying the federal government over two administrations and six Congressional terms, we have finally gotten the recognition we deserve. The effort to interrupt the "war" by restricting Department of Justice (DOJ) enforcement in medical cannabis states failed seven times before being adopted this week by Congress and signed by President Obama. While the adoption of this measure is really a stop-gap solution, it represents a sea change in how the federal government looks at this issue.

The Road to Passing the Medical Marijuana CJS Amendment

Including key language in the Cromnibus Bill was an accomplishment 11 years in the making, building on an amendment first introduced by Reps. Dana Rohrabacher (R-CA) and Maurice Hinchey (D-NY) in 2003. As support grew over the years, more bipartisan sponsors joined the amendment. Now coined the Rohrabacher-Farr amendment, the historic measure was sponsored this year by Reps. Sam Farr (D-CA), Don Young (R-AK), Earl Blumenauer (D-OR), Tom McClintock (R-CA), Steve Cohen (D-TN), Paul Broun (R-GA), Jared Polis (D-CO), Steve Stockman (R-TX), Dina Titus (D-NV), Justin Amash (R-MI) and Barbara Lee (D-CA). When the House vote took place in May, [49 Republicans joined 170 Democrats in favor of the amendment](#), one of the strongest bipartisan showings on a controversial piece of legislation in recent history.

In the Senate, Barbara Mikulski (D-MD) led the charge for patients during the conference committee negotiations. Inclusion of the Rohrabacher-Farr Amendment would not have been possible without the efforts of patients and parent-activists from Alabama, Kentucky, and Virginia, who called on conference committee members Sen. Shelby (R-AL), Rep. Rogers (R-KY) and Rep. Wolf (R-VA) to do the right thing. These three members were the stiffest opposition to including the amendment, and the efforts of patients and parents who reached out to them really paid off. By engaging with the opposition, these advocates created the political space for Senator Mikulski (D-MD) to get the amendment included in the final bill.

Coordinated lobby days hosted by ASA at the [National Medical Cannabis Unity Conference and Lobby Day](#) in Washington, DC were another reason for the success of the Rohrabacher-Farr Amendment. These lobby days, the largest of their kind, were instrumental in demonstrating to Members of Congress that medical cannabis is an important issue among their constituencies.

The Medical Marijuana CJS Amendment

The plain language of the Rohrabacher-Farr provision to the Cromnibus appropriations bill states that “None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of...[list of 32 states]..., to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” The key word in the provision is “implement,” which is not explicitly defined in the U.S. Code, federal case law, or Black’s Law Dictionary. However, according to Merriam-Webster, the verb “implement” is defined as to “carry out, accomplish; especially : to give practical effect to and ensure of actual fulfillment by concrete measures.”

Because the act of carrying out a medical marijuana law requires ongoing regulation and administration of the program established by such local and state laws, “implementation” is an ongoing process. It is not possible to accomplish the purpose of state medical marijuana laws if the parties utilizing the state program (patients, caregivers, physicians, cultivators, providers, landlords, etc.) are being thwarted from engaging in this conduct due to aggressive federal interference. The legislative intent of the Rohrabacher-Farr amendment supports this position. Below are excerpts from the floor debate that took place in the U.S. House of Representatives on May 29, 2014, in which the cosponsors state the extent and reach of the provision’s language. A review of the opponents statements in the Congressional Record also reveals an acknowledgement of the extent to which the DOJ will be prevented from obstructing or interfering with those engaging in medical marijuana conduct within the enumerated states.

Rep. Sam Farr

This is essentially saying, look, if you are following State law, you are a legal resident doing your business under State law, the Feds just can't come in and bust you and bust the doctors and bust the patient. It is more than half the States. So you don't have to have any opinion about the value of marijuana. This doesn't change any laws. This doesn't affect one law, just lists the States that have already legalized it only for medical purposes, only medical purposes, and says, Federal Government, in those States, in those places, you can't bust people. It seems to me a practical, reasonable amendment in this time and age.

Rep. Dina Titus

Mr. Chair, for the District of Columbia and 22 States, including Nevada, with laws in place allowing the legal use of some form of marijuana for medical purposes, this commonsense amendment simply ensures that patients do not have to live in fear when following the laws of their States and the recommendations of their doctors. Physicians in those States will not be prosecuted for prescribing the substance, and local businesses will not be shut down for dispensing the same.

Rep. Barbara Lee

We should allow for the implementation of the will of the voters to comply with State laws rather than undermining our democracy.

In States with medical marijuana laws, patients face uncertainty regarding their treatment, and small business owners who have invested millions creating jobs and revenue have no assurances for the future. It is past time for the Justice Department to stop its unwarranted persecution of medical marijuana and put its resources where they are needed.

Rep. Dana Rohrabacher

Mr. Chairman, I rise to speak in favor of my amendment, which would prohibit the Department of Justice from using any of the funds appropriated in this bill to prevent States from implementing their own medical marijuana laws...

...The State governments have recognized that a doctor has a right to treat his patient any way he sees fit, and so did our Founding Fathers.

Rep. Thomas Massie

We need to remove the roadblocks to these potential medical breakthroughs. This amendment would do that. The Federal Government should not countermand State law.

Rep. Paul Broun

Also, this is a states' rights, states' power issue, because many States across the country--in fact, my own State of Georgia is considering allowing the medical use under the direction of a physician. This is a states' rights, Tenth Amendment issue. We need to reserve the states' powers under the Constitution.

Rep. Earl Blumenauer

The problem is that the Federal Government is getting in the way. The Federal Government makes it harder for doctors and researchers to be able to do what I think my friend from Louisiana wants than it is for parents to self-medicate with buying marijuana for a child with violent epilepsy.

This amendment is important to get the Federal Government out of the way. Let this process work going forward where we can have respect for states' rights and something that makes a huge difference to hundreds of thousands of people around the country now and more in the future.

It is abundantly clear from the legislative intent of the cosponsors and supporters of the Rohrabacher-Farr amendment that it goes much further than simply allowing states to adopt medical cannabis laws without federal obstruction. Rather, full implementation of state medical marijuana laws necessitates that the DOJ be prevented from interfering with state-law abiding patients, caregivers, physicians, providers, and other parties exercising their rights necessary to accomplish the purpose of the state medical marijuana program.

Beyond Symbolism

The DOJ is unequivocally responsible for the Drug War's [oversight and funding on nearly every level](#), from the Federal Bureau of Investigations (FBI) and the Drug Enforcement Administration (DEA) to U.S. Attorneys Offices nationwide, down the line to the U.S. Marshals Service and the Bureau of Prisons (BOP). The following are five ways this enormous power has been wielded to circumvent state laws.

1. Direct Interference

Over the years, many state legislatures have used the conflict in federal law as an excuse to drag their feet when passing or implementing medical cannabis programs, while other elected officials received direct threats from the Department of Justice. In Washington State, for example, [U.S. Attorneys issued a 2011 letter on DOJ letterhead](#) saying state agencies and employees who played an active role in licensing medical cannabis businesses “would not be immune from liability under the CSA.” Three days later, comprehensive legislation to create a legal framework for dispensaries was partially vetoed by then-Governor Christine Gregoire, gutting all provisions that called for state regulation.

Consequently, when other approaches were implemented, the [DOJ again weighed in](#), asserting that commercial cultivation and distribution of medical cannabis is “not tenable” and violates “both state and federal law.” This is a clear-cut example of how the threat of federal enforcement has been used to impede state implementation of medical marijuana laws. Under the new federal spending freeze, this type of meddling by the DOJ would be forbidden.

2. DEA Raids and Arrests

Since 1997, the DEA has targeted medical cannabis gardens and dispensaries regardless of whether or not they are (or might be) in compliance with state law. More than 500 raids in legal medical cannabis states, including California, Colorado, Montana, and more, have been conducted by the DEA. These are atypical raids involving “dynamic entry,” a euphemism for kicking in doors or using a battering ram. Once inside, DEA agents indiscriminately detain patients and staff, often at gunpoint. Victims are searched and interrogated; sometimes they are arrested. Plants, medicine, money, and records are confiscated, and patients have no legal recourse to recover their property.

In some cases, the DEA has gone so far as to raid the homes of medical cannabis patients and providers. These raids are not only terrifying and dangerous for legal patients and providers caught in the crossfire, but expensive. [During the Obama Administration, the DEA has spent four percent of its budget on medical cannabis enforcement.](#)

This policy has stymied implementation of state and local medical cannabis laws. Lawmakers are reluctant to adopt regulations for medical cannabis if the threat of DEA raids looms. The raids have also slowed the development of professional safety and operational standards for patients.

Under the new budget, paramilitary style raids will cease. Ending federal raids at gardens and dispensaries will allow sensible regulations to be adopted and implemented, and it will permit the continued advancement of the medical cannabis industry that serves more than 2 million patients.

3. Criminal Prosecutions

Pending and future prosecution of patients and providers must also be halted under the new budget. This will make a world of difference to federal defendants like the Kettle Falls Five, particularly [Larry Harvey, a 70-year-old retiree](#). Together with four other authorized patients, Larry grew less than 75 plants on his property north of Spokane, Washington. Although Larry was recently diagnosed with pancreatic cancer, the terms of his Pre-Trial Supervision denies him the right to use medical cannabis, despite living in a state where marijuana is legal for recreational and medical use.

To date, more than a million dollars has been spent on enforcement against the Kettle Falls Five. Unfortunately, [as recently reported](#), their case is hardly isolated. Several more Washington patients are being prosecuted, along with others in California, Michigan and elsewhere. Without any funding to spend on prosecutions, U.S. Attorneys will be forced to withdraw these indisputably medical cannabis cases.

4. Asset Seizure and Forfeiture

In addition to criminal prosecution, the DOJ has increasingly used civil asset forfeiture as a tool to interfere in the implementation of state and local law. Over the past few years, the DOJ sent hundreds of letters to landlords in California, threatening seizure of their property if they continue to lease to medical cannabis businesses. This stark interference resulted in the closure of more than 600 lawful dispensaries across the state.

In addition, the DOJ has filed costly civil forfeiture lawsuits against dispensaries like Berkeley Patients Group (BPG) and Oakland's Harborside Health Center. Self-described as the "world's largest medical marijuana dispensary," Harborside has managed to [fight off forfeiture action thus far](#), thanks in large part to support from the City of Oakland, but such legal actions are still pending. Like Oakland, officials in Berkeley have intervened on behalf of BPG, the City's largest dispensary. Once the new law takes effect, these costly court battles that have tied up resources for years will finally come to an end.

5. Imprisonment

The plight of severely ill Michigan patient Jerry Duval is another example of misguided and unwarranted DOJ interference. The cost to imprison Jerry alone is [\\$250,000 per year in Michigan dollars](#), due in large part to the significant health challenges that he faces. Jerry's son, Jeremy, and daughter, Ashley, grew medical cannabis on farmland owned by their father, roughly an hour south of Detroit. Jeremy and Ashley were both registered caregivers as required under Michigan law, while Jerry was a qualified patient. Jeremy and Jerry were federally prosecuted and, because they were (and others like them are routinely) denied a defense at trial, a jury found

them guilty of conspiracy to manufacture and distribute marijuana. When it was all said and done, Jeremy and Jerry were sentenced to five and 10-year mandatory minimum prison terms, respectively, and [the federal government seized the family farm](#) that had been passed down for three generations, eventually auctioning it off to the highest bidder. Complicating matters is the fact that Jerry is diabetic and the recipient of a dual organ transplant. Despite being placed in a Federal Medical Prison, the BOP has neglected to provide critical care that Jerry needs to survive. According to the BOP website, Jerry will not be released until 2022.

Likewise, former dispensary operator Aaron Sandusky was convicted at trial and is doomed to prison until 2021, despite being a registered caregiver in full compliance with California law. After his initial arrest, a judge was forced to release Aaron from jail when [emergency room due to being denied medication](#) for a potentially fatal heart condition. Sadly, Aaron is now being housed at a federal lockup in Texas and by the time he is released from BOP custody, the DOJ will have spent at least half-a-million dollars to prosecute and imprison him. Under the terms of the new spending restrictions, the DOJ will be forced to consider releasing these prisoners and many, many others.

What's next:

For these and other reasons, the Rohrabacher-Farr amendment will dramatically impact DOJ enforcement, including ending federal medical marijuana raids, arrests, criminal prosecutions, and civil asset forfeiture lawsuits, as well as providing prisoners with a way to petition for their release.

However, this amendment is only a temporary "ceasefire" in the conflict between state medical programs and federal law, which expires in September 2015. While the Rohrabacher-Farr amendment is an important step in the process of harmonizing federal law with local and state medical cannabis programs, Congress still needs to pass comprehensive federal legislation, like the bipartisan ["States' Medical Marijuana Patient Protection Act" \(HR 686\)](#).

ASA is calling on everyone who believes safe access is a human right to get off the sidelines and help us finish this "war" once and for all. One way to do this is to join us in Washington, DC next year at our [2015 Congressional Lobby Day on March 31, 2015](#) to build on our momentum in Congress to establish real change.

CERTIFICATE OF MAILING

I, HEREBY CERTIFY that I served a true and correct copy, certified as such, of the foregoing SUBMISSION, on the date indicated below by:

- mail, placed in a sealed envelope with postage prepaid, deposited in the U.S. Mail at Klamath Falls, Oregon,
- hand delivery, contained in a sealed envelope, to place of business listed below,
- hand delivery placed in courthouse box,
- facsimile transmission,
- overnight delivery, contained in a sealed envelope with delivery prepaid.

I further certify that said copy was delivered as set forth above addressed to the following person(s) at the address(es) located below:

Kevin R. McConnell
Deputy City Attorney
City of Medford
411 West 8th Street
Medford, OR 97501

Date this 6th day of February, 2015.



Deb Hooker
Legal Assistant for Phil Studenberg

Phil Studenberg, Attorney at Law
230 Main Street
Klamath Falls, OR 97603
Tel (541)880-5562 | Fax (541)880-5564

fax

TO: Glend Wilson, City Recorder FROM: Phil Studenberg
FAX: 541-618-1700 PAGES: (incl. cover sheet) 2
PHONE: _____ DATE: 2.23.15
RE: Bus lic # 16-40463 CC: _____

- Urgent For Review Please Comment Please Reply Per Request

Phil Studenberg
Attorney at Law
230 Main Street
Klamath Falls, Oregon 97601
(541)880-5562; Fax (541)880-5564

February 20, 2015

City of Medford, City Recorder
411 W. Eighth Street
Medford, OR 97501

RE: *Business License #16-40463 Request for Appeal Hearing*

To Whom It May Concern:

On behalf of my client, Phil Carvalho, Patients Helping Patients (PHP), I am requesting a hearing to appeal the denial for PHP's business license.

Sincerely,



Phil Studenberg
Attorney for Mr. Carvalho

CC: Phil Carvalho



OFFICE OF
THE CITY RECORDER
cromed@ci.medford.or.us

CITY OF MEDFORD
411 WEST 8TH STREET
MEDFORD, OREGON 97501

TELEPHONE (541) 774-2017
FAX: (541) 617-1800
www.ci.medford.or.us

February 26, 2015

Mr. Phil Studenberg, Attorney at Law
230 Main Street
Klamath Falls, OR 97601

Re: Business License Denial/Appeal Hearing

Pursuant to your letter dated February 20, 2015, the Medford City Council will consider an appeal of the Building Department's decision denying your client's request for a business license for Patients Helping Patients (PHP).

The public hearing on this matter will be scheduled for the regular city council meeting on **March 19, 2015 at 7 p.m.** at the Medford City Hall Council Chambers, 411 W. 8th Street. The City Council will hear evidence on the appeal to determine whether to sustain the administrative decision.

You may contact the Recorder's Office at 774-2017 with any questions regarding this appeal hearing.

Sincerely,

Karen M. Spoonts, MMC
Deputy City Recorder

cc: Mayor/Council
City Attorney's Office
Building Department
Police Department
Phil Carvalho, Patients Helping Patients

Continuous Improvement – Customer Service

Denied 1/9/15



CITY OF MEDFORD
Business Licenses
200 S Ivy Street, 2nd Floor
Medford Oregon 97501
P: 541-774-2025
F: 541-618-1726
business.licenses@cityofmedford.org

Comm

APPLICATION FOR BUSINESS AND REGULATORY LICENSES
NEW BUSINESS AND NEW LOCATIONS

The Medford Code requires annual licensing of each business operating in the city. Applicant must notify the city within 30 days of any change in application information and keep all necessary county/state/federal licenses and permits current. Failure to do so will be treated as a misrepresentation and may result in revocation of license. Sign permits must be obtained from the Planning Department prior to any installation or painting of outdoor advertising.

If some of the requested information on this form does not apply to your business, please write "N/A" on the space provided.

Business start date 3-3-2014 Start date at this location 11/24/2014 Is business based out of your home? NO

Name of Business PATIENTS HELPING PATIENTS LLC

Owner(s) of Business and Date(s) of Birth JUNE 3, 1976

Business Address 2390 W. MAIN ST. SUITE D MEDFORD OR 97501
Street Address City State Zip Code

Mailing Address SAME AS ABOVE
Street Address City State Zip Code

Business Phone 541-840-0818 Private Phone 541-210-3276 Other _____

Emergency Phone Number (required): 541-779-1774 Email address: OMMPHP@GMAIL.COM

Oregon Construction Contractor Number (CCB#) _____ Expiration _____

Please describe the business activity and any accessory business activity
STATE APPROVED MEDICAL MARIJUANA DISPENSARY

Specify the product /services to be sold MEDICAL MARIJUANA ASSOCIATED PRODUCTS & SERVICES

Will you require any age-based restrictions to customer access or sales? 18 & OVER WITH OMMP & GOV ID

*What was the prior use of the building (or tenant space)? CHIROPRACTOR

*No. of Employees including Owners _____ *Name of Business Manager PHIL CARVALHO *Area = 900 sq. ft.

*Describe any recent remodeling or planned remodeling to this tenant space. If none, write "NONE" in the space provided.
PAINT ONLY

I have signed the Home Occupancy forms and agree to its terms (if business is located in your home) N/A
Initial _____

All activities associated with, and occurring at, the above listed business location within the city limits of Medford, Oregon are in compliance with municipal, state and federal laws and ordinances. Yes No
Initial PC

The undersigned applicant attests that the facts stated herein are true as I reasonably believe. I understand that this is a "sworn statement" and that any material misrepresentation contained herein will be cause for denial or revocation of license.

Signature: [Signature] Title: PARTNER Date 12-15-14

DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY

Business License #
16. 40463

License Fee \$ _____
Additional Fees \$ _____
TOTAL \$ _____

Receipt No.	_____
Receipt Date	_____
Check No.	_____
Your Initials	_____

OFFICE USE ONLY - MUST BE COMPLETED IN ORDER LISTED

BUSINESS NAME Patients Helping Patients LLC

BUSINESS ADDRESS 2390 W Main St Ste D

PLANNING DEPARTMENT REVIEW: Comments or Conditions

Zoning District _____ Approved _____ Date _____

Permitted Use Section _____ SIC# _____ Disapproved _____ Date _____

SIC DEFINITION *required* : _____

As per Home Occupation Agreement

BUILDING DEPARTMENT REVIEW: Comments or Conditions:

Occupancy Classification _____ Approved _____ Date _____

Building Construction Type _____ Disapproved _____ Date _____

Area of Tenant Space per packet _____

FIRE MARSHAL REVIEW: Comments or Conditions

_____ Approved _____ Date _____

_____ Disapproved _____ Date _____

PUBLIC WORKS- ENGINEERING REVIEW: Comments or Conditions

_____ Approved _____ Date _____

Sanitary SDC _____ Street SDC _____ By _____ Disapproved _____ Date _____

POLICE DEPARTMENT REVIEW: Comments or Conditions

Denied _____ Approved _____ Date _____

_____ Disapproved _____ Date _____

FINANCE DEPARTMENT:

BUSINESS LICENSE # 16 40463

Rhonda K. Lingafelter

From: Kevin G. Walruff
Sent: Friday, January 09, 2015 6:35 AM
To: Rhonda K. Lingafelter
Cc: Kevin R. McConnell
Subject: Re: Patients Helping Patients

Rhonda,

Sorry for the delay on this. With the city's current moratorium in place, the police department would recommended denial of this businesses license.

Lt. Kevin Walruff #400
Medford Area Drug & Gang
(541)774-2229

On Jan 6, 2015, at 11:00, "Rhonda K. Lingafelter" <Rhonda.Lingafelter@cityofmedford.org> wrote:

Hello Lt. Walruff,

Attached is the business license application for Patients Helping Patients.

Thank you,

Rhonda Lingafelter / Business License Technician / 200 S Ivy St., 2nd Floor / Medford, OR 97501 /
p: 541.774.2025 / f: 541.618.1726

<2015_01_06_10_57_13.pdf>



BUILDING SAFETY DEPARTMENT
BUSINESS LICENSE DIVISION

CITY OF MEDFORD
LAUSMANN ANNEX
200 SOUTH IVY STREET
MEDFORD, OREGON 97501

TELEPHONE (541) 774-2025
FAX (541) 618-1726
E-MAIL: building@cityofmedford.org

January 12, 2015

Patients Helping Patients LLC
2390 W. Main St. Suite D
Medford, OR 97501

Re: City of Medford Business License
2390 W. Main St.

Dr. Mr. Carvalho,

Your business license application for Patients Helping Patients, LLC has been disapproved by the City of Medford Police Department based on Medford Municipal Code Section 8.015 (3) & (4). Code Section (3) states; No business license shall be issued to any person to engage in a business that does not comply with local, state or federal law. And Code Section 8.015 (4) states; Without limiting the City's powers under Section 3 above, no business license shall be issued to any person or entity engaged in the transfer, exchange, distribution, provision, or furnishing of marijuana, with or without consideration, for any purpose.

Per Section 8.004 of the Medford Municipal Code, this denial shall be final fifteen (15) business days from the date of this letter. If you believe this denial is in error, you may appeal the decision by filing a notice of intent to appeal with the Building Safety Director before the close of business on the 15th day. The written appeal should be addressed to:

Sam Barnum, Building Safety Director
City of Medford Building Department
200 S. Ivy St, 2nd Floor
Medford, OR 97501

If a timely notice of appeal is filed, the Building Safety Director shall notify the applicant of the time and place of an appeal hearing and shall make a final decision after considering all the evidence presented. At the hearing, the applicant will have the opportunity to present additional information and evidence.

If you have any questions regarding the appeal process, please contact Rhonda Lingafelter (541) 774-2025. Enclosed is a copy of the Medford Municipal codes referenced above.

Respectfully,


Sam Barnum
Building Safety Director

Cc: Kevin McConnell, Senior City Attorney
Rhonda Lingafelter, Business License Technician
Christy Taylor, Development Services Administrator
Lt Kevin Walruff, Police Department



BUILDING SAFETY DEPARTMENT
BUSINESS LICENSE DIVISION

CITY OF MEDFORD
LAUSMANN ANNEX
200 SOUTH IVY STREET
MEDFORD, OREGON 97501

TELEPHONE (541) 774-2025
FAX (541) 618-1726
E-MAIL: building@cityofmedford.org

January 16, 2015

Mr. Phil Studenberg
230 Main Street
Klamath Falls, Oregon 97601

Re: Business License Denial – Appeal Hearing for Patients Helping Patients, LLC

Dear Mr. Phil Carvalho:

The appeal hearing regarding Patients Helping Patients, LLC's business license denial has been scheduled for February 3, 2015:

Tuesday, February 3, 2015
3:00 p.m.
Building Safety Department – Lausmann Annex Conference Rm # 151
200 S. Ivy Street, 2nd Floor
Medford, Oregon 97501

This hearing will be attended by representatives from the City of Medford's Building Safety Department, Legal Department and Police Department.

