CITY COUNCIL MONTHLY MEETING CALENDAR

Jun-16

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 Election Packets Available 9am - City Recorder's Office Water Providers CB 6:30pm	2 EDC Noon	3 Rotary Steak Feed S&CC 1st Friday	4
5	6 Planning Comm 7pm	7 CCI 5:30pm	8 Municipal Court Parks Master Plan Workshop 5:30 & 7:30 pm Rogers Rm MPAC 5pm	9 PAC 5pm	10 JWC 12:30pm TBA	11
12	13 CITY COUNCIL 5:30 PM - EXECUTIVE SESSION (Labor) 6:00 PM - WORK SESSION (City Code Update) 7:00 PM - REGULAR MEETING COMMUNITY AUDITORIUM	14 Red Cross Blood Drive 1pm - 6pm - Comm Aud Library 6:30pm	15 P&R 7am CFC 5:15pm CAO 5pm CWAC 5:30pm	16 Food Film 7:30pm	17 LOC Directors	18
19	20 Chamber Luncheon FGS&CC Bd Mtg 6:30pm Planning Comm 7pm Sister Cities Comm 4:45 pm	21 Fernhill Wetlands 5:30pm	22 Municipal Court PSAC 7:30am *Thompson out June 22 - July 20th*	23 WEA Breakfast Sustainability 6pm	24	25
26	27 CITY COUNCIL 5:30 PM - EXECUTIVE SESSION (CM Evaluation) 6:05 PM - WORK SESSION (Body Worn Cameras) 6:40 PM - URBAN RENEWAL AGENCY MEETING 7:00 PM - REGULAR COUNCIL MEETING COMMUNITY AUDITORIUM	28 HLB 7:15pm *Johnston out June 28 - July 29*	29 MPAC 5pm	30 Employee Breakfast 7am - Fire Station		

Jul-16

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 S&CC 1st Friday	2
Thompson out until July 20 *Johnston out until July 29* *Wenzl out July 10 - July 15*						
3	4 CITY OFFICES CLOSED HOLIDAY	5 Planning Comm 7pm CCI 5:30pm	6 PAC Art Dedication 5:30pm MPAC 5pm	7 EDC Postponed	8	9
10 *Thompson out* *Johnston out* *Wenzl out*	11 1st DAY TO FILE CANDIDACY PETITION 120-DAYS BEFORE ELECTION 9:00 am - City Recorder's Office CITY COUNCIL 7:00 PM - REGULAR MEETING COMMUNITY AUDITORIUM	12 Red Cross Blood Drive 1pm - 6pm - Comm Aud Library 6:30pm *OCCMA Conference*	13 Municipal Court	14 PAC 5pm Nyuzen - Mayor Meet & Greet 5pm - Comm Aud *Nyuzen Adult Delegation Arrives*	15 Nyuzen Welcome Dinner 6pm - Location TBA *Wenzl returns*	16 Cruis'n the Grove
17 Rotary Concours	18 Chamber Luncheon FGS&CC Bd Mtg 6:30pm Planning Comm 7pm *Nyuzen Adult Delegation Departs*	19 Fernhill Wetlands 5:30pm	20 P&R 7am CFC 5:15pm CAO 5pm CWAC 5:30pm *Thompson returns*	21 Food Film 7:30pm *OMA Conference*	22	23
24	25 CITY COUNCIL NO REGULAR MEETING SCHEDULED	26 HLB 7:15pm	27 Municipal Court PSAC 7:30am *Wenzl out until August 3*	28 WEA Breakfast Sustainability 6pm	29 *Johnston returns*	30
31						

Aug-16

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Planning Comm 7pm *Wenzl out until August 3*	2 Nat'l Night Out CCI 5:30pm	3 MPAC 5pm	4 EDC No Meeting	5 S&CC 1st Friday	6
7	8 CITY COUNCIL 7:00 PM - REGULAR MEETING COMMUNITY AUDITORIUM	9 Red Cross Blood Drive 1pm - 6pm - Comm Aud Library 6:30pm	10 Municipal Court	11 PAC 5pm	12	13
14	15 Chamber Luncheon FGS&CC Bd Mtg 6:30pm Planning Comm 7pm	16 Fernhill Wetlands 5:30pm	17 P&R 7am CFC 5:15pm CAO 5pm CWAC 5:30pm	18 Food Film 7:30pm	19	20
21	22 CITY COUNCIL NO REGULAR MEETING SCHEDULED	23 Ford Leadership HLB 7:15pm	24 Municipal Court PSAC 7:30am	25 WEA Breakfast Sustainability 6pm	26	27
28	29	30 LAST DAY TO FILE COMPLETED PETITION 70-DAYS BEFORE ELECTION 5:00 pm - City Recorder's Office Sept 12 - Voters' Pamphlet Deadline				

Meeting dates/times may cancel without notice; please confirm with meeting agendas.
TBD=To Be Determined

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CITY COUNCIL MEETING AGENDA — MONDAY, JUNE 27, 2016

5:30 PM – Executive Session (City Manager Self Evaluation)
6:05 PM – Work Session (Body Worn Cameras)
6:40 PM – Urban Renewal Agency Meeting *(Separate Agenda)*
7:15 PM – Regular Meeting

Community Auditorium
1915 Main Street
Forest Grove, OR 97116

Forest Grove City Council Meetings are televised live by Tualatin Valley Community Television (TVCTV) Government Access Programming, Ch 30. To obtain the programming schedule, please contact TVCTV at 503.629.8534 or visit http://www.tvctv.org/government-programming/government-meetings/forest-grove.

PETER B. TRUAX, MAYOR

Thomas L. Johnston, Council President
Richard G. Kidd III
Victoria J. Lowe
Ronald C. Thompson
Elena Uhing
Malynda H. Wenzl

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EXECUTIVE SESSIONS ARE CLOSED TO THE PUBLIC. Representatives of the news media and designated staff may attend Executive Sessions. Representatives of the news media are specifically directed not to report on any of the deliberations during the Executive Session, except to state the general subject of the session as previously announced. No Executive Session may be held for the purpose of taking final action or making any final decision.

The City Council will convene in the Community Auditorium – Conference Room to hold the following executive session(s):

Peter Truax, Mayor	**5:30**	In accordance with ORS 192.660(2)(i) to review and evaluate the employment-related performance of the City Manager.
Mike Herb, Police Captain J. F. Schutz, Police Chief Jesse VanderZanden, City Manager	**6:05**	**WORK SESSION: POLICE BODY WORN CAMERAS** The City Council will convene in the Community Auditorium – Conference Room to conduct the above work session(s). The public is invited to attend and observe the work session(s); however, no public comment will be taken. The Council will take no formal action during the work session(s).
Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	**6:40**	**URBAN RENEWAL AGENCY MEETING:** The Forest Grove Urban Renewal Agency Board will convene in the Community Auditorium to conduct an Urban Renewal Agency Meeting. (*Refer to separate agenda*).

7:00

1. **REGULAR MEETING**: Roll Call and Pledge of Allegiance
2. **CITIZEN COMMUNICATIONS**: Anyone wishing to speak to Council on an item not on the agenda may be heard at this time. *Please sign-in before the meeting on the Citizen Communications form posted in the foyer*. In the interest of time, please limit comments to two minutes. Thank you.
3. **CONSENT AGENDA: See Page 5**
4. **ADDITIONS/DELETIONS:**
5. **PRESENTATIONS:**

7:10 (15mins)

- *Representative Susan McLain, House District 29, Update*

(PowerPoint Presentation)
Paul Downey, Administrative Services Director
Kevin Ellingsburg, Police Captain
Jesse VanderZanden, City Manager

7:25 (20mins)

6. **PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2016-13 AMENDING FOREST GROVE CITY CODE CHAPTER 2, GOVERNMENT AND ADMINISTRATION, BY ADDING NEW CODE SECTIONS 2.705 TO 2.710, ESTABLISHING MUNICIPAL COURT JURISDICTION; ADDING NEW CODE SECTIONS 5.375 TO 5.390, ESTABLISHING EXCLUSION FROM CITY FACILITY OR PROPERTY; AND AMENDING CITY CODE CHAPTER 5, PUBLIC PROTECTION, ABATEMENT-RELATED PROCEDURES AND OTHER PROVISIONS**

(PowerPoint Presentation) Dan Riordan, Senior Planner Jon Holan, Community Development Director Jesse VanderZanden, City Manager	7:45 20mins	7.	**PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2016-14 AMENDING FOREST GROVE DEVELOPMENT CODE ARTICLES 3, 8 AND 12 FOR THE PURPOSES OF ADOPTING TIME, PLACE AND MANNER RESTRICTIONS FOR MARIJUANA FACILITIES; CLASSIFYING MARIJUANA FACILITIES; AND ADOPTING DEFINITIONS; FILE NO. 311-16-00034**
(PowerPoint Presentation) Jon Holan, Community Development Director Jesse VanderZanden, City Manager	8:05 15mins	8.	**PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2016-15 OF CITY OF FOREST GROVE IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE TO THE ELECTORS OF FOREST GROVE AT THE NEXT GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016**
Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	8:20 5mins	9.	**PUBLIC HEARING AND RESOLUTION NO. 2016-40 ADOPTING BUDGET FOR FISCAL YEAR COMMENCING JULY 1, 2016, AND ENDING JUNE 30, 2017**
Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	8:25 5mins	10.	**RESOLUTION NO. 2016-41 MAKING APPROPRIATIONS FOR THE CITY OF FOREST GROVE, WASHINGTON COUNTY, OREGON, FOR THE FISCAL YEAR COMMENCING JULY 1, 2016, AND ENDING JUNE 30, 2017**
Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	8:30 5mins	11.	**RESOLUTION NO. 2016-42 LEVYING AND CATEGORIZING TAXES FOR FISCAL YEAR COMMENCING JULY 1, 2016, AND ENDING JUNE 30, 2017**
Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	8:35 5mins	12.	**RESOLUTION NO. 2016-43 ADOPTING FISCAL YEAR 2016-21 CAPITAL IMPROVEMENTS PROGRAM**
Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	8:40 5mins	13.	**PUBLIC HEARING AND RESOLUTION NO. 2016-44 DECLARING CITY'S ELECTION TO RECEIVE STATE REVENUES**
Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	8:45 5mins	14.	**PUBLIC HEARING AND RESOLUTION NO. 2016-45 CERTIFYING SERVICES PROVIDED BY THE CITY OF FOREST GROVE**

Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	8:50 5mins	15.	**PUBLIC HEARING AND RESOLUTION NO. 2016-46 ADOPTING CAPITAL IMPROVEMENTS PROGRAM EXCISE TAX AND REPEALING RESOLUTION NO. 2015-49**
Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	8:55 5mins	16.	**RESOLUTION NO. 2016-47 TRANSFERRING APPROPRIATIONS WITHIN VARIOUS FUNDS FOR FISCAL YEAR 2015-16**
Rob Foster, Public Works Director Paul Downey, Administrative Services Director Jesse VanderZanden, City Manager	9:00 5mins	17.	**PUBLIC HEARING AND RESOLUTION NO. 2016-48 ESTABLISHING CERTAIN CLEAN WATER SERVICES UTILITY RATES AND CHARGES (Sanitary Sewer; Surface Water Management; Surface Water Management System Development Charges; and Sewer System Development Charges) FOR THE CITY OF FOREST GROVE, EFFECTIVE JULY 1, 2016, AND REPEALING RESOLUTION NO. 2015-52**
City Councilors	9:05 15min	18.	**CITY COUNCIL COMMUNICATIONS:**
Jesse VanderZanden, City Manager	9:20 5min	19.	**CITY MANAGER'S REPORT:**
Peter Truax, Mayor	9:25 5min	20.	**MAYOR'S REPORT:**
	9:30	21.	**ADJOURNMENT:**

3. CONSENT AGENDA: Items under the Consent Agenda are considered routine and will be adopted with a single motion, without separate discussion. Council members who wish to remove an item from the Consent Agenda may do so prior to the motion to approve the item(s). Any item(s) removed from the Consent Agenda will be discussed and acted upon following the approval of the remaining Consent Agenda item(s).

A. Approve City Council Work Session (Fire Standards Cover) Meeting Minutes of May 23, 2016.
B. Approve City Council Regular Meeting Minutes of May 23, 2016.
C. Approve City Council Executive Session (Labor Negotiations) Meeting Minutes of June 9, 2016.
D. Accept Parks and Recreation Commission Meeting Minutes of May 18, 2016.
E. Accept Planning Commission Meeting Minutes of June 6, 2016.
F. Accept Sustainability Commission Meeting Minutes of February 25, March 31 and April 28, 2016.

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URBAN RENEWAL AGENCY MEETING AGENDA MONDAY, JUNE 27, 2016

Community Auditorium
1915 Main Street
Forest Grove, OR 97116

6:40 PM – Urban Renewal Agency Meeting

PETER B. TRUAX, DIRECTOR BOARD CHAIR

Thomas L. Johnston, Vice Chair
Richard G. Kidd II
Victoria J. Lowe
Ronald C. Thompson
Elena Uhing
Malynda H. Wenzl

All meetings of the Urban Renewal Agency Board are open to the public and all persons are permitted to attend any meeting except as otherwise provided by ORS 192. The public may address the Urban Renewal Agency Board as follows:

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6:40 1. **URBAN RENEWAL AGENCY MEETING**: Roll Call

2. **CITIZEN COMMUNICATIONS**: Anyone wishing to speak to Urban Renewal Agency Board on an item not on the agenda may be heard at this time. *Please sign-in before the meeting on the Citizen Communications form posted in the foyer*. In the interest of time, please limit comments to two minutes. Thank you.

