



Medford City Council Meeting

Agenda

December 1, 2016

12:00 Noon AND 7:00 P.M.

**Medford City Hall, Council Chambers
411 West 8th Street, Medford, Oregon**

10. Roll Call

Introduction of McLoughlin Middle School Students of the Month

20. Approval or Correction of the Minutes of the November 17, 2016 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 Safety Committee Recognition – Mike Snyder

40. Consent Calendar

50. Items Removed from Consent Calendar

60. Ordinances and Resolutions

60.1 COUNCIL BILL 2016-56 - CONTINUED - An ordinance repealing sections 9.350 and 9.400 of the Medford Code, amending section 9.660, and adding sections 9.900 through 9.914 to adopt the International Property Maintenance Code.

60.2 COUNCIL BILL 2016-142 An ordinance adding sections 9.400, 9.405, 9.410, 9.415, 9.420, 9.425, 9.430, 9.435, 9.440, 9.445 and 9.450 of the Medford Code pertaining to housing receivership.

70. Council Business

80. City Manager and Other Staff Reports

80.1 Further reports from City Manager

90. Propositions and Remarks from the Mayor and Councilmembers

90.1 Proclamations issued: None

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 Consideration of Parks System Development Charge (PSDC) methodology.

120.2 COUNCIL BILL 2016-143 An ordinance amending section 10.337 of the Medford Code pertaining to the retail sales of marijuana.

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: Building Department
PHONE: (541) 774-2362
STAFF CONTACT: Sam Barnum, Building Safety Director

AGENDA SECTION: Ordinances and Resolutions
MEETING DATE: December 1, 2016

COUNCIL BILL 2016-56

An ordinance repealing sections 9.350 and 9.400 of the Medford Code, amending section 9.660, and adding sections 9.900 through 9.914 to adopt the International Property Maintenance Code.

SUMMARY AND BACKGROUND

An ordinance amending Medford Municipal Code, repealing sections 9.350 and 9.400, amending section 9.660, and adding sections 9.900 through 9.914 to adopt the International Property Maintenance Code.

Medford adopted the Uniform Housing Code and the Uniform Code for the Abatement of Dangerous Buildings five decades ago. These codes are no longer published, and have been replaced with the International Property Maintenance Code. This code combines the two previous codes and provides more detailed guidelines for properties and buildings that have fallen into disrepair. Although administration of this code will be the responsibility of the Medford Police Department's Code Enforcement section, this updated code better aligns with the building codes now used by the Building Safety Department. Adoption of this code will provide code enforcement staff the necessary tools by which they can address the growing problem of abandoned buildings and boarded-up structures, and urban blight in general.

PREVIOUS COUNCIL ACTIONS

In late 2014, City Council directed staff to look into the issue of boarded-up abandoned buildings and urban blight. In April 2015, staff presented at a study session the scope of the problem and recommended adoption of the International Property Maintenance Code with amendments. On March 24, 2016, staff presented a second study session which detailed the suggested amendments to the code along with council directions for additional changes. At the May 5, 2016 council meeting, council reviewed the ordinance and directed staff to table the topic brought forth by stakeholders. On May 19, 2016, the topic was removed from the agenda. On July 21, 2016, staff presented a third study session with council direction for additional changes.

On August 18, 2016, Ken Troutman, representing People's Bank, spoke to council regarding determining the correct method to resolve the blighted homes problem in Medford. Councilmember Jackle stated he preferred more discussion and would like to create a work group. Councilmember Bunn asked Mr. Troutman to suggest who should attend a meeting on this process; Mr. Troutman recommended representatives from the credit union, People's Bank, and Wells Fargo. On October 14, 2016, a meeting was held at the Lausmann Annex to discuss receivership and definition of owner with Councilmembers Bunn and Jackle, City Attorney's Cooper and McConnell, City Building Department Barnum and Garvin, representing the Police Department Lane and Gish, representing the banking associations Erb, Sherman and Muckey, and representing title companies Auerbach and Mania.

ANALYSIS

The ordinance will apply to all residential and commercial properties in the city.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

No change to the current budget.

TIMING ISSUES

None.



CITY OF MEDFORD
AGENDA ITEM COMMENTARY

Item No: 60.1

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COUNCIL OPTIONS

Approve, modify or deny the ordinance.

STAFF RECOMMENDATION

Staff recommends approval of the ordinance.

SUGGESTED MOTION

I move to approve the ordinance amending Medford Municipal Code repealing sections 9.350 and 9.400, amending section 9.660, and adding sections 9.900 through 9.914 to adopt the International Property Maintenance Code.

EXHIBITS

Ordinance

ORDINANCE NO. 2016-56

AN ORDINANCE repealing sections 9.350 and 9.400 of the Medford Code, amending section 9.660, and adding sections 9.900 through 9.914 to adopt the International Property Maintenance Code.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

SECTION 1. Section 9.350 of the Medford Code is hereby repealed:

~~9.350 Adoption of the Uniform Housing Code, as Modified.~~

~~(1) The Uniform Housing Code, 1997 Edition, published and copyrighted by the International Conference of Building Officials is hereby adopted in its entirety, except as hereinafter specifically modified, as an ordinance of the City of Medford, to be hereinafter referred to as the Housing Code; one copy of which is on file in the City of Medford Building Safety Department.~~

~~(2) Section 204 of the Housing Code is modified to read as follows:~~

~~204. Citations for violations shall be issued in conformance with Medford Code Section 2.855 "Uniform Short Form Complaint and Citation."~~

~~(3) Section 302.1 is added to Section 302 of the Housing Code to read as follows:~~

~~302.1. When a building permit is not required but inspection to insure compliance with the provisions of the Housing Code is required as a condition of sale or as a condition of financing the sale or improvement of the property in question, the following fees shall be paid to the Building Safety Department to defray the costs of such inspection:~~

~~——— 1. \$50.00 for a Single Family Residence.~~

~~——— 2. \$75.00 for a Multiple Family Residence up to three (3) dwelling units.~~

~~——— 3. \$200.00 for a Multiple Family Residence over three (3) dwelling units.~~

~~(4) Section 1401(a) is modified by deleting the last sentence of the paragraph.~~

SECTION 2. Section 9.400 of the Medford Code is hereby repealed:

~~9.400 Adoption of the Uniform Code for the Abatement of Dangerous Buildings.~~

~~(1) The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published and copyrighted by the International Conference of Building Officials is hereby adopted in its entirety, except as hereinafter specifically modified, as an ordinance of the City of Medford, to be hereinafter referred to as the Dangerous Building Code; at least one copy of which is on file in the City of Medford Building Safety Department.~~

~~(2) Section 203 of the Dangerous Building Code is modified to read as follows:~~

~~203. Citations for violations shall be issued in conformance with Medford Code Section 2.855 "Uniform Short Form Complaint and Citation."~~

~~(3) Section 701(1) is modified by deleting the last sentence of the paragraph.~~

~~(4) Sections 901, 902 and 903 of the Dangerous Building Code are modified by substituting the term "City Recorder" for the term "Clerk."~~

~~(5) Section 905 of the Dangerous Building Code is modified to read as follows:~~

~~905. Assessment. After the proceedings described in Section 904 of this Code, the City Council~~

may order that the said charge be imposed as a special assessment against the real property involved. ~~If the Council orders that the charge be assessed against the property, it shall impose the assessment by ordinance, cause the same to be entered in the docket of City Liens, and thereafter the said assessment shall constitute a lien against said property, enforceable in the same manner as liens for street improvements and shall bear interest at the rate specified in Section 3.470(2) of the Medford Code, beginning 10 days after the entry of the lien in the lien docket.~~

~~(6) The Dangerous Building Code is further modified by omitting therefrom Sections 906, 908, 909, 910, 911 and 912.~~

SECTION 3. Section 9.660 of the Medford Code is amended to read as follows:

9.660 Violations; Penalties; Remedies.

(1) No person, **firm, corporation or other entity however organized**, shall erect, **construct**, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain a building or structure in the city, or cause the same to be done, contrary to or in violation of this chapter.

~~(2) Violations of a provision of this chapter constitutes a violation, and is punishable by an administrative civil penalty in accordance with ORS 455.895.~~ **shall be subject to an administrative civil penalty not to exceed \$5,000 or, in the case of a continuing violation as defined in subsection (3) of this section, not more than \$1,000 for each day of the violation and shall be processed in accordance with the procedures set forth in this code.**

(3) Each day that a violation of a provision of this chapter exists constitutes a separate violation.

(4) The penalties and remedies provided in this Section are not exclusive and are in addition to other penalties and remedies available to the City under the Code or other law.

SECTION 4. Section 9.900 of the Medford Code is added to read as follows:

9.900 Adoption of the International Property Maintenance Code.

This article shall be known and may be cited as the Property Maintenance Code of Medford, hereinafter referred to as the "IPMC", one copy of which is on file in the City of Medford Police Department, Code Enforcement Division.

SECTION 5. Section 9.901 of the Medford Code is added to read as follows:

9.901 Additions to the International Property Maintenance Code.

(1) **The International Property Maintenance Code, 2012 Edition, published and copyrighted by the International Code Council, Inc., is hereby adopted in its entirety, except as added, repealed or amended below, as an ordinance of the City of Medford, to be administered and enforced along with such further amendments contained herein.**

(2) **When the phrase "the code official shall" is used in the IPMC with respect to enforcement, it refers to the Manager's discretionary option, rather than a mandatory obligation, to choose the course of action that would be appropriate when a violation of the code is found. The phrase "code official shall" does not impose on the city a mandatory duty**

to implement particular enforcement procedures.

(3) The following sections are ADDED to the IPMC:

304.13.3 Window Sill Height. Windows in sleeping rooms that are provided to meet emergency escape or rescue requirements shall meet the requirements of the Oregon Residential Specialty Code, Section 310.1.

Exception: Window sill heights constructed in accordance with code requirements in place for sleeping rooms at the time of construction.

304.13.4 Ability to Open. Every window required for ventilation or emergency escape shall be capable of being easily opened and held open by window hardware and shall meet the requirements of the Oregon Residential Specialty Code, Section 310.1.4.

304.13.5 Minimum Dimensions. Windows in sleeping rooms that are required to meet emergency escape or rescue requirements shall meet the requirements of the Oregon Residential Specialty Code, Section 310.1.1.

Exception: Window dimensions constructed in accordance with code requirements in place for sleeping room at the time of construction. [Added]

705.1 Carbon Monoxide Detectors. Carbon monoxide alarms shall be installed, maintained and repaired in residential units in accordance with the Oregon Residential Specialty Code, Section 315.

(4) The following sections of the IPMC are REPEALED in their entirety:

102.6	Historic Buildings.
103.3	Deputies.
103.5	Fees
106	Violations
111	Means of Appeal
304.14	Insect Screens.

(5) The following sections of the IPMC are AMENDED to read as follows:

101.1 Title. These regulations shall be known as the International Property Maintenance Code of the City of Medford, hereinafter referred to as the "IPMC." [Amended]

102.3 Application of other codes. Repairs, additions or alterations to a structure, changes of occupancy and all other work required under the IPMC shall be done in accordance with the procedures and provisions of the Oregon Specialty Codes. Nothing in this code shall be construed to cancel, modify or set aside any provision of Chapter 9 of the Medford Municipal Code. [Amended]

SECTION 103 RESPONSIBILITIES FOR PROPERTY MAINTENANCE

INSPECTION [Amended]

103.1 General. Property maintenance inspection is hereby the responsibility of the Medford Police Department. [Amended]

103.4 Liability. The provisions and protections of the Oregon Tort Claims Act, ORS 30.265 et. seq. shall apply to all city officials, agents and employees charged with the enforcement of the IPMC. The IPMC shall not be construed to relieve from or lessen the responsibility of any non-city agent or employee, including but not limited to any owner, owner's agent, builder, contractor, agent or employee of any builder or contractor, or any person owning, operating or controlling any building, structure or premises, for any damages to persons or property caused by defects or violations of this code, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspections authorized by this code or any permits or certificates issued under this code. [Amended]

110.1 General. The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than six months, the code official shall order the owner to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond six months, unless approved by the building official. [Amended]

111.1 Application for appeal. Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the Unified Board of Appeals, pursuant to Medford Municipal Code 9.662. [Amended]

112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be considered to be committing a violation and will be subject to a notice of civil penalty as prescribed in Medford Municipal Code, Chapter 9.660 (2). [Amended]

201.3 Terms Defined in Other Codes. Where terms are not defined in the IPMC and are defined in the Oregon Specialty Codes and Chapter 9 of the Medford Municipal Code, such terms shall have the meanings ascribed to them as stated in those codes. [Amended]

SECTION 202. GENERAL DEFINITIONS

Where terms are not defined in the IPMC or other code section and are defined in the Oregon Specialty Codes, such terms shall have the meanings ascribed to them as in those codes.

Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies. Whenever the words “premises,” “building” or other similar words are stated in the IPMC, they shall be construed as though they were followed by the words “or any part thereof.” Unless otherwise expressly stated, the following terms shall, for the purposes of the IPMC, have the following meanings:

ATTRACTIVE NUISANCE. A condition that can attract children and be detrimental to the health or safety of children whether in a building, on the premises of a building or upon an unoccupied lot. This includes, but is not limited to: abandoned buildings, abandoned wells, shafts, basements, excavations, abandoned freezers or refrigerators with self-latching doors, motor vehicles, structurally unsound fences or structures, lumber, trash, fences, debris, or water feature that may prove hazardous for inquisitive minors.

BOARDED BUILDING. An unoccupied or derelict building that has been secured against entry by material such as plywood, boards or other similar material placed over openings that are designed for and/or are required for windows and doors, and which is visible off the premises and is not both lawful and customary to install on an occupied structure.

BUILDING. Any structure occupied or intended for any occupancy.

DERELICT STRUCTURE. Any structure that meets any one of the following:

- (1) unoccupied and unsecured,
- (2) partially constructed without an active building permit,
- (3) maintained in a condition that is an imminent threat to public health and safety.

DETERIORATION. A lowering in quality of the condition or appearance of a building, structure or parts thereof characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, or any other evidence of physical decay, neglect, excessive use, or lack of maintenance.

MANAGER. The City Manager or appointed representative(s) who is responsible for supervising, administering and enforcing all aspects of this code.

OWNER.

- 1) The holder of fee title to the property, except the seller on a land sale contract that has not been foreclosed;
- 2) A person who is the purchaser of the property on a land sale contract and who has a current right to possession of the property;
- 3) A person who is obligated on a mortgage loan or trust deed loan secured by the

- property and has a current right to possession of the property;
- 4) A person who has foreclosed any land sale contract, mortgage, trust deed or lien applicable to the property and has purchased the property at the foreclosure sale; and
 - 5) Any successor in interest to any of the persons described in subsections (2) through (4) who has a current right to possession of the property.

PARTIALLY CONSTRUCTED. An occupied or vacant structure, or portion thereof, that has been left in a state of partial construction for more than six months or after the expiration of any building permit, or that has not had a required permit inspection within any six-month period.

RENEWABLE ENERGY SYSTEM. Systems which produce energy from sources that do not use up finite natural resources. Examples include, but are not limited to, solar, wind, biomass, geothermal, and micro-hydro systems.

UNOCCUPIED. Vacant or not being used for a lawful occupancy. [Amended]

302.4 Weeds. All premises and exterior property shall be maintained free from weeds or plant growth in accordance with Medford Municipal Code 7.410, 7.420, 7.430 and 7.440. [Amended]

Motor Vehicles. Except as provided for in other provisions of the IPMC, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled pursuant to Medford Municipal Code 5.505 (2). [Amended]

302.8 Defacement of Property. The owner or occupant of the property, or person in charge of property, shall comply with the requirements of Medford Municipal Code 5.519. [Amended]

304.3 Premises identification. Each structure to which a street number has been assigned shall have such number displayed in a position easily observed and readable from the public right-of-way as required by the Oregon Fire Code, and maintained. [Amended]

304.13.1 Glazing. All glazing materials shall be maintained free from cracks and holes. Glazing with holes, cracks, or that is partially or wholly missing shall be replaced within thirty (30) calendar days of the incident that caused the defect. [Amended]

401.3 Alternative devices. In lieu of the means for natural light and ventilation herein prescribed in Sections 402 and 403 of this code, artificial light or mechanical ventilation complying with the Oregon Specialty Codes shall be permitted. [Amended]

403.4 Process ventilation. Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system that is in compliance with the Oregon

Specialty Codes shall be provided to remove the contaminating agent at the source. Air shall be exhausted to the exterior and not be recirculated to any space.