If you have any questions, please contact Christy Taylor at (541) 774-2367 or Christy.taylor@cityofmedford.org

Respectfully,

Sam Barnum,
Building Safety Director

cc: Kevin McConnell, Deputy City Attorney
Lieutenant Kevin Walruff, City of Medford PD
Christy Taylor, Development Services Administrator
Rhonda Lingafelter, Business License Technician



BUILDING SAFETY DEPARTMENT

CITY OF MEDFORD
LAUSMANN ANNEX
200 SOUTH IVY STREET
MEDFORD, OREGON 97501

TELEPHONE: (541) 774-2350
FAX: (541) 618-1707
E-MAIL: building@cityofmedford.org

February 10, 2015

Phil Carvalho
Patients Helping Patients
2390 W. Main St., Suite D
Medford, OR 97501

RE: Business License #16-40463 Denial/Appeal Hearing

Dear Mr. Carvalho:

As the appellant, you waived oral request and submitted written testimony which I received on February 2nd, 2015, via Kevin McConnell, City of Medford Deputy City Attorney. I received an additional letter from Phil Studenberg, Attorney-at-law, representing Patients Helping Patients (PHP) on February 9th, 2015.

Based on the written submittals from both parties, I hereby uphold the determination of the City Manager's (or designees) decision, and deny your appeal to approve PHP's business license. The denial was based on the unlawful nature of your business as defined in the Medford Municipal Code Section 8.003(2) and 8.015(3) & (4). Although this decision is deemed final, you have the right to appeal the decision to the City Council under the procedures set out in section 1.025 of the Medford Municipal Code. (Attached is a copy of the City code for your reference).

Under Medford Municipal Code section 1.025(1), you have 10 days upon receipt of this letter to file with the City Recorder a written notice of your request to appeal the decision. This letter should be addressed to:

City of Medford, City Recorder
411 W Eighth St.
Medford, OR 97501

The City Council shall hear your appeal within 30 days after the recorder receives the notice of your request. The City recorder will notify you the time and place of the hearing. If you have any questions, please contact the City Recorder at (541)774-2008.

Sincerely,

A handwritten signature in black ink, appearing to read "SR" followed by a circled "B".

Samual D. Barnum
Building Safety Director

Cc: Eric Swanson, City Manager
Tim George, Police Chief
Glenda Wilson, City Recorder
Kevin McConnell, Deputy City Attorney
Christy Taylor, Development Services Manager

enc.

P \ BUSINESS LICENSES \ DENIALS \ Medical Marijuana \ PATIENTS HELPING PATIENTS

Phil Studenberg

Attorney at Law
230 Main Street
Klamath Falls, Oregon 97601
(541) 880-5562; Fax (541) 880-5564
phil@philstudenberg.com

December 24, 2014

City of Medford
Business Licenses
200 S. Ivy Street, 2nd Floor
Medford OR 97501

RE: Denial of Business License for Patients Helping Patients, LLC

Dear City of Medford:

I am the attorney representing Mr. Carvalho, president and owner of Patients Helping Patients, LLC.

I am writing to appeal the denial of the business license application for Patients Helping Patients, LLC.

They have met all the criteria required by the Oregon Health Authority Medical Marijuana Dispensary Program and are licensed by that agency as a dispensary. The moratorium passed by the City is illegal and preempted by the laws of the state.

The Federal preemption issue has been dealt with by the U.S. Congress in the passage of HR 83, Section 538, and signed into law by President Obama.

I would request that you confer with my office when schedule any hearings in order to insure that a mutually agreeable time and date

Sincerely



Phil Studenberg

PS:lb

CC: Phil Carvalho

Nikki N. Anders

From: Mayor and Council
Sent: Tuesday, February 17, 2015 10:17 AM
To: Gary H. Wheeler
Cc: Crystal L. Palmerton; Business Licenses; Code Enforcement
Subject: FW: Patients helping patients

Follow Up Flag: Follow up
Flag Status: Flagged

This message was received in the Mayor and Council's email box.

Thank you.

Winnie Shepard

Mayor and City Manager's Office
411 West 8th Street
Medford, OR 97501
(541) 774-2003

From: dragonflykmoor [mailto:dragonflykmoor@msn.com]
Sent: Tuesday, February 17, 2015 9:48 AM
To: Mayor and Council
Subject: Patients helping patients

Mr Mayor,

My name is Karen Brown and I own a business at 2390 W Main St Ste C in Medford. Right next door is a business that allows medical marijuana card holders to smoke pot indoors. This creates an awful odor in my salon and nothing I've done with complaints to medford PD? The Oregon Health Authority, and my landlord, has gotten me any results. Quite frankly I just want them gone. It should not be legal to smoke in a building anywhere.

I understand the owner of this "Lounge"

Is supposed to be in court because he does not have a business license. I would like to be informed of the date of this hearing if at all possible.

Thank You

KAREN BROWN

Sent from my U S Cellular® Smartphone

BEFORE THE BUILDING DIRECTOR OF THE CITY OF MEDFORD

IN RE APPEAL OF NOTICE
OF REVOCATION OF BUSINESS
LICENSE FOR PATIENTS
HELPING PATIENTS, LLC.

CITY'S SUBMISSION

I. INTRODUCTION

The Medford Code prohibits a person from engaging in business within the City unless they obtain a business license. *Section 8.015(1)*. No business license shall be issued to any person engaging in a business that does not comply with local, state or federal law. *Section 8.015(3)*. Moreover, no business license shall issue to any person engaged in the transfer, exchange, distribution or furnishing of marijuana, with or without consideration, for any purpose. *Section 8.015(4)*. This prohibition includes medical marijuana facilities, and any business that could be licensed by the state pursuant to Measure 91. The prohibition against licensing such businesses does not expire. *Section 8.015(4)(b)*. If a business license application or investigation discloses information which indicates that the business would be engaged in unlawful activity, the application shall be denied. *Section 8.003(2)*.

For the reasons that follow, the City respectfully requests that the Building Director (“the Director”) affirm the City’s decision to deny a business license to Patients Helping Patients (“PHP”) under Section 8.003(2) of the Medford Code.

II. BACKGROUND

A. Brief history of PHP and The Lounge.

Appellant Phil Carvalho (“Appellant”) operates PHP, which is located at 2390 West Main Street, Suite D. On December 15th, 2014, Appellant submitted business license application

number 16.40463, seeking to license PHP. The application for PHP is attached hereto as Exhibit A.

In the application, Appellant states that PHP's business activity was a "state approved medical marijuana dispensary," and the products to be sold were "medical marijuana associated products & services." The City denied PHP's application on January 9th, 2015, pursuant to Section 8.003(2).¹

This was not the first time that Appellant had an application for a business license denied. On April 17, 2014, the Medford City Council ("the Council") affirmed the March 4, 2014 decision of the Director to uphold the City's decision to deny a business license to The Lounge- which conducted business at 617 East Main Street. At that time, Patients Helping Patients, LLC, was listed by the Oregon Secretary of State Corporation Division as doing business in the same location as The Lounge. A copy of that document is attached hereto as Exhibit B.

In Resolution No. 2014-45, the Council affirmed the Director's decision, for the reason that Appellant distributed marijuana to registry identification cardholders, and that he received money in exchange for the marijuana in an amount in excess of his costs of supplies and utilities. The Council concluded that those activities violated the City Code, as well as state and federal law. A copy of the Resolution No. 2014-45 and accompanying Findings of Fact and Conclusions of Law is attached hereto as Exhibit C.

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¹ Section 8.003(2) states in pertinent part that [i]f the application or the investigation by the city discloses information which indicates that the business would be engaged in unlawful activity... the application shall be denied by the city manager (or designee).

B. Summary of Jackson County Circuit Court Decisions Affirming the Council's Revocation/Denial of Business Licenses to Businesses Distributing Marijuana.

Appellant sought to overturn the Council's decision regarding The Lounge by petitioning for a writ of review with the Jackson County Circuit Court. The court issued the writ, and the matter was set for additional briefing and argument. After reviewing the record and hearing arguments from both parties, the court affirmed the Council's decision to deny a business license to The Lounge.

The court first held that The Lounge distributed marijuana in violation of the Oregon Medical Marijuana Act ("OMMA") in two ways. The court found that The Lounge was not a licensed medical marijuana facility authorized to transfer useable marijuana to registry identification cardholders, and that The Lounge distributed marijuana to any registry identification cardholder for a 10-dollar door entry fee (a registry identification cardholder may only lawfully reimburse their grower for the costs of supplies and utilities).

The court also held that *even if The Lounge were in compliance with the OMMA*, the Federal Controlled Substances Act ("CSA") preempts the state statute (ORS 475.304) authorizing the creation of a marijuana grow site registration system- rendering it unenforceable. The court explained that "[t]he OMMA's affirmative authorization of the manufacture and distribution of marijuana (ORS 475.304) irreconcilably conflicts with the CSA; therefore, that statute is not effective pursuant to the... Supremacy Clause." A copy of the court's Order on Review is attached hereto as Exhibit D.

The court's reasoning in its Order on Review follows the reasoning of a similar Jackson County Circuit Court case decided on May 13, 2014. In *Nuckols v. City of Medford, Case No. 14CV02349*, Circuit Court Judge Timothy Gerking affirmed the Council's decision to revoke the

business license of Plaintiffs' businesses MaryJane's Attic/Basement. As in The Lounge case, the Council found that MaryJane's Attic/Basement unlawfully distributed marijuana in violation of local, state and federal law. In the *Nuckols* Order on Review, the court found that:

Just as the Court in *Emerald Steel* held that the affirmative authorization of the "use [of marijuana] that federal law prohibits stands as an obstacle to the implementation and execution of the full purposes and objectives of the [CSA]," I find that the affirmative authorization of the manufacture and distribution of marijuana under the OMMA likewise presents an actual conflict. For that reason ORS 475.304 is unenforceable.

A copy of the *Nuckols* Order on Review is attached hereto as Exhibit E.

It is clear- at least in this judicial district- that the Council's decision to either revoke or deny a business license to a business engaged in the distribution of marijuana will withstand judicial review, regardless of its status under state law.

C. The PHP Appeal.

Despite the fact that the Council's decision to deny a business license to The Lounge was affirmed by a state circuit court in 2014, Appellant now appeals the denial of a business license to PHP. He forwards two arguments as to why the City's decision should be overturned:

- 1) As a state- licensed medical marijuana facility, state law preempts the City's moratorium on licensing such businesses; and
- 2) With the passage of the Consolidated and Further Continuing Appropriations Act, 2015, Congress has in effect delisted marijuana as a schedule I drug. As such, no provision of the OMMA is preempted by the CSA, and the OMMA is therefore enforceable.

The City addresses each argument in turn.

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III. ARGUMENT

A. *The City's prohibition against licensing any business engaged in marijuana activity does not sunset.*

As explained in the Introduction, Sections 8.003(2)/8.015(3)&(4) (“the Ordinances”) prohibit the City from issuing a business license to PHP. Copies of the Ordinances are attached hereto as Exhibit F. Appellant may argue that because PHP is now a licensed medical marijuana facility, the City’s “moratorium” (Sections 8.015 (3)-(4)) is preempted by state law, because it must sunset by May 1, 2015. Appellant is incorrect. To explain why, a brief summary of HB 3460 and SB 1531 is warranted.

HB 3460 (now codified at ORS 475.314) relaxed the rules regarding the distribution of medical marijuana to registry identification cardholders. HB 3460 permits medical marijuana facilities to distribute medical marijuana to *any* registry identification cardholder. HB 3460 was signed by the Governor on August 14, 2013. A copy of HB 3460 is attached hereto as Exhibit G.

SB 1531, among other things, permitted local governments to enact a moratorium on the operation of the medical marijuana facilities allowed for by HB 3460. In order for the moratorium to be effective, the local government had to enact such an ordinance no later than May 1st, 2014. SB 1531 was signed into law by the Governor on March 19, 2014. A copy of SB 1531 is attached hereto as Exhibit H.

On March 20, 2014, the City amended Section 8.015 *in part* to effectuate the authority granted to local governments under SB 1531. That amendment is codified at Section 8.015(4)(a). *See Ordinance No. 2014-30*, attached hereto as Exhibit I. However, the City went further.

Ordinance No. 2014-30 clarified Section 8.015(3) by stating that “no business license shall be issued to any person or entity engaged in the transfer, exchange, distribution, provision, or furnishing of marijuana, with or without consideration, for any purpose.” *See Section 8.015(4)*. Unlike the moratorium provision set out in SB 1531, which sunsets on May 1, 2015- the prohibition set out at section 8.015(4) contains no sunset provision. *See Section 8.015(4)(b)*.

While Section 8.015(4)(a) specifically prohibits licensing medical marijuana facilities and includes the moratorium provision set out in SB 1531, section 8.015(4) categorically prohibits the City from issuing a business license to any business whose business is marijuana. The intent of Ordinance No. 2014-30 was two-fold: 1) to ensure that no business dealing in marijuana would obtain a business license, and 2) ensure that the City took advantage of the moratorium provision set out in SB 1531.

As Section 8.015(4) does not sunset, the issue then turns to whether the City’s blanket prohibition against licensing medical marijuana facilities is preempted by the OMMA. As explained below, it is not.

B. The City lawfully exercised its Home Rule Powers, the Ordinances are not preempted by the OMMA.

Pursuant to its Home Rule powers, the City may lawfully ban medical marijuana facilities, and the exercise of that authority is neither implicitly nor explicitly preempted by the OMMA. Because the Ordinances and the OMMA can operate concurrently, they are not preempted by state law.

The City’s power to adopt ordinances and any preemptive effect of state law on those ordinances are regulated by the Home Rule Amendment found at Article XI, Section 2 of the Oregon Constitution. The Home Rule Amendment applies to cities that adopt municipal

charters. The primary purpose of Home Rule is to allow the people of a locality to decide upon the organization of their government and the scope of its powers under its charter without having to obtain statutory authorization from the Oregon legislature. *LaGrande/Astoria v. PERB*, 281 Or 137, 142, *aff'd on reh'g*, 284 Or 173(1978).

The City has attained Home Rule status:

Chapter II, Sections 4-5 of the Medford Charter provide that:

Section 4. POWERS OF THE CITY. The city shall have all powers which the constitutions, statutes, and common law of the United States and of this state expressly or impliedly grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers.

Section 5. CONSTRUCTION OF CHARTER. In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home-rule provisions of the state constitution. As used in this charter, the term "whole council" means all of the present membership of the council at the time the vote is taken.

Notwithstanding Home Rule status, state law may preempt an inconsistent municipal enactment. Oregon courts have held a local ordinance incompatible with state law when either: 1) the Oregon legislature meant its law to operate exclusively (explicit preemption) or 2) both cannot operate concurrently, *i.e.*, the operation of local law makes it impossible to comply with a state statute (implicit preemption). *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, 470 (2010), *citing LaGrande/Astoria v. PERB*, 281 Or at 156.

While the Home Rule Amendment does not afford much protection against state preemption of local criminal codes, Oregon courts have found a strong presumption against implied preemption on the civil side. *See Paul Diller, The Partly Fulfilled Promise of Home Rule in Oregon*, 87 Or.L.Rev., 939, 940; 958 (2008). The Home Rule Amendment was intended

to protect “the structure and procedures of local agencies” from state intrusion. *Id.* at 961, *citing LaGrande/Astoria*, 281 Or at 156. Medford’s business license ordinance regulates civil conduct.

Neither House Bill 3460 nor any other provision of the OMMA explicitly preempts the Ordinance. In order for a local ordinance to be held explicitly preempted by state law, Oregon courts have concluded that a state statute must clearly and unequivocally state its preemptive intent. Oregon courts have held that the Oregon legislature may not displace local regulation of local conditions by statewide law unless that intention is apparent (*e.g.*, “the State of Oregon hereby preempts...;” “No city shall adopt or enforce any ordinance, rule or regulation regarding...”). *See Thunderbird Mobile Club, LLC, v. City of Wilsonville*, 234 Or App at 472, n. 4-5. The provision of the OMMA dealing with medical marijuana facilities does not contain such language.

Moreover, the Oregon Health Authority has stated, in regards to the Medical Marijuana Dispensary Program mandated by HB 3460, that “[t]he issue of whether a local government believes a certain type of business should operate... is a local government decision.” *See OHA Medical Marijuana Dispensary Program- A note about local government issues* [www.oregon.gov/oha/mmj/Pages/index.aspx], attached hereto as Exhibit J. That is not the language of state preemption.

Neither are the Ordinances implicitly preempted by state law, because the operation of the Ordinances do not make it impossible to comply with the OMMA. The Ordinances do not prevent registry identification cardholders from using marijuana, growing their own marijuana, or having a registered grower/caregiver do so for them.

It is presumed that the legislature did not mean to impliedly repeal a local ordinance, and the Court should seek to reconcile the operation of the Ordinances and the OMMA. *See*

Thunderbird Mobile Club, LLC, 234 Or App at 471. Applying the applicable caselaw to the case at bar, a court could do so.

In *Thunderbird Mobile Club, LLC*, the city of Wilsonville enacted an ordinance requiring owners of mobile home parks wanting to close a park obtain a closure permit, file a detailed closure impact report and relocation plan that would provide for the payment of all reasonable costs to displaced tenants. *Id.* at 461. The applicable provisions of the Oregon Residential Landlord and Tenant Act required that mobile home park wanting to close a park either give tenants a one-year notice, or 180-days' notice with a space to move to and moving expenses up to \$3,500.00. *Id.* at 460.

The owner of the mobile home park challenged the city's ordinance as being preempted by the Oregon Residential Landlord and Tenant Act. *Id.* at 462. The trial court found that the costs associated with complying with the city's ordinance would be substantial, and that the owner of the mobile home park could neither sell nor close the park without complying with the ordinance. In concluding that the city ordinance was preempted by state law, the trial court noted that it prohibited what state law permitted. *Id.* at 463-64.

The *Thunderbird* court determined that the only test applicable in determining whether a local law is implicitly preempted by state law was the test laid out in *LaGrande/Astoria* (a local law is implicitly preempted *only if* it cannot operate concurrently with state law). The *Thunderbird* court expressly rejected arguments that: 1) the city could not supplement state law by enacting an ordinance imposing additional requirements on mobile home park owners and 2) the city ordinance conflicts with state law because the ordinance prohibits what state law specifically allows for (selling a mobile home park after giving a 1-year notice to tenants). *Id.* at 473-75.

The *Thunderbird* court held that the city ordinance was not implicitly preempted by state law, because a mobile home park owner could comply with the requirements of both the city ordinance and state law. *Id.* at 474. See also *Oregon Restaurant Assn. v. City of Corvallis*, 166 Or App 506, 508-09 (2000)(holding that a city’s ordinance prohibiting smoking in all enclosed public spaces was not preempted by a state law imposing less strict regulations, reasoning that “we are reluctant to assume that the legislature, in adopting statewide standards, intended to prohibit [a city] from requiring more stringent limitations...”); *State ex rel. Haley v. City of Troutdale*, 281 Or 203, 209-10 (1978)(holding that a city building code requiring double wall construction without exception was not preempted by a state building code provision allowing for single wall construction under certain circumstances); *Rogue Valley Sewer Services v. City of Phoenix*, 262 Or App 183 (2014) (relying upon *LaGrande/Astoria*, holding that city could impose a franchise fee upon a sanitary authority for its use of city’s right of way, as the franchise fee was not incompatible with the applicable state law’s legislative purpose).

Applying the applicable caselaw to the case at bar, the Ordinances are not implicitly preempted by the OMMA. HB 3460 is not a law unto itself. It is codified at ORS 475.314 as one of the statutes that make up the OMMA. The City concedes that the Ordinances work to limit one way for patients to access marijuana. However, the Ordinances are not preempted by the OMMA simply because it imposes more stringent limitations or prohibits what state law allows for. Pursuant to *LaGrande/Astoria* and its progeny, the Ordinances will be preempted by state law only if its operation makes it impossible to comply with the OMMA.

The Ordinances can operate concurrently with the OMMA, because they do not preclude registry identification cardholders from accessing marijuana. Cardholders can still grow their own marijuana or have a registered person grow it for them.

Based upon the City's cited cases, the Director- attempting to reconcile the operation of the Ordinances with the OMMA- can find that the operation of the Ordinances do not make it impossible to comply with the OMMA. While it can be argued that the Ordinances either impose stricter requirements than the OMMA, or prohibit what the OMMA expressly allows for, the City's ban on medical marijuana facilities not preclude registry identification cardholders from accessing marijuana under the OMMA.

Moreover, the Ordinances do not interfere with the legislative purpose of the OMMA. ORS 475.300 provides the legislative purpose of the OMMA:

The people of the state of Oregon hereby find that:

(1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;

(2) Oregonians suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use (emphasis added);

(3) ORS 475.300 to 475.346 are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctor's professional advice; and

(4) ORS 475.300 to 475.346 are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes.

The legislative purpose of the OMMA is to allow persons suffering from debilitating medical conditions to use medical marijuana, and protect said persons and their doctors from civil and criminal liabilities associated with the use of marijuana for medicinal purposes. Nothing in the Ordinances affect the ability of registry identification cardholders to use marijuana pursuant to the OMMA, or imposes any kind of criminal penalty for such use.

As the Ordinances do not affect the ability of a registry identification cardholder to use or grow marijuana pursuant to the OMMA, the Director may properly find that the Ordinances are not preempted by state law.

C. *The Consolidated and Further Continuing Appropriations Act, 2015 ("the Act") does not delist or in any way reschedule marijuana under the CSA.*

In his appeal letter, Appellant claims that "[t]he federal preemption issue has been dealt with by the U.S. Congress in the passage of HR 83, Section 538², and signed into law by President Obama." The City infers from this statement that Appellant is arguing the Act had the effect of delisting or rescheduling marijuana under the CSA; therefore the City's federal preemption argument is inapplicable to this case. Appellant's assertion is incorrect.

The Act in no way changes marijuana's listing as a schedule I drug under the CSA. The Act is a one-year spending bill, preventing the U.S. Department of Justice from taking action to prevent the listed states from implementing laws authorizing the use, distribution, possession or cultivation of medical marijuana.³ Unless Congress takes the same action again next year, section 538 of the Act will sunset. Moreover, the only ways to delist or reschedule marijuana would be for Congress to do so, or have the Attorney General follow the APA rulemaking procedures set out at 5 U.S.C. § 553. This one-year spending bill cannot be reasonably interpreted to be an attempt by Congress to either delist or reschedule marijuana.

² The full text of the Act can be found at: <http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT91668/pdf/CPRT-113HPRT91668.pdf> Section 538 can be found at pgs. 213-214.

³ Section 5 of the Act states the following: "STATEMENT OF APPROPRIATIONS. The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2015."