3. **CONSENT AGENDA:**
   - *A. Approve Urban Renewal Agency Executive Session (Real Property) Meeting Minutes of February 22, 2016.*
   - *B. Approve Urban Renewal Agency Regular Meeting Minutes of February 22, 2016.*

4. **ADDITIONS/DELETIONS:**

5. **PRESENTATIONS:** None.

Paul Downey, Administrative Services Director
Jesse VanderZanden, City Manager

6. **URA RESOLUTION NO. 2016-04 OF THE CITY OF FOREST GROVE URBAN RENEWAL AGENCY ADOPTING THE BUDGET, MAKING APPROPRIATIONS, AND DECLARING THE TAX INCREMENT FOR FISCAL YEAR COMMENCING JULY 1, 2016, AND ENDING JUNE 30, 2017**

6:55 7. **ADJOURNMENT:**

3A

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Monday, February 22, 2016
6:00 p.m., Community Auditorium
Conference Room

Urban Renewal Agency Executive Session Minutes

Minutes are unofficial until approved by the Board of Directors.

1. **CALLED TO ORDER AND ROLL CALL:**
Peter Truax, Urban Renewal Agency (URA) Director Chair, called the URA Executive Session to order at 6:19 p.m.

ROLL CALL: URA DIRECTORS PRESENT: Thomas Johnston, Vice-Chair; Richard Kidd; Victoria Lowe; Ronald Thompson; Malynda Wenzl; and Peter Truax, Chair.
URA BOARD DIRECTOR ABSENT: Elena Uhing, excused.

STAFF PRESENT: Jesse VanderZanden, Executive Director; Paul Elsner, URA Counsel; Paul Downey, Administrative Services Director; Jon Holan, Community Development Director; and Anna Ruggles, City Recorder.

2. **EXECUTIVE SESSION:**
The Urban Renewal Agency Board of Directors met in Executive Session in accordance with:

ORS 192.660(2)(E) to deliberate with persons designated by the governing body to negotiate in real property transactions.

3. **ADJOURNMENT:**
Director Chair Truax adjourned the URA executive session at 7:12 p.m.

Respectfully submitted,

_____
Anna D. Ruggles, CMC, City Recorder

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Urban Renewal Agency Meeting Minutes

Monday, February 22, 2016
7:45 p.m., Community Auditorium

Minutes are unofficial until approved by the Board of Directors.

1. **CALLED TO ORDER AND ROLL CALL:**
Peter Truax, Urban Renewal Agency (URA) Director Chair, called the regular URA meeting to order at 8:07 p.m.

ROLL CALL: URA DIRECTORS PRESENT: Thomas Johnston, Vice-Chair; Richard Kidd; Victoria Lowe; Ronald Thompson; Malynda Wenzl; and Peter Truax, Chair.
URA BOARD DIRECTOR ABSENT: Elena Uhing, excused.

STAFF PRESENT: Jesse VanderZanden, Executive Director; Paul Elsner, URA Counsel; Paul Downey, Administrative Services Director; Jon Holan, Community Development Director; Dan Riordan, Senior Planner; George Cress, Light and Power Director (in the audience); Rob Foster, Public Works Director (in the audience); J. F. Schutz, Police Chief (in the audience); and Anna Ruggles, City Recorder.

2. **CITIZEN COMMUNICATIONS**: None.

3. **CONSENT AGENDA:**
   A. Approve Urban Renewal Agency Meeting Minutes of June 22, 2015
   B. Approve Urban Renewal Agency Meeting Minutes of August 10, 2015.

MOTION: Director Kidd moved, seconded by Director Wenzl, to approve the Consent Agenda as presented. ABSENT: Director Uhing. MOTION CARRIED 6-0 by voice vote.

4. **ADDITIONS/DELETIONS:**
VanderZanden added the following resolutions to the agenda (refer below):
   1) 6. A. URA Resolution No.2016-02, Authorizing the Agency's Executive Director to enter into a Disposition and Development Agreement (DDA) between Tokola Properties and Urban Renewal Agency (URA) of the City of Forest Grove for Mixed-Use Project, and
   2) 6. B. URA Resolution No. 2016-03, Authorizing the Agency's Executive Director to Complete Sale of Property from Urban Renewal Agency of the City of Forest Grove to Tokola Properties.

5. PRESENTATIONS:

5. A. Financial Projections on Times Litho; Disposition and Development Agreement
Downey presented an informational PowerPoint presentation outlining the proposed Disposition and Development Agreement (DDA) (Item 6. A. below) between the Urban Renewal Agency (URA) and Tokola Properties for Forest Grove Mixed-Use Project, located north of Pacific Avenue and west of A Street; File No. 311-15-00022-PLNG, noting the URA and Tokola Properties have reached an agreement on the major provisions of the DDA, including: 1) description of the mixed-use project; 2) value of the property to be sold; 3) obligations of all parties concerning responsibilities with respect to the project and the timing of those responsibilities; 4) Tokola financial obligation; and 5) URA financial participation for the project. Downey referenced his PowerPoint presentation outlining the major purposes of the DDA; map showing Phase I as the property to be sold to Tokola; major conditions for land sale to be completed; project timelines indicating Tokola has until July 1, 2017, to meet conditions for transfer of property or agreement will terminate subject to one 180-day extension at written request and Tokola has 24 months after closing of property sale to obtain required certificate of completion for the project; URA financial participation indicating Tokola has requested URA financial participation on the project to make the project financially feasible; City has hired ECONorthwest to do an independent third-party assessment of Tokola's pro-forma financial information; and slides showing operating forecast for apartments and retail, annual operating and cash flow forecast; and project summary valuation vs. costs, showing total project cost of $15,525,536 and financial gap of $1,842,624, with a remaining balance of $1,555,124. Downey outlined the proposed strategy for the $1,555,124 remaining in public participation, noting if the City waives building permits and plan review fees ($72,563) and land write-down by URA ($520,000), the total costs to be paid by the URA is $962,561. Downey advised the URA and City currently have a $1.1 million note for the URA to repay the City for the URA's purchase of the Times Litho site from the City, noting the URA does not have cash to meet the public participation obligation and would need to borrow the money, so staff is proposing the City loan the URA $962,561 so the URA has funding to pay for the costs. Downey noted the combined loan would be interest only for the first two years and restructuring of the loan after 5-7 years to pay back the loan faster as URA property tax revenue increases. Downey referenced slides showing the estimated revenues and expenditures of the URA, including repayment of the loan, noting staff concludes that the URA has sufficient property tax revenues to pay for the payments for the debt incurred to the City to pay for the land and other Tokola project costs paid by the URA and the annual administrative costs of the URA. After the payment of the above-noted costs, over time there will be remaining property tax revenues available for other URA projects. In conclusion of the above-noted presentation, Downey advised staff is adding two resolutions to the agenda this evening: 1) Authorizing the Executive Director to complete the DDA and execute final

DDA as long as significant provisions of the DDA are not changed; and 2) Authorizing the Executive Director to complete the sale of the portion of the Times Litho Property described as Phase 1.

5. B. Times Litho Site Redevelopment; Financial Feasibility Assessment
Downey introduced ECONortwest representative who gave an informational PowerPoint presentation outlining the assessment of Tokola's pro-forma; benefits of private-public partnerships; and key assumptions, noting Tokola's total project cost and assumptions are reasonable and the project requires public participation to be viable. In addition ECONorthwest displayed photographs showing other private-public tax increment financing (TIF) projects, including Astoria, Library Theater ($9M, 22% TIF); Madras, Inn at Cross Keys ($4.7M, 11% TIF); The Dalles, Commodore Building ($5.3M, 9% TIF); Salem, Hollywood Station ($20M, >50% TIF); and Salem, North Broadway ($15M, 25-30% TIF), noting Tokola Properties' projected profit is in the low end of normal range and percent projected TIF participation (10%) is also on the low end of other similar projects.

6. A. PUBLIC HEARING AND URA RESOLUTION NO. 2016-02 AUTHORIZING THE AGENCY'S EXECUTIVE DIRECTOR TO ENTER INTO A DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN TOKOLA PROPERTIES AND URBAN RENEWAL AGENCY (URA) OF THE CITY OF FOREST GROVE FOR MIXED-USE PROJECT

Staff Report:
Downey and VanderZanden added the above-proposed resolution to the agenda authorizing the Executive Director to enter into a Disposition and Development Agreement (DDA) between the Urban Renewal Agency (URA) and Tokola Properties for the Forest Grove Mixed-Use Project on the portion of the Times Litho property owned by the URA. Downey reported the URA and Tokola Properties have reached agreement on the major provisions of the DDA, including: 1) description of the mixed-use project; 2) value of the property to be sold; 3) obligations of all parties concerning responsibilities with respect to the project and the timing of those responsibilities; 4) Tokola financial obligations; and 5) URA financial participation for the project. In conclusion of the above-noted staff report, Downey advised staff is recommending the URA adopt the proposed resolution authorizing the Executive Director to complete and excute the DDA on behalf of the URA subject to: 1) any substantive changes to the terms of the DDA will be brought back to the URA prior to execution; 2) significant duties of the parties to the DDA are not adjusted without approval of the URA; and 3) URA Counsel approves the final version of the DDA.

Before proceeding with Public Hearing and Board discussion, Director Chair Truax asked for a motion to adopt URA Resolution No. 2016-02.

VanderZanden read URA Resolution No. 2016-02 by title.

MOTION: Director Kidd moved, seconded by Director Thompson, to adopt URA Resolution No. 2016-02 Authorizing the Agency's Executive Director to Enter into a Disposition and Development Agreement (DDA) between Tokola Properties and Urban Renewal Agency (URA) of the City of Forest Grove for Mixed-Use Project.

Public Hearing Opened:
Director Chair Truax opened the Public Hearing and explained hearing procedures.

Testimony Heard:
Al Young, Hillsboro, asked for a delay, noting he has concerns about the $1.5 million (public participation) and remaining portion of the system development charges the City is proposing to pay.

Kathryn Harrington, Metro Councilor District 4, testified in support of the motions.

No one else testified and no written comments were received.

Public Hearing Closed:
Director Chair Truax closed the Public Hearing.

Board of Directors Discussion:
Elsner responded to various concerns, inquiries and scenarios the URA presented pertaining to the terms, obligations, risk factors of the DDA and gave examples of subordination, i.e., requesting a larger loan or additional loan and agreeing to be paid second, noting he does not see a substantiated risk to the City. Elsner added the City is not a party to the DDA; therefore, not part of the motion currently on the floor, noting if that was to happen, the agreement would have to come back to Council for formal approval as well as the URA. VanderZanden and Downey clarified the subordination concept is the URA's potential to pay the City back, noting the URA pays the City back through property taxes.

Lowe asked to TABLE Resolution No. 2016-02 as noted below.

MOTION TO TABLE: Director Lowe moved, seconded by Director Wenzl, to TABLE (Resolution No. 2016-02) for more information from Attorney and further negotiations by Executive Director and developer.

ROLL CALL VOTE ON MOTION TO TABLE: AYES: Directors Lowe and Wenzl.

NOES: Directors Vice Chair Johnston, Kidd, Thompson, and Director Chair Truax. ABSENT: Director Uhing. MOTION FAILED 2-4.

Hearing no further discussion from the Board and question called, Director Chair Truax asked for a roll call vote on the above motion.

ROLL CALL VOTE: AYES: Directors Vice Chair Johnston, Kidd, Thompson, Wenzl, and Director Chair Truax. NOES: Director Lowe. ABSENT: Director Uhing. MOTION CARRIED 5-1.

6. B. PUBLIC HEARING AND URA RESOLUTION NO. 2016-03 AUTHORIZING THE AGENCY'S EXECUTIVE DIRECTOR TO COMPLETE SALE OF PROPERTY FROM URBAN RENEWAL AGENCY OF THE CITY OF FOREST GROVE TO TOKOLA PROPERTIES

Staff Report:
Downey and VanderZanden added the above-proposed resolution to the agenda authorizing the Executive Director to complete sale of property from the URA to Tokola Properties. Downey reported the sale of property is identified as Phase I on the site known as the Times Litho property to Tokola Properties for zero dollars as part of the URA financial assistance provided to Tokola Properties, noting the DDA has requirements that must be met before the property can be sold. In conclusion of the above-noted staff report, Downey advised staff is recommending the URA approve the proposed resolution authorizing the Executive Director to complete the sale of property to Tokola Properties subject to: 1) all requirements for the sale of the property required by the DDA be completed prior to execution of the property deed; and 2) URA Counsel concurs all requirements to complete the property sale have been completed and approves the final form of the deed.

Before proceeding with Public Hearing and Board discussion, Chair Truax asked for a motion to adopt URA Resolution No. 2016-03.

VanderZanden read URA Resolution No. 2016-03 by title.

MOTION: Director Vice Chair Johnston moved, seconded by Director Kidd, to adopt URA Resolution No. 2016-03 Authorizing the Agency's Executive Director to Complete Sale of Property from Urban Renewal Agency of the City of Forest Grove to Tokola Properties.

Public Hearing Opened:
Director Chair Truax opened the Public Hearing and explained hearing procedures.

Testimony Heard:
No one testified and no written comments were received.

Public Hearing Closed:
Director Chair Truax closed the Public Hearing.

Board of Directors Discussion:
Hearing no further discussion from the Board and question called, Director Chair Truax asked for a roll call vote on the above motion.

ROLL CALL VOTE: AYES: Directors Vice Chair Johnston, Kidd, Thompson, Wenzl, and Director Chair Truax. NOES: Director Lowe. ABSENT: Director Uhing. MOTION CARRIED 5-1.