Exception: Range hoods constructed in accordance with code requirements in place at the time of construction. [Amended]

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the provisions of the Oregon Specialty Codes. [Amended]

505.4 Water heating facilities. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 120°F (49°C). A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom (or in a closet serving that room), or any other occupied room normally kept closed, unless adequate combustion air is provided (exception only applies to "other occupied room".) An approved combination temperature and pressure- relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters. [Amended]

602.2 Residential Occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room year-round temperature of 68°F (20°C) in all habitable rooms. Cooking appliances shall not be used to provide space heating to meet the requirements of this section. Portable space heating devices shall not be used to meet the dwelling heat requirements of this code. No inverted or open flame fuel-burning heater shall be permitted. All heating devices or appliances shall be of an approved type. [Amended]

602.3 Heat Supply. Every dwelling unit shall be provided with heating facilities capable of maintaining a minimum room temperature of 68°F (20°C) at a point 3 feet (914 mm) above the floor and 2 feet (610 mm) from exterior walls in all habitable rooms at the design temperature. [Amended]

602.4 Occupiable Work Spaces. Indoor occupiable work spaces shall be supplied with heat to maintain a year-round temperature of not less than 68°F (20°C) during the period the spaces are occupied. [Amended]

603.1 Mechanical appliances. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function. Mechanical ventilation systems for range hoods and bathrooms shall be maintained in sound working order meeting manufacturer specifications for operation and function. [Amended]

604.2 Service. The size and usage of appliances and equipment shall serve as a basis for

determining the need for additional facilities in accordance with the Oregon Specialty Codes. Dwelling units shall be served by a three-wire, 120/240 volt, single-phase electrical service having a rating of not less than 60 amperes. [Amended]

606.1 General. Elevators, dumbwaiters and escalators shall be maintained in compliance with the Oregon Elevator Specialty Code. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, be available for public inspection in the office of the building operator or be posted in a publicly conspicuous location approved by the code official. The inspection and tests shall be performed at not less than the periodic intervals listed in the Oregon Elevator Specialty Code, except where otherwise specified by the authority having jurisdiction. [Amended]

702.1 General. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the Oregon Specialty Codes. [Amended]

702.2 Aisles. The required width of aisles in accordance with the Oregon Specialty Codes. [Amended]

702.3 Locked Doors. All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the Oregon Specialty Codes. [Amended]

704.1 General. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the Oregon Specialty Codes. [Amended]

704.2 Smoke Alarms. Single or multiple-station smoke alarms shall be installed and maintained in Groups— R-2, R-3, R-4 and in dwellings not regulated in Group R, regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
2. In each room used for sleeping purposes.
3. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level. Single or multiple—station smoke alarms shall be installed in other groups in accordance with the Oregon Specialty Codes. [Amended]

SECTION 6. Section 9.902 of the Medford Code is added to read as follows:

9.902 Responsibility.

Unless otherwise provided for, the Manager shall be responsible for the ultimate enforcement of all of the provisions of the IPMC. The Manager may appoint such enforcement officers, technical assistants, inspectors and other employees as may be necessary for the administration of the IPMC. For the purpose of the IPMC, any person so appointed will be deemed a “code official” as defined in the IPMC. The Manager is authorized to designate an employee who shall exercise all the powers of the Manager during the temporary absence or disability of the Manager.

Where work is required to be done to correct violations under the IPMC any and all permits required for such work by the Building Code shall be obtained. All final inspections shall be approved for the associated permits prior to the violations being considered resolved.

SECTION 7. Section 9.903 of the Medford Code is added to read as follows:

9.903 Modifications.

In the event of extreme hardships involved in carrying out provisions of the IPMC relating to external conditions and derelict structures, the Manager shall have the right to vary or modify the provisions of the IPMC upon application of an owner, provided that the spirit and intent of the law is observed and that the public health and safety is assured.

SECTION 8. Section 9.904 of the Medford Code is added to read as follows:

9.904 Emergency Repair.

The use of tarps or similar material for the purpose of an emergency repair, or temporarily in place of a customary building component such as a roof, siding or a door, shall not exceed 90 days in any consecutive 12 month period; provided, however, that this subsection is subject to, and does not supersede, the requirements of the Building Code and Fire Code. The use of tarps or similar material in place of a customary building component is not permitted under the Building Code.

SECTION 9. Section 9.905 of the Medford Code is added to read as follows:

9.905 Weather Proofing and Screens.

Where windows and doors have been sealed by plastic or other materials for weather proofing, said materials shall be maintained in a workmanlike manner. Window and door screens, while not required by the IPMC, shall be maintained in a sound working condition.

SECTION 10. Section 9.906 of the Medford Code is added to read as follows:

9.906 Derelict Structures Prohibited.

Derelict structures are prohibited.

SECTION 11. Section 9.907 of the Medford Code is added to read as follows:

9.907 Closing and Securing of Derelict Structures.

The Manager may order appropriate measures to render a derelict structure secure from entry. The securing of the structure shall be by methods calculated to render entry very difficult, including, but not limited to, the use of lag screws in the boarding of entry points, instead of nailing. In order to perform the function or duty authorized or required under this section, city representatives and their agents shall have the right at reasonable times to enter upon the property and render a derelict structure secure from entry. If consent to inspect or secure the property is refused, the City shall apply for an inspection warrant. The costs incurred by the city in boarding or securing a derelict structure may be assessed to the property owner and collected as costs of abatement under Medford Municipal Code 5.520.

SECTION 12. Section 9.908 of the Medford Code is added to read as follows:

9.908 Derelict Structure Registration.

- (1) The Manager shall maintain a list of derelict structures.
- (2) The owner of a derelict structure shall register the structure with the Manager within 10 calendar days of the Manager's written direction to register. Registration shall be completed on forms provided by the Manager, and shall include:
 - (a) the location of the property;
 - (b) the ownership of the property, including address, phone number, and email address;
 - (c) the expected period of its vacancy;
 - (d) a schedule for inspection and maintenance of the property during the period of vacancy;
 - (e) the agent responsible for inspection and maintenance, including address, phone number, and email address;
 - (f) a plan for re-occupancy and use of the structure, or its demolition; and
 - (g) a provision whereby the owner of the structure shall indemnify, defend and hold the city harmless from any and all claims asserted against the city by third parties stemming from injuries to persons or to property as a result of the condition or accessibility of the structure.
- (3) The registration and plan are subject to review and approval by the Manager.
- (4) Any change in the information provided pursuant to this subsection shall be given to the Manager within 30 calendar days of the change. When the owner believes the structure is no longer derelict the owner shall contact the Manager and request an inspection to determine that the structure is no longer derelict.

SECTION 13. Section 9.909 of the Medford Code is added to read as follows:

9.909 Temporary Waivers of Enforcement Action.

- (1) The Manager may issue a temporary waiver of enforcement action, which will give a

period of time that the Manager determines is reasonable, but no longer than six months, to correct the violations found. The length of time given will depend on several factors, such as the extent and cost of the repairs, seriousness of the conditions, financial capacity of the owner, and the time of year. During the waiver period, the affected residential rental unit(s) may not be occupied.

(2) The Manager may revoke the waiver if any of the conditions that allowed the owner to qualify for a waiver change. Because the waiver is granted to a specific property owner, the waiver automatically terminates upon change in ownership. The Manager may, assist the owner in obtaining information regarding financial or other assistance to make the necessary repairs.

SECTION 14. Section 9.910 of the Medford Code is added to read as follows:

9.910 Hardship Waivers of Enforcement Action.

(1) The Manager may issue a hardship waiver of enforcement action only if the owner currently Legally resides on the property. A hardship waiver may be issued only in those instances when the owner is found by the Manager to be over 65 years of age, disabled, or classified as “very low income” under the US Department of Housing and Urban Development (HUD) standards. Hardship waivers shall not exceed three years. The income level of the owner will be reevaluated before the end of the three year waiver period. Application for a hardship waiver must be filed with the Manager in writing. The Manager may require the owner to supply all information necessary to demonstrate the owner’s eligibility for the waiver. The owner must submit a separate application for waiver for each notice of complaint and violation.

(2) The Manager may revoke the waiver if any of the conditions that allowed the owner to qualify for a waiver change. Because the waiver is granted to a specific property owner, the waiver automatically terminates upon change in ownership or tenure of the property.

(3) The owner may reapply for new hardship waivers to become effective at the expiration of the term of any hardship waiver previously granted.

(4) The Manager may assist the owner in obtaining information concerning financial or other assistance to make the necessary repairs.

SECTION 15. Section 9.911 of the Medford Code is added to read as follows:

9.911 Penalty and Appeal Rights.

Violation of any section of the IPMC/Oregon Specialty codes shall be subject to the violation, penalties and remedies of Medford Municipal Code Section 9.660 to 9.662.

SECTION 16. Section 9.912 of the Medford Code is added to read as follows:

9.912 Liens and Assessments

Abatement costs, late payment charges, reinspection fees, or other fees or charges imposed under the IPMC, shall be paid within 30 calendar days of imposition of the fees. The City Council may order that the said charge be imposed as a special assessment against the real

property involved. If the Council orders that the charge be assessed against the property, it shall impose the assessment by ordinance, cause the same to be entered in the docket of City Liens, and thereafter the said assessment shall constitute a lien against said property, enforceable in the same manner as liens for street improvements and shall bear interest at the rate specified in section 3.470(2) of the Medford Code, beginning 15 days after the entry of the lien in the lien docket.

SECTION 17. Section 9.913 of the Medford Code is added to read as follows:

9.913 Application of Other Codes.

Nothing in the IPMC shall be construed to relieve a person from complying with any federal, state or local law, including any other provisions of the Oregon Specialty Codes, or the requirement to obtain all necessary permits and approvals.

SECTION 18. Section 9.914 of the Medford Code is added to read as follows:

9.914 Coordination of Enforcement.

The Manager shall make reasonable effort to arrange for the coordination of enforcement efforts and any necessary inspections in an effort to minimize conflicts between the activities of affected city departments.

PASSED by the Council and signed by me in authentication of its passage this ____ day of _____, 2016.

ATTEST: _____
City Recorder

Mayor

APPROVED _____, 2016.

Mayor

NOTE: Matter in **bold** 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 AGENDA ITEM COMMENTARY

Item No: 60.2

www.ci.medford.or.us

DEPARTMENT: Legal **AGENDA SECTION:** Ordinances and Resolutions
PHONE: (541) 774-2020 **MEETING DATE:** December 1, 2016
STAFF CONTACT: Kevin McConnell, Deputy City Attorney

COUNCIL BILL 2016-142

An ordinance adding sections 9.400, 9.405, 9.410, 9.415, 9.420, 9.425, 9.430, 9.435, 9.440, 9.445 and 9.450 of the Medford Code pertaining to housing receivership.

SUMMARY AND BACKGROUND

An ordinance adopting the Housing Receivership Ordinance of the City of Medford ("the Ordinance").

PREVIOUS COUNCIL ACTIONS

Study Sessions were held on March 24, 2016 and June 23, 2016.

ANALYSIS

The Ordinance implements the Oregon Housing Receivership Act (ORS 105.420 to 105.455; "the Act"). Its purposes include adding to the City's affordable housing stock, ensuring that residential properties comply with the City's building and housing codes, combating urban blight and community deterioration, and protecting the public's health, safety, and welfare.

The Ordinance applies to any property used or intended to be used for residential purposes. It provides a potent remedy for violation of its building or housing codes. Although an available remedy for any residential property in violation of the City's housing or building codes, it will be the primary enforcement mechanism for vacant and/or boarded up residential properties abandoned by their owners.

Per the Ordinance, if the Building Director ("the Manager") determines that a property is in violation of a city building or housing code, and in the exercise of reasonable discretion determines that the violation is a threat to the public health, safety, or welfare, then the Manager may apply to the Jackson County Circuit Court for the appointment of a receiver to abate the violation and rehabilitate the property. A receiver may be a city department, urban renewal agency, or entity such as a non-profit corporation whose primary purpose is improvement of housing conditions within the City.

If no party with an interest in the property corrects the code violations in the time provided by law, the court will appoint the receiver. A receiver's authority is very broad under the Ordinance and Act. A receiver may, among other things, take possession and control of the property, modify/terminate tenancies, charge and collect rents, pay expenses to maintain property, dispose of abandoned property, enter into contracts to abate/rehabilitate the property, and enter into financing agreements with public/private lenders to obtain funding to abate/rehabilitate the property.

Under the Act, the recovery of costs is not limited to those incurred to cure the building or housing code violations. *City of Portland v. Ristick*, 150 Or App 1, 3-4 (1997). The receiver may also perform and recover the costs for any work necessary to complete the abatement (*i.e.*, making such other improvements or corrections as needed to effect the rehabilitation of the property or structure). The receiver may also charge an administrative fee, which can be an hourly rate or 15% of total cost of abatement. The administrative fee awarded is within the discretion of the court. If the court finds the costs of abatement to be reasonable and necessary, it shall issue an order to that effect.

If the costs of abatement are not paid, a court order constitutes a lien on the property. Thereafter, the lien may be foreclosed in accordance with state law or City ordinance.



CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 60.2

www.ci.medford.or.us

The City anticipates that the responsible use of the Ordinance will compel owners and/or lienholders that have routinely ignored building and housing code violation citations to remove boards from residential properties and complete required repairs, increasing the chance that these properties will then be offered for sale.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

If a city department were appointed as receiver, the City would need to pay for the performance of any work necessary to complete the abatement. If a nonprofit agency were appointed receiver, it would be up to that agency to do so. However, any receiver would be able to recoup its costs by collecting costs from an interested party or placing a lien on the property. If a lien is placed on the property, it is generally deemed to be prior and superior to all other liens, mortgages and encumbrances against the property upon which it is imposed.

TIMING ISSUES

None.

COUNCIL OPTIONS

Approve or deny the ordinance.

STAFF RECOMMENDATION

Staff recommends approval of the ordinance.

SUGGESTED MOTION

I move to approve the ordinance implementing the Oregon Housing Receivership Act.

EXHIBITS

Ordinance
The Act

ORDINANCE NO. 2016-142

AN ORDINANCE adding sections 9.400, 9.405, 9.410, 9.415, 9.420, 9.425, 9.430, 9.435, 9.440, 9.445 and 9.450 of the Medford Code pertaining to housing receivership.

Section 1. Section 9.400 of the Medford Code is hereby added to read as follows:

9.400 Title, Purpose, and Scope; Findings.

This ordinance shall be known and may be cited as the “Housing Receivership Ordinance of the City of Medford.” The purpose of the ordinance is to establish authority and procedures for the use of the Oregon Housing Receivership Act (ORS 105.420 to 105.455), and shall apply to all residential property. The remedies provided for in this ordinance shall be in addition to any other remedy set out in the Code.

In addition to the Oregon Legislature’s findings set out at ORS 105.420, the Council specifically finds that properties in violation of the Act create an undue risk of harm to the City’s public safety officers and firefighters responding to calls at these properties, as well as neighboring citizens. The Council declares that the health, safety and welfare of citizens, public safety officers and firefighters are promoted by adopting and implementing the Housing Receivership Ordinance of the City of Medford.

Section 2. Section 9.405 of the Medford Code is hereby added to read as follows:

9.405 Definitions.

(1) “Abatement” means the removal or correction of any condition at a property including demolition that violates a provision of a City building or housing code, as well as the making of other such improvements or corrections as are needed to effect the rehabilitation of the property or structure, but not including the closing or physical securing of the structure.

(2) “Building or housing code” means any City law, ordinance or regulation concerning habitability or the construction, maintenance, operation, occupancy, use or appearance of any property.

(3) “Interested party” means any person or entity that possesses any legal or equitable interest of record in the property, including but not limited to the holder of any lien or encumbrance of record on the property.

(4) “Property” means any real property and all improvements thereon including edifices, structures, buildings, unit or part thereof used or intended to be used for residential purposes including single-family, duplex, multifamily, and mixed-use structures which have one or more residential units.

Section 3. Section 9.410 of the Medford Code is hereby added to read as follows:

9.410 Authority.

(1) When the Manager finds that a property is in violation of a building or housing code, and in the exercise of reasonable discretion believes that violation is a threat to the public’s health, safety, or welfare, the Manager may apply to a court of competent jurisdiction for the

appointment of a receiver to perform an abatement.

(2) In administering the provisions of this ordinance, the Manager's authority shall include, but is not limited to:

- (a) The selection of properties, subject to Council approval;**
- (b) The selection of appropriate receivers, subject to Council approval; and**
- (c) The establishment of written rules and procedures as are deemed necessary for the administration of this ordinance.**

Section 4. Section 9.415 of the Medford Code is hereby added to read as follows:

9.415 Selection of Properties.

In selecting properties where the City may seek appointment of a receiver, the Manager shall consider those properties that have, at a minimum, the following characteristics:

- (1) A violation of a building or housing code that threatens the public health, safety, or welfare; and**
- (2) The interested parties have not acted in a timely manner to correct the violations.**

Section 5. Section 9.420 of the Medford Code is hereby added to read as follows:

9.420 Notice to Interested Parties and Application.

(1) At least 60 days prior to the filing of an application for appointment of a receiver, the Manager shall cause a notice to be sent by certified mail to all interested parties.

(2) The notice shall give the date upon which the City has the right to file with the court for the receiver, and in addition shall:

- (a) State the address and legal description of the property;**
- (b) List the building or housing code violations which give rise to the proposed application; and**
- (c) Give the name, address, and telephone number of a person who can provide additional information concerning the violations and their remedy.**

Section 6. Section 9.425 of the Medford Code is hereby added to read as follows:

9.425 Selection of Receivers.

In selecting specific receivers, the Manager shall choose the Jackson County Housing Authority, a City agency or department designated by the City as being responsible for the rehabilitation of property, an urban renewal agency, or a private not-for-profit corporation, the primary purpose of which is the improvement of housing conditions within the City. In making the selection, the Manager shall consider, at a minimum, the following:

- (1) The receiver's experience in rehabilitating and managing this type of property; and**
- (2) The receiver's capacity to take on additional property management responsibilities.**

Section 7. Section 9.430 of the Medford Code is hereby added to read as follows:

9.430 Powers of a Receiver.

A receiver appointed by the court shall have the authority to take any of the actions provided for in ORS 105.435.

Section 8. Section 9.435 of the Medford Code is hereby added to read as follows:

9.435 Plan and Estimate.

Within 30 days after appointment by the court, a receiver shall submit to the Manager a written plan for the abatement. The Manager shall approve the plan before the receiver commences work on the abatement.