The City notes that Appellant made a similar argument in *The Lounge* appeal. In that appeal, Appellant relied upon a series of memoranda from the United States Attorney General's office for the proposition that their conduct is lawful federally. Those memoranda explained that the United States Attorney General's office would refrain from enforcing marijuana crimes where alleged offenders comply with state criminal marijuana laws, and such state laws meet certain parameters established by the Attorney General.

A United States Circuit Court has found that the U.S. Attorney memoranda do not change what conduct is unlawful under the Controlled Substances Act.

The scheduling of controlled substances under the CSA is not static. Not only can Congress amend it, but the statute itself includes a provision permitting the Attorney General to add or transfer a drug to a particular schedule if he "(A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the [requisite findings, see note 3, ante] for the schedule in which such drug is to be placed." *Id.* § 811(a)(1). The CSA mandates that such a reclassification by the Attorney General be made "on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by [the Administrative Procedure Act ('APA') at 5 U.S.C. § 553]." *Id.* § 811(a). In assessing the scientific and medical factors relevant to this rulemaking process, the Attorney General is required to request an evaluation from the Secretary of Health and Human Services, and accept the findings contained in the evaluation as binding. *Id.* § 811(b); *see also Gonzales*, 546 U.S. at 250.

U.S. v Canori, 737 F3d 181, 183 (2nd Cir. 2013). That case went on to describe whether the *Ogden* memo or its successor, the *Cole* memo or any of the series of memorandum changed in any way the federal law. The Court explained:

Canori contends that, by virtue of the *Ogden* Memo and its progeny, the Attorney General has "implicitly" and unilaterally exercised his powers under § 811 of the CSA to reclassify marijuana from its current status as a Schedule I substance. Yet both the *Ogden* and *Cole* Memos expressly state and reiterate that the guidance contained therein does not affect marijuana's classification as a Schedule I substance under the CSA.

Even assuming *arguendo* that the Attorney General had expressed an intention to reclassify marijuana, which, as stated above, he did not, the CSA

mandates a particular procedure under the APA through which the Attorney General may reclassify a drug. See 21 U.S.C. § 811; *see also Part A, ante; accord Gonzales*, 546 U.S. at 259-60 ("The CSA gives the Attorney General limited powers, to be exercised in specific ways."). This procedure is the exclusive means provided by statute for the Attorney General to reclassify a substance; he cannot do so "implicitly" or by fiat. Here, the Attorney General has not followed the required rulemaking procedures outlined in 5 U.S.C. § 553 to effectuate a "rescheduling" of marijuana, and so marijuana remains a Schedule I substance.

Canori next argues that we must recognize a de facto reclassification in order to avoid what he characterizes as a "constitutional nullification crisis." Appellant's Br. 30. According to Canori, if the *Ogden Memo* did not de facto reschedule marijuana, those States that have legalized medical marijuana have somehow "undermine[d] the doctrine of Federalism and the Supremacy Clause of the United States Constitution."

This argument also fails. Marijuana remains illegal under federal law, even in those states in which medical marijuana has been legalized. See 21 U.S.C. § 903 (providing for preemption where "there is a positive conflict between [a provision of the CSA] and that State law such that the two cannot consistently stand together"). That the Department of Justice has chosen to prioritize certain types of prosecutions unequivocally does not mean that some types of marijuana use are now legal under the CSA. Rather, "prosecutors are permitted discretion as to which crimes to charge and which sentences to seek." *United States v. Gonzalez*, 682 F.3d 201, 204 (2d Cir. 2012); *see also United States v. Nixon*, 418 U.S. 683, 693 (1974) ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case."). The Attorney General's exercise of that discretion, in the *Ogden Memo*, neither legalizes marijuana nor creates a constitutional crisis.

U.S. v. Canori, 737 F3d at 184-85.

For the same reasons that the *Canori* court found that the United States Attorney *Ogden* and *Cole* memoranda did not change the law, the Director can find that the Act also fails to do so.

D. Appellant's business activity violates the CSA, and the City may properly choose to not interfere with the implementation and execution of the CSA.

The CSA, 21 USC § 801 *et seq.* places all controlled substances into a schedule, based upon the controlled substance's potential for abuse and medicinal value. Marijuana is classified

as a Schedule I controlled substance (hallucinogenic substances), meaning that it deemed to be highly addictive and having no medicinal value. 21 CFR §1308 contains the current schedule of controlled substances. Marijuana is currently listed as a Schedule I controlled substance.

The CSA prohibits the possession, distribution and manufacture of marijuana, and contains no exception for medicinal use.

When a state law irreconcilably conflicts with federal law, the Supremacy Clause (Article VI, Clause 2 of the United States Constitution) renders the state law of no effect. Because the OMMA- specifically ORS 475.314- allows dispensing of marijuana from one person to another, it is preempted by the CSA. ORS 475.314 affirmatively authorizes what the CSA prohibits, and therefore is not effective pursuant to the Supremacy Clause.

Therefore, the City, acting in accordance with the Home Rule Doctrine, may choose to not license businesses that engage in activities which stand as an obstacle to the implementation and execution of the CSA. The City relies upon *Willis v. Winters*, 350 Or 299 (2011) and *Emerald Steel Fabricators, Inc. v. BOLI*, 348 Or 159 (2010) in support of its contention.

The Emerald Steel case

In *Emerald Steel*, employee was terminated from his position after he admitted to his employer that he smoked marijuana for medical purposes. Employee filed a complaint with BOLI, arguing that a provision of state law (ORS 659A.112) prohibits discrimination against an otherwise qualified person because of a disability, and requires that employers reasonably accommodate a person's disability. Because the employee was a medical marijuana cardholder, and the OMMA expressly authorizes the use of medical marijuana by cardholders, employee argued that the employer discriminated against him when it failed to reasonably accommodate his disability.

Employer countered, arguing that: 1) Oregon law requires the reasonable accommodation statute (ORS 659A.112) to be interpreted consistently with the Americans with Disabilities Act (“ADA”); 2) the ADA states that its protections do not apply to persons engaged in the illegal use of drugs; and 3) the CSA prohibits the possession/use of marijuana without regard to whether it is used for medicinal purposes.

BOLI found that employer failed to reasonably accommodate employee’s disability, and that the employee suffered damages as a result of the violation. The case made its way to the Oregon Supreme Court.

The *Emerald Steel* court held that the OMMA’s authorization of the medical use of marijuana was implicitly preempted by the CSA, and the employee’s use of medical marijuana constituted an illegal use of drugs. Therefore, employer was not required to reasonably accommodate employee’s disability under ORS 659A.112.

In finding that the OMMA’s express authorization of the use of medical marijuana was preempted by the CSA, the *Emerald Steel* court noted the following regarding the CSA:

- The CSA’s stated objective is to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.
- Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels.
- To accomplish these objectives, Congress enacted a comprehensive, closed regulatory regime that criminalizes the unauthorized manufacture, distribution and possession of controlled substances, which are classified in five schedules.
- Schedule I drugs are categorized as such because they lack any accepted medical use and have a high potential for abuse. Schedule I drugs are not permitted to be

manufactured, distributed or possessed for public use.

- Congress has classified marijuana as a Schedule I drug. Therefore, the CSA prohibits marijuana from being manufactured, distributed and possessed.
- The categorization reflects Congress's conclusion that marijuana lacks any accepted medical use.
- The United States Supreme Court held that the CSA does not contain a medical necessity exception that would permit the manufacture, distribution and possession of marijuana for medical treatment.

The *Emerald Steel* court explained that section 903 of the CSA addressed the relationship between the CSA and state law. Section 903 states that states may pass laws on the same subject matter as the CSA, unless there is a positive conflict between the Act and state law so that the two cannot consistently stand together (implied preemption). The *Emerald Steel* court recognized that the United States Supreme Court has held a state statute implicitly preempted under the Supremacy Clause when the state law stands as an obstacle to the accomplishment and execution of the full purposes of Congress.

Applying its knowledge of the CSA and federal preemption to the case at bar, the *Emerald Steel* court reversed BOLI's order. The *Emerald Steel* court reasoned that because Congress had classified marijuana as a Schedule I drug, Congress had expressed its judgment that marijuana has no recognized medical use. The *Emerald Steel* court recognized that Congress had imposed a blanket federal prohibition on the use of marijuana- as opposed to a limited prohibition on the use of marijuana (prohibiting its use unless the states chose to authorize its use for medical purposes). The *Emerald Steel* court also recognized that the OMMA affirmatively authorizes the use of marijuana for medical purposes (ORS 475.306(1)).

As ORS 475.306(1) authorizes the very conduct that the CSA prohibits, the *Emerald Steel* court held that federal law preempts ORS 475.306(1), leaving it without effect.

Therefore, because ORS 475.306(1) was not enforceable when the employer terminated employee, no applicable Oregon statute authorized the use of marijuana or excluded marijuana from the definition “illegal use of drugs” as defined under ORS 659A.122, and therefore employer could lawfully terminate employee.

The Winters case

In *Winters*, Jackson County Sheriff Winters denied the petitioner’s application to renew her concealed handgun license. ORS 166.291 requires a sheriff of a county to issue a concealed handgun license if the applicant meets the statutory criteria. The petitioner met the statutory criteria listed in ORS 166.291. However, the sheriff *added* questions to the application regarding the use of controlled substances.

At her administrative hearing, the petitioner disclosed that she used medical marijuana in accordance with the OMMA. The petitioner appealed the denial to the circuit court, asserting that the sheriff was required to issue the license because she satisfied all of the criteria set out at ORS 166.291.

The sheriff countered, asserting in pertinent part that his statutory obligation under ORS 166.291 was preempted by section 922(g) of the federal Gun Control Act (“GCA”). Section 922(g) of the GCA states in relevant part that it is unlawful for a person who is an unlawful user of or addicted to any controlled substance to *possess* any firearm. The sheriff contended that issuing a concealed handgun license under ORS 166.291 to an admitted user of marijuana would frustrate the purpose of the GCA, as Congress deemed marijuana users unqualified to possess firearms. Both the circuit court and Court of Appeals both rejected the sheriff’s preemption

argument. The Oregon Supreme Court affirmed, holding that the GCA does not preempt ORS 166.291 and ordered the sheriff to issue the petitioner's concealed handgun license.

The *Winters* court noted that the analysis used to resolve the preemption issue in the *Emerald Steel* case was not applicable to the *Winters* case. That is because the ORS 166.291 does not "affirmatively authorize" conduct that the GCA prohibits.⁴ The *Winters* court observed that ORS 166.291 does not authorize the *possession* of firearms, but deals solely with the *concealment* of firearms. As such, the *Winters* court analyzed the case under the federal obstacle preemption analysis.⁵

Under that analysis, obstacle preemption questions are resolved by "examining the federal law to ascertain its purposes and intended effects, examining the state statute to determine its effects, and comparing the results to determine whether the latter statute in some way obstructs the accomplishment of the objectives that have been identified with respect to the former statute."⁶

Applying that analysis, the *Winters* court held that ORS 166.291 did not stand as an obstacle to the full accomplishment and exercise of the GCA's purpose. The *Winters* court flatly rejected the sheriff's argument that it did, noting that ORS 166.291 does not authorize the possession of firearms, but merely the concealment of firearms. Moreover, the *Winters* court stated that ORS 166.291 does not interfere with the federal government's ability to enforce the policy that the that the GCA expresses (keeping marijuana users from possessing firearms).

⁴ *Willis v. Winters*, 350 Or at 310, n.6.

⁵ The *Winters* court defined obstacle preemption as "preemption implied from an actual conflict." *Winters*, 350 Or at 308. The *Winters* court observed that the GCA expressly renounced any Congressional intent to preempt state law unless the law is in "direct and positive conflict" with the GCA. The CSA at Section 903 contains a similar provision.

⁶ *Id.* at 309.

Finally, the *Winters* court noted that the sheriff could not use the state's licensing scheme to keep marijuana users from possessing guns, as Congress has not enacted a law requiring license denial as a means of enforcing the policy underlying the GCA- and in fact could not enact such a law under a federal "anti-commandeering" principle (the federal government cannot force the states to govern according to Congress' instructions-- in *Winters*, that means Congress does not have authority to hijack Oregon's gun licensing statutes to advance the purposes of the GCA).

Application of *Emerald Steel & Winters*

The facts before the Director resemble the facts of *Emerald Steel*; as such, the Director may consider any constitutional challenges to the City's business license regulatory scheme in light of that case. Section 903 of the CSA authorizes states to pass laws on the same subject matter as the CSA, unless there is a positive conflict between the state law and CSA so that the two cannot consistently stand together (implicit preemption).

By enacting HB 3460, the state has affirmatively authorized a use that federal law explicitly prohibits, and therefore stands as an obstacle to the implantation and execution of the full purposes and objectives of the CSA. These purposes and objectives are contained in section 801 of the CSA:

§801. Congressional findings and declarations: controlled substances

The Congress makes the following findings and declarations:

(1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

(2) *The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.*

(3) *A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate*

commerce because—

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate.

Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic. (Emphasis added).

HB 3460 allows medical marijuana facilities to distribute medical marijuana to any registry identification cardholder. The CSA classifies marijuana as a schedule I drug, devoid of any medicinal value, and prohibits the possession, distribution and manufacture of marijuana for any purpose.

Under the *Emerald Steel* analysis HB 3460's authorization for medical marijuana facilities to possess and distribute marijuana to any registry identification cardholder is preempted by the CSA. Likewise, just as the *Emerald Steel* corporation was not required to accommodate the employee's marijuana use, the City is not required to accommodate – by way of issuing a business license – a medical marijuana facility.

Even if the *Emerald Steel* analysis is not applicable to the facts in this matter, the Director may nonetheless find that HB 3460 is preempted by the CSA. Under the *Winters* analysis, the Director would first examine the purpose and intended effects of the CSA. The CSA's purpose is to conquer drug abuse, control the legitimate and illegitimate traffic in

controlled substances, and prevent the diversion of controlled substances from legitimate to illegitimate channels.

Section 801 of the CSA specifically states that “[t]he illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.” Moreover, that section goes on to state that “[i]ncidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce... .”

Likewise, Congress has determined that the local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances, and federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

The Director would next examine HB 3460 to determine its effects. At its core, HB 3460 makes it easier for people to access marijuana. HB 3460 allows medical marijuana facilities to possess and distribute marijuana to people licensed to use marijuana under state law. Congress has determined that local possession and distribution of marijuana adversely impacts the federal government’s ability to control the interstate flow of marijuana into illegal markets and has a detrimental effect on the health and general welfare of the American people

In comparing HB 3460 to the purposes of the CSA, the Director may clearly find that HB 3460 obstructs the accomplishment of the objectives of the CSA.⁷ Unlike *Winters*, where ORS

⁷ The United States Department of Justice has intimated that state laws like the OMMA interfere with the federal government’s ability to enforce the CSA. *See Cole Memo, Exhibit K*—“the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws... . The enactment of state laws that endeavor to authorize marijuana production, distribution and possession by

166.291 was found to not obstruct the federal Gun Control Act's purpose of keeping marijuana users from possessing guns, HB 3460 makes access to marijuana easier and adversely impacts the federal government's ability to control the interstate flow of marijuana into illegal markets.

The City's denial of Appellant's business license is not an attempt to enforce the CSA. Rather, its only effect is to not interfere with the CSA's stated purposes. Under the Home Rule doctrine, the City may properly choose to deny business licenses to businesses that act in violation of federal law, when an inapposite state law obstructs the accomplishment of a federal law's objectives.

IV. CONCLUSION

The Director may properly find that PHP is in violation of section 8.003(2) of the Medford Code. PHP's practice of distributing medical marijuana to registry identification cardholders acts constitutes the distribution of marijuana in violation of City and federal law.

Finally, section 8.003(2) is neither preempted by HB 3460 nor any other state law. Rather, the City may properly choose to deny business licenses to businesses that act in violation of federal law, especially when an inconsistent state law obstructs the accomplishment of a federal law's objectives.

The City respectfully requests that the Director uphold the City's denial of PHP's business license pursuant to section 8.003(2) of the Medford code and make the following findings, based upon the arguments contained in the City's Submission and the Record:

- 1) The City properly denied a business license to Appellant, based upon Sections 8.003(2) and 8.015(3)&(4) of the Medford Code;
- 2) Sections 8.003(2) and 8.015(3)&(4) of the Medford Code: i) can operate

establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement."

concurrently with OMMA section ORS 4675.314 and ii) do not interfere with the legislative purpose of the OMMA. Therefore, the Medford Code sections are not preempted by state law;

3) ORS 475.314 irreconcilably conflicts with the CSA; therefore, pursuant to the Supremacy Clause, is rendered without effect. Under the Home Rule Doctrine, the City may choose to not license a business that engages in activities which stand as an obstacle to the implementation and execution of the CSA;

4) The Consolidated and Further Continuing Appropriations Act, 2015, did not have the effect of rescheduling or delisting marijuana as a Schedule I drug under the CSA; and

5) Based upon my findings, I find that the City did not err in denying a business license to Appellant, and hereby affirm that decision.

DATED: February 2nd, 2015

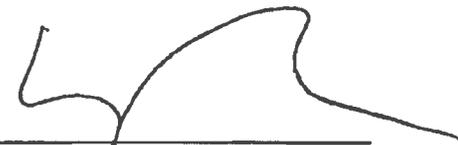


Kevin R. McConnell OSB #022360
Deputy City Attorney

Certificate of Service By Mail

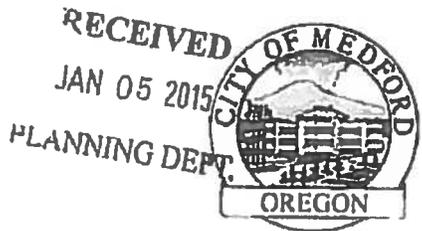
I certify that I mailed via first-class mail a true copy of the foregoing City's Submission and accompanying exhibits to Phil Studenberg, 230 Main St., Klamath Falls OR 97601, attorney for Patients Helping Patients LLC, on the date stated below.

DATED: February 2nd, 2015



Kevin R. McConnell, OSB 02236
Deputy City Attorney

Denied 11/9/15



CITY OF MEDFORD
Business Licenses
200 S. Ivy Street, 2nd Floor
Medford, Oregon 97501
P: 541.771.2025
F: 541.618.1726
businesslicens: sarpy@medford.org

Comm

APPLICATION FOR BUSINESS AND REGULATORY LICENSES
NEW BUSINESS AND NEW LOCATIONS

The Medford Code requires annual licensing of each business operating in the city. Applicant must notify the city within 30 days of any change in application information and keep all necessary county/state/federal licenses and permits current. Failure to do so will be treated as a misrepresentation and may result in revocation of license. Sign permits must be obtained from the Planning Department prior to any installation or painting of outdoor advertising.

*If some of the requested information on this form does not apply to your business, please write "N/A" on the space provided.
Business start date: 3-3-2014 Start date at this location: 11/24/2014 Is business based out of your home? NO
Name of Business: PATIENTS HELPING PATIENTS LLC
Owner(s) of Business and Date(s) of Birth: JUNE 3, 1976
Business Address: 2390 W. MAIN ST. SUITE D MEDFORD OR 97501
Mailing Address: SAME AS ABOVE
Business Phone: 541-840-0818 Private Phone: 541-210-3276 Other:
Emergency Phone Number (required): 541-779-1774 Email address: OMMPHP@GMAIL.COM
Oregon Construction Contractor Number (CCC#) Expiration

Please describe the business activity and any necessary business activity: STATE APPROVED MEDICAL MARIJUANA DISPENSARY
Specify the product(s)/service(s) to be sold: MEDICAL MARIJUANA ASSOCIATED PRODUCTS & SERVICES
Will you require any age-based restriction(s) to customer access or sale?: 18 & OVER WITH OMMMP & GOV ID
*What was the prior use of the building (or tenant space)? CHIROPRACTOR
*No. of Employees including Owners: *Name of Business Manager: PHIL CARVALHO *Area: 900 sq ft
*Describe any recent remodeling or planned remodeling to this tenant space. If none, write "NONE" in the space provided.
PAINT ONLY

I have signed the Home Occupancy forms and agree to its terms (if business is located in your home) N/A Initial
All activities associated with, and occurring at, the above listed business location within the city limits of Medford, Oregon are in compliance with municipal, state and federal laws and ordinances. Yes [X] No [] Initial

The undersigned applicant attests that the facts stated herein are true as I reasonably believe. I understand that this is a "sworn statement" and that any material misrepresentation contained herein will be cause for denial or revocation of license.
Signature: [Signature] Title: PARTNER Date: 12-15-14
DO NOT WRITE BELOW THIS LINE FOR OFFICE USE ONLY

Table with columns for Business License # (16. 40463), License Fee, Additional Fees, TOTAL, Receipt No., Receipt Date, Check No., and Your Initials.

EXHIBIT A-1

ALL OF THE FOLLOWING MUST BE COMPLETED IN ORDER LISTED

BUSINESS NAME Patients Helping Patients LLC

BUSINESS ADDRESS 2390 W Main St Ste D

PLANNING DEPARTMENT REVIEW: Comments or Conditions

Zoning District _____ Approved _____ Date _____

Permitted Use Section _____ SIC# _____ Disapproved _____ Date _____

SIC DEFINITION *required* : _____

As per Home Occupation Agreement

BUILDING DEPARTMENT REVIEW: Comments or Conditions:

Occupancy Classification _____ Approved _____ Date _____

Building Construction Type _____ Disapproved _____ Date _____

Area of Tenant Space per packet _____

FIRE MARSHAL REVIEW: Comments or Conditions

_____ Approved _____ Date _____

_____ Disapproved _____ Date _____

PUBLIC WORKS- ENGINEERING REVIEW: Comments or Conditions

_____ Approved _____ Date _____

Sanitary SDC _____ Street SDC _____ By _____ Disapproved _____ Date _____

POLICE DEPARTMENT REVIEW: Comments or Conditions

Denied _____ Approved _____ Date _____

_____ Disapproved _____ Date _____

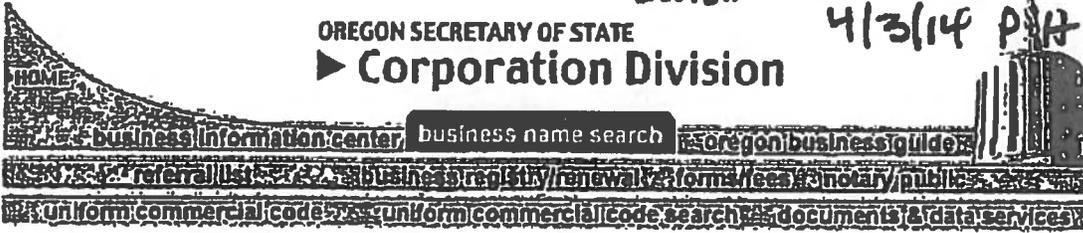
FINANCE DEPARTMENT:

BUSINESS LICENSE # 16 40463

EXHIBIT A-2

submitted by K. McConnell
4/3/14 P/H

OREGON SECRETARY OF STATE
► Corporation Division



Business Name Search

[New Search](#) [Printer Friendly](#)

Business Entity Data

02-26-2014
10:00

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
997856-94	DLLC	ACT	OREGON	02-24-2014	02-24-2015	
Entity Name PATIENTS HELPING PATIENTS, LLC						
Foreign Name						

[New Search](#) [Printer Friendly](#)

Associated Names

Please click [here](#) for general information about registered agents and service of process.