6. **PUBLIC HEARING AND URA RESOLUTION NO. 2016-01 AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN TOKOLA PROPERTIES AND URBAN RENEWAL AGENCY (URA) FOR FOREST GROVE MIXED-USE PROJECT, LOCATED NORTH OF PACIFIC AVENUE AND WEST OF A STREET; FILE NO. 311-15-00022-PLNG**

Staff Report:
Riordan, Holan, Downey and VanderZanden presented the above-proposed resolution authorizing the Executive Director to enter into a Development Agreement (DA) between the URA and Tokola Properties to allow for development of Phase I, a four-story, mixed-use residential apartment and commercial development project comprised of 78-apartment units, including five live-work units, approximately 2,500 square feet of commercial space, 94 parking spaces, and a privately constructed/publicly accessible plaza area comprised of approximately 2,900 square feet on 1.53 acres located north of Pacific Avenue and west of A Street in downtown Forest Grove (former Times Litho property); Forest Grove Mixed-Use Project, File No. 311-15-00022-PLNG. Riordan provided background information, noting the City entered into an exclusive agreement with Tokola Properties in 2015 in order to refine the project concept based on the City's objectives for the property. Riordan reported the Council approved the land use application, including the DA on January 25, 2016, noting the URA must also approve the DA since the URA is party to the DA and the project will occur on URA owned land. Riordan added the DA would allow the redevelopment project to move forward and is necessary to accommodate project density and other necessary design features to achieve the City's redevelopment objectives for the property, because the Development Code affecting permissible development density is not in effect at this time. In conclusion of the above-noted staff report, Riordan advised staff is recommending the URA approve the DA attached as Exhibit 1.

Before proceeding with Public Hearing and Board discussion, Director Chair Truax asked for a motion to adopt URA Resolution No. 2016-01.

VanderZanden read URA Resolution No. 2016-01 by title.

MOTION: Director Kidd moved, seconded by Director Thompson, to adopt URA Resolution No. 2016-01 Authorizing the Executive Director to Enter into a Development Agreement between Tokola Properties and Urban Renewal Agency (URA) for Forest Grove Mixed-Use Project, located North of Pacific Avenue and West of A Street; File No. 311-15-00022-PLNG.

Public Hearing Opened:
Director Chair Truax opened the Public Hearing and explained hearing procedures.

Testimony Heard:
No one testified and no written comments were received.

Public Hearing Closed:
Director Chair Truax closed the Public Hearing.

Board of Directors Discussion:
Hearing no discussion from the Board and question called, Director Chair Truax asked for a roll call vote on the above motion.

ROLL CALL VOTE: AYES: Directors Vice Chair Johnston, Kidd, Thompson, Wenzl, and Director Chair Truax. NOES: Director Lowe. ABSENT: Director Uhing. MOTION CARRIED 5-1.

7. **ADJOURNMENT:**
Director Chair Truax adjourned the URA regular meeting at 9:17 p.m.

Respectfully submitted,

_____
Anna D. Ruggles, CMC, City Recorder

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	6.
MEETING DATE:	
FINAL ACTION:	

URBAN RENEWAL AGENCY STAFF REPORT

TO: *Urban Renewal Agency Board of Directors*

FROM: *Jesse VanderZanden, Executive Director*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Paul Downey, Administrative Services Director*

SUBJECT TITLE: *Adoption of FY 2016-17 URA Budget and Property Taxes*

ACTION REQUESTED:

	Ordinance		Order	X	Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT: The Forest Grove Urban Renewal Budget Committee approved on May 12, 2016, the Proposed FY 2016-17 Budget of $1,046,205 and declared the tax increment to be collected. The Urban Renewal Agency (URA) Board now needs to adopt the FY 2016-17 Approved Budget, declare the tax increment to be collected for FY 2016-17, and make the appropriations that set the legal expenditure level. Staff has prepared a resolution that includes all three actions for the Board's consideration.

BACKGROUND: This is the second operating budget for the URA. The principal revenues that will be available in FY 2016-17 are the taxes collected on the incremental increase in the assessed value of the URA and a loan from the City of Forest Grove's Capital Project Fund to permit the URA to help pay for development costs of development planning to commence construction in September 2016. The Budget includes funds to pay interest to the City's Capital Project Fund for debt for the land purchase and the planned loan for development costs. Staff has not proposed any changes to the Budget approved by the URA Budget Committee.

FISCAL IMPACT: The projected property taxes on the increase in incremental assessed value for the URA will be sufficient to repay the interest for the loans for the property purchase and development costs. Funds available for other URA projects will depend upon the amount of taxes generated above the debt repayments.

STAFF RECOMMENDATION: Staff recommends the Urban Renewal Agency Board of Director approve the attached resolution to adopt the FY 2016-17 Budget, declare the tax increment for FY 2016-17, and set the legal appropriations for FY 2016-17.

ATTACHMENT(s): Resolution

FORM UR-1

NOTICE OF BUDGET HEARING

A public meeting of the Forest Grove Urban Renewal Agency will be held on June 27, 2016, at 6:40 p.m. at the Community Auditorium, 1915 Main Street, Forest Grove, Oregon. The purpose of this meeting is to discuss the budget for the fiscal year beginning July 1, 2016, as approved by the Forest Grove Urban Renewal Agency Budget Committee. A summary of the budget is presented below. A copy of the budget may be inspected or obtained at City Hall, 1924 Council Street, Forest Grove, Oregon, between the hours of 9:00 a.m. and 5:00 p.m. or online at www.forestgrove-or.gov. This budget is for an annual budget period. This budget was prepared on a basis of accounting that is the same as the preceding year.

Contact: Paul Downey, Administrative Services Director Telephone: 503-992-3200 Email: pdowney@forestgrove-or.gov

FINANCIAL SUMMARY - RESOURCES			
TOTAL OF ALL FUNDS	Actual Amount 2014-15	Adopted Budget This Year 2015-16	Approved Budget Next Year 2016-17
Beginning Fund Balance/Net Working Capital			5,924
Federal, State and All Other Grants			
Revenue from Bonds and Other Debt			965,000
Interfund Transfers			
All Other Resources Except Division of Tax & Special Levy		50	50
Revenue from Division of Tax		43,021	75,231
Revenue from Special Levy			
Total Resources	**0**	**43,071**	**1,046,205**

FINANCIAL SUMMARY - REQUIREMENTS BY OBJECT CLASSIFICATION			
Personnel Services			
Materials and Services		22,446	786,277
Capital Outlay			203,084
Debt Service		20,625	52,365
Interfund Transfers			
Contingencies			
All Other Expenditures and Requirements			
Unappropriated Ending Fund Balance			4,479
Total Requirements	**0**	**43,071**	**1,046,205**

FINANCIAL SUMMARY-REQUIREMENTS AND FULL-TIME EQUIVALENT EMPLOYEES (FTE) BY ORGANIZATIONAL UNIT OR PROGRAM *			
Name of Organizational Unit or Program			
FTE for that unit or program			
General Fund		43,071	1,046,205
FTE		0	0
Non-Departmental / Non-Program			
FTE			
Total Requirements	**0**	**43,071**	**1,046,205**
Total FTE	**0**	**0**	**0**

STATEMENT OF CHANGES IN ACTIVITIES and SOURCES OF FINANCING *

This is the second budget of the Forest Grove Urban Renewal Agency. During FY 2015-16, the Agency purchased property from the City which will be paid back over a ten-year period. For Fiscal Year 2016-17, the Agency will borrow $965,000 from the City of Forest Grove's Capital Project Fund for assistance on a development project.

STATEMENT OF INDEBTEDNESS		
LONG TERM DEBT	Estimated Debt Outstanding July 1, 2016	Estimated Debt Authorized, But Not Incurred on July 1
General Obligation Bonds		
Other Bonds		
Other Borrowings	$1,100,000	$965,000
Total	$1,100,000	$965,000

* If more space is needed to complete any section of this form, insert lines (rows) on this sheet or add sheets. You may delete unused lines.

6.

URBAN RENEWAL AGENCY OF THE CITY OF FOREST GROVE

URA RESOLUTION NO. 2016-04

RESOLUTION OF THE CITY OF FOREST GROVE URBAN RENEWAL AGENCY ADOPTING THE BUDGET, MAKING APPROPRIATIONS, AND DECLARING THE TAX INCREMENT FOR FISCAL YEAR COMMENCING JULY 1, 2016, AND ENDING JUNE 30, 2017

WHEREAS, the Budget Committee of the City of Forest Grove Urban Renewal Agency has approved a budget and the collection of the tax increment for the Urban Renewal Agency for the fiscal year commencing July 1, 2016, pursuant to the provisions of the Oregon Local Budget Law; and

WHEREAS, staff has not proposed any change to the Budget approved by the Budget Committee, and

WHEREAS, a hearing has been held before the Urban Renewal Agency Board of Directors as required by law, and

WHEREAS, it appears to the Board that the Budget approved by the Budget Committee and the tax increment set by the Budget Committee should be adopted.

NOW, THEREFORE, THE URBAN RENEWAL AGENCY OF THE CITY FOREST GROVE RESOLVES AS FOLLOWS:

Section 1. That the City of Forest Grove Urban Renewal Agency Board hereby adopts the FY 2016-17 Budget in the total amount of $1,046,205. The Budget is on file with City Recorder's Office.

Section 2. That the amounts shown below are hereby appropriated for the fiscal year beginning July 1, 2016, and for the purposes hereby appropriated as follows:

General Fund	
Materials and Services	$786,277
Capital Outlay	203,084
Debt Service	52,365
Fund Total	$1,041,276

Section 3. The City of Forest Grove Urban Renewal Agency certifies to the Washington County Assessor's Office a request for the Forest Grove Urban Renewal Plan Area for the maximum amount of revenue that may be raised by dividing the taxes under Section1c, Article IX, of the Oregon Constitution.

Section 4. This resolution is effective immediately upon its enactment by the Urban Renewal Agency of the City of Forest Grove.

PRESENTED AND PASSED this 27th day of June, 2016.

_____
Jesse VanderZanden
Urban Renewal Agency Executive Director

APPROVED by the Urban Renewal Agency of the City of Forest Grove at its regular meeting thereof this 27th day of June, 2016, and filed with the City Recorder this date.

_____
Peter B. Truax
Urban Renewal Agency Chair

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	
MEETING DATE:	
FINAL ACTION:	

CITY COUNCIL STAFF REPORT — WORK SESSION

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Chief J.F. Schutz, Captain Mike Herb*

SUBJECT TITLE: *Body Worn Camera Study*

ACTION REQUESTED:		Ordinance		Order		Resolution		Motion	X	Informational

X all that apply

ISSUE STATEMENT: Assessing and determining the appropriate direction/next steps for the Police Department to take in relation to the use of Body Worn Cameras (BWC) within the department.

BACKGROUND: On 10/27/2014 the Council held a work session on the viability of instituting a pilot program for the use of BWC's which began with a request from a patrol officer. Questions were asked and answered along with a commitment of having a Standard Operating Procedure in place, prior to beginning the pilot program. Two separate camera systems were tried prior to deciding to use the Taser Axon Flex camera for the trial study. An educational segment was instituted for those staff members that would be participating in the BWC pilot program and for those that would have access to the system where our video footage would be stored.

The BWC pilot program began in May 2015 with two cameras in place. Information has been continuously gathered from that time and, because of evolving technology and law, there will continue to be opportunities to learn more.

HB 2571 went into effect in late June 2015 with the legislature giving some much needed direction as to who would have standing in requesting copies of BWC videos along with setting standards addressing the privacy concerns of individuals whose image may have been captured on BWC video. Lexipol Policy 423, referencing BWCs, continues to be modified and reviewed as we go forward.

FISCAL IMPACT: A placeholder exists in the budget for a BWC program depending on direction given by the City Manager and the Council.

STAFF RECOMMENDATION: Report for informational purposes only.

ATTACHMENT(s):

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FOREST GROVE OREGON

Body Worn Camera Study

BWC Pilot Project Report

City Council Work Session

June 27, 2016

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History

- Law Enforcement has been incorporating video into police work from its inception. FGPD began using in-car video systems in the early 1990's.
- In 2012 and 2013, a FGPD officer requested a BWC.
- Research into the request led to the idea to implement a pilot program to begin in 2015.
- A Council informational work session on the project was first held on October 27th, 2014.
- Meanwhile, calls nationally for BWC's for police officers were being heard following Ferguson and other high profiled events.

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Pilot Program Preparation

- A purpose statement was created and BWC best practice and standard operating procedures (SOP's) were reviewed. The program was then vetted through the FGPOA and City leaders.
- Systems were reviewed. After three vendor proposals, FGPD chose Taser International for a pilot program.
- Two cameras were purchased with grant funds and cloud storage was budgeted for one year.
- Two officers volunteered to wear the cameras for duration of the pilot program.

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Pilot Program Preparation (Cont.)

- The officers were first trained on camera use and SOP.
- Evidence Specialist and Administrative Captain trained on the cloud storage interface, Evidence.Com.
- Officers were required to sign off on SOP (Lexipol 423) before the start of the program.
- The department involved the WCDA's Office in the program.

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Pilot Program

- Pilot program was implemented and started May 1, 2015. While monthly reports were required of both officers through October of 2015, the gathering of data and updates in policy and best practice continues.
- Cameras are docked and footage uploaded at end of each shift to secure cloud storage (Evidence.Com).
- Cloud storage logs a significant amount of data to each video and allows an audit trail even when video is deleted based on retention schedule.
- Officers are unable to delete or alter video.
- Video is logged as evidence in any arrest, use of force incident or when evidence is collected in a criminal investigation.

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Pilot Program (Cont.)

- Video is labeled by the officer in any citation issued for a traffic violation.
- Both officers were required to submit a pre-formatted monthly report.
- All video was kept and/or deleted in compliance with state retention requirements.
- Compliance with policy was monitored through random checks. No officer was found to be out of compliance during the pilot program.