Section 9. Section 9.440 of the Medford Code is hereby added to read as follows:

9.440 Record Keeping.

The receiver shall keep a record of all moneys received and expended and all costs and obligations incurred in performing the abatement and managing the property. Records shall be kept in a form as shall be agreed upon by the receiver and the Manager, and copies shall be provided to the Manager upon request.

Section 10. Section 9.445 of the Medford Code is hereby added to read as follows:

9.445 Purchasing.

Excepting Medford Code section 2.509, all abatement work done pursuant to this ordinance is exempt from the provisions of the City's contracting and purchasing code.

Section 11. Section 9.450 of the Medford Code is hereby added to read as follows:

9.450 Lien Enforcement; City Agency or Department as Receiver; Foreclosure.

In accordance with ORS 105.440(2), unpaid liens shall be entered into the docket of City liens, and shall bear interest at the rate specified in section 3.470(2) of the Medford Code. Thereafter, the City may cause the property to be sold as provided for by ORS 223.505 to 223.590, or any other method provided by law.

PASSED by the Council and signed by me in authentication of its passage this _____ day of _____, 2016.

ATTEST: _____
City Recorder

Mayor

APPROVED _____, 2016.

Mayor

O.R.S. § 105.420
105.420. Legislative findings

- (1) The Legislative Assembly recognizes that there exists residential property in this state that is insanitary and unsafe and that many citizens, especially those with lower incomes, are forced to live in and occupy these properties.
- (2) The Legislative Assembly further recognizes that there are residential properties in this state that have not been maintained in compliance with basic sanitary and habitability standards and which have become abandoned. These conditions contribute to the spread of disease and criminal activity, create urban blight and community deterioration, adversely affect the state's economic and social viability and otherwise detrimentally impact the public's health, safety and welfare.
- (3) In order to correct these conditions, it is necessary to revitalize these residential properties and thus add to the overall housing stock of this state. The Legislative Assembly deems it necessary to authorize county and municipal governments to adopt and implement receivership programs to allow for the upgrading of substandard and abandoned residential properties.

O.R.S. § 105.425
105.425. Definitions

As used in ORS 105.420 to 105.445 and 105.455:

- (1) "Abatement" means the removal or correction of any condition at a property including demolition that violates the provisions of any duly enacted building or housing code, as well as the making of such other improvements or corrections as are needed to effect the rehabilitation of the property or structure, but not including the closing or physical securing of the structure.
- (2) "Building code" or "housing code" means any law, ordinance or governmental regulation concerning habitability or the construction, maintenance, operation, occupancy, use or appearance of any property.
- (3) "Governing body" means the city council, board of commissioners, county court or other managing board of a municipality or county.
- (4) "Interested party" means any person or entity that possesses any legal or equitable interest of record in the property, including but not limited to the holder of any lien or encumbrance of record on the property.
- (5) "Property" means real property and all improvements thereon including edifices, structures, buildings, unit or part thereof used or intended to be used for residential purposes including

single-family, duplex, multifamily structures and mixed-use structures which have one or more residential units.

O.R.S. § 105.430

105.430. Receivership for residential property in violation of building or housing codes constituting threat; procedure

(1) If residential property is found to be in violation of building or housing codes which the city or county, in the exercise of reasonable discretion believes constitutes a threat to the public health, safety or welfare, the city or county in addition to any other remedies available to it may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement.

(2) At least 60 days prior to the filing of an application for appointment of a receiver pursuant to ORS 105.420 to 105.455, the city or county shall give written notice by regular mail to all interested parties of its intent to file the application and information relative to:

(a) The identity of the property;

(b) The violations of the building or housing codes giving rise to the application for the receiver;

(c) The name, address and telephone number of the person or department where additional information can be obtained concerning violations and their remedy; and

(d) The city or county which may seek the appointment of a receiver pursuant to ORS 105.420 to 105.455 unless action is taken within 60 days by an interested party.

(3) A city or county may not apply for the appointment of a receiver pursuant to ORS 105.420 to 105.455 if an interested party has commenced and is then prosecuting in a timely fashion an action or other judicial or nonjudicial proceeding to foreclose a security interest on the property, or to obtain specific performance of or forfeit the purchaser's interest in under a land sale contract.

(4) Notice of the application for the appointment of a receiver pursuant to ORS 105.420 to 105.455 shall be served on all interested parties.

(5) If, following the application for appointment of a receiver, one or more of the interested parties elects to correct the conditions at the property giving rise to the city's or county's application for the appointment of a receiver, the party or parties shall be required to post security in an amount and character as the court deems appropriate to insure timely performance of all work necessary to make corrections, as well as such other conditions as the court deems appropriate to effect the timely completion of the corrections by the interested party or parties.

(6) In the event that no interested party elects to act pursuant to subsection (5) of this section or fails to timely perform work undertaken pursuant to subsection (5) of this section, the court shall

make a determination that the property is an unsafe or insanitary condition and appoint a receiver to complete the abatement.

(7) A receiver may be any one of the following:

(a) A housing authority organized under the terms of ORS 456.055 to 456.235;

(b) An urban renewal agency organized under the terms of ORS 457.035 to 457.320;

(c) A private not-for-profit corporation, the primary purpose of which is the improvement of housing conditions within the city or county; or

(d) A city or county agency, bureau or similar subdivision designated by the city or county as being responsible for the rehabilitation of property.

(8) A receiver appointed by the court pursuant to ORS 105.420 to 105.455 shall not be required to give security or bond of any sort prior to appointment.

O.R.S. § 105.435

105.435. Powers and duties of receiver; financing agreements; fee; exemption from public contracting law

(1) A receiver appointed by the court, pursuant to ORS 105.420 to 105.455, shall have the authority to do any or all of the following unless specifically limited by the court:

(a) Take possession and control of the property including the right to enter, modify and terminate tenancies pursuant to ORS 105.105 to 105.161 and to charge and collect rents derived therefrom, applying said sum to the costs incurred due to the abatement and receivership;

(b) Negotiate contracts and pay all expenses associated with the operation and conservation of the property including, but not limited to, all utility, fuel, custodial, repair or insurance costs;

(c) Pay all accrued property taxes, penalties, assessments and other charges imposed on the property by a unit of government as well as any accruing charge of like nature accruing during the pendency of the receivership;

(d) Dispose of any or all abandoned personal property found at the structure; and

(e) Enter into contracts and pay for the performance of any work necessary to complete the abatement.

(2) In addition to the powers set forth in subsection (1) of this section, the receiver may, under such terms and condition as a court shall allow, enter into financing agreements with public or private lenders and encumber the property therewith so as to have moneys available to correct the conditions at the property giving rise to the abatement.

(3) A receiver may charge an administrative fee at an hourly rate approved by the court or at a rate of 15 percent of the total cost of the abatement, whichever the court deems more appropriate.

(4) All abatement work done under ORS 105.420 to 105.455 is exempt from the public contracting statutes set forth in ORS 279C.005, 279C.100 to 279C.125 and 279C.300 to 279C.470 and ORS chapters 279A and 279B, except ORS 279A.125, 279A.250 to 279A.290 and 279B.235.

O.R.S. § 105.440

105.440. Review of receiver's expenditures by court; lien for unpaid expenses

(1) All moneys expended and all costs and obligations incurred by the receiver in performing the abatement shall be reviewed by the court for reasonableness and their necessity in performing the abatement. To the extent that the court finds the moneys, costs or obligations, or any combination thereof, to be reasonable and necessary, it shall issue an order reciting this fact as well as the amount found to be reasonable and necessary.

(2) If the costs and obligations incurred due to the abatement have not been paid, the order of the court shall be filed with the county recorder within 60 days of its filing with the court and shall thereafter constitute a lien on the property.

O.R.S. § 105.445

105.445. Purchase money security interest; default; priority of lien abatement expenses

(1) As used in this section, "purchase money security interest" means:

(a) The interest of a vendor under a land sale contract pertaining to the property if the contract was recorded prior to the issuance of the notice under ORS 105.430 (2);

(b) The interest of a mortgagee under a purchase money mortgage if the mortgage was recorded prior to the issuance of the notice under ORS 105.430 (2); or

(c) The interest of a beneficiary under a purchase money trust deed if the trust deed was recorded prior to the issuance of the notice under ORS 105.430 (2).

(2) Notwithstanding any other provision of law or any purchase money security interest, the issuance of the notice under ORS 105.430 (2) shall constitute a default under the purchase money security interest, and if the violations of the building or housing codes listed in the notice are not corrected within 30 days after the mailing of the notice, the vendor, mortgagee or beneficiary under the purchase money security interest may commence proceedings to exercise the remedies set forth in the purchase money security interest.

(3) A lien created by ORS 105.440 (2) shall be prior and superior to any purchase money security interest in the property if:

(a) The city or county gave the holder of the purchase money security interest and any vendee, mortgagor or grantor under such purchase money security interest the notice required under ORS 105.430 (2); and

(b) The holder of the purchase money security interest has not, prior to the appointment of a receiver under ORS 105.430 (6), initiated proceedings or taken other action to foreclose the purchase money security interest or to otherwise gain possession of the property.

(4) A lien created under ORS 105.440 (2) shall, except for property tax liens, assessment liens, liens created by ORS 87.352 to 87.362 and purchase money security interests not covered by subsection (3) of this section, be prior and superior to all other liens, mortgages and encumbrances against the property upon which it is imposed without regard to whether the other liens, mortgages or encumbrances attached to the property before or after the lien created by ORS 105.440 (2) attached.

O.R.S. § 105.450

105.450. Termination of receivership by court order

The receivership authorized pursuant to the terms of ORS 105.420 to 105.455 shall terminate only by an order of the court after a showing by an interested party or the receiver that:

(1) The abatement has been completed;

(2) The costs and obligations incurred due to the abatement have been paid by an interested party or a lien has been filed pursuant to ORS 105.440; and

(3) The interested party will manage the property in conformance with applicable housing codes.

O.R.S. § 105.455

105.455. Short title

ORS 105.420 to 105.430 and 105.455 may be cited as the Oregon Housing Receivership Act.



CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 120.1

www.ci.medford.or.us

DEPARTMENT: Parks & Recreation

PHONE: (541) 774-2483

STAFF CONTACT: Rich Rosenthal, Interim Parks & Recreation Director

AGENDA SECTION: Public Hearings

MEETING DATE: December 1, 2016

Public hearing for consideration of Parks System Development Charge (PSDC) methodology.

SUMMARY AND BACKGROUND

A public hearing for City Council consideration of Parks System Development Charge (PSDC) methodology. The PSDC is a major funding mechanism for projects identified in the 10-year Capital Facilities Plan contained in the City's newly adopted 2016-25 Leisure Services Plan (LSP).

PREVIOUS COUNCIL ACTIONS

On Sept. 16, 1993, City Council approved Resolution 7465 authorizing establishment of PSDCs.

On Jan. 19, 2006, City Council approved Council Bill 2006-14 amending municipal PSDC code and authorizing a PSDC increase.

On April 2, 2009, City Council approved Council Bill 2009-79 revising PSDC methodology effective May 1, 2009.

On March 7, 2013, City Council approved Council Bill 2013-041 adopting the Southeast Area Plan that included Policy 3-E, "City of Medford shall seek to expend parks system development charges collected within the SE Area on park-related improvements within the same SE Area."

On June 4, 2015, City Council approved Council Bill 2015-57 adopting the biennial budget, which contained the appropriation for the LSP and PSDC update process.

On Jan. 14, 2016, the City Council provided direction on the framework for a PSDC update. City Council heard technical analysis and discussed PSDC methodology options during study sessions on May 26, 2016 and Sept. 8, 2016.

On Oct. 20, 2016, City Council approved Council Bill 2016-130 initiating a minor amendment to the City's Comprehensive Plan to include the 2016-25 LSP, including the 10-year Capital Facilities Plan.

ANALYSIS

Current PSDCs have been in place since May 2010, and the prospective revision of PSDCs is one of the final elements in the 2016-25 Leisure Services Plan update process. The City contracted with FCS Group to update PSDC methodology and to document proposed calculations.

PSDCs are charged to new construction development and generate capital to expand capacity for parks, trails and facilities that are outlined in the 10-year Capital Facilities Plan section of the LSP. The project list was developed through extensive community input.

On May 26, 2016, and again on Sept. 8, the City Council directed staff to present two PSDC calculation options for consideration at a public hearing. These options are a uniform cost and an area-specific cost:

- **Uniform Cost** – The proposed rate that would be paid by all development regardless of location.
- **Area-Specific Cost** – Establishment of PSDC rates specific to the Southeast Area and a standard rate for the remainder of Medford.



**CITY OF MEDFORD
AGENDA ITEM COMMENTARY**

Item No: 120.1

www.ci.medford.or.us

At the May 26 study session, Council also provided direction to staff to make every effort to keep the PSDC at or near existing rates. After extensive analysis of projected community growth, service demand and inflation since the most recent update, both proposed methods reflect a PSDC reduction for single-family dwelling units compared to the existing rate:

Uniform Cost

Category	Current PSDC	Proposed	Difference
Single Family dwelling unit	\$ 3,433	\$ 3,391	-42
Multi-Family dwelling unit	\$ 2,533	\$ 2,867	+334
Mobile Home	\$ 2,273	\$ 3,797	+1,524
Accessory Dwelling (Per Unit)	\$ 1,716	\$ 1,956	+240
Assisted Living dwelling unit	\$ 2,533	\$ 2,867	+334
Employee (Per Employee)	\$ 85	\$ 216	+131

Area-Specific Cost

Category	Current PSDC	SE Area	Non-SE Area
Single Family dwelling unit	\$ 3,433	\$ 3,679	\$ 3,210
Multi-Family dwelling unit	\$ 2,533	\$ 3,111	\$ 2,714
Mobile Home	\$ 2,273	\$ 4,120	\$ 3,595
Accessory Dwelling (Per Unit)	\$ 1,716	\$ 2,122	\$ 1,851
Assisted Living dwelling unit	\$ 2,533	\$ 3,111	\$ 2,714
Employee (Per Employee)	\$ 85	\$ 235	\$ 205

While more difficult to administer, the Area-Specific approach allows a community to maximize benefit of a strong construction market in a particular area. Conversely, the Uniform Cost approach is simple and straightforward to administer and to communicate to the public.

Policy 3-E of the Council-approved Southeast Area Plan, which was adopted into the City Comprehensive Plan in January 2016, states that the PSDCs collected in the Southeast Area should be expended in that area. Similarly, the Council could designate other areas of the City for Area-Specific PSDC assessment.

The Area-Specific cost methodology outlined in the FCS document would also allow a percentage of PSDCs to be expended outside of the designated area for a “special use area,” such as an aquatics facility or a recreation center.

At its Sept. 20 meeting, the Parks and Recreation Commission voted 6-2 to recommend the Area-Specific methodology.

If Council selects a new PSDC methodology, City staff will bring back an ordinance for Council consideration to revise the municipal code pertaining to PSDC methodology as well as a resolution formally adopting the new PSDC rates.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

The average PSDC collection since 2012 is approximately \$1 million per fiscal year. The FY16 collection was \$1.375 million. The 2016-25 Capital Facilities Plan contains \$52,832,500 in PSDC-eligible costs.



CITY OF MEDFORD AGENDA ITEM COMMENTARY

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TIMING ISSUES

Staff has identified Jan. 1, 2017 as a logical start date for new PSDC rates. However, the start date is contingent upon when the City Council formally adopts PSDC rates in the form of a resolution.

COUNCIL OPTIONS

Adopt the Area-Specific PSDC Methodology.
Adopt the Uniform PSDC Methodology.
Retain 2010 PSDC rates.

STAFF RECOMMENDATION

Staff recommends approval of the Area-Specific methodology.

SUGGESTED MOTION

I move to approve the [Area Specific or Uniform] parks system development charge methodology, effective Jan. 1, 2017.

EXHIBITS

FCS Group Final Report for Parks System Development Charge Update
2016-25 Capital Facilities Plan
Current Medford SDC Rates and New Development Charges

City of Medford, Oregon



Final Report for
PARKS SYSTEM
DEVELOPMENT CHARGE
UPDATE

September, 2016

FCS GROUP
Building 1, Suite 220
4000 Kruse Way Place
Lake Oswego, OR 97035
503.841.6543

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SECTION 1: INTRODUCTION

This section describes the project scope and policy context upon which the body of this report is based.

PROJECT

The City of Medford (“City”) last updated its parks system development charge (SDC) methodology in 2009.¹ The City’s parks SDCs were last adjusted in 2010, as shown below:

Continuous Improvement
Customer Service



MEDFORD PARKS AND RECREATION DEPARTMENT
SYSTEM DEVELOPMENT CHARGES

As of May 1, 2010 the following rates will be in place.

Single Family Dwelling Unit:	\$3,433.00
Multi-Family Dwelling Unit: (one or more attached units)	\$2,533.00 (rate times # of units)
Mobile Home Park	\$2,273.00 (rate times # of units)
Accessory Dwelling Unit (unit added to existing single family unit)	\$1,716.00
Assisted Living	\$2,533.00
Employee Cost – Commercial	\$85.00 (rate times # of employees)

Creating Healthy Lives, Happy People & A Strong Community
City Hall • 411 W. 8th Street, Rm 225 • Medford, OR 97501 • (541) 774-2400 • Fax (541) 774-2560
www.ci.medford.or.us/parks • parks@cityofmedford.org

¹ Don Ganer & Associates, “Parks and Recreation System Development Charges Methodology Update,” January 27, 2009.

In September, 2015, the City engaged Conservation Technix to update the City's Leisure Services Plan. As part of that effort, the City engaged FCS GROUP to update the City's parks SDC methodology and develop a funding plan for the updated Leisure Services Plan.