Type	AGT REGISTERED AGENT	Start Date	02-24-2014	Resign Date
Name	PHIL CARVALHO			
Addr 1	617 E MAIN			
Addr 2				
CSZ	MEDFORD	OR	97504	Country UNITED STATES OF AMERICA

Type	MAL MAILING ADDRESS
Addr 1	617 E MAIN
Addr 2	
CSZ	MEDFORD OR 97504 Country UNITED STATES OF AMERICA

Type	MEM MEMBER	Resign Date
Name	OWEN LEE CHRISTIANSEN	
Addr 1	5120 SARDINE CREEK RD	
Addr 2		
CSZ	GOLD HILL	OR 97525 Country UNITED STATES OF AMERICA

ADULT B
Name History

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RESOLUTION NO. 2014-45

A RESOLUTION affirming the Building Safety Director's decision to deny the business license of The Lounge; adopting Findings.

WHEREAS, by and through reports from the Medford Police Department, the City Manager became aware of conduct that could be deemed unlawful occurring at The Lounge, located at 617 E. Main St., Medford, Oregon 97504; and

WHEREAS, on December 19, 2013, the Building Safety Director issued a letter to The Lounge denying the business license based on the applicant engaging in unlawful activity; and

WHEREAS, the applicant appealed the denial of its license to the Building Safety Director; and

WHEREAS, on February 5, 2014, the Building Safety Director heard testimony, evidence and argument and received supplemental submissions and on March 4, 2014, issued a decision to deny the business license of The Lounge; and

WHEREAS, the applicant appealed that decision to the City Council for the City of Medford Oregon and on April 3, 2014, the City Council heard the evidence and argument on the appeal and being fully advised in its premises; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON,

Section 1. That the Building Safety Director's decision to deny the business license of The Lounge located at 617 E. Main St., Medford, Oregon 97504, is hereby affirmed.

Section 2. This decision is supported by the Findings of Fact and Conclusions of Law attached hereto as Exhibit A.

PASSED by the Council and signed by me in authentication of its passage this 17 day of April, 2014.

ATTEST: Glenda Wilson
City Recorder

APPROVED April 17, 2014.

[Signature]
Mayor
[Signature]
Mayor

EXHIBIT A

MEDFORD CITY COUNCIL FINDINGS OF FACT AND CONCLUSIONS OF LAW Affirming Planning Director Administrative Decision Adopting Code Interpretation

Facts

This matter came before the City Council on April 3, 2014, on appeal from a March 4, 2014 decision of the Building Director to uphold the City's decision to deny a business license to The Lounge, doing business at 617 East Main Street, Medford OR 97501.

Appellant was represented by Philip W. Studenberg, Attorney at Law.
City was represented by John Huttli, City Attorney and Kevin McConnell, Deputy City Attorney.

Findings

1. The record before the Building Director supports the conclusion that Appellant distributes marijuana to registry identification cardholders, and that Appellant receives money in exchange for the marijuana in an amount in excess of Appellant's costs of supplies and utilities. Such conduct violates federal law, state law, and City law. The City Council adopts and incorporates by reference the reasons set forth in the City's supplemental submittals before the Building Director, as well as the arguments proffered by the City Attorney's office at the April 3, 2014 appeal hearing, as support for its decision to deny a business license to Appellant.

2. In addition to the above and as explained below, the City Council does not find Appellant's arguments raised in its submission to the Building Director or the additional arguments raised at the April 3, 2014 appeal hearing as persuasive, and therefore those arguments are rejected.

a. *Home Rule allows the City to regulate businesses engaged in the distribution of marijuana; the City is not preempted by state law.*

The OMMA is a defense to prosecution of certain marijuana-related crimes. We are not criminally punishing Appellant in this matter; therefore, to the extent state law has any authority, the City is not preempted from administering our business license regulatory scheme. The City's Charter specifically provides that the City has all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home-rule provisions of the state constitution.

In addition, we understand that HB 3460 allows medical marijuana facilities to distribute medical marijuana to any registry identification cardholder. However, the Federal Controlled Substances Act classifies marijuana as a schedule I drug, and makes the possession and distribution

EXHIBIT 5-2

of marijuana illegal. Based upon our understanding of the *Emerald Steel Fabricators* and *Willis v. Winters* cases, we find that the City is not preempted by state law, because HB 3460 interferes with the purposes and objectives of the Federal Controlled Substances Act. We choose to not interfere with these stated purposes and objectives.

b. *The case from Michigan is neither binding nor persuasive.*

Appellant submitted a judicial opinion from the state of Michigan Supreme Court, *John Ter Beek v. City of Wyoming*. A review of that case shows that its rationale is not binding, as it disagrees with the Oregon Supreme Court's opinion in *Emerald Steel Fabricators*. Further, as far as the state and local preemption arguments contained in that case, Michigan's state law was more broad than Oregon's state law with respect to its impact on local conduct.

c. *SB 863 (the GMO Bill) does not prohibit our decision.*

The argument that SB 863 somehow limits our ability to act on this appeal is not persuasive. There is nothing in the GMO Bill to indicate that it is intended to regulate any controlled substance, and specifically any language to believe it was intended to regulate medical marijuana.

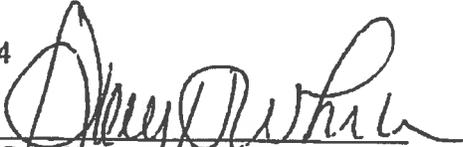
To the extent that the GMO Bill attempts to or can be interpreted this way, it is preempted by the Federal Controlled Substances Act. Assuming the GMO bill is intended to apply to marijuana or medical marijuana and that it is not preempted by the Federal Controlled Substances Act, its scope is vague in that its applicability to medical marijuana is unclear. Moreover, GMO Bill is overbroad, to the extent it attempts to regulate a local government's decision to not interfere with the Federal Controlled Substances Act's stated purposes and objectives.

Lastly, in the event that the GMO Bill applies and is somehow constitutional, the record does not adequately show with proper evidence that marijuana in this case meets the definition of such a regulated GMO under that bill. Therefore, to the extent it is an affirmative defense, it fails for lack of proof.

Conclusion

The Council finds that there is substantial evidence in the record to deny Appellant a business license pursuant to section 8.003(2) of the Medford Code.

DATED this 17 day of April, 2014

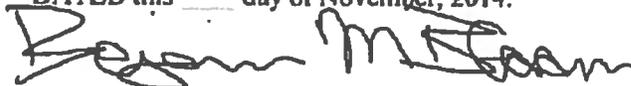

Gary H. Wheeler, Mayor

1 2) The Federal Controlled Substances Act (CSA) preempts ORS 475.304, rendering it
2 unenforceable. The CSA classifies marijuana as a schedule I drug, devoid of any
3 medicinal value, and prohibits the possession, distribution and manufacture of marijuana
4 for any purpose. The OMMA's affirmative authorization of the manufacture and
5 distribution of marijuana (ORS 475.304) irreconcilably conflicts with the CSA; therefore,
6 that statute is not effective pursuant to Article VI, Clause 2 of the United States
7 Constitution (Supremacy Clause). For these reasons, the Medford City Council did not
8 err in denying a business license to The Lounge pursuant to Medford Code section
9 8.003(2). Now, therefore,

10
11 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Medford City
12 Council's decision to deny a business license to The Lounge per Medford Code section 8.003(2)
13 is affirmed.

Signed 11/21/2014 03:30 PM

14 DATED this _____ day of November, 2014.

15 

16 Benjamin M. Bloom, Circuit Court Judge

17 Submitted by:
18 Kevin R. McConnell
18 OSBAR 022360
411 W. 8th St., Room 370
19 Medford OR 97501
Tel. (541) 774-2022 FAX (541) 774-2567
20 kevin.mcconnell@cityofmedford.org
Attorney for Defendant

21

22 -2- Order on Review- Case No. 14CV04064

23

Medford City Attorney's Office
411 West 8th Street, Medford, OR 97501
(541) 774-2020

EXHIBIT D -2

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2014 with a return date of April 9, 2014. The Court scheduled a second hearing as part of its review process for May 7, 2014. In connection with that hearing, the Court also established a briefing schedule for counsel. Prior to the commencement of the May 7 hearing, Nuckols' orally requested that the Court make special findings of fact and separately state its conclusions of law (ORCP 62 A; see also, ORCP 1A). Those findings and conclusions follow.

II. Findings of Fact

1. In April 2013 the Nuckols submitted their application for a business license to the City with the following business names and business activities described – Mary Jane's Attic (Retail Store); Mary Jane's Basement (Patient Services). The City issued a single license, No. 13-37319, on April 9, 2013 for both business activities since they were to be conducted at one business location.
2. At all relevant times, both Mr. and Mrs. Nuckols were registry identification card holders, designated primary caregivers and individuals responsible for grow sites under the Oregon Medical Marijuana Act, ORS 475.300 et. seq (OMMA). (Record, pp. 280-282)
3. In June and July 2013, the Medford Police Department began an investigation of Nuckols' business premises through the use of two informants, both of whom were OMMA registry identification card holders. The informants each went separately to Nuckols' business premises on two occasions, displayed their registration card, asked to buy marijuana, were told that the cost was essentially on a point system - \$1.00 being equivalent to 1 point and a gram of marijuana being worth so many more points – and on each occasion they paid between \$16.00 and \$40.00 for different quantities of marijuana. (Record, pp. 225-237)
4. The Nuckols were not the informants' grow site operators or their primary caregivers under the OMMA. The Nuckols agree that the money exchanged by the

EXHIBIT E - 2

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- informants for the marijuana was in excess of the reasonable cost of supplies and utilities for growing and harvesting the marijuana. (Record, pp. 260)
5. At the time, the City's Code provided that business licenses were subject to revocation if the licensees engaged in any unlawful activity. (Medford Code 8.003 (3)). On September 5, 2013, the City's Code was amended to define "unlawful activity" to include any violation of local, state or federal law. (Medford Code 8.003 (5)).
 6. On August 14, 2013, HB 3460 passed. At no time relevant to this matter were the Nuckols licensed to operate a medical marijuana facility under HB 3460.
 7. The City Manager of the City revoked Nuckols' business license on September 25, 2013 for engaging in unlawful activity.
 8. Pursuant to the City's Code, the Nuckols requested a hearing before the City's Finance Director and that hearing was held on December 2, 2013.
 9. The revocation was upheld by the Finance Director on December 17, 2013
 10. The Nuckols filed an appeal to the City Council. At some point during this appeal process, the Nuckols' business license was inadvertently renewed by the City.
 11. On March 2, 2014, HB 1531 went into effect.
 12. The appeal hearing before the City Council took place on March 6, 2014.
 13. On March 20, 2014 the City passed a formal resolution, No. 2014-33, revoking the Nuckols' business license.
 14. In response to HB 1531, the City also passed Ordinance 2014-30 on March 20, 2014 authorizing a permanent moratorium on the issuance of business licenses to medical marijuana facilities.

1 **III. Analysis and Conclusions**

2 **A. Were the Nuckols in Violation of State Law?**

3 There is no dispute that the City had the legal authority to revoke Nuckols'
4 business license if they were engaged in any unlawful activity under State law

5 At the time the purported unlawful activity was occurring on the Nuckols'
6 premises, marijuana was being regulated under the OMMA, ORS 475.300 et. seq.
7 The OMMA, among other things, authorizes the medicinal use of medical marijuana
8 by a person possessing a registry identification card (ORS 475.306(1)). The OMMA
9 also authorizes a marijuana grow site registration system to allow for the production
10 of marijuana by a registry identification cardholder, a designated primary caregiver
11 who grows marijuana for specified cardholders or other individuals who are
12 responsible for grow sites. ORS 475.304(1) The cardholder must go through an
13 application process to obtain a grow site registration card. ORS 475.304(2). These
14 grow site registration cards must be posted at the grow site identifying each
15 cardholder for whom marijuana is being produced at the grow site. ORS 475.304(4)
16 All the marijuana grown at the grow site is the property of the identified cardholders
17 and must be provided to them on request. ORS 475.304(5). Finally, under
18 subsection (7), the exchange of money is limited as follows:

19 A registry identification cardholder or the designated primary caregiver
20 of the cardholder may reimburse the person responsible for a marijuana grow
21 site for the costs of supplies and utilities associated with the production of
22 marijuana for the registry identification cardholder. No other costs associated
23 with the production of marijuana for the registry identification cardholder,
24 including the cost of labor, may be reimbursed.

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By virtue of the foregoing statutory scheme within the OMMA, Oregon has permitted a closed marijuana distribution system that only permits a cardholder to obtain marijuana from a pre-identified person operating a pre-identified grow site who is permitted to grow marijuana for that person and, perhaps, other specifically identified cardholder(s) and who is limited to receiving his/her costs for supplies and utilities in connection therewith.

The Nuckols may have been licensed cardholders, licensed caregivers and/or identified grow site operators, but they were not identified by the two informants as their grow site operators or caregivers as required by the OMMA (See also ORS 475.312) Essentially the Nuckols were operating outside this narrowly defined statutory system of marijuana distribution, as a third-party supplier, to these two cardholder informants, which violated ORS 475.304 of the OMMA.

Further, they received compensation in excess of that which is allowed under ORS 475.304(7). The Nuckols concede this, but argue that the excess was simply a contribution or a donation to them for facilitating the distribution. (Record, pp. 231, 260). This argument is disingenuous at best. Not only is there no evidence in the record regarding what the costs for supplies and utilities were for the marijuana transferred to the informants, there was no evidence that any such costs were the Nuckols, as the grower's for the marijuana transferred. And, certainly, the donation argument is totally devoid of any statutory basis. Perhaps the Nuckols argument pertaining to their compensation would be a meritorious one under HB 3460 (new ORS 475.316), but that wasn't in effect at the time of the activities in question and, even if that law could apply somehow, the Nuckols were not at that time licensed to operate a medical marijuana facility under HB 3460.

For all the foregoing reasons, there is substantial evidence in the whole record to support the City's action in revoking the Nuckols' business license.

1 B. Assuming the Nuckols Were Not in Violation of the OMMA, Is the OMMA
2 Preempted By the Federal Controlled Substances Act?

3 The parties agree that the legal analysis ends if there is substantial
4 evidence that the Nuckols' business activity was unlawful under Oregon law.
5 Although I have found such unlawful activity, I am willing to assume for the
6 sake of argument that there was no state law violation. If one were to assume
7 that to be true, the City's action in revoking the Nuckols' business license can,
8 nevertheless, still be upheld if the Federal Controlled Substances Act (CSA),
9 contained in 21 USC 801 et. seq., preempted all or at least specific portions of
10 the OMMA that the Nuckols purportedly violated.

11 The Oregon Supreme Court in *Emerald Steel Fabricators, Inc. v. BOLI*,
12 348 Or. 159 (2010) has already held that in an employment discrimination
13 context, the CSA preempts ORS 475.306(1) rendering it unenforceable. The
14 question here is whether the CSA also preempts ORS 475.304. The Nuckols
15 would have me reject the 5-2 decision of the Court in *Emerald Steel* and side
16 with Justice Walters' dissenting opinion, as well as the recent decision of the
17 Michigan Supreme Court in *Ter Beck v. City of Wyoming* (Mich. decided
18 February 6, 2014), which supports their position. There are several reasons
19 why I am unwilling to do so.

20 First, the *Emerald Steel* decision is the Rule of Law in Oregon. I can't
21 simply refuse to follow a decision of our Supreme Court if, perhaps, I happen to
22 disagree with it. As a sitting judge, I am constrained to follow it if it applies, and
23 here, I find that its application to this case is clear and inescapable.

24 Congress has, under the CSA, classified marijuana as a Schedule I
25 controlled substance prohibiting its manufacture, distribution and possession.
26 By scheduling marijuana as a Schedule 1 drug, Congress has concluded that

1 marijuana lacks any acceptable medical use and there is an absence of any
2 accepted safety for use in medically supervised treatment. *Id.* at 174. Section
3 903 of the CSA allows states to pass laws on the same subject matter "unless
4 there is a positive conflict" between the two. So, although Congress has not
5 expressed a desire to preempt the entire field on this subject, federal
6 preemption, nevertheless, applies if there is an actual conflict between them,
7 either because of the physical impossibility of complying with both laws at the
8 same time or because the OMMA or portions thereof "stand as an obstacle to
9 the accomplishment and execution of the full purposes and objectives of
10 Congress" *Id.* at 175. Just as the Court in *Emerald Steel* held that the
11 affirmative authorization of the "use [of marijuana] that federal law prohibits
12 stands as an obstacle to the implementation and execution of the full purposes
13 and objectives of the Controlled Substances Act," I find that the affirmative
14 authorization of the manufacture and distribution of marijuana under the OMMA
15 likewise presents an actual conflict. For that reason ORS 475.304 is
16 unenforceable. As stated by Justice Kistler in *Emerald Steel*:

17 In sum, whatever the wisdom of Congress's policy choice to
18 categorize marijuana as a Schedule I Drug, the Supremacy Clause
19 requires that we respect that choice where, as in this case, state law
20 stands as an obstacle to the accomplishment of the full purposes of the
21 federal law. *Id.* at 186

22 C. Other Issues Raised By the Nuckols

23 My analysis need go no further. It is unnecessary for me to examine
24 whether the City's ordinance is preempted by State law because I have already
25 found that the applicable State law is unenforceable under the Supremacy
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Clause of the United States Constitution. I see no point in propping up another strawman argument to extend the analysis further.

The Nuckols also argue that the City's inadvertent renewal of their business license during the revocation appeal process operates as an estoppel against the City from proceeding further. I frankly could find no evidence in the record specifically relating to this issue, but the City concedes this in fact occurred. If this renewal process actually resulted in the issuance of a new business license, with a new license number, that might have been significant because the City's revocation process arguably was only directed toward the revocation of a specifically numbered license. If that had been the case, the argument would be that the City would have had to begin the whole revocation process anew directed toward the Nuckols' new business license number. However, I could find no evidence in the record of this having occurred. Otherwise, I don't believe the City's mistaken renewal of the same business license during the appeal process works as an estoppel against the City or prevented the City from passing its Resolution of Revocation in March 2014 following the hearing before the City Council.

Finally, the Nuckols challenge the City's authority to revoke their business license that covered both of their operations, one pertaining to Mary Jane's Attic that was arguably in compliance with the law and the other pertaining to Mary Jane's Basement that was not. The Nuckols argue that the City should have simply effected only a partial revocation preserving the Nuckols ability to operate their merchandise business through Mary Jane's Attic. Suffice it to say, the City was authorized to issue a single business license to the Nuckols for their multiple business operations on the same

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premises and the City was also authorized to revoke that license if there was unlawful activity occurring on any part of that premises. (Medford Code 8.040)

For the foregoing reasons, the City's action in revoking the Nuckols' business license is upheld.

SO ORDERED:

Dated: May 13, 2014


TIMOTHY C. GERKING
CIRCUIT COURT JUDGE

Cc: Leland Berger
Robert Graham
John Hutti
Kevin McConnell

8.003 Denial or Revocation of License

(1) If the applicant makes any material misrepresentation on the sworn application, the City Manager (or designee) shall deny or revoke the business license upon discovery of the misrepresentation and bar the applicant from doing business in the city for one year from the date of discovery by the city of the misrepresentation.

(2) If the application or the investigation by the city discloses information which indicates that the business would be engaged in unlawful activity or that the specified location, site, and existing structure (if one is to be used) cannot lawfully be used for the conduct of the proposed activity or that the applicant lacks any license or permit required by the city or any other government agency, the application shall be denied by the city manager (or designee).

(3) If an existing licensed business is found to be engaged in unlawful activity or if it is determined that the specified location, site, and existing structure (if one is to be used) cannot lawfully be used for the conduct of the business activity, the business license shall be revoked by the city manager (or designee) and the applicant shall be barred from doing business on the formerly licensed premises for one year from the date of discovery by the city of the unlawful activity.

(4) If an existing licensed business is found to lack any license or permit required by the city or any other government agency, and the business fails to obtain the license or permit and present satisfactory proof of same within fifteen (15) business days after notice of such deficiency is mailed to the business, the license shall be revoked by the city manager (or designee).

(5) As used herein, "unlawful activity" includes but is not limited to violations of local, state or federal law.

(6) (a) Upon the determination that the conduct of a business licensee creates an imminent threat to life or property, the business license may be summarily suspended. If the activities of the business licensee cause any property to be or remain in the public way, the property of the business licensee may be removed from the public way by the City and the costs of such removal be assessed to the business licensee.

(b) The suspension takes effect immediately upon notice of suspension being received by the holder of the business license, or being delivered to the business address as stated on the business license being suspended. Such notice shall state the reason for the suspension.

(c) The City may continue the suspension as long as the reason for the suspension exists or until a determination on appeal regarding the suspension is made under Section 8.004.

(d) A summary suspension under this Section may be appealed by the business licensee in the manner set forth in Section 8.004.

[Added, Sec. 2, Ord. No. 1998-233, Oct. 15, 1998; Amd. Sec. 2, Ord. No. 2008-174, Aug. 21, 2008; Amd. Sec. 2, Ord. No. 2013-128, Sept. 5, 2013; Amd. Sec. 1, Ord. No. 2014-103, Aug. 21, 2014.]

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EXHIBIT F -1

8.015 Business License Required

(1) No person, for himself or as agent or employee of another, shall do business within the city unless:

- (a) Such business has been duly licensed as provided in Sections 8.005 to 8.070; and,
- (b) The license is valid at the time of the transaction.

(2) In addition to the penalties provided by Section 8.900, this section may be enforced by means of a civil action in the Circuit Court for Jackson County wherein the city may seek an injunction and other appropriate relief.

(3) No business license shall be issued to any person to engage in a business that does not comply with local, state or federal law.

(4) Without limiting the City's powers under Section 3 above, no business license shall be issued to any person or entity engaged in the transfer, exchange, distribution, provision, or furnishing of marijuana, with or without consideration, for any purpose.

(a) This prohibition includes medical marijuana facilities as defined by Oregon state law and shall have the effect of meeting the moratorium provisions of that law to the full extent of that law, including without limitation those provisions of state law that allow the enactment of a moratorium with an effective date of March 1, 2014.

(b) This prohibition has no sunset provision.

(c) If any provision of this ordinance is deemed unlawful it shall be struck and the remainder of the ordinance shall survive.

(d) The City Manager shall notify the Oregon Health Authority of this ordinance in a manner as prescribed by the Authority.

[Amd. Sec. 5, Ord. No. 1998-233, Oct. 15, 1998; Amd. Sec. 3, Ord. No. 2013-128, Sept. 5, 2013; Amd. Ord. No. 2014-30, March 20, 2014.]

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EXHIBIT F - 2

**Enrolled
House Bill 3460**

Sponsored by Representative BUCKLEY, Senator PROZANSKI; Representative FREDERICK, Senator DINGFELDER

CHAPTER

AN ACT

Relating to medical marijuana; creating new provisions; amending ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 475.300 to 475.346.