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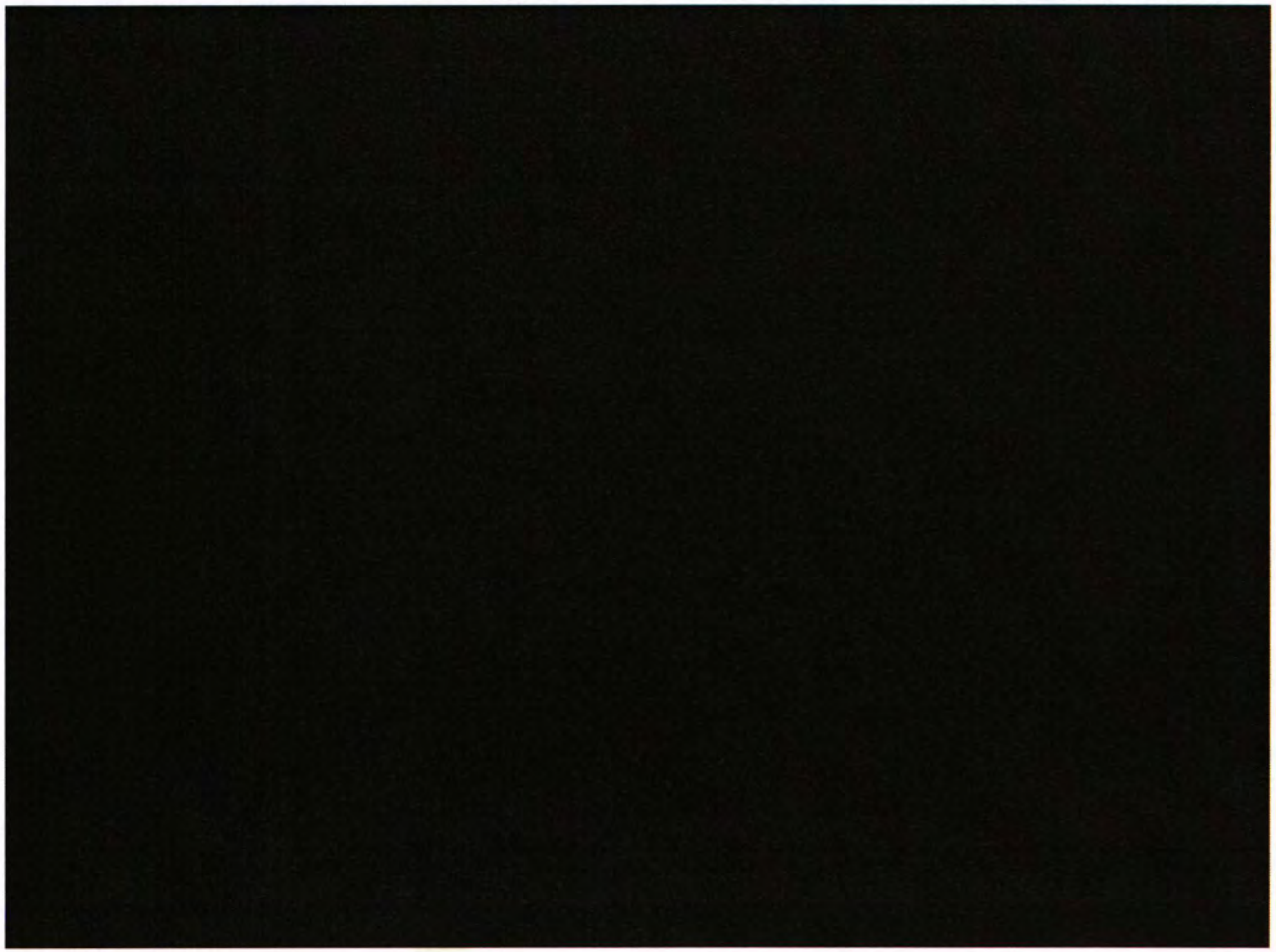
BWC Video - Examples



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Meanwhile...

- HB 2571 went into effect June 25th, 2015. HB 2571 required LE to establish policies & procedures for camera use and retention & release of footage. (FGPD already had an SOP in place, but HB 2571 made important distinctions for public records requests).
- Other high profiled police involved incidents throughout the nation prompted further discussion and political endorsements for BWC's in LE along with grant opportunities.
- The first metro-area meeting of LE agencies considering BWC's took place in Portland to share ideas on BWC equipment and policy & procedure.
- Evidence.com announced they would work on a "blurring tool" within the Evidence.com interface.
- Department wide survey was also completed.

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Pilot Program Conclusions

- BWC's provide an effective means of documenting police interaction with the public. Use may reduce complaints made against police. Two complaints filed during the program were cleared as unfounded after review of BWC footage.
- The technology is fully adequate with no hardware or software failures or problems that occurred during the pilot project.
- Maintaining a department wide BWC program will require both additional capital and operating resources on an ongoing basis.
- A department-wide survey pointed to general support of BWC implementation.
- The need for review and updates in SOP were and are the most significant factors and talking points from the pilot program.

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BWC SOP

- Purpose and Scope, Policy and Definitions.
- Officer and Supervisor Responsibilities.
- Operation of the Camera and Privacy Considerations.
- Reporting Requirements, Review and Use of Recordings.
- Management of Digital Evidence and Retention.
- Public Information Requests.
- SOP continues to be modified and reviewed as we go forward.

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Final Notes

- We allowed the officers involved in the pilot program to continue using the BWC's issued.
- The use of video and audio recording devices to include BWC's continue to expand on a national level.
- All policies are fluid with training, best practice and new case law requiring constant updates, especially true with BWC procedures.
- Captain Herb helped to develop a county-wide work group on BWC policy to get area agencies on the same page. The first meeting was held on June 13th and included leaders from area agencies along with the Washington County DA's office.
- No agency in Washington County has yet fully implemented BWC's. WCSO has 25 officers testing several different camera systems in a pilot program. Beaverton has also began a pilot program. Hillsboro and Sherwood will be following. North Plains has purchased two cameras and will start using in one month.

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Work in Progress...

- If, for whatever reason we leave Evidence.com cloud storage after a contract ends, what happens to the data we own?
- Some district attorney's want access to video, others do not. What will the procedure look like in submitting or providing access to video evidence?
- Work load. Who will handle the BWC audits? On public records, redaction can take time and requires staff time.
- Need for agencies to be on the same page – prosecution requirements, best practice, public perception, ongoing policy review.
- Will the FGPOA support what the individual officer survey told us? (Individual survey indicated overall support)

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Next Steps

- Seek input and answer questions from Council.
- A placeholder exists in the budget for a BWC program. Is there enough information to proceed? If so, under what scope?
- Should we look for other grant possibilities for expansion of a full scale pilot program?

FOREST GROVE POLICE

Body Worn Camera Report Form

2102 Pacific Ave.,
Forest Grove, Or 97116

Month:

1. **Were you able to use the camera for this reporting period? Yes/No. If no, please explain.**

2. **Did you encounter technical difficulties with the camera? Yes/No. If yes, please explain.**

3. **Did you encounter any policy conflict, challenge or difficulty related to use or non-use of the camera? Yes/No. If yes, please explain.**

4. **Did you receive any negative and/or positive feedback from the public from use of the camera?**

5. **Did you encounter any training issues with use of the camera?**

6. **Please describe any positive or negative experiences with the body worn camera use for this reporting period.**

General comments or notes concerning the pilot body worn camera program for this evaluation period:

House Bill 2571

Sponsored by Representative WILLIAMSON, Senator BURDICK; Representatives DOHERTY, KENY-GUYER, PARRISH, Senators BOQUIST, PROZANSKI, ROBLAN (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Requires law enforcement agency to establish policies and procedures for retaining recordings from cameras worn upon police officer's person to record officer's interactions with members of public.

Provides exemption from required disclosure under public records law of recordings made of law enforcement officer's interactions with public. Creates exceptions to exemption.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to video cameras worn upon police officer's person; creating new provisions; amending ORS 165.540 and 192.502; and declaring an emergency.

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

SECTION 1. (1)(a) A law enforcement agency shall establish policies and procedures for the storage and retention of video and audio recordings resulting from the operation of video cameras worn upon a law enforcement officer's person that record the officer's interactions with members of the public while the officer is on duty.

(b) The policies and procedures described in paragraph (a) of this subsection may include a requirement that the recordings be retained for a specified length of time.

(2) As used in this section:

(a) "Law enforcement agency" means an agency employing law enforcement officers to enforce criminal laws.

(b) "Law enforcement officer" means an officer employed to enforce criminal laws by:

(A) This state or a municipal government within this state;

(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph; or

(C) A police department established by a university under ORS 352.383 or 353.125.

SECTION 2. ORS 165.540 is amended to read:

165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of this section, a person may not:

(a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio communication to which the person is not a participant, by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at least one participant.

(b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or facilities of a telecommunication or radio communication company over which messages are transmitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communi-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

cation to which the person is not a participant.

(c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all participants in the conversation are specifically informed that their conversation is being obtained.

(d) Obtain the whole or any part of a conversation, telecommunication or radio communication from any person, while knowing or having good reason to believe that the conversation, telecommunication or radio communication was initially obtained in a manner prohibited by this section.

(e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio communication obtained by any means prohibited by this section.

(2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:

(A) Officers, employees or agents of a telecommunication or radio communication company who perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of construction, maintenance or conducting of their telecommunication or radio communication service, facilities or equipment.

(B) Public officials in charge of and at jails, police premises, sheriffs' offices, Department of Corrections institutions and other penal or correctional institutions, except as to communications or conversations between an attorney and the client of the attorney.

(b) Officers, employees or agents of a telecommunication or radio communication company who obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge to others, the information except for the purpose of construction, maintenance, or conducting of their telecommunication or radio communication service, facilities or equipment.

(3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not apply to subscribers or members of their family who perform the acts prohibited in subsection (1) of this section in their homes.

(4) The prohibitions in subsection (1)(a) of this section do not apply to the receiving or obtaining of the contents of any radio or television broadcast transmitted for the use of the general public.

(5) The prohibitions in subsection (1)(c) of this section do not apply to:

(a) A person who records a conversation during a felony that endangers human life;

(b) A person who, pursuant to ORS 133.400, records an interview conducted by a peace officer in a law enforcement facility;

(c) A law enforcement officer who is in uniform and displaying a badge and who is operating:

(A) A vehicle-mounted video camera that records the scene in front of, within or surrounding a police vehicle, unless the officer has reasonable opportunity to inform participants in the conversation that the conversation is being obtained; or

(B) A video camera worn upon the officer's person that records the officer's interactions with members of the public while the officer is on duty, unless the officer has reasonable opportunity to inform participants in the conversation that the conversation is being obtained; or

(d) A law enforcement officer who, acting in the officer's official capacity, deploys an Electro-Muscular Disruption Technology device that contains a built-in monitoring system capable of recording audio or video, for the duration of that deployment.

(6) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept or attempt to intercept with an unconcealed recording device the oral communications that are part of any of the following proceedings:

(a) Public or semipublic meetings such as hearings before governmental or quasi-governmental

bodies, trials, press conferences, public speeches, rallies and sporting or other events;

(b) Regularly scheduled classes or similar educational activities in public or private institutions; or

(c) Private meetings or conferences if all others involved knew or reasonably should have known that the recording was being made.

(7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do not apply to any:

(a) Radio communication that is transmitted by a station operating on an authorized frequency within the amateur or citizens bands; or

(b) Person who intercepts a radio communication that is transmitted by any governmental, law enforcement, civil defense or public safety communications system, including police and fire, readily accessible to the general public provided that the interception is not for purposes of illegal activity.

(8) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

(9) As used in this section:

(a) "Electro-Muscular Disruption Technology device" means a device that uses a high-voltage, low power charge of electricity to induce involuntary muscle contractions intended to cause temporary incapacitation. "Electro-Muscular Disruption Technology device" includes devices commonly known as tasers.

(b) "Law enforcement officer" has the meaning given that term in ORS 133.726.

SECTION 3. ORS 192.502 is amended to read:

192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance;

(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member; and

(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body

has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9)(a) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information compiled in a public record when:

(A) The basis for the claim of exemption is ORS 40.225;

(B) The factual information is not prohibited from disclosure under any applicable state or federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410 to 192.505;

(C) The factual information was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body;

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A.

(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the agents of the treasurer or the council relating to active or proposed publicly traded investments under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or liquidation of the investments. For the purposes of this subsection:

(a) The exemption does not apply to:

(A) Information in investment records solely related to the amount paid directly into an investment by, or returned from the investment directly to, the treasurer or council; or

(B) The identity of the entity to which the amount was paid directly or from which the amount was received directly.

(b) An investment in a publicly traded investment is no longer active when acquisition, exchange or liquidation of the investment has been concluded.

(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset including but not limited to records regarding the solicitation, acquisition, deployment, exchange or liquidation of the investments including but not limited to:

(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership or to their respective investment vehicles.

(B) Financial statements of an investment fund, an asset ownership or their respective investment vehicles.

(C) Meeting materials of an investment fund, an asset ownership or their respective investment vehicles.

(D) Records containing information regarding the portfolio positions in which an investment fund, an asset ownership or their respective investment vehicles invest.

(E) Capital call and distribution notices of an investment fund, an asset ownership or their respective investment vehicles.

(F) Investment agreements and related documents.

(b) The exemption under this subsection does not apply to:

(A) The name, address and vintage year of each privately placed investment fund.

(B) The dollar amount of the commitment made to each privately placed investment fund since inception of the fund.

(C) The dollar amount of cash contributions made to each privately placed investment fund since inception of the fund.

(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer, council or board from each privately placed investment fund.

(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer, council or board.

(F) The net internal rate of return of each privately placed investment fund since inception of the fund.

(G) The investment multiple of each privately placed investment fund since inception of the fund.