We approached this project as a series of three steps:

- **Framework for Charges.** In this step, we worked with City staff to identify and agree on the approach to be used and the components to be included in the analysis. As part of this step, we met with the City Council by telephone on January 14, 2016.
- **Technical Analysis.** In this step, we worked with City staff to isolate the recoverable portion of facility costs and calculate draft SDC rates. As part of this step, we met with City Council on May 26, 2016, to communicate initial analytic results. We then met with City staff on July 29, 2016, to refine the analysis.
- **Draft Methodology Report Preparation.** In this step, we documented the calculation of the draft SDC rates included in this report.

POLICY

SDCs are enabled by state statute and authorized by local ordinance.

State Statutes

Oregon Revised Statutes ("ORS") 223.297 to 223.314 enable local governments to establish SDCs, which are one-time fees on new development that are paid at the time of development. SDCs are intended to recover a fair share of the cost of existing and planned facilities that provide capacity to serve future growth.

ORS 223.299 defines two types of SDC:

- A reimbursement fee that is designed to recover "costs associated with capital improvements already constructed, or under construction when the fee is established, for which the local government determines that capacity exists"
- An improvement fee that is designed to recover "costs associated with capital improvements to be constructed"

ORS 223.304(1) states, in part, that a reimbursement fee must be based on "the value of unused capacity available to future system users or the cost of existing facilities" and must account for prior contributions by existing users and any gifted or grant-funded facilities. The calculation must "promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities." A reimbursement fee may be spent on any capital improvement related to the system for which it is being charged (whether cash-financed or debt-financed).

ORS 223.304(2) states, in part, that an improvement fee must be calculated to include only the cost of projected capital improvements needed to increase system capacity for future users. In other words, the cost of planned projects that correct existing deficiencies or that do not otherwise increase capacity for future users may not be included in the improvement fee calculation. An improvement fee may be spent only on capital improvements (or portions thereof) that increase the capacity of the system for which it is being charged (whether cash-financed or debt-financed).

Local Ordinance

Medford Municipal Code ("MMC") 3.870 to 3.883 authorizes the imposition of parks SDCs in Medford. The provisions of these sections are within the limits specified by statute. However, we

have identified some opportunities to improve these sections of code. We describe these opportunities in detail in Section 3.

SECTION 2: ANALYSIS

This section provides our detailed calculations of the maximum defensible parks SDC.

In general, SDCs are calculated by adding a reimbursement fee component (if applicable) and an improvement fee component—both with potential adjustments. Each component is calculated by dividing the eligible cost by growth in units of demand. The unit of demand becomes the basis of the charge.

GROWTH

The City's park system serves both the residents and employees of Medford. We therefore define growth for the parks SDC as a combination of growth in total population and growth in employment during the planning period.

Current Demand

The calculation of growth begins with the most recent counts for population and employment in Medford. As shown in Table 2.1, 77,655 residents live in Medford, and 43,437 employees work in Medford. Of these, 15,514 people both live and work in Medford.

	Living inside Medford	Living outside Medford	Total
Working inside Medford	15,514	27,923	43,437
Working outside Medford	12,502		
Not working	49,639		
Total	77,655		

Source: 2016-2025 Medford Leisure Services Plan, page 11 (total living inside Medford); U. S. Census Bureau, OnTheMap Application, accessed from <http://onthemap.ces.census.gov/> on May 5, 2016.

Next, we calculate the relative demand of residents and employees. To do that, we estimate the number of hours of potential park use for each of the two groups, as shown in Tables 2.2 and 2.3.

	Living inside Medford	Living outside Medford
Working inside Medford	72	
Working outside Medford	72	
Not working	112	

Source: FCS GROUP.

	Living inside Medford	Living outside Medford
Working inside Medford	15	15
Working outside Medford		
Not working		

Source: FCS GROUP and City staff.

When the hours per week of potential park demand are multiplied by the counts from Table 2.1, we are able to determine the relative demand of residents and employees. As shown in Table 2.4, one employee is equivalent to 0.15 resident.

	Residential Hours	Non-Residential Hours	Total Hours
Working inside Medford	1,117,008	651,555	1,768,563
Working outside Medford	900,144		900,144
Not working	5,559,568		5,559,568
Total	7,576,720	651,555	8,228,275
Hours per resident	98		
Hours per employee		15	
Residents per employee			0.15

Source: Previous tables.

Future Demand

Based on the growth assumptions in the “2016-2025 Medford Leisure Services Plan,” we calculate the growth in residents and employees over the 10-year planning period. Because each employee is equivalent to 0.15 residents, we can combine these growth calculations into the single category of residential equivalents, as shown in Table 2.5.

	2015	2016	2026	Growth from 2016 to 2026
Population	77,655	80,220	111,025	30,805
Employees	43,437	44,872	62,103	17,231
Residential equivalents	84,333	87,119	120,573	33,454

Source: 2016-2025 Medford Leisure Services Plan, page 10 (population in 2026); previous tables. Note: The implied annual growth rate for population from 2015 (77,655 residents) to 2026 (111,025 residents) is 3.30 percent. We used this growth rate to interpolate population and employees for 2016.

The City has expressed a desire to calculate not only parks SDCs that can be charged uniformly throughout the city, but also parks SDCs that vary by geography. Specifically, the City has requested calculations for two areas: (1) the southeast area of the city and (2) the rest of the city. Based on data provided by the City, we allocate growth as shown in Table 2.6.

	2016	2026	Growth from 2016 to 2026	Portion of Growth
Southeast area				
Population	1,064	13,910	12,846	41.70%
Employees	30	392	362	2.10%
Residential equivalents	1,069	13,970	12,902	38.57%
Rest of city				
Population	79,156	97,115	17,959	58.30%
Employees	44,842	61,711	16,869	97.90%
Residential equivalents	86,050	106,602	20,552	61.43%

Source: E-mail from Chris C. Olivier, 05/16/2016 (2016 population and employees in southeast area); e-mail from John K. Adam, 05/16/2016 (2026 population in Southeast area).

LEVEL OF SERVICE AND ELIGIBILITY

Determining what portion of which costs can be legally recovered in an SDC begins with determining the level of service (LoS) that is currently being achieved for each type of facility (i.e., category of park). That LoS can then be compared with the City’s standards to determine if a deficiency or surplus exists. Table 2.7 presents both the current level of service and the City standard for each type of facility. In the case of special use areas, which do not have an adopted standard, we considered the current LoS to be the standard.

Unit of measurement	Neighborhood Parks acre	Community Parks acre	Natural Areas acre	Paved Paths mile	Unpaved Trails mile	Special Use Areas acre
Inventory						
Land	127.08	247.95	1,977.59	38.14	11.44	59.28
Developed facilities	93.81	226.54		38.14	11.44	39.28
Current level of service per 1,000 residents						
Land	1.64	3.19	25.47	0.49	0.15	0.76
Developed facilities	1.21	2.92		0.49	0.15	0.51
Standard level of service, existing						
Land per 1,000 residents	1.56	2.75	20.00	0.27	0.19	0.76
Developed facilities per 1,000 residents	1.56	2.75		0.27	0.19	0.51

Source: 2016-2025 Medford Leisure Services Plan.

Deficiencies

The City’s inventory of park facilities is deficient in two categories:

- Developed neighborhood parks (achieved LoS of 1.21 acres per 1,000 residents, which is below the standard of 1.56 acres per 1,000 residents)
- Unpaved trails (achieved LoS of 0.15 mile per 1,000 residents, which is below the standard of 0.19 mile per 1,000 residents)

As a result of these deficiencies, planned projects in these categories will not be 100 percent eligible for SDC funding.

Surpluses

The City’s inventory of park facilities exceeds its standards in several categories:

- Neighborhood park land (achieved LoS of 1.64 acres per 1,000 residents, which is above the standard of 1.56 acres per 1,000 residents)
- Community parks (Achieved LoS for both land and developed facilities is above standard.)
- Natural areas (achieved LoS of 25.47 acres per 1,000 residents, which is above the standard of 20.00 acres per 1,000 residents)
- Paved paths (achieved LoS of 0.49 mile per 1,000 residents, which is above the standard of 0.27 mile per 1,000 residents)

These surpluses create a potential opportunity for a reimbursement fee.

Table 2.8 summarizes the impacts of deficiencies and surpluses on SDC eligibility:

Unit of measurement	Neighborhood Parks acre	Community Parks acre	Natural Areas acre	Paved Paths mile	Unpaved Trails mile	Special Use Areas acre
Standard level of service, existing						
Required inventory in 2016						
Land per 1,000 residents	121.14	213.55	1,553.10	20.97	14.75	59.28
Developed facilities per 1,000 residents	121.14	213.55	0.00	20.97	14.75	39.28
Required inventory in 2026						
Land per 1,000 residents	173.20	305.32	2,220.50	29.98	21.09	84.75
Developed facilities per 1,000 residents	173.20	305.32	0.00	29.98	21.09	56.16
Improvement fee eligibility						
Land	100.00%	100.00%	100.00%	100.00%	65.69%	100.00%
Developed facilities	65.57%	100.00%		100.00%	65.69%	100.00%
Reimbursement fee eligibility						
Land	5.94	34.40	424.49	17.17	0.00	0.00
Developed facilities	0.00	12.99	0.00	17.17	0.00	0.00

Source: 2016-2025 Medford Leisure Services Plan.

REIMBURSEMENT FEE

The reimbursement fee is the cost of available capacity per unit of growth that such available capacity will serve. In order for a reimbursement fee to be calculated, unused capacity in the existing

park system must be available to serve future growth. For facility types that do not have excess capacity, no reimbursement fee may be charged.

Although Table 2.8 shows that several acres and miles of park facilities are eligible for reimbursement, we have not calculated a reimbursement fee for two reasons. First, the City was able to produce historical cost data for only a fraction of the eligible types of facilities. Second, the City has \$29 million in remaining debt service for outstanding parks-related debt. The outstanding principal from this debt would have to be deducted from a reimbursement fee cost basis. Because of the limited cost data and the prospect of a large deduction for outstanding debt, we agreed with City staff that a reimbursement fee was not worth pursuing further.

IMPROVEMENT FEE

The improvement fee is the cost of capacity-increasing capital projects per unit of growth that those projects will serve. The unit of growth becomes the basis of the fee. In reality, the capacity added by many projects serves a dual purpose of both meeting existing demand and serving future growth. To compute a compliant SDC rate, growth-related costs must be isolated, and costs related to current demand must be excluded.

We have used the capacity approach to allocate costs to the improvement fee basis.¹ Under this approach, the cost of a given project is allocated to growth by the portion of total project capacity that represents capacity for future users. That portion, sometimes known as the improvement fee eligibility percentage, is multiplied by the total project cost to determine that project's improvement fee cost basis.

Calculation of the improvement fee begins with the estimated costs of the City's list of growth-related parks projects. For each project, we then apply the improvement fee eligibility percentage shown for that project's category in Table 2.8. This percentage represents the proportion of each project that will serve growth in Medford. For the southeast area of Medford, the total eligible cost is \$19.7 million, as shown in Table 2.9.

¹ Two alternatives to the capacity approach are the incremental approach and the causation approach. The incremental approach is computationally complicated, because it requires the computation of hypothetical project costs to serve existing users. Only the incremental cost of the actual project is included in the improvement fee cost basis. The causation approach, which allocates 100 percent of all growth-related projects to growth, is vulnerable to legal challenge.

Table 2.9: Planned Projects, Southeast Area					
Area	Eligibility Category	First Fiscal Year	Cost	Improvement Fee Eligibility	Eligible Cost
Trail segment 1 (class G3)	Unpaved trails, development		\$ 476,736	65.69%	\$ 313,152
Trail segment 2 (class G3)	Unpaved trails, development		623,168	65.69%	409,339
Trail segment 3 (class G4)	Unpaved trails, development		313,664	65.69%	206,036
Trail segment 4 (class G2)	Unpaved trails, development		460,928	65.69%	302,769
Trail segment 5 (class G4)	Unpaved trails, land		217,910	65.69%	143,138
Trail segment 5 (class G4)	Unpaved trails, development		235,456	65.69%	154,663
Trail segment 6 (class G1)	Unpaved trails, development		809,536	65.69%	531,758
Trail segment 7 (class)	Unpaved trails, land		38,500	65.69%	25,289
Trail segment 7 (class)	Unpaved trails, development		6,000	65.69%	3,941
Trail segment 8 (class)	Unpaved trails, land		88,550	65.69%	58,166
Trail segment 8 (class)	Unpaved trails, development		13,800	65.69%	9,065
Trail segment 9 (class G1)	Unpaved trails, development		987,584	65.69%	648,712
SE Area Plan Park Development	Neighborhood parks, development		-	65.57%	-
SE Area Plan - Larson Creek Corridor	Paved paths, development	2022	1,390,000	100.00%	1,390,000
SE Area Plan - Tributary to Medford Canal	Paved paths, development	2023	1,570,000	100.00%	1,570,000
Neighborhood Park - SE Medford	Neighborhood parks, land	2019	1,020,000	100.00%	1,020,000
Community Park - SE Medford	Community parks, land	2019	4,875,000	100.00%	4,875,000
Neighborhood Park - SE Medford	Neighborhood parks, land	2022	1,074,647	100.00%	1,074,647
Neighborhood Park - SE Medford	Neighborhood parks, land	2025	750,000	100.00%	750,000
Multi-Use Recreation & Aquatic Center	Special use areas, development	2019	6,176,573	100.00%	6,176,573
Total			\$ 21,128,052		\$ 19,662,248

Source: 2016-2025 Medford Leisure Services Plan, Capital Facilities Plan.

For the rest of Medford, the total eligible cost is \$27.4 million, as shown in Table 2.10.

Table 2.10: Planned Projects, Rest of City					
Area	Eligibility Category	First Fiscal Year	Cost	Improvement Fee Eligibility	Eligible Cost
Donahue-Frohnmayr Park Expansion & Upgrades	Neighborhood parks, development	2022	\$ 2,100,000	65.57%	\$ 1,377,026
Oregon Hills Park, Phase II	Neighborhood parks, development	2019	310,000	65.57%	203,275
Chrissy Park Development	Neighborhood parks, development	2018	3,790,000	65.57%	2,485,204
Cedar Links Park Development	Neighborhood parks, development	2019	1,400,000	65.57%	918,017
Howard School Park	Neighborhood parks, development	2022	1,844,000	65.57%	1,209,160
Midway Park Development	Neighborhood parks, development	2020	1,100,000	65.57%	721,299
Lone Pine Park Development	Neighborhood parks, development	2024	200,000	65.57%	131,145
Prescott Park Trail Development	Unpaved trails, development	2020	1,750,000	65.69%	1,149,518
Neighborhood Park - N Medford	Neighborhood parks, land	2018	1,625,000	100.00%	1,625,000
Community Park - W Medford	Community parks, land	2020	2,320,000	100.00%	2,320,000
Neighborhood Park - E Medford	Neighborhood parks, land	2021	741,935	100.00%	741,935
Neighborhood Park - SW Medford	Neighborhood parks, land	2023	1,350,000	100.00%	1,350,000
Neighborhood Park - SW Medford	Neighborhood parks, land	2024	1,350,000	100.00%	1,350,000
Multi-Use Recreation & Aquatic Center	Special use areas, development	2019	11,823,427	100.00%	11,823,427
Total			\$ 31,704,363		\$ 27,405,009

Source: 2016-2025 Medford Leisure Services Plan, Capital Facilities Plan.

The Multi-Use Recreation & Aquatic Center is a single project with citywide benefit. We therefore allocated its cost (\$18 million in total) to the two areas according to the proportion of expected growth in residential equivalents.

Table 2.11 summarizes the eligible and ineligible project costs in the entire city.

	Southeast Area	Rest of City	Total
Eligible costs	\$ 19,662,248	\$ 27,405,009	\$47,067,257
Ineligible costs	1,465,804	4,299,353	5,765,157
Total project costs	<u>\$21,128,052</u>	<u>\$31,704,363</u>	<u>\$52,832,414</u>

Source: Previous tables.

ADJUSTMENTS

Two cost basis adjustments are potentially applicable to both reimbursement and improvement fees: fund balance and compliance costs.

Fund Balance

To the extent that SDC revenue is currently available in a fund balance, that revenue should be deducted from its corresponding cost basis. Because we are calculating only an improvement fee, we have made only one adjustment for the City’s SDC fund balance of \$1 million. For area-specific calculations, we allocated the fund balance according to each area’s proportion of growth in residential equivalents. This is the same method we used for allocating the cost of the Multi-Use Recreation & Aquatic Center.

Compliance Costs

ORS 223.307(5) authorizes the expenditure of SDCs on “the costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.” To avoid spending monies for compliance that might otherwise have been spent on growth-related projects, this report includes an estimate of compliance costs in its SDCs.

In a manner consistent with the previous SDC methodology, we have estimated compliance costs of 2.135 percent of the improvement fee cost basis (whether the cost basis is uniform or area-specific).

CALCULATED SDCS

Having determined eligible costs and adjustments, we then divide by growth in residential equivalents to determine the improvement fee per residential equivalent. Table 2.12 shows this calculation for both a uniform SDC that would be charged citywide and area-specific SDCs.

	Uniform	Area Specific, Southeast Area	Area Specific, Rest of City
Reimbursement fee cost basis	\$ -	\$ -	\$ -
Improvement fee cost basis	47,067,257	19,662,248	27,405,009
Compliance costs	1,004,886	419,789	585,097
Less fund balance	(1,000,000)	(385,655)	(614,345)
Total cost basis	<u>\$47,072,143</u>	<u>\$19,696,382</u>	<u>\$27,375,761</u>
Growth in residential equivalents	33,454	12,902	20,552
SDC per residential equivalent	\$ 1,407	\$ 1,527	\$ 1,332

Source: Previous tables and previous SDC methodology (compliance costs as a function of improvement fee cost basis).