SECTION 2. (1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:

(a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or

(b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:

(a) The name of the person responsible for the medical marijuana facility;

(b) The address of the medical marijuana facility;

(c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;

(d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and

(e) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana facility:

(a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site;

(b) Must be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;

(c) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;

(d) Must not be located within 1,000 feet of another medical marijuana facility; and

(e) Must comport with rules adopted by the authority related to:

EXHIBIT 3-1

(A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and

(B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

(4)(a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.

(b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.

(c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.

(5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility shall display the proof of registration on the premises of the medical marijuana facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.

(6)(a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.

(b) A registered medical marijuana facility shall maintain:

(A) A copy of each authorization form described in paragraph (a) of this subsection; and

(B) Documentation of each transfer of usable marijuana or immature marijuana plants.

(7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.

(8) The authority may inspect:

(a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and

(b) The records of a registered medical marijuana facility to ensure compliance with subsection (8)(b) of this section.

(9)(a) A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

EXHIBIT G-2

(10) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346 or rules adopted under ORS 475.300 to 475.346. The authority may release to the public a final order revoking a medical marijuana facility registration.

(11) The authority shall adopt rules to implement this section, including rules that:

(a) Require a medical marijuana facility registered under this section to annually renew that registration; and

(b) Establish fees for registering and renewing registration for a medical marijuana facility under this section.

SECTION 3. ORS 475.302 is amended to read:

475.302. As used in ORS 475.300 to 475.346:

(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) "Authority" means the Oregon Health Authority.

(3) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation due to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

or

(c) Any other medical condition or treatment for a medical condition adopted by the authority by rule or approved by the authority pursuant to a petition submitted pursuant to ORS 475.334.

(4)(a) "Delivery" has the meaning given that term in ORS 475.005.

(b) "Delivery" does not include transfer of:

(A) Marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer[.];

(B) Usable marijuana or immature marijuana plants from a registry identification cardholder, the designated primary caregiver of a registry identification cardholder or a marijuana grow site to a medical marijuana facility registered under section 2 of this 2013 Act; or

(C) Usable marijuana or immature marijuana plants from a medical marijuana facility registered under section 2 of this 2013 Act to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(5) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the authority. "Designated primary caregiver" does not include the person's attending physician.

(6) "Marijuana" has the meaning given that term in ORS 475.005.

(7) "Marijuana grow site" means a location where marijuana is produced for use by a registry identification cardholder and that is registered under the provisions of ORS 475.304.

(8) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of the person's debilitating medical condition.

(9) "Production" has the meaning given that term in ORS 475.005.

(10) "Registry identification card" means a document issued by the authority that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(11) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(12) "Written documentation" means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records.

SECTION 4. ORS 475.304 is amended to read:

475.304. (1) The Oregon Health Authority shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the authority that includes:

(a) The name of the person responsible for the marijuana grow site;

(b) The address of the marijuana grow site;

(c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and

(d) Any other information the authority considers necessary.

(2) The authority shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.

(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.

(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a medical marijuana facility registered under section 2 of this 2013 Act, upon request.

(6)(a) The authority shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed.

(8) The authority may adopt rules imposing a fee in an amount established by the authority for registration of a marijuana grow site under this section.

SECTION 5. ORS 475.309 is amended to read:

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475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:

(a)(A) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section, is the designated primary caregiver of the cardholder or applicant, or is the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304; and

[(b)] (B) The person who has a debilitating medical condition, the person's primary caregiver and the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for medical use in amounts allowed under ORS 475.320[.]; or

(b) The person is responsible for or employed by a medical marijuana facility registered under section 2 of this 2013 Act and does not commit any of the acts described in this subsection anywhere other than at the medical marijuana facility.

(2) The Oregon Health Authority shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the authority shall issue a registry identification card to any person who pays a fee in the amount established by the authority and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician;

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application; and

(e) A written statement that indicates whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location.

(3) The authority shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the authority. A county health department that receives the information pursuant to this subsection shall transmit the information to the authority within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the authority.

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(5)(a) The authority shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(b) In addition to the authority granted to the authority under ORS 475.316 to deny an application, the authority may deny an application for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section;

(B) The authority determines that the information provided was falsified; or

(C) The applicant has been prohibited by a court order from obtaining a registry identification card.

(c) Denial of a registry identification card shall be considered a final authority action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the authority's action.

(d) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the authority or a court of competent jurisdiction.

(6)(a) If the authority has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(b) of this section is applicable, the authority shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

(C) The name and address of the person's designated primary caregiver, if any;

(D) Whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location; and

(E) Any other information that the authority may specify by rule.

(b) When the person to whom the authority has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the authority shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the authority of any change in the person's name, address, attending physician or designated primary caregiver.

(B) If applicable, notify the designated primary caregiver of the cardholder, [and] the person responsible for the marijuana grow site that produces marijuana for the cardholder and any person responsible for a medical marijuana facility that transfers usable marijuana or immature marijuana plants to the cardholder under section 2 of this 2013 Act of any change in status including, but not limited to:

(i) The assignment of another individual as the designated primary caregiver of the cardholder;

(ii) The assignment of another individual as the person responsible for a marijuana grow site producing marijuana for the cardholder; or

(iii) The end of the eligibility of the cardholder to hold a valid registry identification card.

(C) Annually submit to the authority:

(i) Updated written documentation from the cardholder's attending physician of the person's debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

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(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8)(a) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the person's debilitating medical condition shall return the registry identification card and any other associated Oregon Medical Marijuana Program cards to the authority within 30 calendar days of notification of the diagnosis or notification of the contraindication.

(b) If, due to circumstances beyond the control of the registry identification cardholder, a cardholder is unable to obtain a second medical opinion about the cardholder's continuing eligibility to use medical marijuana before the 30-day period specified in paragraph (a) of this subsection has expired, the authority may grant the cardholder additional time to obtain a second opinion before requiring the cardholder to return the registry identification card and any associated cards.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the authority pursuant to subsection (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the authority. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied.

(10)(a) A registry identification cardholder has the primary responsibility of notifying the designated primary caregiver [and], the person responsible for the marijuana grow site that produces marijuana for the cardholder and any person responsible for a medical marijuana facility that transfers usable marijuana or immature marijuana plants to the cardholder under section 2 of this 2013 Act of any change in status of the cardholder.

(b) If the authority is notified by the cardholder that a primary caregiver or person responsible for a marijuana grow site has changed, the authority shall notify the primary caregiver or the person responsible for the marijuana grow site by mail at the address of record confirming the change in status and informing the caregiver or person responsible for the marijuana grow site that their card is no longer valid and must be returned to the authority.

(11) The authority shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the authority within seven calendar days of notification of the revocation. If the cardholder is a patient, the patient shall return the patient's card and all other associated Oregon Medical Marijuana Program cards.

(12) The authority shall revoke the registration of a medical marijuana facility registered under section 2 of this 2013 Act if a court has issued an order that prohibits the person responsible for the medical marijuana facility from participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346.

~~(12)~~ (13) The authority and employees and agents of the authority acting within the course and scope of their employment are immune from any civil liability that might be incurred or imposed for the performance of or failure to perform duties required by this section.

SECTION 6. ORS 475.320 is amended to read:

475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, the registry identification

cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

(2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow site:

(a) May produce marijuana for and provide marijuana:

(A) To a registry identification cardholder or [that person's] a cardholder's designated primary caregiver as authorized under this section[.]; or

(B) If the marijuana is usable marijuana or an immature marijuana plant and the registry identification cardholder authorizes the person responsible for the marijuana grow site to transfer the usable marijuana or immature marijuana plant to a medical marijuana facility registered under section 2 of this 2013 Act, to the medical marijuana facility.

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for whom marijuana is being produced.

(c) May produce marijuana for no more than four registry identification cardholders or designated primary caregivers concurrently.

(d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304 for each registry identification cardholder or designated primary caregiver for whom marijuana is being produced.

(e) Must provide all marijuana produced for a registry identification cardholder or designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.

(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule of the Oregon Health Authority.

(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the authority for each registry identification cardholder for whom the person responsible for the marijuana grow site is producing marijuana.

SECTION 7. ORS 475.323 is amended to read:

475.323. (1) Possession of a registry identification card [or], designated primary caregiver identification card pursuant to ORS 475.309 or proof of registration as a medical marijuana facility under section 2 of this 2013 Act does not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency. However, the Oregon Health Authority may inspect a medical marijuana facility registered under section 2 of this 2013 Act at any reasonable time to determine whether the facility is in compliance with ORS 475.300 to 475.346.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers may not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or the district attorney's designee, that the per-

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son from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. The determination may be evidenced, for example, by a decision not to prosecute, the dismissal of charges or acquittal.

SECTION 8, ORS 475.331 is amended to read:

475.331. (1)(a) The Oregon Health Authority shall create and maintain a list of the persons to whom the authority has issued registry identification cards, the names of any designated primary [caregivers and the addresses of authorized marijuana grow sites.] caregivers, the names of persons responsible for a medical marijuana facility registered under section 2 of this 2013 Act, the addresses of authorized marijuana grow sites and the addresses of registered medical marijuana facilities. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

(b) The authority shall develop a system by which authorized employees of state and local law enforcement agencies may verify at all times that: [a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.]

(A) A person is a lawful possessor of a registry identification card;

(B) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(C) A location is an authorized marijuana grow site;

(D) A location is a registered medical marijuana facility; or

(E) A person is the person listed as the person responsible for a registered medical marijuana facility.

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the authority as necessary to perform official duties of the authority.]; and]

(b) Authorized employees of state or local law enforcement agencies, who provide to the authority adequate identification, such as a badge number or similar authentication of authority, only as necessary to verify that: [a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. Prior to being provided identifying information from the list, authorized employees of state or local law enforcement agencies shall provide to the authority adequate identification, such as a badge number or similar authentication of authority.]

(A) A person is a lawful possessor of a registry identification card;

(B) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(C) A location is an authorized marijuana grow site;

(D) A location is a registered medical marijuana facility; or

(E) A person is the person listed as the person responsible for a registered medical marijuana facility.

(3) Authorized employees of state or local law enforcement agencies that obtain identifying information from the list as authorized under this section may not release or use the information for any purpose other than verification that: [a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.]

(a) A person is a lawful possessor of a registry identification card;

(b) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(c) A location is an authorized marijuana grow site;

(d) A location is a registered medical marijuana facility; or

(e) A person is the person listed as the person responsible for a registered medical marijuana facility.

SECTION 9. (1) Sections 1 and 2 of this 2013 Act and the amendments to ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331 by sections 3 to 8 of this 2013 Act become operative on March 1, 2014.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority by sections 1 and 2 of this 2013 Act and the amendments to ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331 by sections 3 to 8 of this 2013 Act.

SECTION 10. Notwithstanding any other law limiting expenditures, the amount of \$809,276 is established for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Health Authority for administrative and operating expenses incurred in implementing section 2 of this 2013 Act and the amendments to ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331 by sections 3 to 8 of this 2013 Act.

SECTION 11. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House June 24, 2013

Received by Governor:

Repassed by House July 6, 2013

.....M....., 2013

Approved:

.....
Ramons J. Line, Chief Clerk of House

.....M....., 2013

.....
Tinu Kntek, Speaker of House

.....
John Kitzhaber, Governor

Passed by Senate July 3, 2013

Filed in Office of Secretary of State:

.....
Peter Courtney, President of Senate

.....M....., 2013

.....
Kate Brown, Secretary of State

EXHIBIT G - 10

Enrolled
Senate Bill 1531

Sponsored by Senators HANSELL, MONROE, STARR; Senators BAERTSCHIGER JR, BOQUIST, CLOSE, FERRIOLI, GIROD, JOHNSON, KNOPP, KRUSE, MONNES ANDERSON, OLSEN, THOMSEN, WHITSETT, WINTERS, Representatives ESQUIVEL, JENSON, THATCHER, THOMPSON, WHISNANT, WITT (at the request of Association of Oregon Counties and League of Oregon Cities) (Presession filed.)

CHAPTER

AN ACT

Relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS 475.300 to 475.346.

SECTION 2. Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, "reasonable regulations" includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

SECTION 3. (1) Notwithstanding ORS 475.314 and section 2 of this 2014 Act, the governing body of a city or county may adopt an ordinance enacting a moratorium on the operation of registered medical marijuana facilities until May 1, 2015, in the area subject to the jurisdiction of the city or county if the moratorium is enacted no later than May 1, 2014.

(2) Notwithstanding ORS 475.309 (1)(b), a person who is responsible for or employed by a registered medical marijuana facility located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section is not excepted from the criminal laws of this state for possession or delivery of marijuana, aiding and abetting another in the possession or delivery of marijuana or any other criminal offense in which possession or delivery of marijuana is an element.

(3) The governing body of a city or county that enacts a moratorium under this section must notify the Oregon Health Authority, in a manner prescribed by the authority, of the moratorium.

(4) A registered medical marijuana facility that is located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section may choose to surrender the medical marijuana facility's registration. To surrender registration under this subsection, the medical marijuana facility must notify the authority, in a manner prescribed

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by the authority, of the surrender. If a medical marijuana facility surrenders registration under this subsection, the authority may refund any fee imposed by the authority pursuant to ORS 475.314 (12).

SECTION 4. Section 3 of this 2014 Act is repealed on January 2, 2016.

SECTION 5. ORS 475.314 is amended to read:

475.314. (1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:

(a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or

(b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:

(a) The name of the person responsible for the medical marijuana facility;

(b) The address of the medical marijuana facility;

(c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;

(d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and

(e) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana facility:

(a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land; *[and may not be located at the same address as a marijuana grow site;]*

(b) May not be located at the same address as a marijuana grow site;

[(b)] (c) Must be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;

[(c)] (d) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;

[(d)] (e) Must not be located within 1,000 feet of another medical marijuana facility; and

[(e)] (f) Must comport with rules adopted by the authority related to:

(A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and

(B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

(4)(a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.

(b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.

(c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.

(5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility

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shall display the proof of registration on the premises of the medical marijuana facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.

(6)(a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.

(b) A registered medical marijuana facility shall maintain:

(A) A copy of each authorization form described in paragraph (a) of this subsection; and

(B) Documentation of each transfer of usable marijuana or immature marijuana plants.

(7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.

(8)(a) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused product that is meant to be swallowed or inhaled, unless the product is packaged in child-resistant safety packaging that meets standards established by the authority by rule.

(b) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused product that is manufactured or packaged in a manner that is attractive to minors, as determined by the authority by rule.

[(8)] (9) The authority may inspect:

(a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and

(b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.

[(9)(a)] (10)(a) A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

[(10)] (11) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346, [or] rules adopted under ORS 475.300 to 475.346 or ordinances adopted pursuant to section 2 of this 2014 Act. The authority may release to the public a final order revoking a medical marijuana facility registration.

[(11)] (12) The authority shall adopt rules to implement this section, including rules that:

(a) Require a medical marijuana facility registered under this section to annually renew that registration; and

(b) Establish fees for registering and renewing registration for a medical marijuana facility under this section.

SECTION 6. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect March 1, 2014.

Passed by Senate February 18, 2014

Repassed by Senate March 7, 2014

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House March 5, 2014

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M..... 2014

Approved:

.....M....., 2014

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M....., 2014

.....
Kate Brown, Secretary of State

EXHIBIT H -4

ORDINANCE NO. 2014-30

AN ORDINANCE amending Section 8.015 of the Medford Code prohibiting marijuana dispensaries in the City of Medford.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

SECTION 1. Section 8.015 of the Medford Code is amended to read as follows:

8.015 Business License Required.

(1) No person, for himself or as agent or employee of another, shall do business within the city unless:

- (a) Such business has been duly licensed as provided in Sections 8.005 to 8.070; and,
- (b) The license is valid at the time of the transaction.

(2) In addition to the penalties provided by Section 8.900, this section may be enforced by means of a civil action in the Circuit Court for Jackson County wherein the city may seek an injunction and other appropriate relief.

(3) No business license shall be issued to any person to engage in a business that does not comply with local, state or federal law.

(4) Without limiting the City's powers under Section 3 above, no business license shall be issued to any person or entity engaged in the transfer, exchange, distribution, provision, or furnishing of marijuana, with or without consideration, for any purpose.

(a) This prohibition includes medical marijuana facilities as defined by Oregon state law and shall have the effect of meeting the moratorium provisions of that law to the full extent of that law, including without limitation those provisions of state law that allow the enactment of a moratorium with an effective date of March 1, 2014.

(b) This prohibition has no sunset provision.

(c) If any provision of this ordinance is deemed unlawful it shall be struck and the remainder of the ordinance shall survive.

(d) The City Manager shall notify the Oregon Health Authority of this ordinance in a manner as prescribed by the Authority.

PASSED by the Council and signed by me in authentication of its passage this 20 day of March, 2014.

ATTEST: Glenda Wilson
City Recorder

[Signature]
Mayor

APPROVED March 20, 2014.

[Signature]
Mayor

NOTE: Matter in bold in an amended section is new.

Ordinance No. _____

P:\MPCORDS\amd8.015

EXHIBIT

Medical Marijuana Dispensary Program



Medical Marijuana Dispensary Program

[About Us](#)

[Dispensary Directory](#)

[How to Apply](#)

[Frequently Asked
Questions](#)

[Background Check](#)

[Rules](#)

[Transfer Authorization](#)

[Change of PRF](#)

[Contact Us](#)

[School Locator Map](#)

[Oregon Medical
Marijuana Program](#)

[Oregon Health Authority](#)



MEDICAL MARIJUANA DISPENSARY PROGRAM

Attention

Effective January 28, 2015, the Medical Marijuana Dispensary Program Oregon Administrative Rules have been updated. The new rules make a number of changes which affect dispensary operation requirements. Please see the [Rules page](#) for details.

Please also note that the application process for dispensary registration has changed for applications submitted on or after January 28. Please read the [How to Apply page](#) carefully before applying. Applications received before January 28 will be processed under the previous set of rules. Please [contact the Dispensary Program](#) if you have any questions.

Updated Application Page

Our online application system has been updated. Please see the [How to Apply page](#) for details.

Questions and answers about Measure 91 and marijuana legalization

- [What is Measure 91?](#)
- [Who will implement Measure 91?](#)
- [Does Measure 91 make changes to the Oregon Medical Marijuana Program or the Medical Marijuana Dispensary Program?](#)
- [Where can I apply for a retail license to sell marijuana for recreational use?](#)

January 16 dispensary application update

As of January 16, the Medical Marijuana Dispensary Program has approved 215 dispensary applications. >> [See the directory of approved dispensaries.](#)

A note about local government issues

The law requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities, which must be located on property zoned for commercial, industrial, mixed use or agriculture uses only. The issue of whether a local government believes a certain type of business should operate within one of these zones is a local government decision.

On March 19, 2014, [Senate Bill 1531](#) was signed into law. SB 1531 gives local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries, including the ability to impose a moratorium for a period of time up until May 1, 2015. The law also authorizes the Oregon Health Authority to issue refunds upon request to dispensary applicants whose facilities are located in an area that falls under a moratorium.

Update:

Read the [list of cities and counties that have enacted a moratorium on medical marijuana dispensaries](#). The Medical Marijuana Dispensary Program was last notified by a city or county of changes to this list on 5/21/14. This list includes only cities and counties that have submitted documentation of a moratorium to the Medical Marijuana Dispensary Program, consistent with the rules implementing SB 1531. The Oregon Health Authority is only authorized to offer a full refund to applicants and licensees whose dispensaries are located in an area named on this list.

Board of Pharmacy registration

After discussions with the Oregon Board of Pharmacy and the Oregon Health Authority, each is in agreement that there are no requirements under the provisions of 475.125 for any individual applying for registration to operate a medical marijuana facility as defined in ORS 475.314 to register with the Board of Pharmacy.



[REDACTED]
U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

EXHIBIT K - 1

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of examples only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

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Memorandum for All United States Attorneys
Subject: Guidance Regarding Marijuana Enforcement

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must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

EXHIBIT K - 3

Memorandum for All United States Attorneys
Subject: Guidance Regarding Marijuana Enforcement

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As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: **Myhill Raman**
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michale M. Leunhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hoako
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

EXHIBIT K - 4



CITY OF MEDFORD
AGENDA ITEM COMMENTARY

Item No: 120.3

www.ci.medford.or.us

DEPARTMENT: City Manager's Office
PHONE: 541-774-2000
STAFF CONTACT: Eric Swanson, City Manager

AGENDA SECTION: Public Hearings
MEETING DATE: March 19, 2015

COUNCIL BILL 2015-24

An ordinance approving the assessment of properties identified in the final plan for the Downtown Economic Improvement District.

ISSUE STATEMENT & SUMMARY:

Consider testimony on the assessments for an Economic Improvement District in downtown Medford.

BACKGROUND:

The Heart of Medford, pursuant to Medford Code 8.2004, presented a Petition and Preliminary Economic Improvement Plan for the formation of an Economic Improvement District in downtown Medford. The City Council initiated the process pursuant to the Medford Code and held the first required public hearing on February 5, 2015. This second public hearing is required pursuant to Medford Code 8.2010 regarding the proposed assessment ordinance.

A. Council Action History

The Medford City Council adopted Medford Code 8.2000 through 8.2019 on July 11, 2013. The Code allows Economic Improvement Districts (EIDs) within the City of Medford and establishes the procedures to create EIDs. On December 4, 2014, the City Council directed the City Manager to begin the process for the formation of the District. On December 18, 2014 the City Council set a public hearing for February 5, 2015 and the public hearing was held. At that meeting, City Council approved the formation of the District and directed staff proceed with the process to formalize the District and the assessments by scheduling the second public hearing.

B. Analysis

Pursuant to Medford Code 8.2004, Metro Medford Downtown Association (MMDA) presented a Petition and Preliminary Economic Improvement Plan to the City Manager for City Council consideration in creating an Economic Improvement District. MMDA is recommending an EID for a period of three years and has provided a proposed scope of work and budget. The budget of \$316,946 for the three year period includes beautification programs, maintenance, marketing and promotions, as well as administrative costs. The EID would provide benefits to the properties within the boundaries by promoting businesses and the downtown as a whole and therefore improve the economic vitality.

Attached are a listing of the properties considered for the EID and the Final Petition and Economic Improvement Plan.

C. Financial and/or Resource Considerations

\$15,874.00 in revenue for City administrative fees to collect the assessment on behalf of the Metro Medford Association in proposal will be redirected to the EID plan per City Council motion on February 5, 2015.



CITY OF MEDFORD
AGENDA ITEM COMMENTARY

Item No: **120.3**

www.ci.medford.or.us

D. Timing Issues
None

STRATEGIC PLAN:

Theme: Healthy Economy

Goal 6: Maintain and enhance community livability.

Objective 6.3: Encourage the continued revitalization of the downtown.

COUNCIL OPTIONS:

1. Approve assessment amounts for properties in the district.
2. Deny assessment amounts for properties in the district.
3. Modify assessment amounts for properties in the district.

STAFF RECOMMENDATIONS:

Staff supports the adoption of resolution to form the Economic Improvement District and the continued outreach by the District to educate and inform property owners of the purpose of the district.

SUGGESTED MOTION:

I move to approve the assessment rates for properties as identified in the final Economic Improvement District Plan.