(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis to each privately placed investment fund.

(I) The dollar amount of cash profit received from each privately placed investment fund on a fiscal year-end basis.

(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(16) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(17)(a) The following records, communications and information submitted to the Oregon Business Development Commission, the Oregon Business Development Department, the State Department of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS 777.005, or a county or city governing body and any board, department, commission, council or agency thereof, by applicants for investment funds, grants, loans, services or economic development moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

(A) Personal financial statements.

(B) Financial statements of applicants.

(C) Customer lists.

(D) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(E) Production, sales and cost data.

(F) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(b) The following records, communications and information submitted to the State Department of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

(A) Personal financial statements.

(B) Financial statements of applicants.

(C) Customer lists.

(D) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(E) Production, sales and cost data.

(F) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(18) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(19) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(20) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(23) The records of a library, including:

(a) Circulation records, showing use of specific library material by a named person;

(b) The name of a library patron together with the address or telephone number of the patron; and

(c) The electronic mail address of a patron.

(24) The following records, communications and information obtained by the Housing and Community Services Department in connection with the department's monitoring or administration of financial assistance or of housing or other developments:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals, excluding appraisals obtained in the course of transactions involving an interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed of as part of the project, but only after the transactions have closed and are concluded.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence.

(k) Personal information about a tenant.

(L) Housing assistance payments.

(25) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(26) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related

to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(28) Personally identifiable information about customers of a municipal electric utility or a people's utility district or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109. The utility or district may release personally identifiable information about a customer, and a public body providing water, sewer or storm drain services may release the name, date of birth, driver license number, telephone number, electronic mail address or Social Security number of a customer, if the customer consents in writing or electronically, if the disclosure is necessary for the utility, district or other public body to render services to the customer, if the disclosure is required pursuant to a court order or if the disclosure is otherwise required by federal or state law. The utility, district or other public body may charge as appropriate for the costs of providing such information. The utility, district or other public body may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(30) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(31) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(32) A county elections security plan developed and filed under ORS 254.074.

(33) Information about review or approval of programs relating to the security of:

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(D) Petroleum products;

(E) Sewage; or

(F) Water.

(b) Telecommunication systems, including cellular, wireless or radio systems.

(c) Data transmissions by whatever means provided.

(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court designates the information as confidential by rule under ORS 1.002.

(35)(a) Employer account records of the State Accident Insurance Fund Corporation.

(b) As used in this subsection, "employer account records" means all records maintained in any form that are specifically related to the account of any employer insured, previously insured or under consideration to be insured by the State Accident Insurance Fund Corporation and any information obtained or developed by the corporation in connection with providing, offering to provide or declining to provide insurance to a specific employer. "Employer account records" includes, but is not limited to, an employer's payroll records, premium payment history, payroll classifications, employee names and identification information, experience modification factors, loss experience and dividend payment history.

(c) The exemption provided by this subsection may not serve as the basis for opposition to the discovery documents in litigation pursuant to applicable rules of civil procedure.

(36)(a) Claimant files of the State Accident Insurance Fund Corporation.

(b) As used in this subsection, "claimant files" includes, but is not limited to, all records held by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all records pertaining to such a claim.

(c) The exemption provided by this subsection may not serve as the basis for opposition to the discovery documents in litigation pursuant to applicable rules of civil procedure.

(37) Except as authorized by ORS 408.425, records that certify or verify an individual's discharge or other separation from military service.

(38) Records of or submitted to a domestic violence service or resource center that relate to the name or personal information of an individual who visits a center for service, including the date of service, the type of service received, referrals or contact information or personal information of a family member of the individual. As used in this subsection, "domestic violence service or resource center" means an entity, the primary purpose of which is to assist persons affected by domestic or sexual violence by providing referrals, resource information or other assistance specifically of benefit to domestic or sexual violence victims.

(39) Information reported to the Oregon Health Authority under ORS 431.964, except as provided in ORS 431.964 (2)(c) information disclosed by the authority under ORS 431.966 and any information related to disclosures made by the authority under ORS 431.966, including information identifying the recipient of the information.

(40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of the executive department, as defined in ORS 174.112, a local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117.

(b) This subsection does not apply to electronic mail addresses assigned by a public body to public employees for use by the employees in the ordinary course of their employment.

(41)(a) Audio or video recordings, whether digital or analog, resulting from a law enforcement officer's operation of a video camera worn upon the officer's person that records the officer's interactions with members of the public while the officer is on duty un-

less:

(A) Each member of the public who is recorded consents to the disclosure in writing; or

(B) The interaction being recorded involves the use of force by a law enforcement officer and the public interest requires disclosure of that particular recording.

(b) As used in this subsection, the term "law enforcement officer" has the meaning given that term in section 1 of this 2015 Act.

SECTION 4. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

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3A

City Council Work Session Minutes | **Monday, May 23, 2016**
Fire Department Standards of Cover | **5:30 p.m., Conference Room**

Minutes are unofficial until approved by Council.

1. **CALLED TO ORDER AND ROLL CALL:**
Mayor Peter Truax called the Work Session to order at 5:33 p.m.

CALL: COUNCIL PRESENT: Thomas Johnston, Council President; Richard Kidd; Victoria Lowe; Ronald Thompson; Malynda Wenzl; and Mayor Peter Truax.
COUNCIL ABSENT: Elena Uhing, excused.

STAFF PRESENT: Jesse VanderZanden, City Manager; Paul Downey, Administrative Services Director; Michael Kinkade, Fire Chief; and Anna Ruggles, City Recorder.

Tim Rippe, Public Safety Advisory Commission (present in the audience).

2. **WORK SESSION: FIRE STANDARDS OF COVER**
Fire Chief Kinkade and VanderZanden facilitated the work session, noting the purpose of the work session was to discuss and review the Community Risk Analysis and Standards of Cover recommendations. Chief Kinkade presented a PowerPoint presentation overview of the components and importance of having Standards of Cover and community risk assessment; system performance; performance objectives and compliance methodology, noting the Standards of Cover describes and defines a community-based risk analysis and documents historical performance based on call type, risk and population. Chief Kinkade reported the Standards of Cover consists of decisions made regarding the placement of field resources in relation to the potential demand placed on them by the type of risk and historical needs of the community, noting the outcome must demonstrate that lives are saved and properties are protected. Chief Kinkade added the Standards of Cover is a rationale and systematic way of looking at the basic service provided, noting the purpose of the Standards of Cover is to provide a system which will assist with the following:

- Assessing community fire and non-fire risks;
- Defining baseline and benchmark emergency response performance standards;
- Planning future station locations;
- Determining apparatus and staffing positions;
- Evaluating workload and ideal unit utilization;
- Measuring service delivery performance; and
- Supporting strategic planning and policy development relative to resources procurement and allocation.

In conclusion of the above-noted staff report, Chief Kinkade advised the Public Safety Advisory Commission and Forest Grove Rural Fire Protection District have approved the Community Risk Analysis and Standards of Cover recommendations.

Council Discussion:
Mayor Truax opened the floor and roundtable discussion ensued pertaining to the Community Risk Analysis and Standards of Cover recommendations. Fire Chief Kinkade addressed various Council concerns, inquiries, and scenarios posed by Council pertaining to the importance of having Standards of Cover and community-based risk analysis and addressed current levels of services; call volume trends; paramedic-level response; improving future ISO rating; current distribution of a single station and extended response times to the northern fire response zones; and national and regional best practices and accreditation. Chief Kinkade pointed out the Baseline for Forest Grove has historically been able to achieve 15 firefighters on scene in 13 minutes 38 seconds, 90 percent of the time within the City and six firefighters on scene in 14 minutes, 86 percent of the time in rural communities. In addition, Chief Kinkade outlined what the City has done so far to implement recommendations in the 2015 Cooperative Fire Services Study as outlined in the presentation, noting he recommends beginning a strategic planning process that incorporates a future station deployment plan and increased staffing and continuing to monitor system performance utilizing in the Standards of Cover. In conclusion of the above-noted Council discussion, Fire Chief Kinkade and VanderZanden advised staff is proposing to bring back a resolution asking Council to consider adopting the Community Risk Analysis and Standards of Cover, to which no objections were heard.

Council took no formal action nor made any formal decisions during the above-noted work session.

3. **ADJOURNMENT:**
Mayor Truax adjourned the regular meeting at 6:10 p.m.

Respectfully submitted,

_____
Anna D. Ruggles, CMC, City Recorder

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3B

City Council Regular Meeting Minutes — **Monday, May 23, 2016 7:00 p.m., Community Auditorium**

Minutes are unofficial until approved by Council.

1. **CALLED TO ORDER AND ROLL CALL:**
Mayor Peter Truax called the regular City Council meeting to order at 7:01 p.m. and led the Pledge of Allegiance.

ROLL CALL: COUNCIL PRESENT: Thomas Johnston, Council President; Richard Kidd; Victoria Lowe; Ronald Thompson; Malynda Wenzl; and Mayor Peter Truax. **COUNCIL ABSENT:** Elena Uhing, excused.

STAFF PRESENT: Jesse VanderZanden, City Manager; Paul Downey, Administrative Services Director; Rob Foster, Public Works Director; Jon Holan, Community Development Director; J. F. Schutz, Police Chief; Brandi Walstead, Program Coordinator; and Anna Ruggles, City Recorder.

2. **CITIZEN COMMUNICATIONS:**
Cherie Savoie Tintary, Forest Grove, requested that Council consider imposing a total ban on backyard burning, noting Hillsboro has imposed a total ban and Cornelius is consider imposing a total ban. Council President Johnston indicated the City continues to look at alternative methods for disposing yard debris, pointing out the City is a Tree City USA with over two million trees in town. Mayor Truax advised Forest Grove was ahead of other cities in the county to impose restrictions on backyard burning, noting Council is continuing to work on issues.

3. **CONSENT AGENDA:**
Items under the Consent Agenda are considered routine and are adopted with a single motion, without separate discussion. Council members who wish to remove an item from the Consent Agenda may do so prior to the motion to approve the item(s). Any item(s) removed from the Consent Agenda will be discussed and acted upon following the approval of the remaining Consent Agenda item(s).

   A. Approve City Council Meeting Minutes of May 9, 2016.
   B. Accept Economic Development Commission Meeting Minutes of February 4, March 3, and April 7, 2016.
   C. Accept Library Commission Meeting Minutes of April 12, 2016.
   D. Accept Parks and Recreation Commission Meeting Minutes of April 20, 2016.
   E. Accept Public Arts Commission Meeting Minutes of March 10 and April 14, 2016.

F. **ENDORSE LIQUOR LICENSE RENEWAL APPLICATION FOR YEAR 2016**:
1. Tienda La Rosa (Off-Premises Sales)

MOTION: Councilor Kidd moved, seconded by Councilor Wenzl, to approve the Consent Agenda as presented. ABSENT: Councilor Uhing. MOTION CARRIED 6-0 by voice vote.

4. ADDITIONS/DELETIONS:
VanderZanden reported he had nothing to add or delete to the agenda; however, Councilor Lowe approached him prior to the meeting requesting an item be added to the agenda as noted below.

Lowe requested a letter of support signed by Council (which she requested by e-mail sent to Council on May 18) after receiving a request of support from the Sustainability Commission and the succession of the vote that went down in defeat by Cascade Locks pertaining to selling water rights to bottling companies, noting this is the first time she has requested to add an item to the agenda in 16 years. Lowe added she has two upcoming meetings and she would like to represent the community at these meetings and she is under a deadline so if she does not have it (letter of support); there would be a long-term delay.

VanderZanden advised pursuant to Council Rules of Procedure, Section 6.3, Scheduling of Agenda Items, requires: 1) a vote of the Council, and 2) Councilmember may advise Mayor or City Manager no later than ten 10 days prior to the meeting at which the item is to be considered. Lowe expressed that she is one or two days outside of the 10-day window; however, she was not in control of that window, because she had to wait for the vote to happen in Cascade Locks.

Council Discussion:
In response to Council President Johnston's inquiry, Lowe explained she is requesting support for regional water, similar to Council's letter of support for Gales Creek on the LNG stance. Council President Johnston explained the reason he voted in favor of LNG's letter was that it was traversing the City's watershed.

In response to Councilor Kidd's inquiry, Lowe explained Hood River County voters turned down Nestlé by a no vote of 68 percent.

Mayor Truax added it was an affirmative vote on a ballot measure that banned Nestlé's plans to bottle water in Cascade Locks.

MOTION: Councilor Wenzl moved, seconded by Councilor Lowe, to add the Item to the Agenda. NOES: Councilor Kidd. ABSENT: Councilor Uhing. MOTION CARRIED 5-1 by voice vote. Mayor Truax added the item to the Agenda as Item 13.

A. as noted below.

5. PRESENTATIONS:

5. A. Forest Grove/Cornelius Enterprise Zone Renewal
King presented a PowerPoint presentation requesting authorization to extend the Forest Grove/Cornelius Enterprise Zone for another 10-year period, noting the program was established in 2006 and is scheduled to sunset on June 30, 2016. King provided background information and referenced a map showing the Enterprise Zone, noting the zone includes industrial zones and hotel/motel within commercial zones. King reported the program has benefited six businesses and six business expansions for a total of 172 job created and $21.86 million investment, noting the tax benefit is $30,331 annually or estimated $333,644 over 11 years. In conclusion of the above-noted presentation, King advised staff is recommending to bring back a proposed resolution for Council's consideration authorizing Forest Grove to reapply with the State for renewing the Forest Grove/Cornelius Enterprise Zone for another 10-year period, effective July 1, 2016, noting Cornelius adopted its resolution for reauthorization of the program on May 2nd. In response to various Council inquiries, King explained businesses receive three years' exemption from property taxes normally assessed on new plant and equipment, noting the program is intended to creating new jobs and investments.