The final analytic step is to convert the SDCs per residential equivalent into the categories of land use that appear in the City’s fee schedule. Table 2.13 shows the resulting proposed fee schedule.

Table 2.13: Proposed SDC Schedule

	Residential Equivalents	Uniform	Area Specific, Southeast Area	Area Specific, Rest of City
Single-family dwelling unit	2.41	\$ 3,391	\$ 3,679	\$ 3,210
Multi-family dwelling unit	2.04	2,867	3,111	2,714
Mobile home park unit	2.70	3,797	4,120	3,595
Accessory dwelling unit	1.39	1,956	2,122	1,851
Assisted living dwelling unit	2.04	2,867	3,111	2,714
Employee	0.15	216	235	205

Source: U. S. Census Bureau, 2014 American Community Survey 1-Year Estimates, tables B25024 and B25033; Jordan Palmeri, *Accessory Dwelling Units in Portland, Oregon*, 06/01/2014; previous tables.

SECTION 3: IMPLEMENTATION

This section addresses two aspects of implementing an SDC. The first is a set of recommended code changes. The second is a method of accounting for inflation between SDC updates.

CODE CHANGES

We recommend that the city enact the following changes to the MMC concurrently with the adoption of this SDC methodology.

References to a Specific Methodology

We recommend the removal of references to a specific methodology in MMC 3.870(3) and 3.871(14). We further recommend the addition of language authorizing the City Council to adopt methodologies by resolution.

Time Limit on Expenditures

We recommend the repeal of MMC 3.881. A time limit for spending SDC revenues is not required by statute, and we find that such a limit reduces the City's flexibility.

ANNUAL INDEXING

ORS 223.304 allows for the periodic indexing of system development charges for inflation, as long as the index used is:

- (A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
- (B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
- (C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

We have reviewed the indexing practice described in MMC 3.872, and we find that it meets the requirements of statute. We recommend that the City implement this practice.

SECTION 4: FUNDING PLAN

This section addresses the funding of parks projects (or portions of projects) that either are ineligible for SDC funding or for which SDC revenues are not available.

AVAILABLE REVENUES

The City has multiple streams of revenue that are available either for parks projects or for debt service related to parks projects. These revenue streams include the transient lodging tax, the car rental tax, and the parks utility fee. Debt service for outstanding parks-related debt is paid from these revenues, but the debt service consumes only a portion of the total revenues. Table 4.1 shows projected revenues from these sources in excess of payments on existing debt:

Table 4.1: Incremental Cash Flow	Net Revenue Available for Parks
FY 2015-16	\$ 526,455
FY 2016-17	541,594
FY 2017-18	584,844
FY 2018-19	630,369
FY 2019-20	664,489
FY 2020-21	693,452
FY 2021-22	734,244
FY 2022-23	1,199,869
FY 2023-24	1,234,594
FY 2024-25	1,265,069
FY 2025-26	1,290,494
FY 2026-27	1,406,869
FY 2027-28	2,967,250
FY 2028-29	3,092,375
FY 2029-30	3,210,425
FY 2030-31	3,283,325
FY 2031-32	3,354,087
FY 2032-33	3,415,750
FY 2033-34	3,478,375
FY 2034-35	4,025,000
Total	\$37,598,929

Source: "20-Year Projections and Debt Service Schedule" provided by City staff.

BORROWING POWER

To determine the maximum purchasing power of this net revenue in the short term, we calculated a hypothetical amortization schedule for a bond issue whose debt service schedule exactly matched the projected net revenue. Table 4.2 shows the hypothetical amortization:

Table 4.2:
Hypothetical Amortization

	Beginning Principal	Interest Payment	Principal Payment	Total Payment	Ending Principal
Interest rate		3.50%			
Year 1	\$ 23,478,035	\$ 821,731	\$ (295,276)	\$ 526,455	\$ 23,773,311
Year 2	23,773,311	832,066	(290,472)	541,594	24,063,783
Year 3	24,063,783	842,232	(257,388)	584,844	24,321,171
Year 4	24,321,171	851,241	(220,872)	630,369	24,542,043
Year 5	24,542,043	858,972	(194,483)	664,489	24,736,525
Year 6	24,736,525	865,778	(172,326)	693,452	24,908,852
Year 7	24,908,852	871,810	(137,566)	734,244	25,046,418
Year 8	25,046,418	876,625	323,244	1,199,869	24,723,173
Year 9	24,723,173	865,311	369,283	1,234,594	24,353,890
Year 10	24,353,890	852,386	412,683	1,265,069	23,941,208
Year 11	23,941,208	837,942	452,552	1,290,494	23,488,656
Year 12	23,488,656	822,103	584,766	1,406,869	22,903,890
Year 13	22,903,890	801,636	2,165,614	2,967,250	20,738,276
Year 14	20,738,276	725,840	2,366,535	3,092,375	18,371,741
Year 15	18,371,741	643,011	2,567,414	3,210,425	15,804,326
Year 16	15,804,326	553,151	2,730,174	3,283,325	13,074,153
Year 17	13,074,153	457,595	2,896,492	3,354,087	10,177,661
Year 18	10,177,661	356,218	3,059,532	3,415,750	7,118,129
Year 19	7,118,129	249,135	3,229,240	3,478,375	3,888,889
Year 20	3,888,889	136,111	3,888,889	4,025,000	0
Total		\$ 14,120,894	\$ 23,478,035	\$ 37,598,929	

Source: FCS Group.

Assuming an interest rate of 3.50 percent, the project stream of revenues represents the ability to borrow \$23.5 million with a 20-year maturity. The SDC-ineligible cost of projects listed in this methodology is only \$5.8 million (from Table 2.11).

This analysis, however, should be taken with a grain of salt. Because the amount of revenue available for debt service rises each year during the repayment period, the debt is negatively amortized during the first seven years. If the amount borrowed is reduced to \$15.0 million, negative amortization is eliminated.

Medford Leisure Services Plan Update (2016)
2016 - 2025 CAPITAL FACILITIES PLAN
Projects Eligible for SDC Funding (In Whole or In Part)

Project #	Proposed 2015-2025 Projects	Type	2017-19 BIENNIUM		2019-21 BIENNIUM		2021-23 BIENNIUM		2023-25 BIENNIUM		2025-27 BIENNIUM		2027/28	10-yr Total	Abbreviated Project Descriptions/Potential Grant Sources
			2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27			
Park Enhancements & Development															
	Donahue-Frohnmayr Park Expansion & Upgrades	D					\$ 2,100,000							\$ 2,100,000	Master plan improvements and expansion, including Spring Street improvements
	Oregon Hills Park, Phase II	D		\$ 310,000										\$ 310,000	Phase II: playground, sports courts, more trails. (Amount shown will be carry-forward from current fiscal period)
	Chrissy Park Development	D	\$ 290,000								\$ 3,500,000			\$ 3,790,000	Phase I: parking, restroom, picnic shelter, paved & natural trails. Phase II: parking, sports courts, shelters, disc golf, dog park, exercise trails. (Amount shown will be carry-forward from current fiscal period)
	Cedar Links Park Development	D		\$ 1,400,000										\$ 1,400,000	Park development (per MP) with playground, parking, restrooms, picnic shelters, basketball court, pathways, landscaping
	Howard School Park	D					\$ 922,000	\$ 922,000						\$ 1,844,000	Restrooms, renovated sports courts, playground, added pathways
	Midway Park Development	D			\$ 1,100,000									\$ 1,100,000	Parking, pathways, picnic shelter, restrooms, splash pad, gazebo, exercise course, BCG trail connection
	Lone Pine Park Development	D							\$ 200,000					\$ 200,000	Playground, community garden, added pathways
Paths & Trails															
	Prescott Park Trail Development	D			\$ 1,750,000									\$ 1,750,000	Internal park trails (0.42 miles)
	SE Area Plan - Larson Creek Corridor	A/D					\$ 1,390,000							\$ 1,390,000	Multi-use shared path (1.15 miles)
	SE Area Plan - Tributary to Medford Canal	A/D						\$ 1,570,000						\$ 1,570,000	Multi-use shared path (1.25 miles)
	SE Area Plan Paths & Trails	A/D							\$ 2,000,000	\$ 2,271,832				\$ 4,271,832	Paths and trails consistent with SE Area Circulation Plan
Future Acquisitions															
	P-1 Neighborhood Park - N Medford	A	\$ 1,625,000											\$ 1,625,000	Potential acquisition - North Medford, south of airport (5 acres)
	P-2 Neighborhood Park - SE Medford	A		\$ 1,020,000										\$ 1,020,000	Potential acquisition - Southeast Medford, southwest of Hillcrest Road and Foothill Road (3 acres)
	P-3 Community Park - SE Medford	A		\$ 4,875,000										\$ 4,875,000	Potential acquisition - Southeast Medford, near N Phoenix Road in the Larson Creek area (15 acres)
	P-9 Community Park - W Medford	A			\$ 2,320,000									\$ 2,320,000	Potential acquisition - West Medford, generally near Rossanley Drive and N Ross Lane (15 acres)
	P-4 Neighborhood Park - E Medford	A				\$ 741,935								\$ 741,935	Potential acquisition - East Medford, south of McAndrews and east of Foothill Road (2 acres)
	P-6 Neighborhood Park - SE Medford	A					\$ 1,074,647							\$ 1,074,647	Potential acquisition - Southeast Medford, northwest of Hillcrest Road and Foothill Road (3 acres)
	P-7 Neighborhood Park - SW Medford	A						\$ 1,350,000						\$ 1,350,000	Potential acquisition - Southwest Medford, near Crooked Creek and Kings Hwy (5 acres)
	P-8 Neighborhood Park - SW Medford	A							\$ 1,350,000					\$ 1,350,000	Potential acquisition - Southwest Medford, near South Medford High School (5 acres)
	P-5 Neighborhood Park - SE Medford	A								\$ 750,000				\$ 750,000	Potential acquisition - Southeast Medford, near Hillcrest Road between Prescott Park and Chrissy Park (2 acres)
Facilities															
	Multi-Use Recreation & Aquatic Center	D		\$ 9,000,000	\$ 9,000,000									\$ 18,000,000	
Totals per year:			\$ 1,915,000	\$ 16,605,000	\$ 14,170,000	\$ 741,935	\$ 5,486,647	\$ 3,842,000	\$ 3,550,000	\$ 3,021,832	\$ -	\$ 3,500,000	\$ -	\$ 52,832,414	

Medford Leisure Services Plan Update (2016)
2016 - 2025 CAPITAL FACILITIES PLAN
Projects Not Eligible for SDC Funding

Project #	Proposed 2015-2025 Projects	Type	2017-19 BIENNIUM		2019-21 BIENNIUM		2021-23 BIENNIUM		2023-25 BIENNIUM		2025-27 BIENNIUM		2027/28	10-yr Total	Abbreviated Project Descriptions/Potential Grant Sources
			2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27			
Park Enhancements & Development															
	Restroom Replacement Program	R	\$ 300,000		\$ 80,000		\$ 100,000		\$ 80,000		\$ 80,000			\$ 640,000	Replace restrooms @ Fichtner-Mainwaring, Holmes and Bear Creek, Ruhl, and Union Parks
	Master Plan Updates	D	\$ 30,000		\$ 30,000		\$ 30,000							\$ 90,000	Update master plans for Jackson, Holmes and Bear Creek Parks
	U.S. Cellular Community Park Turf Replacement	R	\$ 250,000	\$ 250,000	\$ 40,000	\$ 40,000	\$ 250,000	\$ 250,000	\$ 40,000	\$ 40,000	\$ 250,000	\$ 2,500,000	\$ 40,000	\$ 3,950,000	Anticipated replacement for artificial turf areas
	Bear Creek Park Renovations	R			\$ 250,000	\$ 450,000								\$ 700,000	Additional picnic shelter, improved circulation pathways, restrooms, lighting, shade trees, drainage, pavement resurfacing and playground replacement
	Safety Improvements, Upgrades and Renovations	R	\$ 150,000	\$ 150,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 1,200,000	Add and upgrade lighting, path repairs, irrigation systems, shelter repairs and parking lot maintenance
	Wayfinding & Signage Program	R	\$ 32,500	\$ 32,500	\$ 65,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 130,000	Unified system (for graphics & materials) of Park ID and wayfinding signs for parks, trails & special use facilities
	ADA Renovations & Upgrades	R	\$ 9,250	\$ 158,500	\$ 48,000	\$ 152,000	\$ 122,500	\$ 108,000	\$ 40,500	\$ 41,500				\$ 680,250	Targeted ADA barrier removals and upgrades based on ADA transition plan
Other Capital Enhancements															
	Hilliker Wall Repair	R	\$ 150,000											\$ 150,000	
Totals per year:			\$ 921,750	\$ 591,000	\$ 613,000	\$ 742,000	\$ 602,500	\$ 458,000	\$ 260,500	\$ 181,500	\$ 430,000	\$ 2,600,000	\$ 140,000	\$ 7,540,250	

MEDFORD PARKS & RECREATION

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Medford SDC Rates and New Development Charges (as of Dec. 1, 2016)

Category	Single Family	Single Family	Multi-Family	Multi-Family
Street SDC*	\$ 2,744.08	\$ -	\$ 1,811.09	\$ -
Street SDC**	\$ -	\$ 3,430.10	\$ -	\$ 2,263.87
Regional Sanitary	\$ 1,445.77	\$ 1,445.77	\$ 939.80	\$ 939.80
Medford Sewer	\$ 668.00	\$ 668.00	\$ 434.20	\$ 434.20
Parks SDC (current)	\$ 3,433.00	\$ 3,433.00	\$ 2,867.00	\$ 2,867.00
Storm Drain	\$ 608.00	\$ 608.00		
Water Commission***	\$ 1,707.02	\$ 1,707.02	\$ 1,707.02	\$ 1,707.02
Totals	\$ 10,605.87	\$ 11,291.89	\$ 7,759.11	\$ 8,211.89

Notes:

* Street SDC – No direct access to an arterial or collector

** Street SDC – Access to an arterial or collector

*** Water Commission – 5" x 3/4" meter (most common charge)

Medford School District Tax Rate (through 6/30/17): \$1.23/square foot



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CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 120.2

www.ci.medford.or.us

DEPARTMENT: Planning
PHONE: (541) 774-2380
STAFF CONTACT: Kelly Akin, Interim Planning Director

AGENDA SECTION: Ordinances and Resolutions
MEETING DATE: December 1, 2016

COUNCIL BILL 2016-143

An ordinance amending section 10.337 of the Medford Code pertaining to the retail sales of marijuana.

SUMMARY AND BACKGROUND

After the State legislature legalized various cannabis-related businesses in Oregon, Medford developed a set of code amendments to regulate such use. Legal and Planning staff developed code and took it through the standard review process in summer and fall of 2015.

In October 2015, Ordinance No. 2015-104 was approved by the City Council amending various sections of Chapter 10 of the Municipal Code related to marijuana provisions. During deliberations at the October meeting, City Council rejected allowing recreational marijuana sales in the City and decided to let the citizens of Medford vote on this issue.

Measure 15-144 was placed on the ballot asking voters if they wanted to prohibit the establishment of marijuana retailers within the City. On November 8, 2016, 52% of the populace voted no on this measure resulting in the measure failing.

Last year, the Planning Commission recommended retail sales of marijuana are conditionally permitted within the Community Commercial (C-C), Regional Commercial (C-R), and Heavy Commercial (C-H) zoning districts. Staff voiced their disagreement to this recommendation at that time. Staff continues to recommend City Council approve this amendment making retail sales of marijuana a permitted use in the zoning districts noted above. (file no. DCA-15-104)

PREVIOUS COUNCIL ACTIONS

Ordinance No. 2015-104 was signed on October 21, 2015.

ANALYSIS

The retail sale of marijuana is the remaining issue carried over from last year. The citizens voted down a measure to prohibit retail sales by a close margin. The Planning Commission discussed and made a recommendation to make retail sales a conditional use in the Community Commercial (C-C), Regional Commercial (C-R), and Heavy Commercial (C-H) zoning districts in 2015. Staff respectfully disagrees with this recommendation noting in the report to make retail sales an outright permitted use instead.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

None.

TIMING ISSUES

None.

COUNCIL OPTIONS

Approve, modify or deny the ordinance.

STAFF RECOMMENDATION

Staff recommends approval of the ordinance modifying the Planning Commission's recommendation from a conditional use to a permitted use for the retail sale of marijuana.



CITY OF MEDFORD
AGENDA ITEM COMMENTARY
www.ci.medford.or.us

Item No: 120.2

SUGGESTED MOTION

I move to approve the ordinance establishing retail marijuana businesses as a permitted use in the identified zoning districts.

EXHIBITS

Ordinance

Commission Report dated November 24, 2016

PASSED by the Council and signed by me in authentication of its passage this ____ day of _____, 2016.

ATTEST: _____
City Recorder

Mayor

APPROVED _____, 2016.

Mayor

NOTE: Matter in **bold** 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

Working with the community to shape a vibrant and exceptional city

COMMISSION REPORT

to City Council for a Class-A legislative decision: **Development Code Amendment**

Project Regulation of marijuana retail businesses
File no. DCA-15-104
To Mayor and City Council *for 12/1/2016 hearing*
From Carla Angeli Paladino, Planner IV
Reviewer Kelly Akin, Interim Planning Director
Date November 24, 2016

BACKGROUND

Proposal

A legislative amendment to regulate marijuana-related businesses regarding retail.