EXHIBITS:

Property list and assessment rate
Final Economic Improvement Plan
Written testimony

Status	HMAMap Location	JaCoMap#	JaCo Tax Lot #	JaCo Tax Account #	Physical Address	Owner	Owner Address	Mail Ret - new address	Owner City, Zip	Taxes Owning?	Any Liens?	Gross Square Footage	Yearly EID Assessment Rate	Total Yearly EID Assessment
	1	371W308B	10401	1-036929-5	500 East 4th Street	Kinney Shoe Corporation Nathan-Jeffrey LLC Et Al	185 NW Spanish River Blvd 100		Boca Raton, FL 33431	no	no	7000	0.1	\$ 700.00
	3	"	10300	1-036928-9	200 North Riverside Ave.	Inn At The Commons LLC	953 Emigrant Creek Rd.		Ashland, OR 97520	no	no	24159	0.1	\$ 2,000.00
	7	"	9800	1-036923-8	40 North Riverside Ave.	David R & Susie G Smith	40 North Riverside Ave.		Medford, OR 97501	no	no	5300	0.1	\$ 530.00
	8	"	9400	1-036919-8	413 East Main Street	Cearley Properties Inc.	30 North Riverside Ave.		Medford, OR 97501	YES	no	2450	0.15	\$ 367.50
	9	"	9200	1-036917-1	12 - 16 North Riverside	Tater Rental LLC	P.O. Box 387		Oregon City, OR 97045	no	no	10900	0.15	\$ 1,635.00
	10	"	9700	1-036922-0	32 North Riverside Ave.	Cearley Properties Inc.	30 North Riverside Ave.		Medford, OR 97501	YES	no	19702	0.15	\$ 2,000.00
	11	"	9500	1-036920-3	417 East Main Street	Wright, Robert L/ Jakki D	417 East Main Street		Medford, OR 97501	no	no	7700	0.15	\$ 2,000.00
	12	371W308D	5200	1-037102-5	410 East Main Street	Main Street Market LLC	P.O. Box 1705		Jacksonville, OR 97530	no	no	3654	0.15	\$ 548.10
	13	"	5500	1-037105-8	406 East Main Street	Main Street Market LLC	P.O. Box 1705		Jacksonville, OR 97530	no	no	6960	0.15	\$ 1,044.00
	14	"	5600	1-037106-6	404 East Main Street	A. McGee Properties LLC	P.O. Box 1705		Jacksonville, OR 97530	no	no	3400	0.15	\$ 510.00
	15	"	5700	1-037107-4	3 South Riverside Avenue	BKE Incorporated	P.O. Box 486		Medford, OR 97501	no	no	1430	0.15	\$ 214.50
	16	"	5800	1-037108-2	3 South Riverside Avenue	BKE Incorporated	P.O. Box 486		Medford, OR 97501	no	no	1914	0.1	\$ 191.40
	17	"	5900	1-037109-1	3 South Riverside Avenue	BKE Incorporated	P.O. Box 486		Medford, OR 97501	no	no	2252	0.1	\$ 225.20
	19	"	6100	1-037111-4	17 South Riverside Avenue	Cearley Enterprises, Inc.	30 N. Riverside		Medford, OR 97501	YES	no	2426	0.1	\$ 242.60
	20	"	6200	1-037112-2	25 South Riverside Avenue	Cearley Enterprises, Inc.	30 N. Riverside		Medford, OR 97501	YES	no	13263	0.1	\$ 1,326.30
	21	"	6300	1-037113-1	33 South Riverside Avenue	Cearley Enterprises, Inc.	30 N. Riverside		Medford, OR 97501	YES	no	8281	0.1	\$ 828.10
	22	"	6700	1-037115-5	101 South Riverside Ave.	Towery Michael and O'Dell Douglas Charles Jr.	124 South Foothill Road		Medford, OR 97504	YES	no	780	0.1	\$ 78.00
	23	"	6800	1-037116-3	123 S. Riverside Avenue	Toney Denis, agent Yondorf and Dale LLC	3650 Alley Lane		Medford, OR 97501	YES	no	6105	0.1	\$ 610.50
	24	"	6900	1-037117-1	143 S. Riverside Avenue	Skinner Marcia A	183 Black Oak Drive		Medford, OR 97504	YES	no	4950	0.1	\$ 495.00
notice returne	27	"	8300	1-037130-1	205 Central Ave. S.	Jackson County	208 South Fir Street	Returned - not able to forward	Medford, OR 97501	YES	no	78000	0.1	\$ 2,000.00
	28	"	7500	1-037121-1	202 S. Riverside Avenue	Rogue Community College District Lynda Warren	3345 Redwood Highway		Grants Pass, OR 97525	no	no	7810	0.1	\$ 500.00
	29	"	8700	1-037019-1	141 South Central Ave.	Central Avenue Properties LLC	357 Alta		Ashland, OR 97520	no	no	2998	0.1	\$ 299.80
	30	"	8600	1-037018-3	135-7 South Central Ave.	Central Avenue Properties LLC	357 Alta		Ashland, OR 97520	no	no	1544	0.1	\$ 154.40
	31	"	8500	1-037017-5	125 South Central Avenue	Mountain Development Co. LLC	710 Cardley Ave B		Medford, OR 97504	exempt	no	15000	0.1	\$ 2,000.00
	32	"	8400	1-037016-7	117 South Central Avenue	RCC District	3345 Redwood Highway		Grants Pass, OR 97525	no	no	240	0.1	\$ 24.00
	33	"	8300	1-037015-9	114 South Bartlett Street	RCC District	3345 Redwood Highway		Grants Pass, OR 97525	no	no	5672	0.1	\$ 500.00
	34	"	8000	1-037014-2	227 E. Ninth Street	RCC District	3345 Redwood Highway		Grants Pass, OR 97525	no	no	14870	0.1	\$ 500.00
	35	"	7500	1-037009-4	10 S. Bartlett	OR State/Board of Higher Ed/ SOU/ RCC	3345 Redwood Highway		Grants Pass, OR 97525	purged	no			\$ 500.00
	36	371W308C	6200	1-036997-6	23 South Central Avenue	Craterian Performances	23 South Central Avenue		Medford, OR 97501	no	no	14000	0.1	\$ 500.00
notice returne	37	"	6400	1-036999-2	40 S. Bartlett Street	Rogue Valley Art Assn	P.O. Box 763	Returned - not able to forward	Medford, OR 97501	no	no	5900	0.1	\$ 500.00
	39	"	7300	1-037006-0	313 Eighth Street East	Michael R Yondorf, Muriel D Ames/ Yondorf & Dale	195 Grandview Drive		Ashland, OR 97520	no	no	12710	0.1	\$ 1,271.00
	40	"	7400	1-037007-8	36-38 South Riverside	Jeff Rahenkamp, agent Joann V. Strang	36 South Riverside Avenue	3065 Kingsgate Circle 97504	Medford, OR 97501	YES	no	1944	0.1	\$ 194.40
	42	"	6800	1-037003-7	318 East Main Street	H & H Properties Inc.	P.O. Box 547		Medford, OR 97501	no	no	7664	0.15	\$ 1,149.60
	44	"	6700	1-037001-1	302 East Main Street	Blue Star Properties Premier West Bank	Accounting Department P. O. Box 40		Medford, OR 97501	no	no	4322	0.15	\$ 648.30
	45	"	6100	1-036996-8	10 - 16 S. Bartlett Street 232 East Main Street	Hoover-Cooper Bldg. LLC/ Henselman Realty & Mgmt	107 East Main Steet Ste 23		Medford, OR 97501	no	no	6700	0.15	\$ 1,005.00
	46	"	5900	1-036994-3	275 Theater Alley	Robert Hopkins Lee, Trustee/ Robert Hopkins Lee 1988 Trust	228 East Main Street A		Medford, OR 97501	no	no	5765	0.15	\$ 864.75
	47	"	5800	1-036993-5	220 East Main Street	Cochran & Cochran	23220 Hwy 20East		Bend, OR 97701	no	no	9545	0.15	\$ 1,431.75
	48	"	5700	1-036992-7	214 -216 East Main Street	Marilyn N. Henselman / Henselman Realty & Mgmt	107 East Main Steet Ste 23		Medford, OR 97501	no	no	5352	0.15	\$ 802.80
	49	"	1200	1-036947-1	2 North Central Avenue	Allied Christian Foundation	2408 Heritage Way		Medford, OR 97504	no	no	3310	0.15	\$ 496.50
	50	"	1100	1-036946-3	209 East Main Street	Allied Christian Foundation	2408 Heritage Way		Medford, OR 97504	no	no	5280	0.15	\$ 792.00
	51	"	1000	1-036944-9	14 North Central Avenue	RedCo Development Co LLC / Russ Dale	235 South Oakdale Avenue		Medford, OR 97501	no	no	41075	0.15	\$ 2,000.00
	52	"	900	1-036943-1	217 East Main Street	Linda Brodie LLC	P.O. Box 940		Jacksonville, OR 97530	no	no	5600	0.15	\$ 840.00
	53	"	800	1-036942-2	221 East Main Street	John C. & Dianne A Norris	2808 Old Military Road		Central Point, OR 97502	no	no	9325	0.15	\$ 1,398.75
	54	"	600	1-036939-2	231 East Main Street	Tony & Tory Nieto, Trustees Tory Nieto Living Trust	34 S. Foothill Road		Medford, OR 97504	no	no	2050	0.15	\$ 307.50

	55	"	500	1-036938-4	19 - 21 North Bartlett St. 237 East Main Street	Sharon Lynne Roberts	2796 Donnalee Drive		Medford, OR 97501	no	no	5600	0.15	\$ 840.00
	56	371W308B	8600	1-036911-4	301 East Main Street	Warner Gore L P Limited PTSP c/o Henselman Realty & Mgt	107 East Main Steet Ste 23		Medford, OR 97501	no	no	3234	0.15	\$ 485.10
	57	"	8700	1-036912-2	309 East Main Streete	W. Taylor & Margie Fithian & Mark E and Kristen J Millner	P.O. Box 1958		Jacksonville, OR 97530	no	no	7000	0.15	\$ 1,050.00
	58	"	8800	1-036913-1	311- 315 East Main Street	Fred G & Carol J Phelps	315 East Main Street		Medford, OR 97501	no	no	4768	0.15	\$ 715.20
	59	"	8900	1-036914-9	317 East Main Street	U S Nat'l Bank of Portland JC & FM Barnum Dec'd Trustee	P.O. Box 64042	Mail Returned -no forwarding	St. Paul MN 55164-9366	no	no	10200	0.15	\$ 1,530.00
	60	"	9000	1-036915-5	335 East Main Street	Robert L. Seus	P.O. Box 2686		White City, OR 97503	no	no	18200	0.15	\$ 2,000.00
	62	371W308C	300	1-036935-0	30 North Central Ave. 34 N. Central Ave. Ste 201	Jane Marshall, Joel Ehrlich and John Ehrlich	2408 Heritage Way		Medford, OR 97504	no	no	9700	0.15	\$ 1,455.00
	63	"	200	1-036934-3	38 N. Central Ave. Ste 200 310 E. Sixth Street Ste 100	J R Development LLC	902 Chevy Way		Medford, OR 97504	no	no	29709	0.15	\$ 2,000.00
	64	371W308B	7100	1-036896-1	102 N. Central Ave.	Southern Oregon Historical Society	106 N. Central Avenue		Medford, OR 97501	no	no	29184	0.1	\$ 500.00
	0	"	7300	1-036898-8	131 N. Bartlett St.	Big Rock Investments LLC	7196 Durango Street		Las Vegas, NV 89120	no	no	10000	0.1	\$ 1,000.00
	0	"	7400	1-036899-6	145 N. Bartlett Street	Corey E and Jeanne K Vitus Lenton R Merryman	P.O. Box 1097		Gold Hill, OR 97525	no	no	8338	0.1	\$ 833.80
	67	"	8200	1-036907-4	150 N. Bartlett Street	Lithia Community Development Company, Inc.	150 N. Bartlett Street		Medford, OR 97501	no	no	70000	0.1	\$ 2,000.00
	70	"	4000	1-036865-3	229 N. Riverside	Elaine Reisinger, Trustee Velma E Jennings Testamentary Trust	2301 Upper Applegate Road		Jacksonville, OR 97530	YES	no	6250	0.1	\$ 625.00
	0	"	3900	1-036864-7	Apple Street	Elaine Reisinger, Trustee Velma E Jennings Testamentary Trust	2301 Upper Applegate Road		Jacksonville, OR 97530	YES	no	2050	0.1	\$ 205.00
	73	371W308C	9200	1-037023-1	130 East Eighth Street	RCC District	3345 Redwood Highway		Grants Pass, OR 97525	no	no	5348	0.1	\$ 534.80
			9300	1-37024-0	123 S. Front Street	OH's Oska Investments LLC	3923 Piedmont Terrace		Medford, OR 97504	no	no	11919	0.1	\$ 1,191.90
	74	371W308B	5500	1-036880-7	202 N. Central Ave.	B P O E #1168	202 N. Central Avenue		Medford, OR 97501	no	no	17240	0.1	\$ 1,724.00
	75		5400	1-036879-1	232 N. Central Ave.	B P O E #1168	202 N. Central Avenue		Medford, OR 97501	no	no	3007	0.1	\$ 300.70
	77	372W25AA	1600	1-039273-6	236 N. Front Street	Cathie L P Lime Trustee FBO LP Lime Living Trust	1410 Honeysuckle Avenue		Medford, OR 97504		no	7500	0.1	\$ 750.00
	79		1100	1-039266-0	221 N. Central Ave.	Diane Hight Stenkamp (LE) Thomas L Watson & Cole T Watson	2219 Old Military Road		Central Point, OR 97502	no	no	1200	0.1	\$ 120.00
	80	371W308B	6900	1-036894-7	145 N. Central Ave.	Matthew P & Teri LE Stormberg	3184 Normil Terrace		Medford, OR 97504	no	no	1320	0.1	\$ 132.00
	82		6700	1-036892-1	127 N. Central Ave.	Brett R & Denise R Jensen	1179 Spring Street		Medford, OR 97504	no	no	5008	0.1	\$ 500.80
	83		6600	1-036891-2	117 N. Central Ave.	The ARC of Jackson County	117 N. Central Avenue		Medford, OR 97501	no	no	10000	0.1	\$ 500.00
	84		6500	1-036890-4	111 N. Central Ave.	Davis-Bartlett Properties	107 East Main Steet Ste 23		Medford, OR 97501	no	no	1650	0.1	\$ 165.00
	85		6400	1-036889-9	101 N. Central Ave.	Daniel R & Ann Ebert	101 N. Central Ave.		Medford, OR 97501	no	no	7032	0.1	\$ 703.20
	86		6300	1-036888-1	121 East Sixth Street	RPM Properties LLC c/o Henselman Realty & Mgmt	107 East Main Steet Ste 23		Medford, OR 97501	no	no	1850	0.1	\$ 185.00
	87		6200	1-036887-2	102 - 104 N. Front Street	One East Main LLC	830 O'Hare Parkway 100		Medford, OR 97504	no	no	240	0.1	\$ 24.00
	88		5700	1-036882-3	142 N. Front Street	Timothy L Tolman	2471 Bora Bora Way	8371 Gold Ray Rd., CP 97502	Medford, OR 97504	no	no	5287	0.1	\$ 528.70
	91	372W25AA	11900	1-088301-9	147 N. Front Street	Restaurant Professional LLC	147 N. Front Street		Medford, OR 97501	no	no	6681	0.1	\$ 668.10
	94		1300	1-039270-1	202 N. Front Street	Housing Authority of Jackson County	2251 Table Rock Road		Medford, OR 97501	no	no	18656	0.1	\$ 1,865.60
notice returne	95	371W308C	2201	1-074851-9	31 W. Sixth Street	American Cancer Society	P.O. Box 698	Returned - not able to forward	Medford, OR 97501	exempt	no	5098	0.1	\$ 500.00
	96		90000-2	1-098823-9	1 W. Sixth Street	Ayala Properties LLC	132 W. Main Street Ste 103		Medford, OR 97501	no	no	17000	0.1	\$ 1,700.00
notice returne	97		2000	1-036955-2	1 E. Main Street	One East Main LLC	1175 E. Main Street Ste 1C	Returned - not able to forward	Medford, OR 97504	no	no	16452	0.1	\$ 1,645.20
	98		1500	1-036950-3	44 N. Front Street 100 - 116 East 6th Street	Central Fire Hall LLC	247 E. Barnett Road 106	132 W. Main Ste 20297501	Medford, OR 97504	no	no	10000	0.1	\$ 1,000.00
	99		1400	1-036949-8	29 N. Central Avenue 33 N. Central Avenue 100 120 E. Sixth Street	Dorsey & Parrish Investments LLC	2498 Heritage Way		Medford, OR 97504	no	no	68845	0.15	\$ 2,000.00
	100		1600	1-036951-1	40 -42 N. Front Street	Crater Lake Post #1833 VFW	Martia LLC et al Grant E Alexander P.O. Box 251		Medford, OR 97501	no	no	10000		
	101		1700	1-036952-0	30 N. Front Street	U S Nat'l Bank of Oregon Leigh Fleahman	2800 E Lake Street		Minneapolis MN 55406	no	no	384	0.1	\$ 38.40

	102		1800	1-036953-8	101 E. Main Street 107 E. Main Street 26 107 E. Main Street 29	Scott A & Leesa A Henselman, Roger Henselman & Richard L Henselman	107 East Main Steet Ste 23		Medford, OR 97501	no	no	21875	0.15	\$	2,000.00
	103		1300	1-036948-0	131 E Main Street	U S Nat'l Bank of Oregon Leigh Fleahman	2800 E Lake Street		Minneapolis MN 55406	no	no	39152	0.15	\$	2,000.00
	104		5400	1-036989-5	20 S. Central Avenue	George A Hunt Jr, Trustee & Dianna Jean Hunt, Trustee George & Dianna Hunt Family Trust	P.O. Box 1462		Bisbee, AZ 85603	no	no	3500	0.15	\$	525.00
	105		5000	1-036985-2	26 S. Central Avenue	J/F Properties	P.O. Box B		Medford, OR 97501	no	no	14000	0.15	\$	2,000.00
	106		5300	1-036988-7	130 E Main Street	Miles Family Properties, LLC	4536 Cooper Hawk Road		Klamath Falls, OR 97601	no	no	5250	0.15	\$	787.50
	107		5200	1-036987-9	128 E. Main Street	Robert L Seus	P.O. Box 2686		White City, OR 97503	no	no	3500	0.15	\$	525.00
	108		5100	1-036986-1	120 E Main Street	Robert L Seus	P.O. Box 2686		White City, OR 97503	no	no	5676	0.15	\$	851.40
	109		4500	1-036982-0	100 E Main Street	One Hundred Main LLC	830 O'Hare Parkway 100	100 E. Main Ste C. 97501	Medford, OR 97504	no	no	19570	0.15	\$	2,000.00
	112		4700	1-036984-6	101 E Eighth Street	Medford Chamber	101 East 8th Street		Medford, OR 97501	no	no	4808	0.15	\$	500.00
	113		4400	1-036980-3	2 East Main Street	J C F S / L Assn 1st Amerian Tax Valuation	P.O. Box 560807		Dallas, TX 75356	no	no	9448	0.1	\$	944.80
	114		2200	1-036958-7	50 N. Fir Street	Scan Design by Inge/ Jens Bruun Foundation/ Mark T Schleck	1004 4 th Ave 4400	3/5/15 correct address 1001 4th Ave #4400	Seattle, WA 98154	no	no	41207	0.1	\$	2,000.00
	115	372W25AA	3300	1-039289-1	24 W. Sixth Street	M & W Properties LLC c/o Henselman Realty & Mgmt	107 East Main Steet Ste 23		Medford, OR 97501	no	no	14,500	0.1	\$	2,000.00
	116	371W30BC	2300	1-036959-5	112 W. Main Street	Fairway Fund V LLC	6650 SW Redwood Lane 290		Portland, OR 97224-7234	no	no	31370	0.1	\$	2,000.00
	117		3100	1-036966-8	114 W. Main Street	Fairway Fund V LLC	6650 SW Redwood Lane 290		Portland, OR 97224-7234	no	no	7000	0.1	\$	700.00
	118		3000	1-036965-0	126 W Main Street	Constance L Properties LLC	15 Geneva Street		Medford, OR 97504	no	no	10200	0.1	\$	1,020.00
	119		2900	1-036964-3	132 W. Main Street 201 A	Ayala Orchards LLC	132 W. Main Street 103		Medford, OR 97501	no	no	10139	0.1	\$	1,013.90
	120	372W25AD	11000	1-039778-3	216 W. Main Street	Colonial Pacific Leasing Corp.	3000 Lakeside Drive 200	Mail Returned no forwarding	Bannockburn, IL 60015	no	no	6588	0.1	\$	658.80
	121		11200	1-039779-1	222 W. Main Street	Oregon Bank Land/Prop Admin Attn: Corporate Real Estate Assessments	101 N Tryon Street		Charlotte NC 28246-0100	no	no	9800	0.1	\$	980.00
	122		12000	1-039787-2	229 W Main Street	Sal J & Tami C Mellelo	P.O. Box 639		Rogue River, OR 9757	no	no	5420	0.1	\$	542.00
	123		12100	1-039788-1	225 W. Main Street	Center for Non-Profit Legal Services, Inc.	P.O. Box 1586		Medford, OR 97501	no	no	6500	0.1	\$	500.00
	124		12200	1-039789-9	221 W. Main Street	On Track, Inc	221 W. Main Street		Medford, OR 97501	no	no	11108	0.1	\$	500.00
	125		12300	1-039790-4	207 W. Main Street	On Track, Inc	221 W. Main Street		Medford, OR 97501	no	no	13284	0.1	\$	500.00
	126		12400	1-039791-2	201 W. Main Street	Corban Networks, Inc Jeff D Hall "bad address"	c/oThomas J Spackman Jr Esq 4613 Bryan St. 11	1/20/15 new address from MM 6695 Stage Rd. Medford 97601	Dallas, TX 75204	YES	no	31580	0.1	\$	2,000.00
	127	371W30BC	3200	1-036967-6	135 W. Main Street	Rogue Valley Properties, Inc	P.O. Box 3187		Central Point, OR 97502	no	no	6638	0.1	\$	663.80
	128		3300	1-036968-4	131 W. Main Street	James Lee & Eleanor J Brady	P.O. Box 148		Williams, OR 97544	no	no	6632	0.1	\$	663.20
	129		3400	1-036969-2	123 W. Main Street	Kodiak Properties LLC	3754 Manzanita Heights Drive	Mail Returned no forwarding	Medford, OR 97504	no	no	11800	0.1	\$	1,180.00
	130		4100	1-036976-3	115 W. Main Street	SOHA Properties LLC	3905 Crystal Springs		Medford, OR 97504	no	no	7000	0.1	\$	700.00
	0		4000	1-036975-5	20 S. Fir Street	JWH Properties LLC, John Hamlin, Member	P.O. Box 147		Medford, OR 97501	no	no	5000	0.1	\$	500.00
	131		70000-8	1-099472-3 1-099473-0	28 S. Fir Street	Kay Building Properties, LLC	34 N. Central Avenue		Medford, OR 97501	no	no	10000	0.1	\$	1,000.00
	132		3600	1-036971-4	39 S. Grape Street	Michael A/Claire A Cotta, Trustees, Cotta Family Trust	P.O. Box 1307		Medford, OR 97501	no	no	5000	0.1	\$	500.00
	0		3500	1-036970-6	31 S. Grape Street	JK Investments LLC	P.O. Box 460		Medford, OR 97501	no	no	4250	0.1	\$	425.00
	0		3501	1-071064-2	29 S. Grape Street	David W/Carolyn Allman, Allman Family Trust	19 Hillcrest Street		Ashland, OR 97520	no	no	4296	0.1	\$	429.60
	135	371W30BC	6300	1-037271-1	106 S. Grape Street	Grape & 8th Street LLC / Joan Krause	2251 Skyview Drive		Medford, OR 97501	no	no	5000	0.1	\$	500.00
	136		9900	1-037031-2	101 S. Grape Street	Coning Corp	P.O. Box 8451		Medford, OR 97501	no	no	3648	0.1	\$	364.80
	137		9801	1-095731-4	South Fir Street	California-Oregon Broadcasting Investments	P.O. Box 1489		Medford, OR 97501	no	no	15000	0.1	\$	1,500.00
	0		9600	1-037027-2	35 Eighth Street	Benshap LLC	13 Wildwood Drive		Eagle Point, OR 97524	YES	no	1307	0.1	\$	130.70
		371W30BC	80003		1 West Main Street	One West Main LLC	3581 Excel Drive	100 E. Main Ste C. 97501	Medford, OR 97504	no	no	117,607	0.15	\$	2,000.00
												1373905		\$	105,348.75



The Metro Medford Downtown Association in accordance with an advisory committee composed of property owners and tenants within the boundaries of the proposed Economic Improvement District hereby request to form an Economic Improvement District.