6. SECOND READING OF ORDINANCE NO. 2016-11 REPEALING ORDINANCE NO. 2014-09 AND DELETING FOREST GROVE CITY CODE SECTIONS 2.11.000 TO 2.11.075 (TITLED MARIJUANA TAX)
The first reading of Ordinance No. 2016-11 by title occurred at the Council meeting of May 9, 2016.

Staff Report:
Holan presented the above-proposed ordinance for second reading, noting staff had nothing further to report.

Public Hearing Continued:
Mayor Truax continued the Public Hearing from the meeting of May 9, 2016, and explained hearing procedures.

Written Testimony Received:
No written testimony was received prior to the published deadline of May 9, 2016, 7:00 p.m.

Proponents:
No one testified and no written comments were received.

Opponents:
No one testified and no written comments were received.

Others:
No one testified and no written comments were received.

Public Hearing Closed:
Mayor Truax closed the Public Hearing.

Council Discussion:
Hearing no further discussion from the Council, Mayor Truax asked for a roll call vote on the motion made at the meeting of May 9, 2016.

VanderZanden read Ordinance No. 2016-11 by title for second reading.

ROLL CALL VOTE: AYES: Councilors Johnston, Kidd, Lowe, Thompson, Wenzl, and Mayor Truax. NOES: None. ABSENT: Uhing. MOTION CARRIED 6-0.

7. PUBLIC HEARING AND FIRST READING OF ORDINANCE NO. 2016-12 AMENDING FOREST GROVE CITY CODE CHAPTER 7 BY ADDING NEW CODE SECTIONS 7.900 TO 7.930 PROHIBITING THE USE OF SINGLE-USE PLASTIC CARRYOUT BAGS

Staff Report:
Walstead and Holan presented the above-proposed ordinance for first reading, noting the proposed ordinance is amending City Code, Chapter 7, by adding new Code Sections 7.900 through 7.930, prohibiting the use of single-use plastic carryout bags. Walstead and Holan reported the proposed code provisions would prohibit the use of carryout bags at retail establishments, city facilities, city-managed concessions, city-sponsored events and/or city-permitted events and requires retailers with more than 10 full-time-equivalent (FTE) employees to charge five-cent pass through cost for recycled paper bags, noting the proposed ordinance exempts retailers with less than 10 or fewer FTE employees from the pass through cost for paper bags. Walstead and Holan provided background information and referenced the following: Attachment 1, 2015 Outreach and Education Summary; Attachment 2, Sustainability Commission minutes of March 26, 2015; Attachment 3, written comments received from table discussions and voting results from public forum conducted by Committee for Citizen Involvement; and Attachment 4, survey of the communities in the United States who have adopted similar ordinances. In addition, Holan reported the Sustainability Commission held joint work sessions with Council on the proposed ordinance and the Economic Development Commission voted to support the proposed ordinance, opposed the five-cent pass through cost for recycled paper bags, and instead preferred a different approach, such as an incentive, softer violations and penalties and more focus on

education. In conclusion of the above-noted staff report, Holan advised staff is recommending Council consider adopting/amending/denying or referring the ordinance back to the Sustainability Commission with specific direction for reconsideration.

Before proceeding with the Public Hearing and Council discussion, Mayor Truax asked for a motion to adopt Ordinance No. 2016-12 for first reading.

VanderZanden read Ordinance No. 2016-12 by title for first reading.

MOTION: Councilor Lowe moved, seconded by Councilor Wenzl, to adopt Ordinance No. 2016-12 Amending Forest Grove City Code Chapter 7 by Adding New Code Sections 7.900 to 7.930 Prohibiting the Use of Single-Use Plastic Carryout Bags.

Public Hearing Opened:
Mayor Truax opened the Public Hearing and explained hearing procedures.

Written Testimony Received:
Lisa Nakajima, Ace Hardware, submitted an e-mail dated May 8, 2016, in opposition of the proposed ordinance requiring a mandatory five-cent pass through cost for paper bags and instead supported public education.

David Morelli, Forest Grove, submitted an e-mail dated May 10, 2016, disagreeing with the offered solution and instead requiring bag manufacturers to provide a means to reprocess bags into reusable materials.

Additional Written Testimony Received:
Amanda Dalton, Legislative Director, Northwest Grocery Association, submitted a letter dated May 23, 2016, in support of the proposed code amendments and five-cent pass through cost for paper bags.

Cecelia Warner, Forest Grove Farmers Market Waste Center Founder, submitted an email dated May 20, 2016, urging Council to do the right thing for the planet, stating the pass through cost works as an incentive to change behavior.

Michael Kinkade, Forest Grove, submitted an e-mail dated May 21, 2016, in opposition of the proposed bag ban, stating it is unnecessary regulation, plastic bags are reusable and recyclable, and a ban would have a negative impact on citizens of limited means, large families and families who walk home carrying bags.

Mitch Taylor, Sustainability Commission Vice Chair, Forest Grove, submitted an e-mail dated May 22, 2016, urging Council to pass the plastic bag ordinance and five-cent pass through cost for paper bags, stating the pass through cost provides an added

incentive for people to use reusable cloth.

Dawn Smith, Forest Grove, submitted an e-mail dated May 23, 2016, urging Council to cut the flow of pollution into the ocean by banning disposal plastic bags.

Julie Titus, Forest Grove, submitted an e-mail dated May 23, 2016, urging Council to cut the flow pollution into the ocean by banning disposal plastic bags.

Garret Brown, Pacific University student, submitted an e-mail dated May 23, 2016, urging Council to pass the proposed plastic bag ban and five-cent pass through cost for paper bags, stating the pass through cost can be an excellent motivator.

Robert Lamb, Forest Grove, submitted an e-mail dated May 23, 2016, urging Council to cut the flow of pollution into the ocean by banning disposal plastic bags.

No other written testimony was received prior to the deadline of May 23, 2016, 7:00 p.m.

Proponents:
Edgar Sanchez, Sustainability Commission Student Advisor, Forest Grove, testified in support of the proposed code ordinance.

Melanie Estrada, Forest Grove, signed in but was not present.

Elaine Cole, Sustainability Commission, urged Council to vote in favor and provided background information on the Sustainability Commission's work, stating the Chamber of Commerce does not oppose the proposed ordinance now that the code is exempting businesses with 10 or fewer employees from the pass through cost for paper bags.

Lynne Magner, Forest Grove, testified in support of the proposed ordinance on behalf of Valley Art, but questioned if the five-cent pass through cost for paper bags would apply to non-profits with no employees, to which Mayor Truax advised the proposed ordinance would not apply because Valley Art has no "paid" employees.

Charlotte Lumae, Forest Grove, testified in support of the plastic bag ban.

No one else testified and no written comments were received.

Opponents:
Robin Lindsley, Forest Grove, testified in opposition and urged Council to give more thought to the reasons for not banning plastic bags, i.e., plastic bags can be reused over and over again.

No one else testified and no written comments were received.

Others:
No one testified and no written comments were received.

Council Discussion:
In response to Kidd's concern pertaining to restaurants, Walstead explained the proposed code exempts restaurants and other food-related bags.

In response to Thompson's concern pertaining to businesses surveyed that had 10 or fewer FTE, Holan advised he was uncertain of the results, but he would try to obtain the information and report back at the next meeting.

In response to Council President Johnston's concern pertaining to the Public Safety Advisory Commission (PSAC) weigh in on the violations and penalties, Holan advised staff felt it was unnecessary to meet with PSAC because the enforcement would be educational rather than imposing fines.

In response to Wenzl's inquiry pertaining to types of education programs, Holan explained the City's Program Coordinator would be providing pamphlets and other written material, pointing out the key is for businesses to train and educate cashiers.

In response to Kidd's inquiry pertaining to the appropriateness of Council proposing amendments to the ordinance, Mayor Truax advised Council could propose amendments at the closing of the Public Hearing, following second reading at the next meeting.

Hearing no further discussion from the Council, Mayor Truax recessed the Public Hearing until the next meeting of Monday, June 13, 2016.

Public Hearing Recessed:
Mayor Truax recessed the Public Hearing until the next Council meeting of Monday, June 13, 2016.

8. PUBLIC HEARING AND RESOLUTION NO. 2016-31 SETTING FEES AND CHARGES, EFFECTIVE JULY 1, 2016, REPEALING RESOLUTION NO. 2015-38

Staff Report:
Downey presented the above-proposed resolution increasing fees and charges by three percent (3%), rounded to the nearest increment, effective July 1, 2016. Downey highlighted various proposed fees, noting the Planning Department is proposing to separate new residential developments of six or more units to its own fee, charging an

hourly rate (set at $78.85/hour for FY2016-17) with a deposit of $3,000 and work begins when the department collects the deposit. In conclusion of the above-noted staff report, Downey advised based on Fiscal Year 2016-17 budget proposal, staff is not recommending any increases to the building permit fees, noting the proposed resolution is setting all other fees and charges as outlined in Exhibit A, effective July 1, 2016.

Before proceeding with Public Hearing and Council discussion, Mayor Truax asked for a motion to adopt Resolution No. 2016-31.

VanderZanden read Resolution No. 2016-31 by title.

MOTION: Councilor Lowe moved, seconded by Councilor Thompson, to adopt Resolution No. 2016-31 Setting Fees and Charges, Effective July 1, 2016, excluding Planning Fees, and Repealing Resolution No. 2015-38.

Public Hearing Opened:
Mayor Truax opened the Public Hearing and explained hearing procedures.

Written Testimony Received:
No written testimony was received prior to the published deadline of May 23, 2016, 7:00 p.m.

Proponents:
No one testified and no written comments were received.

Opponents:
No one testified and no written comments were received.

Others:
No one testified and no written comments were received.

Public Hearing Closed:
Mayor Truax closed the Public Hearing.

Council Discussion:
Hearing no discussion from the Council, Mayor Truax asked for a roll call vote on the above motion.

ROLL CALL VOTE: AYES: Councilors Johnston, Kidd, Lowe, Thompson, Wenzl, and Mayor Truax. NOES: None. ABSENT: Councilor Uhing. MOTION CARRIED 6-0.

9. PUBLIC HEARING AND RESOLUTION NO. 2016-32 ADOPTING CITY MANAGER ANNUAL PERFORMANCE EVALUATION STANDARDS AND CRITERIA

Staff Report:
Mayor Truax presented the above-proposed resolution, noting pursuant to the City Manager's Employment Agreement, Section 6, Council must evaluate the City Manager's annual performance and establish the performance evaluation criteria, standards, policy directives, and compensation in an open meeting. Mayor Truax presented a PowerPoint presentation outlining the City Manager performance evaluation process, noting he is proposing to remove the signature page and adopt the evaluation standards and criteria by resolution; otherwise the process is the same as in previous years as follows:

1. City Manager is asked to prepare a self-evaluation.
2. Department Directors are asked to submit input with an option to remain confidential. Council has named the City Attorney, as third-party person, who will prohibit disclosure of information submitted in confidence as provided by ORS 192.502(4).
3. City Attorney compiles submitted comments into a single document and distributes results in a sealed envelope directly to Council.
4. Council reviews compiled responses with City Manager in Executive Session.
5. Each Councilmember submits an evaluation form to Mayor due no later than July 5.
6. Mayor and Council President tabulate and summarize results of Council evaluations and present performance appraisal to City Manager in Executive Session.

In addition, Mayor Truax reported Council will hear the City Manager's self-evaluation and review the compiled responses and comments with the City Manager in Executive Sessions tentatively scheduled for June 27 and July 11, 2016, and after concluding the performance appraisal in the Executive Session scheduled for August 8, 2016, Council will return into open meeting to give a summary of the City Manager's performance appraisal.

Before proceeding with the Public Hearing and Council discussion, Mayor Truax asked for a motion to adopt Resolution No. 2016-32.

MOTION: Councilor Lowe moved, seconded by Councilor Wenzl, to approve Resolution No. 2016-32 Adopting the City Manager Annual Performance Evaluation Standards and Criteria (removing Page 6, signature page).

Public Hearing Opened:
Mayor Truax opened the Public Hearing and explained hearing procedures.

Proponents:
No one wished to testify and no written comments were received.

Opponents:
No one wished to testify and no written comments were received.

Others:
No one wished to testify and no written comments were received.

Public Hearing Closed:
Mayor Truax closed the Public Hearing.

Council Discussion:
Hearing no discussion from the Council, Mayor Truax asked for a roll call vote on the above motion.

ROLL CALL VOTE: AYES: Councilors Johnston, Kidd, Lowe, Thompson, Wenzl, and Mayor Truax. NOES: None. ABSENT: Councilor Uhing. MOTION CARRIED 6-0.

10. RESOLUTION NO. 2016-33 AUTHORIZING CITY MANAGER TO ENDORSE AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN CITY OF FOREST GROVE AND WASHINGTON COUNTY COOPERATIVE LIBRARY SERVICES (WCCLS) "PUBLIC LIBRARY SERVICES AGREEMENT"

Staff Report:
Winters and Downey presented the above-proposed resolution authorizing the City Manager to endorse an Intergovernmental Agreement (IGA) between the City and Washington County Cooperative Library Services (WCCLS), noting the Public Services IGA outlines the central support services provided by WCCLS to member libraries and distribution of county funds to public library service providers. In conclusion of the above-noted staff report, Winters presented a PowerPoint presentation outlining the significant changes to the IGA, noting the new IGA will be effective July 1, 2016, through June 30, 2021, and the annual distribution of WCCLS funds to Forest Grove Library will be $802,081 in FY 16-17 and are projected to increase three percent (3%) annually for the remainder of the term of the IGA.

Before proceeding with Council discussion, Mayor Truax asked for a motion to adopt Resolution No. 2016-33.