History

In midyear 2015, City Council decided to prepare for the legalization of marijuana production, processing and retail sales in Oregon. A joint study session was held by the City Council and Planning Commission on July 9, 2015, to lay out for staff time, place, and manner restrictions. Legal and Planning staff worked together to develop regulations based on that direction. Planning Commission reviewed a draft of the regulations at its July 27, 2015, study session. The Council held a study session on August 27, 2015.

The Planning Commission held a hearing on September 10, 2015, and made a recommendation regarding the production, processing, and retail sales of marijuana. Their recommendation included making retail a conditional use for a two year period and thereafter making it a permitted use with special use regulations.

The Mayor signed Ordinance No. 15-104 on October 21, 2015, regulating the production and processing of marijuana and prohibiting retail sales. Council decided to put the question of retail sales to the vote of the citizens.

On November 8, 2016, Measure 15-144 prohibiting the establishment of marijuana retailers in Medford failed by 52% of the vote. In preparation for this decision, Planning staff mailed notice to the Department of Land Conservation and Development with draft language regarding retail sales of marijuana. On October 13, 2016, Planning staff discussed this amendment with the Planning Commission. They were informed that the

Commission's prior recommendation would be moving forward to the City Council on December 1, 2016.

Authority

This proposed plan authorization is a Class-A legislative amendment of Chapter 10 of the Municipal Code. The Planning Commission is authorized to recommend, and the City Council to approve, amendments to Chapter 10 under Medford Municipal Code §§10.102–122, 10.164, and 10.184.

ANALYSIS

The proposal relates specifically to the retail sales of marijuana. Last year, the Council decided to prohibit retail sales and asked the citizens of Medford to decide if they want to allow such use within the city limits. By a close margin, the people voted not to ban this use within the jurisdiction.

Last year, the Planning Commission recommended retail sales are allowed as a conditional use in the Community Commercial (C-C), Regional Commercial (C-R), and Heavy Commercial (C-H) zoning districts. Staff did not agree with that recommendation and continues to respectfully disagree with that recommendation. Staff forwards our prior arguments to the City Council for consideration. It would be an inefficient use of time and resources for staff and the Planning Commission to process such applications for the following reasons:

- The Commission is unlikely ever to find that “the development proposal is in the public interest” (§10.248(2)).
- In order to find that “the development proposal will cause no significant adverse impact on the livability, value, or appropriate development of abutting property” (§10.248(1)), the Commission will each time have to impose mitigating controls to prevent adverse impacts.
- If the negative externalities are known and mitigating controls can be developed and codified, it is pointless to go through the CUP process.

RECOMMENDATION

The Planning Commission recommends adopting the proposed amendment based on the analyses, findings, and conclusions in the Commission Report dated November 24, 2016, including Exhibits A through I.

EXHIBITS

- A Proposed Text
- B Findings and Conclusions
- C Minutes, City Council/Planning Commission joint study session, 7-9-2015
- D Minutes, Planning Commission study session, 7-27-2015
- E Minutes, City Council study session, 8-27-2015
- F Minutes, Planning Commission hearing, 9-10-2015
- G Minutes, City Council hearing, 10-01-2015
- H Minutes, City Council study session and hearing, 10-15-2015
- I Minutes, Planning Commission hearing, 10-13-2016

CITY COUNCIL AGENDA: December 1, 2016

Exhibit B

Findings and Conclusions

The criteria that apply to code amendments are in Medford Municipal Code §10.184(2). The criteria are rendered in italics; findings and conclusions in roman type.

Land Development Code Amendment. The Planning Commission shall base its recommendation and the City Council its decision on the following criteria:

10.184 (2) (a). Explanation of the public benefit of the amendment.

Findings

There are negative externalities associated with marijuana products: strong odors, the temptation for theft, and degradation of community health, safety, and morals. Odors can be controlled mechanically, just as is done for other odiferous industries. Security measures employed by businesses can be controlled so they are not a nuisance to the community. The display of products can be restricted so that the general public is not impacted.

Conclusions

In the absence of choice for the community, the City has the power to lessen negative impacts through careful regulation of the marijuana industry.

10.184 (2) (b). The justification for the amendment with respect to the following [five] factors:

1. *Conformity with applicable Statewide Planning Goals and Guidelines.*

Findings

The City has an acknowledged comprehensive plan that implements the Goals. Conformity with the Comprehensive Plan is examined and established under criterion 10.184(2)(b)(2).

Conclusions

Based on conformity with the Comprehensive Plan, the amendment conforms with the Statewide Planning Goals and Guidelines.

2. *Conformity with goals and policies of the Comprehensive Plan considered relevant to the decision.*

Findings

The following goals, policies, and implementation measures are from the Economy Element.

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 1-1: The City of Medford shall strengthen its role as the financial, medical, tourist, governmental, and business hub of Southern Oregon and shall build on its comparative advantages in the local and regional marketplace.

Implementation 1-1(c): Provide incentives for businesses that produce value-added products to expand or locate in the community.

Implementation 1-1(f): Provide incentives for entrepreneurial small businesses to start up and/or expand in the City.

Conclusions

The City Council may not have envisioned marijuana when it adopted the Economy Element, but the related business activities do fit within the goal of promoting economic growth.

3. *Comments from applicable referral agencies regarding applicable statutes or regulations.*

Findings

No comments were received.

Conclusions

This criterion does not apply.

4. *Public comments.*

Findings

No comments were received before publication of the staff report.

Conclusions

This criterion does not apply.

5. *Applicable governmental agreements.*

Findings

Staff could find no agreement that is related to how the City elects to regulate businesses within its jurisdiction.

Conclusions

This criterion does not apply.

Exhibit C

Minutes, CC/PC joint study session 7-9-2015

Thursday, July 9, 2015

12:00 p.m.

Carnegie Building

Medford, Oregon

The joint meeting of the Medford City Council and Planning Commission was called to order at 12:00 pm in the Carnegie Building on the above date with the following members and staff present:

Mayor Gary Wheeler; Councilmembers Clay Bearson, Daniel Bunn, Dick Gordon, Tim Jackle, Eli Matthews, Kevin Stine, Michael Zarosinski

City Manager Pro Tem Bill Hoke; Acting City Attorney Kevin McConnell; Deputy City Recorder Karen Spoons

Councilmember absent: Chris Corcoran

Planning Commissioners Tim D'Alessandro, Joe Foley, Bill Mansfield, David McFadden, Mark McKechnie, Jared Pulver, Patrick Miranda (Patrick Miranda arrived at 12:15 pm)

Planning Commissioner absent: Norman Fincher

City Manager Pro Tem Bill Hoke stated that it was Council's desire to meet with the Planning Commission to discuss the time, place and manner, relative to the marijuana laws that have been passed recently, and how we deal with this within the city limits of Medford. Where, how, when and why and since it does involve land use type items and questions that arise Council felt that it would be important to have the joint session with the Planning Commission to get the discussion started since we are going to be depending quite a bit on Planning Commission's input on the time, place and manner for these issues as they come forward.

Mayor Wheeler requested planning staff input. Acting Deputy City Attorney Kevin McConnell stated that Council was to direct the Planning Commission to start the process for time, place and manner restrictions for all marijuana licensees, which includes the Measure 91 retail licensees and the Oregon Medical Marijuana Act licensees. A summary on HB 3400 was provided and included information on where they can be located in a city. He provided an example of the 1,000 foot rule. Mayor Wheeler thought

this was a great place to start with the Planning Commission. Mr. McConnell stated that the State has the public safety area taken care of, so the issue will be where the City wants them located if they lift the moratorium.

Councilmember Stine did not want a regulation of where they should be located as it tells you where it can't be within HB 3400. Mr. McConnell provided an example from another city in Oregon, such as near a drug store. Councilmember Bearnson questioned the locations of the drug stores. Councilmember Bunn stated that it does not fit well around certain businesses and we currently do regulate other businesses. It should not be different from other businesses. Councilmember Bunn thought that Community Commercial, Regional Commercial and Heavy Commercial would be a good location and it does not make sense in Neighborhood Commercial or CSP. Councilmember Stine further questioned locations of businesses. Councilmember Jackle agreed with Councilmember Bunn and thought there would be less marijuana dispensaries which may impact the location of the business.

Commissioner D'Alessandro noted that OLCC does limit the number of liquor stores in an area and this should be somewhat similar to that on the recreational side based on the process they need to go through. Commissioner Pulver had not heard if that would pertain to this situation. Mr. McConnell provided information on the differences between the marijuana businesses. HB 3400 does allow OLCC to segregate these premises in a separate area, but that's another little twist. Marijuana extraction method cannot be in a residential area unless they do not use high heat to do so. Councilmember Bunn questioned the different categories. Mr. McConnell indicated that on the retail side you have: producers, wholesalers, processors and retailers. On the medical side you have: marijuana growers/producers, medical marijuana processors, and medical marijuana dispensaries.

Senate bill 460 would allow medical marijuana dispensaries to sell retail marijuana until the end of 2016. It may not be signed yet and may not be an issue that we are faced with.

Councilmember Bearnson talked about buffers and indicated that OLCC is still meeting to set their rules for where they are going to be allowed and where they are not going to be allowed. Mr. Bearnson indicted his recommendation would be that if volatile or industrial gases are used they should be relegated to industrial areas because if there were an accident they could do a lot of damage. This is a public safety issue that he hasn't seen dealt with on the state level.

Commissioner Mansfield stated that the majority of people voted in favor of the marijuana passage but there was a large minority that voted against the passage and he just wanted to indicate that we are not of a like mind regarding the issue. Councilmember Bearnson noted that passing more prohibitive measures and trying to get it out of town

would exacerbate the black market and keep it functioning solid. Commissioner Mansfield noted that there are arguments against that as well.

Mayor Wheeler stated that for us it is a question of what do we want our city to look like. In Colorado it drove out the antique shops in a certain district. We need to take everything into consideration and give the input to planning staff and have them come back with their recommendation that would best suit our needs for Medford, and what we want our city to look like.

Councilmember Gordon requested information on the testing labs that was mentioned in the materials on hand. Mr. McConnell noted there is no law of where they can be at this time. Councilmember Bearnson noted that from the outside they look the same as any other business. Councilmember Gordon questioned if there were any extra precautions that need to be taken. Councilmember Bearnson noted that they use the same machines as any other lab and assumed they would be held to the same standards. Mr. McConnell noted that if the moratorium is lifted labs are necessary.

Commissioner D'Alessandro questioned if staff has checked on what has worked for the states that have done this already. Mr. McConnell noted that lack of labeling was an issue; another issue is taxation which is in place for the retail side. If the moratorium is lifted we would need to capture new language that has taken place and tax the medical and retail the same. He noted we are not in line with the tax as noted with HB 3400.

Councilmember Bearnson indicated HB 3400 is a culmination of the best of what worked for the two states; he also noted that we can regulate advertising to some extent. Mr. McConnell indicated that in a big indoor grow for recreational use you may want to regulate due to the odor issue. Commissioner Foley noted there was a huge spike in energy consumption at two different states due to the indoor grows.

Commissioner Pulver questioned what planning staff and Planning Commission is being tasked with. Mr. McConnell indicated that the Council would direct the Planning Commission to draft some reasonable time, place and manner restrictions. Planning Department will help you do that. The Planning Department would come up with a zoning text amendment, come back to the Planning Commission for a public hearing, with Planning Commission recommendations to the City Council. Commissioner Pulver questioned if medical and recreational marijuana would be separated or merged or is it just an unknown at this time. Mr. McConnell noted that for the time being politics dictates that they be separate. The Oregon Health Authority is regulating the medical marijuana portion and the OLCC is regulating the retail side. HB 3400 tried to make them as close as possible as far as their definitions are, especially the lab testing requirements. They are mentioned together to address who would monitor them and to make sure the safety standards are the same.

Councilmember Bunn indicated that we have time, place and manner authority and questioned whether or not they are in Chapter 10 and if they are land use. If so, do we want to task the Planning Commission with at least looking at time, place and manner restrictions or do we want them just to stick to zoning districts. Mr. McConnell noted other cities put in hours of operation, the no drive-through item, and advertising limits into their text amendments. Planning Department might not like to see that in there, and maybe that is something you put in the business license chapter. A broader question from Councilmember Bunn was do we want to have our Planning Commission look at time, place and manner. Councilmember Gordon would like that to be dealt with within the Emergency Services. Councilmember Zarosinski indicated that after reviewing Colorado's regulations they are similar to alcohol. We deal with alcohol different than most states and questioned if we could we use that as a guiding principle. Councilmember Bunn questioned if we want to task that process to the Planning Commission. Commissioner D'Alessandro questioned if OLCC would take care of hours, etc. Mr. McConnell indicated he would do more research on that issue.

Mr. McConnell indicated other issues raised were design standards and whether or not a review from SPAC would be necessary. The reason for zoning in Chapter 10 is because on the retail side HB 3400 requires OLCC to obtain a Land Use Compatibility Statement from the City before it actually issues a state license. If we say no, they don't get a license. Councilmember Jackle thought the Planning Commission needs to address all three issues. The Mayor would appreciate as much input from Planning Commission and the Site Plan and Architectural Commission as possible.

Commissioner McFadden remarked that a comment he received was when a current clinic is open there is no parking available for the neighborhood. He assumed that marijuana use was only allowed in the home and Mr. McConnell indicated that he was right. Commissioner McFadden questioned clubs being opened under the current regulations. Mr. McConnell will research whether or not cannabis clubs would be allowed in the City of Medford.

Commissioner McKechnie talked about time, place and manner, stores vs. bars, etc., and that we are breaking new ground and need as many minds as possible look at these issues to come up with some sort of solutions on these issues. Councilmember Bearson stated that OLCC will probably set a time as liquor stores close at 9 pm, etc.

Mr. McConnell mentioned that on the retail side in HB 3400 if a licensee is convicted of violating a local ordinance in the Municipal Court or the Circuit Court we can report that conviction to the OLCC and enforcement action against that licensee will be taken.

Mayor Wheeler talked about clubs and the difference between that and a bar. A ventilation system would be extremely important and we do put restrictions on restaurants on hoods, etc., so we need to take a look at that issue.

Councilmember Gordon stated that if we are looking at retail he agreed with Councilmember Bunn; no on CSP and CN, yes on CC, CR, CH, IG and IH. He was not sure in IL because it is up against lots of residential areas. Commissioner Pulver agreed with Councilmember Bunn's comments in the commercial arena just for the outlets. He would be inclined to not allow retail sales in industrial zones as currently we do not allow them. Councilmember Bunn indicated it might be that this would be an ancillary business in an industrial zone.

Councilmember Jackle questioned the light industrial zone possibilities. Commissioner Pulver noted that does not allow retail uses. It allows restaurants and banks and might allow personal services category uses. Liquor may be allowed in that zone also.

Councilmember Bunn asked if the Council needs to regulate commercial outdoor grows. Mr. McConnell was unsure where you could grow that in the city. Commissioner McKechnie questioned if that would be in the exclusive agriculture overlay. Councilmember Bearnson stated that retail should be restricted to industrial zone. The County will be the one tasked with the outdoor grow. Mayor Wheeler noted that the County will need to look at this regardless of the law.

Councilmember Bearnson questioned Mr. McConnell regarding retail sales of medical marijuana come October 1, 2015, is that correct. Mr. McConnell indicated that that was the estimate. Councilmember Bearnson spoke to the timing issue on this and the more we drag our heels the more disservice we are doing to our local business people who would like to be in this business. We are also keeping the playing field un-level because there is out of state well-funded outside interests that can buy up that property and sit on it, so he would like this process to go relatively quick.

Commissioner Mansfield questioned a report from Mr. McConnell regarding content regulation of signs. Mr. McConnell noted that marijuana cannot be seen on a storefront. We can regulate size but we are not in the business of regulating content and he is not sure whether OLCC may get into this or not. It cannot be appealing to minors, promote excessive use, promote illegal activity, or otherwise be a significant risk to public health and safety. Commissioner Mansfield thought it was getting close to content.

Mayor Wheeler questioned if Planning Director Jim Huber had received enough direction to work with Legal staff. Mr. Huber noted direction on the time, place and manner restrictions is wide open. Commissioner Pulver identified how we will tackle the use issue; which is basically that we will take the seven categories and try to determine where they fit in the Code. He reviewed the Milwaukee, Oregon ordinance about time, place and manner restrictions on a medical marijuana facility. Restrictions included; they defined it; could not be within 1000 feet of a public or private elementary or secondary school or a career school that worked with minors; could not be within 1000 feet of another medical marijuana facility; couldn't be within 1000 feet (two certain properties);

could not collocate with another business; couldn't display marijuana or marijuana products from outside the facility; and the hours of operation would be 8 am to 10 pm. After that they mapped locations where facilities would be permitted.

Mr. McConnell questioned when Council would like to see this back to them. Mayor Wheeler agreed with Councilmember Bearnson that this needs to be as soon as possible. Mr. Huber stated they will rough something up before the Planning Commission in a draft form. Commissioner Pulver questioned time, place and manner for other uses outside OLCC. Mr. Huber noted there are some restrictions. Councilmember Bunn asked if it would be helpful to formally initiate this text amendment at the next Council meeting; Mr. Huber stated that it would.

Councilmember Stine questioned how fast this could be done. Mayor Wheeler noted we need to follow the rules of our State and our Code. Mr. Hoke talked about Mr. Huber's comments about his timeline.

The meeting adjourned at 1:13 p.m.