We have prepared and respectfully submit a Petition and Final Economic Improvement Plan.

The Final Economic Improvement Plan is recommended for a period of three years as a length of term.

The economic improvements submitted in the proposed plan would afford a special and peculiar benefit to subject properties within the Economic Improvement District different in kind or degree from that afforded to the general public.

The goal of creating a vibrant and thriving downtown district is not likely to be satisfactorily and equitably accomplished except through the establishment of an economic improvement district. We believe the formation of an Economic improvement District will provide a stable, secure funding source that allows more flexibility than existing government funding through MURA or the City's General Fund.

An EID will provide funding for paid professional management of The Metro Medford Downtown Association (MMDA) rather than relying primarily on volunteer leadership.

An EID will provide the tools to enable downtown Medford to face strong competition from suburban shopping areas and compete for market share.

An EID will provide fair cost distribution – all who benefit contribute.

Assessment

The proposed assessment method that we believe to be most equitable to all property owners within the district is based on gross square footage. The proposed economic improvement district is broken into two zones.

The larger Zone 1 includes most properties from 4th to 10th, the Creek to Fir Street, with the additional Main and 8th Street blocks from Fir to Holly.

Zone 2 is an overlay district that would encompass what is commonly referred to as the downtown core – Main Street from Bear Creek to Front and Central from 6th to 8th Street. A map is enclosed for your reference.

Properties within the district would be assessed 10 cents and 15 cents per gross square foot annually and respectively for Zone 1 and Zone 2. There is a cap of \$2000 annually as the maximum assessment for any one property and a cap of \$500 annually for a non- profit property. The assessment is anticipated to raise \$316,946 over the three year period.



The proposed scope of work and budget is as follows:

Expense	January 2015 – December 2017	
Beautification Programs	\$75,275	25%
District Maintenance	\$60,220	20%
Administrative Cost - District Management	\$60,220	20%
Marketing, Events & Metro Medford Promotion	\$105,384	35%
Sub Total	\$301,099	100%
City Administrative fee 5%	\$15,847	
Total	\$316,946	

Beautification Programs to include: seasonal hanging flower baskets in core district. Holiday lights, decorations, wreaths, holiday scenery down core district to be enhanced with additional holiday display each of the 3 year consecutive years. Decorative amenities such as benches, bike racks, trash receptacles and flower planters.

District Maintenance to include: Materials and labor for maintenance of the following items - cleaning, watering, maintenance of tree wells, removal and replacements of seasonal plants, cleaning and maintenance of trash receptacles, bike racks, benches, pressure washing sidewalks. Maintenance of street banners and way-finding signage. (May not be needed during the initial 3 year EID period)

Marketing, Promotion and Events. New and ongoing marketing of the Metro Medford downtown district. Promotion through the use of traditional media such as TV, radio and print. Use of social media and integrated marketing to create top of mind awareness. Development and production of signage and printed materials. Maintenance and expanded development of Metro Medford website as a tool to promote downtown. New events created to bring foot traffic to downtown and create a new perspective and experience in the district.

Glenda P. Wilson

From: Mike McNaughton <Mike.McNaughton@fairwayamerica.com>
Sent: Tuesday, February 17, 2015 4:32 PM
To: Glenda P. Wilson
Subject: Economic Improvement District opposition
Attachments: Response to Economic Improvement notice 2-16-15.pdf

Glenda,

Please see attached letter of opposition to the Economic Improvement District.



Mike McNaughton
Field Underwriter
Fairway America, LLC
503.906.9112
503.906.9101 Fax
www.fairwayamerica.com
www.SBREFunds.com
mike.mcnaughton@fairwayamerica.com

Be sure to check out our upcoming [SBRE Investment Summit](#) which will be held in Scottsdale in April.

FAIRWAY AMERICA

City Manager
City of Medford
411 West 8th Street
Medford, OR 97501

Eric Swanson, Medford City Manager

We are in a receipt of a letter dated 02/18/2015 (which we received on 02/16/2015 and signed by Glenda Wilson of the City Recorder office) regarding the proposed Economic Improvement District in the city of Medford. We currently have two building located in what appears to be in the proposed Zone 1 (map location properties #'s 116 & 117). These are properties which we acquired through Deed in Lieu of Foreclosure and we have been attempting to sell or lease them for over 4 years. We have had some partial success leasing a portion of one building. We are on record as opposing the prior proposal for an Economic Improvement District and are opposed to the current proposal for the following reasons:

While we would normally be in favor of a program designed to enhance the market perception of a location where we own property, we find it difficult to support the current proposal for several reasons.

1. We have owned and currently owned REO property throughout the Pacific Northwest in various municipalities, and have never experience a fee as excessive as the current City of Medford Utility Fee (specifically the Street Fee). We have had potential buyers and tenants express concern with the current high expense of Medford Utility Fees, which adversely affects achievable net rent and thereby property value. Approving an additional fee seems counter-productive to helping struggling property owners already hard hit by recessionary value losses.
2. The "proposed scope of work and Budget" appear to included excessive amounts to pay management, maintenance and administrative as well as another city fee of 5%.
3. While we recognized the plan as well intended to generate a long term benefit to the area, we don't think that now is the time to add additional property fees which in the short term create additional losses in property values.

Please accept this letter as our notification of opposition to the proposed Economic Improvement District. We are the owners of JaCo Tax Account #'s 1-036959-5 & 1-036966-8. Please let us know if this letter is sufficient to be officially recognized as the owner of 2 properties opposed to the creation of the District.

Sincerely,



Michael McNaughton
Portfolio Property Department
Fairway Fund V, LLC
Managed by Fairway America, LLC



(503) 906 9100 office
(503) 906 9101 fax
6650 SW REDWOOD LANE, SUITE 290
PORTLAND, OR 97221

www.fairwayamerica.com

Glenda P. Wilson

From: Metro Medford Downtown Association <metromedford@outlook.com>
Sent: Wednesday, February 18, 2015 12:15 PM
To: Glenda P. Wilson
Subject: Fw: Economic improvement district

Hi Glenda - I am forwarding this email I received with 2 corrections. Address and gross sq. ft. I am correcting my spreadsheet. Mr. Brady is not opposed to the EID, rather in support but merely wants to update his information.

Diane Bentley Raymond/executive director
Metro Medford Downtown Association
Tel. 541.521.1893

From: Jim Brady
Sent: Tuesday, February 17, 2015 3:08 PM
To: Metro Medford Downtown Association

Diane

As per our phone conversation I need my mailing address changed from my home address to 131 West Main Street, Medford, Or 97501. On a second issue the square footage on my building is incorrect. You have it listed as 6632 and it is only 4996 making a difference of 1636 square feet. I would appreciate it if you can make the adjustments.

Thank you

--

Jim Brady
Western Oregon Window Fashions
131 West Main Street
Medford, Or 97501
541-776-1081

Jenkins Rental, LLC
December 30, 2014
Page 2



bcc: City of Medford
Office of the City Recorder
411 West 8th Street
Medford, Oregon 97501

RECEIVED
FEB 24 2015
CITY OF MEDFORD
CITY RECORDER'S OFFICE



February 18, 2015

Jenkins Rental, LLC
2990 CR 2984
Avinger, Texas 75630
Attn: John and Laura Jenkins

Re: Property #1082 – 500 East Fourth Street, Medford, Oregon (“Property”)

Ladies and Gentlemen:

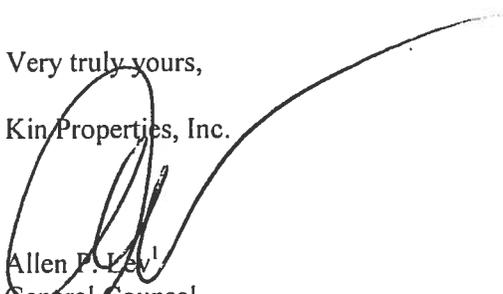
We write in our capacity as managing agent for Nathan Jeffrey LLC, the Owner of the above-referenced Property with regard to the enclosed notice of public hearing to consider the formation of an Economic Improvement District from the City of Medford. The effort is designed to afford a special and peculiar benefit to the Property different in kind or degree from that afforded to the general public. We note that implementation of an Economic Improvement District will result in maintenance of the tax assessment at the approximate rate of \$700.00 per year, for which you will be responsible. The Property is listed as “Property #1” on the enclosed Property Owners list.

As is our practice, unless we hear from you to the contrary within 10 days, we will respond in the affirmative.

Thank you.

Very truly yours,

Kin Properties, Inc.


Allen P. Levy¹
General Counsel

Signed in Attorney's absence to avoid delay

APL/sjd
Enclosure

cc: (via email w/o encl)
Jeffrey Sandelman
Andrew Schreier, Esq.
Steven Sandelman
Wayne Feldman
Lee Cherney
Nicole Kaplan, Esq.
Grant Schreier

¹ A Member of the Illinois Bar
Authorized House Counsel of Florida

W:\1082\CORR\81082-Jenkins Rental\Ltr (2) to Jenkins Rental re formation of Economic Improvement District (2-18-15 APL).doc

(561) 620-9200

(888) KIN-PROP toll-free

185 NW Spanish River Blvd., Suite 100, Boca Raton, FL 33431

RECEIVED

MAR 03 2015

To Whom It May Concern:
CITY MANAGER'S OFFICE

RECEIVED

MAR 03 2015

CITY MANAGER'S OFFICE

February 27, 2015

Our property is being accessed partly on commercial business and upstairs apartments that account for 1,400 sq ft.

We are against the Economic Improvement District due to the fact that Brick and Mortar stores cannot compete against internet sales. Many internet companies pay no property or state tax as there warehouses are located in Nevada.

Internet companies like Amazon buy in volume. They store and retrieve the products which are stacked on high shelves with computerized robots. Human hands touching the products only at time of shipping.

Meanwhile our roads are worn out by UPS and Fed EX trucks. These trucks' gas consumption pollutes the air. The boxes, packaging and containers of the products delivered to the consumer's house having to be recycled or placed in landfills.

Look at the Mall. The business plan was, it was to be a Regional Shopping Center attracting consumers from California who wanted to avoid California's State Sales Tax. The price of gas and the internet has put the Mall into a state of atrophy.

The Mall spends hundreds of thousands of dollars each year on advertising and events and it is still going under!

Internet sales have an unfair advantage which will result in the 1% getting wealthier. Since the Congress and state legislatures are owned by the large corporations, Brick and mortar businesses will continue to decline and local governments' tax revenue will continue to dwindle.

Mike E. Miles

No to the EID

Miles Family Properties
1203 N. RIVERSIDE AVE
MEDFORD OR 97501

Glenda P. Wilson

From: Pat Brown <patbrown@cannonmgnt.com>
Sent: Wednesday, March 04, 2015 10:56 AM
To: Glenda P. Wilson
Subject: Proposed assessment of an Economic Improvement District

Glenda,

My name is Pat Brown and I manage 3 properties that fall within the proposed Economic Improvement District. I represent the owners of these properties and would like to formally notify you that we are opposed to the creation of this District.

The 3 properties that fall within the proposed District are;

1. 100 East Main Street, JaCo Tax Lot # 4500.
2. 102-104 North Front Street, JaCo Tax Lot # 6200.
3. 1 East Main Street, JaCo Tax Lot # 2000.

Although we are in favor of improving the appearance of the downtown area we do not believe these properties will benefit from the other programs proposed because of the use of these properties. It appears that the primary purpose for the proposed EID is to boost foot traffic and improve the shopping experience in the downtown core area. Because these properties are an office building, a church and a parking lot we just don't believe there is any benefit.

Can you please confirm that you received this email ?

Thank you,

Pat Brown | President | Cannon Management

3600 Calle Vista Dr. | Medford, OR 97504 | 📞 Phone: [541.601.9619](tel:541.601.9619) | ✉ e-Mail: patbrown@cannonmgnt.com |

♻️ *Please consider the environment before printing this e-mail*

J R DEVELOPMENT, LLC

902 Chevy Way #102
Medford, Oregon 97504
(541) 776-2336

February 27, 2015

Glenda Wilson
City Recorder
City of Medford
411 West 8th St.
Medford, OR 97501

RECEIVED

MAR - 4 2015

CITY OF MEDFORD
CITY RECORDER'S OFFICE

RE: Formation of Economic Improvement District as proposed by Heart of Medford Association

Dear Ms. Wilson:

I received your letter of February 18, 2015, and the information concerning the proposed Economic Improvement District for the downtown area. In reviewing the proposal and the schedule of annual fees I feel that I must send you this letter of objection. Some of my reasons for objection are:

1. The small businesses, lunch cafe/coffee shop/etc., would really feel the financial hardship of the annual fees. To many of these types of owner operated establishments the several hundred dollars is significant. At the opposite end of the spectrum Lithia Motors headquarters building, probably the largest building and most affluent, pays maybe ten times the annual fee but has revenues in the thousands of times of the small businesses.

2. The proposed district is to have paid employees with estimate annual costs of approximately 20% of the budget. This is a very large percentage, I am sure most businesses do not have nearly this high of an overhead cost percentage.

3. Beautification program - why not just encourage the business owners to grow their own flowers (with the City's permission for location) and their own holiday lighting. Yes, probably not all would do this but I think quite a few would if they did not think they would run afoul of any city rules or restrictions.

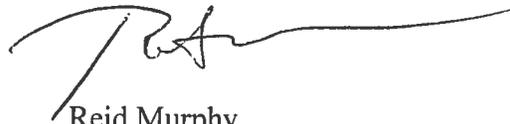
4. District maintenance - we have the sidewalks in front of our building cleaned on a routine basis for the benefit of the employees and the customers - do not other business owners also care about the appearance of their business frontage? My personal experience with placing trash bins outside is that people put their personal household garbage in them, along with rancid food products, making the trash bins more of a nuisance to the business than an asset. It is better to let the businesses that create waste paper to have their own trash bins which they control on a daily basis.

There is already in place the Chamber of Commerce, Metro Medford Association, and MURA to name a few. Why does the City Council think another commission will be any better than those already in place? It has always been true that private business can function better and faster than a governmental agency. Let the business owners handle their own promotion.

The best help the council could give - stay out of the way of private business and let it prosper. Do not add more layers of taxes to take funds out of the business owner hands that could have been spent on their advertising programs.

The above are just a few of my objections. Please advise the city council of my 'no' vote on the formation of the proposed economic improvement district.

Sincerely,

A handwritten signature in black ink, appearing to read 'RM', with a long horizontal flourish extending to the right.

Reid Murphy
Member
J R Development, LLC

October 9, 2013

Constance L Properties, LLC
4 Daughters Irish Pub
126 W Main Street
Medford, Oregon

RECEIVED
MAR - 4 2015
CITY OF MEDFORD
CITY RECORDER'S OFFICE

Economic Improvement District

I would like to object to the formation of the Economic Improvement Plan.

I would not like to pay for flowers and holiday lights. This is something we already do to our building. We were given Christmas decorations a few years back from MURA or Heart of Medford. I am not sure. It was a painted candy cane with lights. We have no plug at the streetlight. So it was useless. Some downtown group scheduled a steam cleaning of the sidewalk and never showed up. We tried group advertizing and that was frustrating and ineffective.

I don't think we need help from a group to beautify our area. We take care of that. My husband got the law changed so we could have sidewalk café. It has brought some life down our way. We have struggled for 6 years in a depressed and forgotten area. What we need is **free parking** so our customers, we do get, don't get tickets.

So, I would like to be excluded from this project. Even though we were the first block built in the early 1900's as downtown, we really are not considered downtown. Very few downtown projects or events come our way. I am afraid being in Zone 2 is going to be a waste of my money.

Sincerely ,

Connie Sidon
Constance L. Properties, LLC

March 1, 2015

Medford City Council,

I feel the same as 2 years ago when I wrote the above letter. Our customers are still getting tickets. We have been left out of the new lights the city put it downtown. I don't need to pay for something we already do and therefore, I am still against the EID.

Connie Sidon

March 5, 2015

City of Medford
Mayor Wheeler and Council
411 West Main Street
Medford, Oregon 97501

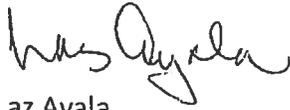
Regarding: Exclusion of 132 West Main Street, 1 West 6th Street, and 44 North Front Street
from Economic Improvement District

Mayor Wheeler and Council:

I respectfully ask that the above referenced properties be removed from the proposed
Economic Improvement District EID.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Laz Ayala". The signature is written in a cursive, flowing style.

Laz Ayala



CITY OF MEDFORD
AGENDA ITEM COMMENTARY

Item No: **120.4**

www.cityofmedford.org

DEPARTMENT: Planning Department

AGENDA SECTION: Public Hearing

PHONE: 541-774-2380

MEETING DATE: March 19, 2015

STAFF CONTACT: James E. Huber, AICP, Planning Director

COUNCIL BILL 2015-25

An ordinance amending Sections 10.03, 10.250 and 10.294 of the Medford Code to pertaining to revisions to conditional use permits and Site Plan and Architectural review. (Legislative) (DCA-14-133)

ISSUE STATEMENT & SUMMARY:

The Municipal Code does not have standards to allow amendments to plan approvals. The proposal will create steps for a simple way to approve minor revisions to Conditional Use Permits and Site Plan and Architectural Review. This will let applicants avoid lengthy revision steps.

BACKGROUND:

City of Medford's Code does not currently allow for minor revisions to a Conditional Use Permit after its initial approval. Code currently requires an applicant to restart the land use application process from the beginning in order to make minor revisions to an approved proposal. This results in a process that is inefficient and time consuming for applicants.

Code currently allows for minor revisions to a Site Plan and Architectural Review permit after its initial approval, but fails to provide standards to identify what constitutes a minor revision. This results in staff having to determine if a revision is minor or major without objective standards on which to base their decision.

A. Council Action History

There is no council action history associated with the proposal.

B. Analysis

It is common for development plans to change somewhat between the time a land use application has been approved and the time building permits are applied for. In some circumstances, this is the result of on-site civil engineering findings. In other circumstances, developers have determined that a minor revision to the original land use approval would result in a superior end product. By allowing minor revisions to approved land use applications, the City of Medford encourages development by providing developers with the flexibility to better realize their objectives without undermining the basis for the original approval.

C. Financial and/or Resource Considerations

Approval of the amendment will not require any additional finances or resources. The amendment will simplify the land use process and reduce the amount of staff time required to process certain applications.

D. Timing Issues

Staff identifies no timing issues associated with adoption of the proposed amendment.



STRATEGIC PLAN:

Theme: Healthy Economy

Goal 6: Maintain and enhance community livability.

Objective 6.3: Encourage the continued revitalization of the downtown.

Action 6.3a: Remove unnecessary local regulatory impediments to downtown development and redevelopment activities.

Action 6.3b: Remove redundant design review and approval processes.

COUNCIL OPTIONS:

1. Adopt the development code amendment.
2. Direct staff to amend the development code amendment.
3. Remand the proposal to the Planning Commission for further consideration.
4. Deny the development code amendment.

STAFF RECOMMENDATION:

The Planning Commission recommended approval of the development code amendment at their February 12, 2015 hearing by a 8-0 vote.

SUGGESTED MOTION:

I move to adopt the ordinance creating a procedure for minor revisions to approved plans.

EXHIBITS:

Staff Report for file DCA-14-133, dated February 23, 2015, including Exhibits A through D.
A copy of the slideshow presentation is on file in the Planning Department.

ORDINANCE NO. 2015-25

AN ORDINANCE amending Sections 10.031, 10.250 and 10.294 of the Medford Code pertaining to revisions to conditional use permits and Site Plan and Architectural review.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

SECTION 1. Section 10.031 of the Medford Code is amended to read as follows:

10.031 Exemptions from the Development Permit Requirement.

A. An exemption from the development permit requirement does not exempt the use or development from compliance with the applicable standards of this chapter, including but not limited to access, parking, riparian protection, and landscaping.

B. Exemptions under this section do not apply to uses subject to a conditional use permit or **major modifications thereof.**

* * *

SECTION 2. Section 10.250 of the Medford Code is amended to read as follows:

10.250 **Modifications and** Expiration of a Conditional Use Permit.

A. Modifications.

1. Major Modification.

Any modification that is not a minor modification is a major modification. A request to substantially modify a conditional use permit shall be processed in the same manner as a request for a conditional use permit in 10.246. The Planning Director may waive submittal requirements deemed unnecessary or inapplicable to the proposal.

2. Minor Modification.

A minor modification to an approved permit may be approved by the Planning Director provided the Planning Director determines that the modification does not constitute a major modification. The purpose of the determination is to assure that a modification does not significantly affect other property or uses; will not cause any deterioration or loss of any natural feature, process or open space; nor significantly affect any public facility. A minor modification shall meet all of the following standards:

(a) Meets all requirements of the Land Development Code and other legal requirements.

(b) The amount of open space and landscaping is not decreased.

(c) No relocation of vehicle access points and parking areas where the change will generate an impact that would adversely affect off-site or on-site traffic circulation.

(d) No reduction or elimination of any project amenities such as recreational facilities, significant natural resources (streams, creeks, landform), fencing and other screening material.

(e) Modifications to facilities and utilities conform to the adopted facility plans.

(f) Modifications to any other components of the plan conform to standards of the Land Development Code.

(g) No modification to any condition of approval.

B. Expiration: Within one (1) year following the final order date, substantial construction on the development shall be completed, or if a use, the use shall have commenced operation. If a request for an extension is filed with the planning department within one (1) year from the approval date of the final order, the approving authority (Planning Commission), may, upon written request by the applicant, grant a single

extension of the expiration date for a period not to exceed one (1) year from the expiration date of the final order. An extension shall be based on findings that the facts upon which the conditional use permit was first approved have not changed to an extent sufficient to warrant refiling of the conditional use permit.