VanderZanden read Resolution No. 2016-33 by title.

MOTION: Councilor Lowe moved, seconded by Councilor Wenzl, to adopt Resolution No. 2016-33 Authorizing the City Manager to Endorse an Intergovernmental Agreement (IGA) between the City of Forest Grove and Washington County Cooperative Library Services (WCCLS), "Public Services Agreement".

Council Discussion:
Hearing no discussion from the Council, Mayor Truax asked for a roll call vote on the above motion.

ROLL CALL VOTE: AYES: Councilors Johnston, Kidd, Lowe, Thompson, Wenzl, and Mayor Truax. NOES: None. ABSENT: Councilor Uhing. MOTION CARRIED 6-0.

11. RESOLUTION NO. 2016-34 AUTHORIZING CITY MANAGER TO ENDORSE AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN CITY OF FOREST GROVE AND WASHINGTON COUNTY COOPERATIVE LIBRARY SERVICES (WCCLS) "WCCLS INFORMATION NETWORK AGREEMENT"

Staff Report:
Winters and Downey presented the above-proposed resolution authorizing the City Manager to endorse an Intergovernmental Agreement (IGA) between the City and Washington County Cooperative Library Services (WCCLS), noting the Information Network Agreement outlines the responsibilities for use of the shared integrated library system software provided to member libraries by WCCLS. In conclusion of the above-noted staff report, Winters presented a PowerPoint presentation outlining the significant changes to the IGA, noting the new IGA will be effective July 1, 2016, through June 30, 2021.

Before proceeding with Council discussion, Mayor Truax asked for a motion to adopt Resolution No. 2016-34.

VanderZanden read Resolution No. 2016-34 by title.

MOTION: Councilor Wenzl moved, seconded by Councilor Kidd, to adopt Resolution No. 2016-34 Authorizing the City Manager to Endorse an Intergovernmental Agreement (IGA) between the City of Forest Grove and Washington County Cooperative Library Services (WCCLS), "WCCLS Information Network Agreement".

Council Discussion:
Hearing no discussion from the Council, Mayor Truax asked for a roll call vote on the above motion.

ROLL CALL VOTE: AYES: Councilors Johnston, Kidd, Lowe, Thompson, Wenzl, and Mayor Truax. NOES: None. ABSENT: Councilor Uhing. MOTION CARRIED 6-0.

12. RESOLUTION NO. 2016-35 AUTHORIZING CITY MANAGER TO ENDORSE THE SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN CITY OF FOREST GROVE AND WASHINGTON COUNTY COOPERATIVE LIBRARY SERVICES (WCCLS)

Staff Report:
Winters and Downey presented the above-proposed resolution authorizing the City Manager to endorse the second amendment to the existing Intergovernmental Agreement (IGA) between the City and Washington County Cooperative Library Services (WCCLS) for the purpose of adding Aloha Community Library as a member, effective July 1, 2016. In conclusion of the above-noted staff report, Winters presented a PowerPoint presentation outlining the existing IGA, noting the IGA defines the membership and governance structure of WCCLS and the duties of the Executive Board and Policy Group.

Before proceeding with Council discussion, Mayor Truax asked for a motion to adopt Resolution No. 2016-35.

VanderZanden read Resolution No. 2016-35 by title.

MOTION: Councilor Kidd moved, seconded by Councilor Wenzl, to adopt Resolution No. 2016-35 Authorizing the City Manager to Endorse the Second Amendment (adding Aloha Community Library as a member, effective July 1, 2016) to Intergovernmental Agreement (IGA) between the City of Forest Grove and Washington County Cooperative Library Services (WCCLS).

Council Discussion:
Hearing no discussion from the Council, Mayor Truax asked for a roll call vote on the above motion.

ROLL CALL VOTE: AYES: Councilors Johnston, Kidd, Lowe, Thompson, Wenzl, and Mayor Truax. NOES: None. ABSENT: Councilor Uhing. MOTION CARRIED 6-0.

13. REPORT AND FINDINGS ON WASTE MANAGEMENT'S RATE INCREASE REQUEST AND SETTING A PUBLIC HEARING FOR MONDAY, JUNE 13, 2016, CITY COUNCIL MEETING, TO CONSIDER UP TO 5.1 PERCENT RATE INCREASE AND $1.50 PER MONTH INCREASE FOR FOOD WASTE RECYCLING TO BE

EFFECTIVE JULY 1, 2016

Staff Report:
Downey presented a PowerPoint presentation outlining background information pertaining to Waste Management's (WM) franchise agreement and proposed rate increases. Downey introduced WM's representatives who were present in the audience. Downey reported WM is requesting a 5.1 percent solid waste collection rate increase as of July 1, 2016, noting the proposed rate increase is due to increases in direct wages and benefits, disposal costs and other costs, and revenue from sale of recycling material has drop significantly over the last two years to almost zero in 2015. In addition, Downey responded to various concerns, inquiries and scenarios Council presented pertaining to solid waste collection rate increases; disposal costs increasing, i.e., tipping fees and Metro fees; and food waste and yard debris co-mingling. In conclusion of the above-noted staff presentation and roundtable discussion, Downey advised based on staff's review of WM's revenues and costs, staff concludes that WM has sufficient justification for a rate increase, noting staff is proposing to schedule a Public Hearing on Monday, June 13, 2016, to consider up to a 5.1 percent rate increase, effective July 1, 2016. Downey added staff is also proposing to approve at the Public Hearing a $1.50 per month fee to implement the City's Food Waste Recycling Program. Upon hearing consensus from the Council, Mayor Truax set the Public Hearing for rate increases for Monday, June 13, 2016, as recommended by staff.

13. A. LETTER OF SUPPORT (COUNCILOR LOWE):
The above-noted letter of support was requested by Councilor Lowe and added to the agenda (refer above to Item 4). Mayor Truax called for a voice vote to:
"Endorse the Action of the Sustainability Commission on Water Issues."
VOICE VOTE: AYES: Councilors Kidd, Lowe, Thompson, Wenzl, and Mayor Truax. NOES: Council President Johnston. ABSENT: Councilor Uhing. MOTION CARRIED 5-1.

14. DEPARTMENT WORK PLANS FOR 2016:
Public Works/Engineering:
Foster presented a PowerPoint presentation outlining the Public Works and Engineering Department's Work Plan for 2016-17 as noted in his staff report. Foster's report focused on seven top project accomplishments for 2015; and four top priorities for 2016-17, including transportation; sanitary sewer; water; and storm drainage improvements.

Police Department:
Police Chief Schutz presented a PowerPoint presentation outlining the Police Department's Work Plan for 2016-17 as noted in her staff report. Chief Schutz's report focused on 13 top program accomplishments for 2015 and five top priorities for 2016-

17, including to implement the Oregon Task Force on School Safety Objectives; work at developing an environment of open/safe communication between Latino population and Forest Grove Police through the "Trust Coalition"; continue work on police facility project; examine staff management within the Police Department; and various staff training.

Administrative Services:
Downey presented a PowerPoint presentation outlining the Administrative Services Department's Work Plan for 2016-17 as noted in his staff report. Downey's report focused on 12 top priorities for 2016-17, including implementation of new financial/human resources information system; financial planning for renewal of local option levy; complete financial policies and submit for Council reviewed and approval; review options for three-year implementation of increased defined benefit plan pension costs for all affected funds; financial analysis of Street Fund's ability to pay for future ongoing maintenance; manage redesign for proposed police facility; update city's website; continue implementation of GIS; study implementing virtual desktop interface to replace desktop computers; evaluation of alternative replacement of health plans; labor contract negotiations; and complete mandatory and supervisory training.

15. CITY COUNCIL COMMUNICATIONS:
Council President Johnston gave highlights about the newly published Forest Grove and Cornelius "2016 Business and Visitor Guide for Western Washington County". Johnston reported on Forest Grove Rural Fire Protection District-related meeting, noting the Board approved their budget for Fiscal Year 2016-17. In addition, Council President Johnston reported on other matters of interest and upcoming meetings he was planning to attend.

Kidd reported on Public Arts Commission-related meeting and activities. In addition, Kidd reported on other matters of interest and upcoming meetings he was planning to attend.

Lowe reported attending the Latino Summit and reported on Sustainability Commission-related meeting and activities. In addition, Lowe reported on other matters of interest and upcoming meetings she was planning to attend.

Thompson reported on Community Forestry Commission-related meeting and activities. In addition, Thompson reported on other matters of interest and upcoming meetings he was planning to attend.

Uhing was absent.

Wenzl reported attending the Latino Summit and reported on Library Commission and Fernhill Wetlands-related meetings and activities. In addition, Wenzl reported on other

matters of interest and upcoming meetings she was planning to attend.

16. CITY MANAGER'S REPORT:
VanderZanden reported on upcoming meetings and events as noted in the Council calendar and City Manager's Report. In addition, VanderZanden referenced the City Manager's Report, which was emailed to Council in advance and outlined various upcoming Council-related meetings; upcoming Council-related agenda; updates on department-related activities and projects, including Administrative Services, Parks and Aquatics, Police, Library, Light and Power, Economic Development, Community Development, and Engineering and Public Works; and other upcoming citywide calendar events.

17. MAYOR'S REPORT:
Mayor Truax announced dates of various upcoming activities, events and meetings as noted in the Council Calendar. Mayor Truax commended the Budget Committee for their work over the last month, noting the Budget Committee has finalized the City's budget for the upcoming Fiscal Year 2016-17. In addition, Mayor Truax reported on various local, regional, Metro, and Washington County-related matters of interest and meetings he attended, upcoming community-related events, and upcoming meetings he was planning to attend.

18. ADJOURNMENT:
Mayor Truax adjourned the regular meeting at 10:03 p.m.

Respectfully submitted,

_____
Anna D. Ruggles, CMC, City Recorder

3C

FOREST GROVE OREGON

A place where families and businesses thrive.

Monday, June 13, 2016
5:30 p.m., Community Auditorium
Conference Room

City Council Executive Session Minutes

Minutes are unofficial until approved by Council.

1. **CALLED TO ORDER AND ROLL CALL:**
Mayor Peter Truax called the Executive Session to order at 5:35 p.m.

ROLL CALL: COUNCIL PRESENT: Thomas Johnston, Council President; Richard Kidd; Victoria Lowe; Ronald Thompson; Elena Uhing; Malynda Wenzl; and Mayor Peter Truax.

STAFF PRESENT: Jesse VanderZanden, City Manager; Paul Downey, Administrative Services Director; Brenda Camilli, Human Resources Manager; and Anna Ruggles, City Recorder.

2. **EXECUTIVE SESSION:**
The City Council met in Executive Session in accordance with:

ORS 192.660(2)(D) to conduct deliberations with person designated by the governing body to carry on labor negotiations.

3. **ADJOURNMENT**
Mayor Truax adjourned the Executive Session at 6:14 p.m.

Respectfully submitted,

_____
Anna D. Ruggles, CMC, City Recorder

3D

APPROVED

PARKS AND RECREATION COMMISSION REGULAR MEETING
WEDNESDAY, MAY 18, 2016
COMMUNITY AUDITORIUM CONFERENCE ROOM

1. **ROLL CALL:**
   a) Commissioners – Brad Bafaro, Ralph Brown, Mackenzie Johnston Carey, Howard Sullivan, Susan Taylor, Glenn VanBlarcom and Paul Waterstreet. Absent – Kenneth Cobleigh and Jeremiah Toews
   b) Council Liaison – Tom Johnston
   c) Staff – Tom Gamble, Matt Baum and Cindy Donoven.

2. **CITIZEN COMMUNICATIONS:** None

3. **APPROVAL OF MINUTES:** The minutes of the April 20, 2016 meeting were approved.

4. **ADDITION/DELETIONS:** None

5. **OLD BUSINESS:**
   a) **2016 C.E.P. Update**
      i) Printed copies of the brochure were passed out and several small changes were noted.
      ii) When completed the brochure will be posted on the City's website.
      iii) The question arose about the size of the map; will it cover the entire back of the brochure?
   b) **Master Plan Progress/Dates**
      i) The CAC meeting will take place on June 7 at 6:30 p.m.
         (1) Survey results will be presented.
         (2) Will draft site recommendations, taking into accounts the survey results, community meetings and outreach from the Latino group.
      ii) June 8 there will be two community workshops.
         (1) Spanish language workshop at 5:30 p.m.
         (2) English language workshop at 7:30 p.m.
      iii) MIG brought in a specialist on historic houses to meet with the Friends of Historic Forest Grove regarding the future of the AT Smith House.
      iv) MIG will compile all the recommendations and in September there will be a joint session with the City Council and the Recreation Commission.
      v) There will be a financial analysis of the current SDC's taking into account property acquisitions and development charges.
         (1) The Council will adopt new fees, with the possibility of a graduated yearly adjustment of the SDC's.

c) **Art In The Park Event**
   i) The committee had an Art Shop visit to view the new piece.
   ii) There will be an arts event on July 9 with a noon dedication of the new piece.
   iii) The brick campaign continues with a goal of selling 200 bricks at $50 each.
   iv) The total budget for the project is $30,000.

d) **2017 C.E.P.**
   i) There is a workshop on Monday night.

7) **NEW BUSINESS:**

a) **Ken's Big Idea**
   i) Ken would like to see an interpretive trail in Thatcher Woods.
      (1) Create educational signage the would describe the eco system and the under and over story.
      (2) Signage that would last.
      (3) It would require thinning and simulated ecology.
      (4) The cost would be approximately $3000 to $5000 and he would donate half the amount.
      (5) The Master Plan does mention adding educational elements to our current system.