Exhibit D

Minutes [excerpt], PC study session 7-27-2015

2. DCA-15-104 Marijuana-related businesses

Mr. Adam reported there are existing uses in the Standard Industrial Classification (SIC) that these marijuana-related businesses will fit into, and so would correspond to the SIC tables in the Code, but staff decided to isolate the marijuana-related businesses under their own category.

Commissioner Foley asked about people holding multiple licenses, those who are retailers, processors and wholesalers. He pointed out that the Heavy Commercial district is the only one that a business can be all three. Is that what the City wants? He does not see this as a big wholesale operation. He questioned if they should be more flexible on that one. Currently, this is illegal federally and there will be an administration change at the Federal level in 2017. Who knows if they will have the same hands-off approach to the States as the current one. Should this be conditional upon Federal regulations? Mr. Huber said the Planning Commission could make that recommendation to the City Council

Commissioner Mansfield reported that there is no liability to the City if the Federal government steps in. They do not need a conditional repeal, if that happens, the City can repeal its laws.

Kelly Akin, Principal Planner, addressed Commissioner Foley's question regarding bakeries. There are two different kinds. There is manufacturing which staff considers the processors to be and then there is the retail component. There can be a retail bakery in any of the commercial zoning districts. The processors are a manufacturing class. You can have a bakery as manufacturing in the heavy commercial zone and dairy products but those are the only two food manufacturing processes that are permitted in heavy commercial zones. Extracting processes are not permitted in the commercial zone.

Commissioner Mansfield said he would vote yes on "all growth will be conducted inside enclosed structures."

Chair McFadden is not sure of the term "dispensaries". Staff responded that it is medical marijuana. Mr. McConnell reported that medical marijuana dispensaries is the medical side and marijuana retailers is the Measure 91 recreational side. Ms. Akin stated that staff did not define these. Producers are growers. Processors are people that make

something with the product such as baked items and extracted oils. Wholesalers are exactly what it says and the rest are what they say.

Commissioner Culbertson reported that in his opinion this will marry along with grapes as far as cultivation, bringing it in and how it is going to be processed. He does not believe it will fit in the commercial zone. It will fit in the light industrial.

Chair McFadden asked where does the marijuana have to be tested? Staff reported in laboratories.

Commissioner McKechnie thought that the labs were like quality control. If there are laboratories why indicate they cannot be in the C-N, I-G and I-H zones? Ms. Akin replied that they carried it across from the existing table: labs are not allowed in those districts now; there is no reason to change it for this purpose. Mr. Adam reported that these are unique laboratories that are uniquely allowed in the industrial zoning districts. More than likely the current laboratories will pick up this business. Commissioner McKechnie asked why do we really care if a laboratory is testing marijuana, building products, or something else? It seems a little odd that they would be in C-S/P. Mr. Adam stated that C-S/P is where the medical uses are allowed.

Mr. Adam asked Commissioner McKechnie if he was asking to specifically give this one special use across the board or asking generally about laboratories? Commissioner McKechnie reported there are too many choices. Staff needs to thin it down by about two thirds.

Chair McFadden sees no problem with concentrating most of this into a certain area. The market is only going to support a certain amount.

Commissioner Pulver thinks staff did a reasonable job allowing them in the certain zoning districts. There needs to be discussion on limitation.

Mr. Adam asked if there was a particular opinion on heavy commercial for processors? It was suggested put it as a Ps.

Mr. McConnell reported that there have been several presentations to the City Council on marijuana in general. Producers will not have a big impact on the City, it is the processing. He has taken dozens of calls from citizens who are interested in setting up shop in Medford and the surrounding area. The processors are where the money is as well as the retailers.

Commissioner Culbertson stated that production will be outside the city limits. The biggest question is the processors. What are they going to do with it? Are they going to be bringing it in bins or truckloads? How are they going to process it? He thinks they will do

the processing out in the field and they will do packaging, the final product in a packing house or somewhere downtown.

Commissioner D'Alessandro reported that a lot of the process will be turning it into edibles, oils, and all the different things they do. He agrees some will be done out in the field as they break it down. The creation of all the other products is going to happen in a warehouse or facility. That is where Commissioner Mansfield's comment came in regarding the production inside a facility. How do you keep that at a level where the smells are not intrusive?

Moving on to looking at the prospective use regulations, Mr. Adam pointed out that no marijuana-related business shall permit trespass or glare from security or other lighting beyond its property line. Section 9.560 is fence provisions that specifies as permitted in the commercial and industrial zones but it talks about hazardous fencing materials.

Chair McFadden asked if "enclosed" meant fully enclosed or just walls? Mr. Adam stated that the intent is fully enclosed.

Commissioner D'Alessandro asked if processors should be held under the same standard as far as odor filtration as the producers and wholesalers? Mr. Adam replied yes.

Commissioner Pulver asked what happens if they are found in violation? Do they get fined? If neighbors complain of the odor what happens? Mr. McConnell reported that any violation of the Code can be prosecuted through Municipal Court. They usually do not do that for a Chapter 10 violation. The businesses do not want to be in violation of State law because OLLC could revoke or suspend their license. He has not read this all the way through and does not know if there is anything specific to marijuana businesses as to what the stake is for violation of the Code. There would certainly be something in the Code for violations. Any violation of the City's Code that has gone on for more than 10 or more days the City can seek injunction relief through the Jackson County Circuit Court.

Commissioner Culbertson asked if there was anything on the books governing the industrial area on Front and Fir Streets or on pear-packing facilities that have ammonia systems? Ms. Akin replied not from a land use perspective.

Commissioner D'Alessandro stated that there are state and federal laws and safety regulations through OSHA that mandate a lot of those types of things when it comes to chemicals in confined spaces.

Staff said its approach to regulation was to normalize this; this is an industry like any other.

Commissioner Pulver equates dispensaries and retailers to liquor stores. They are limited to locations and hours. Is staff addressing that? Mr. McConnell stated that state law says on medical marijuana dispensaries cannot be within 1,000 feet of schools and each other. On the retail side they cannot be within 1,000 feet of schools but it does not say they cannot be within 1,000 feet of each other. House Bill 3400 allows cities to put that limitation as not beyond 1,000 feet. The Commission needs to figure out if they want to put a distance limitation on marijuana recreational retailers.

Commissioner Foley asked if the Planning Commission wanted to discuss hours of operation? Mr. McConnell stated that there is a Rules Advisory Committee that just got started and he does not know if they have hours of operation limitation or not. If not, there probably will be. That may not have to be addressed. The Commission can discuss time, place and manner. If there is something they would like to see now is the time to do it.

Commissioner D'Alessandro stated that if it is going to be similar to alcohol beverages; maybe the time, place, and manner should follow suit in a sense on the retail side in terms of hours and locations. Mr. McConnell said he can see one difference between marijuana and alcohol. The southern Oregon marijuana side has an allure to it because there may be more marijuana retailers congregating because of tourists supporting them. This was happening in Colorado.

Commissioner Mansfield stated that he is fully aware that the public voted for Ballot Measure 91. His motivation is to cooperate as little as possible. He likes all the limitations, and that products cannot be displayed in a manner externally visible to the public. He would like to eliminate both off- and on-premises advertising. He thinks that attention needs to be paid that the OLCC may adopt rules regulating advertising that is appealing to minors, promotes excessive use and promotes illegal activity.

Commissioner McKechnie reported that it might be advantageous to discuss with other cities like Seattle, Denver, and Colorado Springs regarding safety. What kind of occupancy will this fall under? Mr. Adam stated that he will see what he can come up with.

Chair McFadden has concerns with transportation.

Exhibit E

Minutes [excerpt], CC study session 8-27-2015

The Medford City Council Study Session was called to order at 6:00 p.m. in the Medford Room of the Medford City Hall on the above date with the following members and staff present:

Mayor Gary Wheeler; Councilmembers Clay Bearson, Daniel Bunn, Tim Jackle, Kevin Stine, Michael Zarosinski

City Manager Pro Tem Bill Hoke; City Attorney Lori Cooper; City Recorder Karen Spoons; Police Chief Tim George; Deputy City Attorney Kevin McConnell; Public Works Director Cory Crebbin; Planning Director Jim Huber; Finance Director Alison Chan; Senior Planner John Adam

Councilmembers Dick Gordon and Eli Matthews were absent.

Marijuana

Planning Director Jim Huber stated that the purpose of the presentation was to show to Council for feedback (See PowerPoint). There is a Planning Commission hearing on September 10, 2015 regarding this matter.

Deputy City Attorney Kevin McConnell arrived.

Mr. Huber noted that Council will determine what areas (zones) they will be allowed in. Senior Planner, John Adam noted that the information is provided to show how they came up with the thought process. We did leave out neighborhood commercial due to the concerns expressed. Councilmember Stine questioned why regular drug stores are allowed in a CSP but we took it out; Mr. Huber noted it was office buildings and the hospitals.

Councilmember Corcoran questioned if the offensive odor applies to each building in a row of buildings; Mr. Huber stated that it can be clarified. Councilmember Stine questioned if we want the City enforcement to be involved in it; Councilmember Bunn noted that it can be tied to the ownership. Councilmember Jackle noted that you could have different owners on one building. Councilmember Bearson questioned grandfathering and agricultural businesses; Mr. Huber noted that we have only one property like that and it is a vineyard and currently they could not do this. Councilmember Bearson questioned if we could have a fee schedule; Mr. Huber noted we would not put it this por-

tion of the Code. Councilmember Corcoran questioned if marijuana is consumed in the facility; Mr. Huber stated we would defer to the state law. Mr. Adam did not think it would be allowed as the same rules apply as buying cigarettes. Rules are due January 4, 2016. Councilmember Corcoran questioned if we could disallow it and stated that the state has not addressed this and we should wait on that.

Councilmember Bunn questioned how the home occupation license works. Mr. Huber noted that it is loose as you can do things that are not allowed in the underlying area. Finance Director, Alison Chan noted the biggest restriction is the number of people coming to your home; another concern is welding which is disallowed. Councilmember Bearson questioned making brownies at a home; Ms. Chan noted that you would have to have a commercial kitchen. Councilmember Bearson questioned the high heat cover violate gasses. Mr. McConnell believed that it did, he also talked about producers that could grow many plants. Councilmember Jackle questioned other special uses which needed a conditional use permit. Councilmember Bearson questioned if the conditional use permit caused a lot of time for staff. Mr. Huber noted that the Site Plan and Architectural Commission (SPAC) decisions can be appealed. Mr. Adam would not consider it for laboratories. Councilmember Stine would like a structure that is owned by the same person that we are not called on the complaints. Councilmember Bunn agreed. Councilmember Corcoran disagreed. Councilmember Zarosinski questioned spacing requirements and this does not cover that; Mr. Huber noted that state law still applies. Mapping was discussed; Mr. Adam had a map but did not bring it. Councilmember Bearson questioned licensing, taxing, etc. Councilmember Bunn noted that we have a tax in place. Councilmember Bearson questioned Ms. Chan for a fee schedule at the business license; Ms. Chan noted that it is doable in the business license section and can be written specifically for marijuana.

Mayor Wheeler questioned if Council agreed that this should proceed to Planning Commission on September 10, 2015. Councilmember Bunn would like tenants in the building to be addressed with the Planning Commission.

Mr. McConnell stated that if the City Council decides to lift its moratorium, mobile Marijuana Carts will not be allowed within the City.

Regarding the marijuana nuisance ordinance; 4-plant limitation in residential nuisance ordinance (Section 5.652(2)) (see PowerPoint presentation) Mayor Wheeler questioned size; Mr. McConnell noted the City does not have a limit but he thought the state did. Mr. McConnell questioned if a lot gets four plants no matter if indoors or outdoors; Councilmember Bearson noted that it was Councilmember Gordon's motion and he thought that is what he wanted.

Marijuana tax is on the books. Medical marijuana dispensaries not taxed at that time. We taxed in anticipation of producers, etc., coming in. House Bill 3400 and Senate Bill

3460. Council will need to choose. Mr. McConnell is talking to the League of Oregon Cities (LOC) on this as well. Tax at 3% is safe and not open to suits.

Councilmember Corcoran questioned if we lift the moratorium does that allow medical marijuana dispensaries; Mr. McConnell stated that it would and he noted that a lot of folks will be coming in for a business license. Councilmember Corcoran questioned the state law and whether it addresses the difference between retail and a medical marijuana dispensary.

New municipal marijuana laws, previously only a violation. Did not anticipate what is happening in the rise of marijuana items. Some will be violations, some will be a crime, and it depends on the form. More information will be provided on this, such as traffic fatalities. Councilmember Jackle questioned the 1,000 feet between anyone offering marijuana; Mr. McConnell questioned Council going too far but 1,000 would be reasonable. Councilmember Bearson questioned a tax measure to the 3% voters for November; Mr. McConnell will need to talk to the LOC on that. The state is taking care of the safety measure that was a concern of Council. Councilmember Bearson would be inclined to vote for it if medical marijuana card holders did not have to pay the 3% tax. Councilmember Corcoran questioned the cost associated with putting it on the ballot and a ban on marijuana in the City; Mr. McConnell thought the ban comes from petition. Councilmember Bunn thought we could do it with repealing the ban through the business license procedure. How many signatures would be needed as well?

Exhibit F

Minutes [excerpt], Planning Commission hearing 9-10-2015

50.2 DCA-15-104 Consideration of Municipal Code amendments to regulate marijuana-related businesses within the City of Medford (City of Medford, Applicant).

John Adam, Principal Planner, stated that the item before the Planning Commission was a proposal to adopt regulations to control the negative externalities from marijuana-related businesses. The criteria that apply to code amendments are in Medford Municipal Code, Section 10.184 (2). Mr. Adam read the applicable criteria.

Commissioner McKechnie asked that in some of the preliminary findings there were concerns with the odor. Is it not in the Code amendments? Mr. Adam stated that on page 50 of the agenda packet Section 10.839(2) it states "No marijuana-related business shall cause or allow an offensive odor of marijuana or marijuana products to emanate from a structure or from any property."

Commissioner McKechnie asked if marijuana and marijuana products may not be displayed in a manner that is externally visible to the public a state requirement? Kevin McConnell, Deputy City Attorney replied that he believes it is. It is part of House Bill 3400, but it would not be a problem to have a redundant requirement in the City's code.

Commissioner McKechnie stated that he thinks one of the comments from the City Council was that any marijuana use be a conditional use and staff opposed that. Personally he thinks that since this is a brand new growth industry that it would not be a bad idea for the Commission to see the new uses, at least for the first year, if only to see what the overall impacts are. It can be changed later. The only concern he has with a conditional use permit is that it somehow bypasses Site Plan and Architectural review. It seems to him they should be doing both. Mr. Adam responded that any new use goes through Site Plan and Architectural review if it meets certain triggers. If on the other hand it was a business that wanted to open in an existing structure they would not have to do that now. Does Commissioner McKechnie want that to be the case if it is an existing structure?

Commissioner McKechnie replied no. If it is going into an existing structure then obviously not. If it is a brand new building then he thinks the architecture, site plan and landscaping should be reviewed. A few weeks ago the Planning Commission looked at a conditional use permit for the School District which was required. Because it was required as a conditional use it was able to bypass the Site Plan and Architectural Commission but the Planning Commission was not allowed to look at it as a Site Plan and Archi-

tectural review. It is his opinion that the Planning Commission should be looking at any kind of marijuana-related activity just as a conditional use permit to understand the process rather than having it a staff function.

Commission Pulver stated that he thought with the conditional use process the Planning Commission had the ability to refer it to the Site Plan and Architectural Commission for review, but there were usually concerns about meeting the 120-day limit imposed in State law.

Commissioner Mansfield stated that the scope of the Site Plan and Architectural Commission hearing does not have to do with whether or not it is an unreasonable detriment to the neighboring properties. It has to do with whether it is a good building, properly placed, and so forth. Referring it to the Site Plan and Architectural Commission does not do the job; each marijuana activity should be subject to conditional use permit. He considers the marijuana business to be harmful to the community. He is going to vote any way he can to make it more difficult. He is bothered by the idea purveying this kind of substance is going to be helpful to our economy. He is resentful of that concept. He appreciates that staff had a need to try to find something to justify it. He opposes that justification even though he respects staff.

Mr. McConnell noted that Section 10.290 the Site Plan and Architectural review criteria states that for an application to be approved the proposed development has to show it is compatible with the uses and development that exists on adjacent land.

Chair McFadden stated that the Planning Commission review can include some Site Plan and Architectural-related items in terms of how it affects properties offsite of the property being developed.

Mr. Adam stated that by making it a conditional use permit the Planning Commission is unlikely to find that the development proposal is in the public interest.

Commissioner Pulver stated that from his reading of the staff report it indicates that what is being presented provides adequate mitigating controls. With the conditional use permit criteria it would have a hard time passing Criterion 1, but then the challenge would be Criterion 2 and create enough mitigating controls that might make it acceptable where it is proposed to be. He disagrees that it might be impossible to get a conditional use permit for various uses.

Commissioner Pulver asked if the odor concern is enforceable? Mr. McConnell affirmed that it can be enforced. The City has enforced similar nuisance issues such as unlawful accumulation of junk. Those properties have been abated. When the property owner would not do it the City requested a warrant from the Municipal Court judge and followed the process procedures and the City actually abated those nuisances through a lien the property.

Commissioner Pulver asked if a residence in a subdivision is surrounded by eight homes and three have marijuana plants how does one determine which one of the three is the offender? Mr. McConnell reported that question has come up before. It would be the City's burden. They would have to prove by preponderance of the evidence that the person cited owned the plants that were causing the odor that has caused a nuisance to a neighbor.