SECTION 3. Section 10.294 of the Medford Code is amended to read as follows:

10.294 ~~Revisions or Amendments~~ Modification of a Site Plan and Architectural Review.

~~Major revisions or amendments to an approved site and architectural plan shall require reapplication.~~

A. Major Modification.

Any modification that is not a minor modification is a major modification. When modification to an approved plan is determined to be a Major Modification, the plan shall be processed in the same manner as a request for a site plan and architectural review in 10.285. The Planning Director may waive submittal requirements deemed unnecessary or inapplicable to the proposal.

B. Minor Modification.

A minor modification to an approved plan may be made by the Planning Director provided the Planning Director determines that the modification does not constitute a major modification. A minor modification shall meet all of the following standards:

- (1) Meets the exemption standards of 10.031.**
- (2) No increase in the number of dwelling units.**
- (3) The amount of open space or landscaping is decreased by no more than 10% of the previously approved area, provided the resulting area does not drop below the minimum standards as required by the code.**
- (4) No relocation of vehicle access points and parking areas where the change will generate an impact that would adversely affect off-site or on-site traffic circulation.**
- (5) No reduction or elimination of any project amenities such as recreational facilities, significant natural resources (streams, creeks, landform), fencing and other screening material.**
- (6) Modifications to facilities and utilities conform to the adopted facility plans.**
- (7) Modifications to any other components of the plan conform to standards of the Land Development Code.**
- (8) No modification to any condition of approval.**

PASSED by the Council and signed by me in authentication of its passage this ____ day of _____, 2015.

ATTEST: _____
City Recorder

Mayor

APPROVED _____, 2015.

Mayor

NOTE: Matter in **bold** in an amended section is new. Matter ~~struck out~~ is existing law to be omitted. Three asterisks (***) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity.



CITY OF MEDFORD

PLANNING DEPARTMENT

STAFF REPORT – LAND DEVELOPMENT CODE AMENDMENT

Date: February 23, 2015

To: Mayor and City Council for the 3-19-2015 hearing

From: Aaron Harris, Planner II

Reviewer: John Adam, Senior Planner

Subject: Process for Plan Authorization Amendments (SPAR & CUP)
City of Medford, Applicant

File no.: DCA-14-133

BACKGROUND

Proposal: To amend Municipal Code Sections 10.031 and 10.250 to allow minor revisions to Conditional Use Permits, and to amend Municipal Code Section 10.294 to clarify the minor revisions process for Site Plan and Architectural Review approvals. The proposed code amendment provides standards to identify circumstances in which permit revisions shall be allowed. The proposal aims to clarify existing code language and to simplify the land use process by allowing applicants to modify a Conditional Use Permit without having to start the application process from the beginning. Modifications would be approved by the Director and completed as a Class E (ministerial) decision.

Discussion: City of Medford's Code does not currently allow for minor revisions to a Conditional Use Permit after its initial approval. Code currently requires an applicant to restart the land use application process from the beginning in order to make minor revisions to an approved proposal. This results in a process that is inefficient and time consuming for applicants.

Code currently allows for minor revisions to a Site Plan and Architectural Review permit after its initial approval, but fails to provide standards to identify what constitutes a minor revision. This results in staff having to determine if a revision is minor or major without objective standards on which to base their decision.

"Working with the Community to Shape a Vibrant and Exceptional City"

Lausmann Annex • 200 South Ivy Street • Medford OR 97501
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www.ci.medford.or.us

Planning Commission discussed this topic at a January 12, 2015, study session. Planning Commission expressed approval of the code amendment and did not recommend any changes to the proposal. The City's legal department expressed concern with regard to subjective language and suggested making the proposed standards more objective. Staff eliminated the subjective terms and also added a provision under 10.031(B) to avoid conflicting standards.

Criteria: *Medford Land Development Code Section 10.184(2)*

APPROVAL CRITERIA COMPLIANCE

- 10.184** Class 'A' Amendment Criteria.
10.184 (2) Land Development Code Amendment.

The Planning Commission shall base its recommendation, and the City Council its decision, on the following criteria:

CRITERION 10.184 (2)(a). Explanation of the public benefit of the amendment.

Findings: Any revision to a Conditional Use Permit, no matter how small, requires a full repetition of the review process. Minor revisions to Site Plan and Architectural Review permits are allowed by Code, but standards defining a minor revision do not exist. These issues result in a process that is inefficient and time consuming for applicants and staff.

Conclusion: Setting limits for minor revisions and creating a simple process will eliminate excessive procedure.

CRITERION 10.184 (2)(b). The justification for the amendment with respect to the following factors:

CRITERION 10.184 (2)(b)(1). Conformity with applicable Statewide Planning Goals and Guidelines.

Findings: The following demonstrates conformity with the applicable Statewide Planning Goals:

1. *Citizen Involvement:* Goal 1 requires the City to have a citizen involvement program that sets the procedures by which a cross-section of citizens will be involved in the land use planning process, including participation in the revision of the *Land Development Code*. Goal 1 requires providing an opportunity to review proposed amendments prior to the public hearing, and any recommendations must be retained and receive a response from policy-makers. The rationale used to reach land use policy

decisions must be available in the written record. The City of Medford has an established citizen involvement program consistent with Goal 1 that includes review of proposed *Land Development Code* amendments by the Planning Commission and the City Council. Affected agencies and interested persons are also invited to review and comment on such proposals, and hearing notices are published in the local newspaper. This process has been adhered to in the proposed amendment. The document was made available for review on the City of Medford website and at the Planning Department. It will be considered by the Planning Commission and the City Council during televised public hearings.

2. *Land Use Planning:* Goal 2 requires the City to adopt a comprehensive plan which must include identification of issues and problems, inventories, and other factual information for each applicable Statewide Planning Goal, and evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. Comprehensive plans must state how the Statewide Planning Goals are to be achieved. The plan must contain specific implementation strategies that are consistent with and adequate to carry out the plan, and which are coordinated with the plans of other affected governmental units. Implementation strategies can be management strategies such as ordinances, regulations and project plans, and/or site or area-specific strategies such as construction permits, public facility construction, or provision of services. Comprehensive plans and implementation ordinances must be reviewed and revised on a periodic cycle to take into account changing public policies and circumstances. The City of Medford has an established land use planning program consistent with Goal 2.

Staff finds that Goals 3–8 do not apply in this matter.

9. *Economic Development:* Goal 9 requires the City's Comprehensive Plan policies to contribute to a stable and healthy economy. Such plans shall be based upon past trends and updated employment forecasts. Medford's Comprehensive Plan complies with Goal 9. By looking at past trends, future forecasts, policies that affect economic growth, and the availability of employment lands, the City of Medford has adopted a set of Conclusions, Goals, Policies, and Implementation Measures related to economic development within the Economic Element of the Comprehensive Plan.

Staff finds that Goals 10–14 do not apply to this matter. Goals 15–19 apply only to other regions of the State and are not evaluated here.

Conclusion: Criterion 10.184 (2)(b)(1) is satisfied.

CRITERION 10.184 (2)(b)(2). Conformity with goals and policies of the Comprehensive Plan considered relevant to the decision.

Applicable Comprehensive Plan Goals, Policies, and Implementation Strategies:

ECONOMIC

GOAL: To actively stimulate economic development and growth that will provide opportunities to diversify and strengthen the mix of economic activity in the City of Medford.

Policy 1-3: The City of Medford shall, as appropriate under the Goal above, support the retention and expansion of existing businesses.

Implementation 1-3(a): Adopt code amendments that encourage the development of existing sites.

Findings: It is common for development plans to change during the interim period between the time a land use application has been approved and the time building permits are applied for. In some circumstances, this is the result of on-site civil engineering findings. In other circumstances, developers have determined that a minor revision to the original land use approval would result in a superior end product. By allowing minor revisions to approved land use applications, the City of Medford encourages development by providing developers with the flexibility to better realize their objectives. This kind of flexibility in the Code might also help to encourage new developers to locate in Medford.

Conclusion: The addition of this new flexibility will stimulate economic activity. Criterion 10.184 (2)(b)(2) is satisfied.

CRITERION 10.184 (2)(b)(3). Comments from applicable referral agencies regarding applicable statutes or regulations.

Findings: The proposed code amendment was sent to 11 City departments and outside referral agencies on January 6, 2015. The Planning Department has not received any comments on the proposal from these agencies.

Conclusion: Referral agencies have no objections. Criterion 10.184(2)(b)(3) is satisfied.

CRITERION 10.184 (2)(b)(4). Public comments.

Findings: The code amendment was posted on the City website on January 6, 2015 and no comments have been received from the public. A study session was held by the Planning Commission on January 12, 2015 to discuss the text amendment proposal.

Conclusion: The Planning Department has not received any outside public comments on the proposal. Criterion 10.184(2)(b)(4) is satisfied.

CRITERION 10.184 (2)(b)(5). Applicable governmental agreements.

Findings: No governmental agreements apply to the proposed code amendment.

Conclusion: Criterion 10.184 (2)(b)(5) does not apply.

RECOMMENDED ACTION

Discussion: In this case, like with most code amendments, the recommendation made by the Planning Commission comes down to a policy decision. Should Conditional Use Permit minor revisions be permitted in the City? Further, what standards shall be used to determine when a revision will be considered minor and therefore not require an applicant to start the land use process from the beginning? Planning Commission has considered these questions and has presented what it believes to be the best course of action should the City Council decide that these should be permitted.

Recommendation: Based on the findings and conclusions that all of the approval criteria are either met or are not applicable, on February 2, 2015, the Planning Commission voted to recommend adoption of DCA-14-133 per the staff report dated February 23, 2015, including Exhibits A through D.

EXHIBITS

- A. Minutes from the January 12, 2015 Planning Commission Study Session
- B. Minutes from the February 6, 2015 Site Plan and Architectural Commission Meeting
- C. Proposed Code Amendment, dated February 9, 2015
- D. Minutes from the February 12, 2015 Planning Commission Meeting

CITY COUNCIL AGENDA: March 19, 2015



MINUTES
PLANNING COMMISSION STUDY SESSION
January 12, 2015

The study session of the Medford Planning Commission was called to order at 12:00 p.m. in Room 151 of the Lausmann Annex on the above date with the following members and staff in attendance:

Commissioners: Robert Tull, Alec Schwimmer, Bill Christie, David McFadden, Bill Mansfield, Norman Fincher and Patrick Miranda (arrived at 12:10 p.m.).

Staff: Jim Huber, Bianca Petrou, Kelly Akin, John Adam, Aaron Harris and Kevin McConnell.

Subject: 1. DCA-14-133 Process for plan authorization amendments.

Jim Huber, Planning Director, reported that today's study session would be on a proposed text amendment for minor revisions to plans that have already been approved.

Aaron Harris, Planner II, stated that he will be presenting the Medford Land Development Code amendment proposal to allow the process for plan authorization amendments for Site Plan and Architectural review and conditional use permit. Currently, the Code allows revisions for Site Plan and Architectural review (SPAR) but there is no criteria provided to identify when a revision shall be deemed a minor and major revision. The Code currently does not allow for Conditional Use Permit (CUP) revisions and applicants must restart the land use application process from the beginning. The process is inefficient and time consuming for staff and applicants.

The proposed amendment would adopt criteria to identify circumstances in which permit revisions shall be allowed. The public benefit is that it simplifies the land use process for applicants. Minor modifications would be approved by the Planning Director and completed as a Class 'E' ministerial process.

There are five criteria proposed for a minor modification to a SPAR and CUP: 1) No relocation of vehicle access points where the change may generate an impact that could adversely affect off-site or on-site traffic circulation or might adversely affect the community; 2) No reduction or elimination of any project amenities such as recreational facilities, significant natural resources, fencing, and other screening material; 3) Modifications to facilities and utilities conform to the adopted facility plans; 4) Modifications to any other components of the plan conform to standards of the Code; and 5) No modification to any condition of approval. In addition to these five shared criteria there are three additional criteria for SPARs and three additional criteria for CUPs. These criteria differ to the nature of each type of land use application. The additional criteria for SPAR are: 1) Meets the exemption criteria of 10.031; 2) No increase in the number of dwelling units; and 3) The amount of open space or landscaping is decreased by no more than 10% of the previously approved area, provided the decrease does not drop below the minimum standards as required by the code. The three additional criteria for CUP are: 1) Meets the requirements of the Code and other legal requirements; 2) Does not significantly affect other property or uses; will not cause any deterioration or loss of any natural feature, process or open space; nor significantly affect any public facility; and 3) The amount of open space and landscaping is not decreased.

Commissioner Fincher asked what would be an example of a minor SPAR revision. Mr. Harris reported an example of a minor revision would be such as the amount of open space an applicant wants to reduce or move the screening for disposal to another area on the site.

Vice Chair Tull asked how does this differ from the de minimus things that the Planning Director can already approve? Mr. Huber reported that is limited to Planned Unit Developments only.

Vice Chair Tull asked who is going to determine that it may generate an impact that could adversely affect off-site and on-site traffic. Does that become the discretion of the Director? Mr. Huber stated that he would refer back to the original approval to see if the change was significant.

Kevin McConnell, Deputy City Attorney, stated that he discussed this language with Ms. Akin. The legal department thinks there are too many "may", "could", and "might". There is too much discretion to one person. Section D needs to be reworked. He also sees an issue with 1 (b) under conditional use permits. There needs to be a firm understanding.

This will be presented to the Planning Commission at their public hearing on Thursday, February 12, 2015.

Commissioner Mansfield expressed his regret that Vice Chair Tull is not going to be on the Planning Commission any longer. He has relied on Vice Chair Tull a great deal for his expertise, knowledge and judgment.

Vice Chair Tull thanked Commissioner Mansfield but said enough is enough. He is in his 19th year and there are others that can slip into his spot and do it very well for the next 19 years.

Vice Chair Tull stated that one of the things the Planning Commission has accomplished over the years that he has been on the Planning Commission is that they have changed the nature of the relationship between the Planning Commission and staff. When he first came on the Commission the Commission generally was distrustful of initiatives coming from staff. There were some unpleasant confrontations at Commission meetings. Commissioners challenged staff as to why a project had been done a certain way and who said to do it that way. There were times when he wished they had not been in public session. There was fine staff at that time. Generally speaking, this City has equipped itself with very professional planners and has done a good job bringing people into the department and training them to increase responsibility. Mr. Huber is responsible for what they have seen in the last couple of years. The other thing that has changed is that there is a far better trustful relationship between the Planning Commission and the City Council. It is his opinion, that the City Council highly regards the judgment that comes from the Planning Commission regarding land use issues.

Commissioner McFadden reminded the Planning Commission to RSVP, if they have not already done so, for the Boards and Commission luncheon on Friday, January 23, 2015.

Mr. Huber commented that if there are things that annoy the Planning Commission or see areas they would like to change or room for improvement, please let staff know.

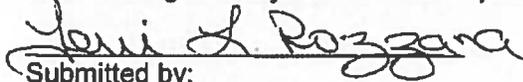
Commissioner Miranda stated that he finds the staff reports very thorough and detailed.

John Adam, Senior Planner, noted that at today's meeting Commissioner Miranda joined at 12:10 p.m.

Mr. Huber thanked and complimented the Planning Commission for their volunteer work that they do.

Vice Chair Tull stated that the Planning Commission is one of the key focal points of citizen input into the operation of the City's government. Those who come give testimony before the Planning Commission need to be commended for coming forth and they need to be listened to. They come because they have a concern that they feel needs to be added to the process that the Planning Commission is working on. There are neighbor citizens who want to talk to the Planning Commission about things that as neighbors, are focusing on because, the City has asked the Planning Commission to do. That is a good relationship that gets reflected in the Planning Commission meetings. People are treated with respect and thanked for their contribution. The Planning Commission is a focal point of citizen input. It needs to be an open and welcoming process.

The meeting was adjourned at 12:31 p.m.



Submitted by:

Terri L. Rozzana, Recording Secretary

80. New Business.

80.1 Text amendment adding revision language.

Aaron Harris, Planner II

90. Report from the Planning Department.

90.1 Ms. Akin stated there was no business scheduled for the February 20, 2015, meeting. There will be a meeting scheduled for the March 6, 2015, meeting.

100. Messages and Papers from the Chair. None.

110. Propositions and Remarks from the Commission. None.

120. City Council Comments. None.

130. Adjournment.

130.1 The meeting was adjourned at approximately 12:48 p.m. The proceedings of this meeting were digitally recorded and are filed in the City Recorder's office.

Submitted by:

Debbie Strigle
Recording Secretary

Site Plan and Architectural Commission Chair

Approved: March 6, 2015

CITY OF MEDFORD
EXHIBIT # B
File # DCA-14-133
Draft Minutes

Modification of a Conditional Use Permit

*This is entirely new language to be added at code section 10.250

1. Major Modification.

Any modification that is not a minor modification is a major modification. A request to substantially modify a conditional use permit shall be processed in the same manner as a request for a conditional use permit in 10.246. The Planning Director may waive submittal requirements deemed unnecessary or inapplicable to the proposal.

2. Minor Modification.

A minor modification to an approved permit may be approved by the Planning Director provided the Planning Director determines that the modification does not constitute a major modification. The purpose of the determination is to assure that a modification does not significantly affect other property or uses; will not cause any deterioration or loss of any natural feature, process or open space; nor significantly affect any public facility. A minor modification shall meet all of the following standards:

- a. Meets all requirements of the Land Development Code and other legal requirements.
- b. The amount of open space and landscaping is not decreased.
- c. No relocation of vehicle access points and parking areas where the change will generate an impact that would adversely affect off-site or on-site traffic circulation.
- d. No reduction or elimination of any project amenities such as recreational facilities, significant natural resources (streams, creeks, landform), fencing and other screening material.
- e. Modifications to facilities and utilities conform to the adopted facility plans.
- f. Modifications to any other components of the plan conform to standards of the Land Development Code.
- g. No modification to any condition of approval.

Modification of a Site Plan and Architectural Review

*This is entirely new language to be added at code section 10.294

1. Major Modification.

Any modification that is not a minor modification is a major modification. When modification to an approved plan is determined to be a Major Modification, the plan shall be processed in the same manner as a request for a site plan and architectural review in 10.285. The Planning Director may waive submittal requirements deemed unnecessary or inapplicable to the proposal.

2. Minor Modification.

A minor modification to an approved plan may be made by the Planning Director provided the Planning Director determines that the modification does not constitute a major modification. A minor modification shall meet all of the following standards:

- a. Meets the exemption standards of 10.031.
- b. No increase in the number of dwelling units.
- c. The amount of open space or landscaping is decreased by no more than 10% of the previously approved area, provided the resulting area does not drop below the minimum standards as required by the code.
- d. No relocation of vehicle access points and parking areas where the change will generate an impact that would adversely affect off-site or on-site traffic circulation.
- e. No reduction or elimination of any project amenities such as recreational facilities, significant natural resources (streams, creeks, landform), fencing and other screening material.
- f. Modifications to facilities and utilities conform to the adopted facility plans.
- g. Modifications to any other components of the plan conform to standards of the Land Development Code.
- h. No modification to any condition of approval.

MLDC 10.031 (B)

Exemptions under this section do not apply to uses subject to a conditional use permit **or major modifications thereof.**

Motion: Adopt the consent calendar.

Moved by: Vice Chair Miranda Seconded by: Commissioner D'Alessandro

Voice Vote: Motion passed, 8-0.

30. Minutes.

30.1 The minutes for January 22, 2015, were approved as submitted.

40. Oral and Written Requests and Communications. None.

Kevin McConnell, Deputy City Attorney, read the Quasi-Judicial Statement.

50. Public Hearing.

New Business

50.1 **DCA-14-133** The Planning Department proposes an ordinance amending *Land Development Code*, Sections 10.250 and 10.294 to allow revisions to Conditional Use Permit and Site Plan and Architectural Review approvals. The proposed code amendment provides criteria to identify circumstances in which permit revisions shall be allowed. The proposal aims to simplify the land use process by allowing applicants to modify permits without having to start the application process from the beginning. (City of Medford, Applicant).

Aaron Harris, Planner II, presented background, outlined the proposal, explained Site Plan and Architectural Commission's recommendation and read the land development code amendment approval criteria.

Commissioner MacMillan asked staff to give an example of a minor modification to a conditional use permit. Kelly Akin, Principal Planner, reported that a couple of years ago, an existing church that had a portico share that they wanted to enclose to make a vestibule. It was floor area that did not increase capacity of the facility. There was no relief from the conditional use permit requirement because it added gross floor area to the structure. It was approximately 350 square feet.

Commissioner Pulver asked what does open space mean as opposed to landscape? Mr. Harris commented that green space is on the site plan.

Commissioner Pulver asked that if a minor change is received by the Planning Director and the result is of his decision is opposed, who do they appeal the decision to? Mr. Harris stated that because it is a ministerial decision they would have the option of a full review.

The public hearing was opened and there being no testimony, the public hearing was closed.

Motion: Based on the materials presented in the staff report dated February 2, 2015, the Planning Commission adopts the findings and conclusions that all of the approval criteria are

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either met or are not applicable and forwards a favorable recommendation for adoption to the City Council per the staff report dated February 2, 2015, including Exhibits A and B.

Moved by: Vice Chair Miranda Seconded by: Commissioner Pulver

Commissioner Schwimmer stated that this agenda item was presented to the Planning Commission at a study session and the Planning Department did a nice job correcting some of the substantive problems with making sure these were clearly objective criteria. The issue that was raised at the Site Plan and Architectural Commission level, were concerns raised by several of the professional architects and it had to do with the architectural element. The concern was that if there was a general purpose or architectural element that needed to be changed, that change could take place and it would not be subject to Site Plan and Architectural Review but allowed by the Planning Director. He supports the motion.

Voice Vote: Motion passed, 8-0.

- 50.2 **LDP-14-132** Consideration of tentative plat approval for a three lot partition on approximately 11.9 acres located on the west side of Crater Lake Highway and the east side of Grumman Drive approximately 400 feet south of Burlcrest Drive within an I-L/AR/RZ (Light Industrial/Airport Radar Overlay/Restricted Zoning) zoning district. (Lithia Real Estate, Inc., Applicant; Maize and Associates, Inc., Agent).

Chair McFadden inquired whether any Commissioners have a conflict of interest or ex parte communication they would like to disclose. None were declared.

Sarah Sousa, Planner IV, read the land division criteria and gave a staff report.

The public hearing was opened and the following testimony was given.

- a. Jim Maize, Maize & Associates, Inc., P. O. Box 628, Medford, Oregon, 97501. Mr. Maize stated that he was present tonight representing his client Lithia Real Estate, Inc. This application is fairly simple. It is dividing the land into three parcels for three separate auto dealerships. The applicant has submitted findings that show that this partition meets the criteria for a land division. They are agreeable to the conditions proposed by City staff and requests that the Planning Commission adopt those findings and approve this application.

The public hearing was closed.

Motion: Adopt the Findings as recommended by staff and adopt the Final Order for approval of LDP-14-132 per the Staff Report dated February 5, 2015, including Exhibits A through M.

Moved by: Vice Chair Miranda Seconded by: Commissioner MacMillan

Voice Vote: Motion passed, 8-0.