Chair McFadden stated that to his understanding there remains a limit on number of plants growing and those plants had to be indoors. Mr. McConnell stated that is his understanding but it is not effective until November 1, 2015 in residential areas. Mr. Adam reported that the item before the Commission deals only with commercial zoned land. Residential grows would not be affected under these rules.

Commissioner Foley stated that he thought State law limited the number of plants for commercial grow. Wasn't there a 100 plant limit indoor? Mr. McConnell reported that there is a canopy limitation that applies to City limits. He does not have the exact number in front of him. There is State law that has limitations on that.

The public hearing was opened and there being no testimony, the public hearing was closed.

Commissioner Foley asked if it was appropriate to put a sunset clause on this since it is a new industry and they do not know enough about it? Mr. McConnell stated that it would be a possible line they could explore.

Chair McFadden stated that his concern is that until there is more of a track record it is hard to know what the issues are going to be.

Commissioner D'Alessandro commented that they are not locked in and if the Planning Commission forwarded this to the City Council and City Council adopted it we could come back at any point and make necessary changes based on experience and something problematic. Mr. Adam confirmed the comment. If there was something they did not anticipate they can always put in a fix after the fact. Mr. McConnell reported that House Bill 3400 gave municipalities the ability to impose reasonable time place and manner restrictions. If there are problems that come along the City can take another look at it and tweak the amendment as necessary.

Commissioner D'Alessandro asked Mr. McConnell that with House Bill 3400 and what is proposed in staff's recommendation there is adequate information to deal with future problems? Mr. McConnell stated that with the State law all marijuana will be tested by the State license laboratories. Marijuana handlers will be licensed by the OLCC. The laboratories will be licensed. With the power of cities to impose time place and manner regulations you will not see what happened in southern California.

Commissioner Foley asked that if a business meets the criteria that is being presented tonight and the City determines in the future that there is a criteria that should have been in place but is not, you put that criteria in place, the business that existed is grandfathered, is that correct? Mr. McConnell stated that they are not grandfathered. A business has to get a business license yearly.

Commissioner Mansfield stated that the City's business licenses have no regulatory functions other than being a vetting system to make sure people are within their proper zoning. Mr. McConnell stated that they have to be in compliance with all provisions of the Code. He does not think there is a grandfather issue here. Commissioner Mansfield stated that he thinks there is.

Commissioner Pulver stated that it is his opinion that the focus is driven by the dispensaries and retail outlets. Processing, wholesaling and laboratory uses in theory should be harmless. They would happen in warehouses or buildings that would be contained where the odor would not be an issue. The State law has time, place, and manner restrictions on dispensaries in terms of how close they can be to one another or schools. Personally he would like to see something of that nature for retail in place.

Commissioner Pulver asked if multiple uses, for example, processing and wholesales, on one site is adequately addressed in what is being proposed? Mr. Adam reported that he does not know if State law requires separation between the different uses. Unless there is a State requirement to keep these things separate one could conceivably have everything from production through processing and retail sales in one location, but only in the Heavy Commercial district. Putting aside whether the State has regulations on separation or not, for any given productive use one can have some onsite retail sales in industrial districts.

Mr. McConnell stated that House Bill 3400 does allow the OLCC as necessary to protect the public health and safety to require any marijuana licensee to combine their licenses into one area. It does allow OLCC to segregate those licensed businesses into separate areas.

1st Motion: The Planning Commission adopts the findings as recommended by staff and directs staff to prepare a Final Report per the staff report dated August 28, 2015, including Exhibits A through C.

Moved by: Vice Chair Miranda

Seconded by: Commissioner Culbertson

Commissioner Foley stated there was an open question on page 50 of the agenda packet Section 10.839(2) to include "from a unit therein." Could he get clarification? Vice Chair Miranda stated he was recommending inclusion.

Friendly amendment made by Commissioner McKechnie: To strike the phrase on page 50 of the agenda packet Section 10.839(2) to include “from a unit therein.” Vice Chair Miranda seconded the first friendly amendment.

2nd Motion: Require a conditional use permit for marijuana retailing with a two year restriction.

Moved by: Commissioner McKechnie

Seconded by: Commissioner Mansfield

Commissioner McKechnie stated that this is new territory and he would rather proceed a little more purposeful instead of jump in and then say “wait a minute, we made a mistake.” We have no idea what kind of parking requirements will be needed for this.

Chair McFadden replied that zoning controls the parking. What he sees is that if this has a conditional use permit they will have to deal with the four issues under Section 10.839(A) General Provisions. Does the Commission have to define the issues that will trigger a conditional use permit, if they are going to include that?

Vice Chair Miranda stated that they are not precluded from coming in later and making additional restrictions, conditions, changing the verbiage or altering it in such a way to mitigate or eliminate a potential issue. His concern is that if they go into it with so many restrictions that it makes it almost self-elimination. He does not know if they are doing the City or themselves a service.

Kelly Akin, Principal Planner, addressed Chair McFadden’s question stating that the conditional use criteria would have to be met. In addition to the criteria, if the Commission cannot find that it meets the first criterion—that there will be no significant adverse impact—which they may be able to, then there are eleven items that can be conditioned and additional findings for mitigation of impact that will be needed to be applied. That is something for them to consider unless they want to come up with some specific language related to this specific use.

Commissioner McKechnie asked what uses already require conditional use permits. Ms. Akin replied that most of the conditional uses are institutional uses in residential zones, churches, schools, and so forth. There are not a lot of conditional uses in commercial or industrial zones.

Commissioner Culbertson commended staff because they have taken an industry that is coming down quickly and encapsulating it into the different industries that they may already have in the valley and mesh it with what they already have. It puts pretty good restrictions in place. Adding a conditional use permit requirement does not seem useful to him. The Commission can try to stonewall marijuana all its wants, but at some point they are going to start running afoul of State law. It is better to see the first test come

in, find out how does it fit within the matrix they have created, where are the gaps, and then plug those holes.

Commissioner Culbertson stated that there has been a motion, a second, a friendly amendment, another motion and second, they need to recap where they are at, because he is lost.

Chair McFadden replied there is a motion to recommend approval of this amendment to the City Council. There was a favorable friendly amendment to strike the phrase “from a unit therein” from Section 10.839 (2). Now they are at a motion to require a conditional use permit for marijuana retailing with a two-year sunset provision.

Commissioner Mansfield stated that unless there is further debate on the merits of Commissioner McKechnie’s motion to amend, it would seem appropriate for the Planning Commission to vote on the motion to amend.

Roll Call Vote for 2nd Motion: Motion passed, 5–4, with Culbertson, D’Alessandro, Miranda, and McFadden voting no. The conditional use provision for retail uses is added to the primary motion.

Roll Call Vote for 1st Motion: Motion passed, 6–3, with Fincher, Mansfield, and Miranda voting no.

Exhibit G

Minutes [excerpt], City Council hearing 10-01-2015

120.2 COUNCIL BILL 2015-104 An ordinance amending Sections 10.012 and 10.337 of the Medford Code and replacing Section 10.839 pertaining to marijuana products and related businesses effective November 1, 2015. (DCA-15-104).

Planning Director Jim Huber noted the proposal's purpose is to adopt regulations to control negative effects/externalities from marijuana-based businesses. Planning staff identified six different types of businesses, including production, processing, wholesale, and retail, laboratory and dispensaries. Zoning determinations included restricting marijuana-related businesses in residential zones, prohibiting grow sites, production, processing, storage or sales outdoors, and regulating odor and glare control. Mr. Huber advised that marijuana-related dispensaries and retail businesses will not be permitted within a 1000 foot area around schools or within 1000 feet of each other, per state law. The Planning Commission recommends an unfavorable recommendation of the time, place and manner restrictions until after the OLCC makes a final regulation.

Councilmember Bearson questioned the reason for the Conditional Use Permit (CUP) for retail businesses and the time period for appeals. Mr. Huber explained a CUP provides more control, but the requirement could be revised. The appeal process should not take years.

Mr. McConnell noted, among other things, that if the zone text amendment is approved and effective on November 1, 2015, medical marijuana dispensaries would be permitted to sell a limited retail marijuana product. He also explained that passing this ordinance would remove the moratorium as of the date specified.

Councilmember Bearnson left at 8:27 p.m. and returned at 8:29 p.m.

Councilmember Bearnson suggested the Council consider moving the effective date of the ordinance from November 1, 2015 to December 1, 2015 which would be closer to the OLCC's determination.

Police Lt. Kevin Walruff advised that OLCC's rules may be more restrictive regarding time, place, and manner, but any changes implemented by Council should hold up. The OLCC is also drafting regulations for labs, packaging, amounts, labeling, dispensing and locating.

Public hearing opened.

William Mansfield, P.O. Box 1721, Medford, clarified that he was speaking as a citizen and only as a citizen. He voiced concerns regarding marijuana distribution and sales in Medford and supported more restrictions, neighbor notification, a CUP and also requested the matter go to a citizen vote. Councilmember Bearnson asked whether Mr. Mansfield supported a CUP just to delay operation of the business; Mr. Mansfield stated all of his comments were to impair the operation of marijuana-related businesses in Medford.

Councilmember Bearnson noted his potential conflict of interest in this matter.

Public hearing closed.

Motion #1: Adopt the ordinance as recommended by planning staff, with an effective date of December 1, 2015.

Moved by: Clay Bearnson

Seconded by: Kevin Stine

Councilmember Bearnson did not agree with the CUP and outlined his reasoning. Councilmembers Jackle, Corcoran and Zarosinski preferred to wait for OLCC determination before voting.

Motion #2: Amend the motion to include language that the City of Medford will opt out of early recreational marijuana sales.

Moved by: Michael Zarosinski

Seconded by: Kevin Stine

Councilmember Zarosinski clarified his intention was to postpone recreational sales until the OLCC rules were established.

Mr. McConnell advised that Senate Bill 460 would allow the sale of limited retail marijuana product along with medical marijuana. However, the Council could opt out of those recreational sales through December 31, 2016 without taking the issue to the voters, by adopting an ordinance.

Motion #2 roll call: Councilmembers Bunn, Gordon, Stine, and Zarosinski voting yes; Councilmembers Bearnson, Corcoran, and Jackle voting no.

Motion carried and so ordered.

Mayor Wheeler stated that Council would now vote on the amended main motion, to adopt the Planning Commission's recommendation removing the conditional use process, but including Senate Bill 460's language to delay the retail sales.

Motion #3: Amend the amendment's date from December 1, 2015 to November 1, 2015.

Moved by: Kevin Stine

Seconded by: None.

Motion died for a lack of a second.

Mayor Wheeler asked for Council to vote on the original motion with Councilmember

Zarosinski's amendment.

Motion #1 roll call: Councilmembers Bearnson, Bunn, Corcoran, Stine, and Zarosinski voting yes; Councilmembers Gordon and Jackle voting no.

Motion will go to a second reading.

Councilmember Gordon requested the updated ordinance include the time, place and manner language. Mr. McConnell recommended including the hours of operation in the ordinance.

Councilmember Bearnson reminded Council about the 3% tax out to the voters, creating a business license and recommended creating a business license index with information on gross revenues. Mr. McConnell stated he could come back with a 3% tax on marijuana retailers and medical marijuana dispensaries.

Motion: Staff to prepare an ordinance referring to voters a 3% tax on marijuana sales and repealing existing marijuana taxes.

Moved by: Daniel Bunn

Seconded: Chris Corcoran

After Council discussion, Councilmember Bunn withdrew the motion.

Exhibit H

Minutes [excerpt], City Council study session & hearing 10-15-2015

60.1 COUNCIL BILL 2015-104 SECOND READING – An ordinance amending Sections 10.012 and 10.337 of the Medford Code and replacing Section 10.839 pertaining to marijuana products and related businesses effective December 1, 2015.

Motion 1: Adopt the ordinance amending Sections 10.012 and 10.337 of the Medford Code and replacing Section 10.839 pertaining to marijuana products and related businesses effective December 1, 2015.

Moved by: Clay Bearnson

Seconded by: Kevin Stine

Motion tabled to evening meeting per Motion #2.

Councilmembers Bearnson stated his reasons for supporting this ordinance as well as the implementation of a 3% tax. Councilmember Zarosinski questioned the language of the ordinance. He believed the motion indicated the Council was going to wait for the Code amendment regarding recreational marijuana. Councilmembers discussed various issues, including whether the Code revision should include recreational marijuana, if a decision should wait until after the OLCC rule determination, a possible tax and whether to submit the issue to the voters. Mayor Wheeler stated that he was undecided at this point and may veto an approved ordinance. City Attorney Lori Cooper read the Charter pertaining to Mayor Wheeler's vote.

Councilmember Bearnson noted his potential conflict of interest regarding the topic of marijuana.

Motion #2: Continue item 60.1 until the evening session and direct staff to return an ordinance consistent with Mr. Zarosinski's motion of October 1, 2015.

Moved by: Daniel Bunn

Seconded by: Clay Bearnson

Councilmember Jackle expressed his concern regarding notice.

Motion #2 roll call: Councilmembers Bearnson, Bunn, Corcoran, Gordon, Jackle, Matthews, Stine, and Zarosinski voting yes.

Motion carried and so ordered.

60.1 COUNCIL BILL 2015-104 SECOND READING An ordinance amending Sections 10.012 and 10.337 of the Medford Code and replacing Section 10.839 pertaining to marijuana products and related businesses effective December 1, 2015.

At Mayor Wheeler's request, City Recorder Karen Spoons noted the pending motion was moved by Clay Bearnson and seconded by Kevin Stine.

Councilmember Bunn noted his goal is to find consensus and he preferred to submit the issue to the voters. Councilmember Bearnson spoke in support of the ordinance and a 3% tax on marijuana. He also provided information regarding the OLCC process and the Council's reactive versus proactive response. He recommended drafting our rules to coincide with the OLCC's rules. Councilmember Matthews questioned whether the Council should wait for the state's decision and expressed his concern for public safety and the potential expense. Councilmember Zarosinski preferred to send the issue to the voters. Councilmember Gordon noted he is in favor of medical marijuana, but is not ready to take the step to retail because of possible long-term effects on the body. He questioned if we could pass the ordinance without the retail stores. City Attorney Lori Cooper noted that the ordinance could be revised.

Motion #2: Amend the ordinance to delete all reference to retail sales.

Moved by: Dick Gordon

Seconded by: Chris Corcoran

Deputy City Attorney Kevin McConnell stated that a revision could not be approved tonight as it would require a substantial zone text amendment from the Planning Department. Councilmember Stine questioned if there would be a legal challenge if someone wanted to sell retail. Mr. McConnell stated after retail sales are licensed by the state, the City may see challenges. Council discussed the legal ramifications of allowing everything except retail.

Councilmember Bunn asked how the City could legally disallow retail marijuana sales. Mr. McConnell responded that we currently utilize the Home Rule Federal Preemption and pursuant to HB 3400, communities may disallow items. However, any revisions would require approval through a general election.

Motion #2 roll call: Councilmembers Bearnson, Bunn, Corcoran, Gordon, Jackle, Matthews, Stine, and Zarosinski voting yes.

Motion carried and so ordered.

Councilmember Gordon sought clarification regarding whether staff would rewrite the ordinance in accordance with the amendment just passed. Mayor Wheeler preferred the topic be submitted to voters in November. He also informed that he may veto an ordinance approving retail sales. He noted his position went back to our Strategic Plan regarding a safe community and because the Council had not addressed outdoor grows. Council discussed taking the matter to voters.

Motion #1 roll call: Councilmembers Bearnson, Bunn, Corcoran, Gordon, Matthews,

Stine, and Zarosinski voting yes; Councilmember Jackle voting no.
Motion carried and so ordered.

Motion #3: Direct staff to prepare an ordinance referring a marijuana retailer dispensary ban to the voters, consistent to statute.

Moved by: Daniel Bunn

Seconded by: Eli Matthews

Councilmember Jackle questioned why the Council didn't wait on this issue; Councilmember Bunn believed that it may reduce the window for lawsuits. Mayor Wheeler noted the next Council meeting will be November 12. He also reported that if he vetoes the matter, Council may hold a special meeting for the purpose of balloting on his veto. If two-thirds of the members present during the meeting vote for such an ordinance, it will become immediately operative as if approved by the Mayor.

Motion #3 roll call: Councilmembers Bearnson, Bunn, Corcoran, Gordon, Matthews, Stine, and Zarosinski voting yes; Councilmember Jackle voting no.
Motion carried and so ordered.

Exhibit I

Minutes [excerpt], Planning Commission hearing 10-13-2016

60.3 Planning Department

Kelly Akin, Interim Planning Director, reported that there are two ballot measures regarding marijuana retailing. Whether the City will or will not ban marijuana retailers and if the public does not want the City to ban marijuana retailers whether there will be a local 3% tax on the marijuana retailers. The text amendment had the retail line on the use chart. Staff will not bring it back to the Planning Commission for reconsideration. Staff will forward their prior recommendation which was to make that use conditional in the C-C, C-R and C-H zoning districts. Staff will move it forward to the City Council in order to expedite it. It is scheduled for the December 1, 2016, City Council meeting.

Commissioner Foley stated that assuming the ballot measures pass and there are marijuana retailers in the City. If he recalls correctly there was a “kerfuffle” where the Commission had discussed a conditional use then decided not but then when it went to City Council it was there. It seemed messy to him. Ms. Akin showed a visual of the table that was adopted and retail is not permitted at this point. The Planning Commission had recommended conditional uses and the City Council adopted the ordinance as they are permitted. There are special operating conditions. Staff will continue to bring forward the Planning Commission’s recommendation. Staff’s recommendation was not the same. They recommended that the uses be permitted outright.