(8) **COMMISSIONER'S REPORTS:**

a) **Butch**:
   i) There was an open house held regarding the future of the Post Office. There is a 30 day information gathering inquiry, during which time you can send in suggestions to the US Postal Service. They looked at the Napa Auto Parts site, along with two others. The site must have 56 parking spaces. This will be a 6 to 9 month process.

b) **Glenn:**
   i) A sub-committee of PSAC has been working on guidelines regarding the sale and distribution of marijuana in Forest Grove. They are recommending no open grow, not within 1000 feet of schools, parks or the library and 1000 feet from residential areas.
   ii) Medical is under the Health Department, recreational under the Liquor Commission and grow operations under the Legislator.

9) **COUNCIL LIAISON REPORT:**

a) **Tom:**
   i) Phase One of the Tokalia development is slated to start late this summer.
   ii) Studying what the Police Department facility should be. We would need to pass an operating levy, which will go out to voters in about two years.

iii) There is a new apartment complex going in at 21st and Hawthorne.
iv) The City budget will be finalized June 27.
(1) The cost of dispatch for police and fire is 1.6% of the annual budget.

10) STAFF REPORTS:

a) Tom:

i) There is a regional parks directors meeting on June 1.
ii) The Old Town Loop Trail pre-bid meeting is June 3 and bids will be opened on June 30. The trail will be built in late July thru September and it will be a 1 ½ mile loop. We are still waiting for the County permit.
iii) The pool will be closed June 11 for Staff Training.
iv) The Summer program begins on Monday, June 13.

11) ANNOUNCEMENT OF NEXT MEETING: The next meeting will be Wednesday, June 15 at 7:00 a.m.

12) ADJOURNMENT: The meeting was adjourned at 8:22 a.m.

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1. **CALL TO ORDER:**

WORK SESSION: APPROVED

Planning Commission Present: Tom Beck, Carolyn Hymes, Sebastian B. Lawler, Lisa Nakajima, Dale Smith, Phil Ruder and Hugo Rojas.
Staff Present: Jon Holan, Community Development Director; James Reitz, Senior Planner; Dan Riordan, Senior Planner; Ashley Driscoll, City Attorney; Marcia Phillips, Assistant Recorder.

Chairman Beck called the work session to order at 6:03 p.m. He explained that the work session was to facilitate the public hearing to follow. There would be no testimony or arguments – just the facts.

A. Appeal of Community Development Department's decision to deny the application for agricultural use (outdoor marijuana grow operation). Forest Grove Storage Site Review – File # 311-16-000005-PLNG.
B. Planning Commission recommendation to City Council on time, place and manner restrictions for marijuana facilities.

Chairman Beck called for the staff report.

Mr. Reitz explained that on February 23, 2016, the applicant, Wayde Elliott, submitted a site plan review application for an indoor and outdoor vehicle storage area, which would be an expansion of the existing use located at 620 Elm St. He stated this was a Type II review process in which Staff renders a decision following a public notice and comment period. Notice of this proposal was mailed to surrounding property owners on February 29, 2016. The public comment period expired March 15, 2016. The Friends of Historic Forest Grove (FHFG) submitted the only public comment.

On March 17, 2016, the applicant submitted a revised application including an "Open Grow Agricultural Use". The additional proposed use warranted a second notice period. City staff mailed the second notice on March 17th with public comments required to be submitted by March 31, 2016. He stated that, as before, the FHFG submitted the only public comment.

Reitz explained that on April 18, 2016, staff issued a preliminary notice of decision approving the application. As the notice provided, the preliminary approval was not final until the end of the appeal period, which extended through May 2, 2016.

Reitz stated that on April 28, 2016, the City Council adopted an ordinance prohibiting the establishment of recreational marijuana production facilities within the City of Forest Grove and declared an immediate effective date. He explained that because the immediate effective date of April 28th preceded the site plan approval appeal period expiration date of May 2nd, the City issued a modified notice of decision on April 29th. Reitz said the modified decision provided that

Section 10.1.125 of the Forest Grove Development Code requires all actions initiated under the Code be consistent with applicable regional, state and federal laws. Reitz stated that because the proposed agricultural use (marijuana grow) is prohibited by ORS 475B.800 which the City implemented by adopting Ordinance No. 2016-10, the City denied the site review application. City staff mailed the notice of the modified decision to the applicant and the FHFG as the only affected parties. He said the new notice of decision had an appeal period extending through May 13, 2016.

Reitz explained that on May 9, 2016, the applicant appealed the denial, and although the Applicant's appeal did not specifically state the issues being appealed, the City determined it met the technical requirements for an appeal.

Reitz stated that on May 12th, 2016, FHFG filed an appeal, which also did not specifically state the issues being appealed, but the City again determined that the appeal met the technical requirements for an appeal. Reitz showed maps and pictures of the site, and answered questions from the Commission.

Chairman Beck asked how legal it is to change the rules.

Ms. Driscoll stated that the "fixed goal post rule" still applies. She said that during the application process this operation became illegal with the State and the City, and even though the application was approved they would not be allowed to have a grow operation (unless they were "grandfathered in").

Time, place and manner regulations: she reviewed the quasi-judicial and legislative procedure for the Commissioners. Driscoll explained that for a ban to be permanent it must go before the voters.

Mr. Holan said that there is a revenue aspect to this. He explained that the City cannot collect revenue if any marijuana activity is totally banned.

Ms. Driscoll stated that the City banned recreational marijuana production, and that ban sunsets on August 5th. She said the City Council put the ban into effect until time, place and manner is in place – more or less a moratorium. Driscoll explained that on a Federal level, the Feds will not use their resources to pursue prosecution if a local jurisdiction approves. She stated there is a 1,000-foot buffer around schools per State law.

Mr. Riordan gave an overview of the Public Safety Advisory Committee's (PSAC) recommendation which includes:

Recommendation # 1 – No open grow of marijuana for recreational production in the city limits

of Forest Grove. (Medical production not addressed by recommendation)

Recommendation # 2 – All marijuana activities shall not be permitted in mixed use zones or residential zones. (Personal grow cannot be prohibited under state law)

Recommendation # 3 – All Marijuana activities are not allowed within 1,000 feet of schools (public or private), city parks and libraries

Recommendation # 4 – Any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.

Recommendation # 5 – Any marijuana activities shall be conditional uses in the affected zone. (Currently reviewed through site plan review process)

Mr. Riordan explained that if marijuana activities are not allowed within 1,000 feet of a park and If trails are included; this would effectively create a citywide ban due to location of these trails. He showed a map of the buffers, and explained that if a buffer area touches any part of a parcel, the whole parcel is included. Riordan said if the PSAC recommendation is adopted, the two medical marijuana dispensaries would be allowed to continue, and could later convert to recreational dispensaries through the OLCC process. He explained that some areas of the PSAC recommendation are not clear such as whether or not trails are included. Mr. Riordan explained that the recommendation in the staff report is the PSAC recommendation not a staff recommendation.

The work session ended at 6:46 p.m. and after a 15-minute break the Commission began the public hearings.

2. PUBLIC MEETING:

Planning Commission Present: Tom Beck, Carolyn Hymes, Sebastian B. Lawler, Lisa Nakajima, Dale Smith, Phil Ruder and Hugo Rojas.
Staff Present: Jon Holan, Community Development Director; James Reitz, Senior Planner; Dan Riordan, Senior Planner; Ashley Driscoll, City Attorney; Brandi Walstead, City Program Coordinator; Marcia Phillips, Assistant Recorder.

2.1 PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS: None.

2.2 PUBLIC HEARING:

A. Appeal of Community Development Department's decision to deny the application for agricultural use (outdoor marijuana grow operation). Forest Grove Storage Site Review File # 311-16-000005-PLNG.

Chairman Beck read the hearing procedures and asked for disclosure of any conflicts of interest, ex-parte contacts, bias, or abstentions. There was only one disclosure. Chairman Beck stated that he is a member of the Friends of Historic Forest Grove, but believed he could make a fair decision on this matter. He then asked if there were any challenges from the audience. There were none. For the audience's benefit, Beck explained the meaning of opponent, proponent and other and how they applied to this situation. He stated that the Commission would hear from the applicant on the appeal, and then decide whether or not the second appeal by the Friends of Historic Forest Grove (FHFG) would need to be addressed since the FHFG was basically appealing the appeal. He then called for the staff report.

Mr. Reitz explained that on February 23, 2016, the applicant, Wayde Elliott, submitted a site plan review application for an indoor and outdoor vehicle storage area, which would be an expansion of the existing use located at 620 Elm St. He stated this was a Type II review process in which Staff renders a decision following a public notice and comment period. Notice of this proposal was mailed to surrounding property owners on February 29, 2016. The public comment period expired March 15, 2016. The Friends of Historic Forest Grove (FHFG) submitted the only public comment. On March 17, 2016, the applicant submitted a revised application including an "Open Grow Agricultural Use". The additional proposed use warranted a second notice period. City staff mailed the second notice on March 17th with public comments required to be submitted by March 31, 2016. He stated that, as before, the FHFG submitted the only public comment.

Reitz explained that on April 18, 2016, staff issued a preliminary notice of decision approving the application. As the notice provided, the preliminary approval was not final until the end of the appeal period, which extended through May 2, 2016.

Reitz stated that on April 28, 2016, the City Council adopted an ordinance prohibiting the establishment of recreational marijuana production facilities within the City of Forest Grove and declared an immediate effective date. He explained that because the immediate effective date of April 28th preceded the site plan approval appeal period expiration date of May 2nd, the City issued a modified notice of decision on April 29th. Reitz said the modified decision provided that Section 10.1.125 of the Forest Grove Development Code requires all actions initiated under the Code be consistent with applicable regional, state and federal laws. Reitz stated that because the proposed agricultural use (marijuana grow) is prohibited by ORS 475B.800 which the City implemented by adopting Ordinance No. 2016-10, the City denied the site review application. City staff mailed the notice of the modified decision to the applicant and the FHFG as the only affected parties. He said the new notice of decision had an appeal period extending through May 13, 2016.

Reitz explained that on May 9, 2016, the Applicant appealed the denial, and although the Applicant's appeal did not specifically state the issues being appealed, the City determined it met the technical requirements for an appeal.

Reitz stated that on May 12th, 2016, FHFG filed an appeal, which also did not specifically state the issues being appealed, but the City again determined that the appeal met the technical requirements for an appeal. Reitz showed maps and pictures of the site, and answered questions

from the Commission.

APPLICANT

Wayde Elliott, 34509 Millard Rd., Warren OR 97053. Mr. Elliott said he would just like to give another perspective. He explained that he did not actually own the marijuana grow operation – he is leasing the ground to the grower. Elliott stated that beginning in March he tried to give a Land Use Compatibility Statement (LUCS) to staff on several occasions, but each time they said the LUCS needs to come from the Oregon Liquor Control Commission (OLCC). He said each time he emailed OLCC they stated he needed to give it to City staff because they did not have the time to do it. Elliott said he did a Google search about who to give the LUCS to for recreational marijuana, and what came up was if he wanted to apply for a recreational marijuana license the LUCS should be submitted to the local jurisdiction and local fees paid. He said on the LUCS statement that is to be handed in it says, "On this form submit to the appropriate city or county planning department". So he explained that he was under the assumption that was State law, and he tried to get that to Staff and was not able to do that. Elliott said he has emails from OLCC stating that it does go to Staff. He said he thought if he had been able to submit the LUCS a little bit earlier, this whole thing probably would not have come to fruition.

Mr. Elliott said the other thing he wanted to make note of is on March 28th there was a motion to ban outdoor marijuana grow by the City Council, which failed 6-1 essentially allowing outdoor marijuana grow, which he said led him to believe this was going to be a viable project. He spent close to $20,000 on planning to provide the space to lease out, and had a secured lease for five years that was $30,000/yr. for the two plots which was another loss. Elliott said when he started this whole process, this was an outright permitted use in that area with no gray areas – no conditional use - it was an outright permitted use. Elliott said he assumed it would be O.K. to do this. After getting an approved site design review plan for everything – both the RV storage and that – he said he assumed it was done. He stated that what he did find out was there was a special planning session during the work session and the first reading came out at the work session he was not a part of because he assumed it was done. He said that three days later there was a special City Council meeting to have a second reading to ban outdoor marijuana grow. Elliott said this did not seem like coincidence to him just days before his final site design review appeal period ended and it would have gone into effect. He said he has talked to several people about how often emergency City Council meetings are held, and was told it is very, very rare. Elliott said he feels like all this was done to single him out, and it just does not feel right to him.

Elliott said the Planning Commission is the governing body, and he knows the right decision will be made, and he will accept what it is. Eliott said he felt like he was railroaded, because when he started the process, it was an outright permitted use. He said he felt like he tried to follow all the steps to get it done, and it did not happen.

Mr. Elliott said somebody had made comments, and there were several comments to City Council about smell complaints. He said there was also a comment about a cash only business, and stated that the cash only business was not true. He said the people who were leasing his ground had a security contract for $6.7 million which was not going to be paid in cash. It was going to be paid by check or cashier's check.

Mr. Elliott said he wanted to comment about smell. He said there was something in the Commission's packet that focuses on 'USA Today' down below from Seattle that says the smell from marijuana is not harmful. He said the City does not have any regulations for odors that are not considered harmful. It also says that for departments to take action on an odor it would have to be from the type of business that creates an odor or fume that can be harmful to your health. He said this is an agricultural plant – it is a flower. Mr. Elliott said he wants to be a good neighbor, and to do the right thing. He said he is doing what he can, but to regulate something based on an odor from a natural plant - he does not agree that it is fair. Mr. Elliott requested that if the Commission does decide to deny the outdoor marijuana grow operation, he would like to ask that the Commission approve the RV storage portion of the application.

In response to a question from Commissioner Lawler regarding concerns about security, Mr. Elliott stated that there is a fence around the entire site, and he would essentially build a fence inside the existing fence. The second fence would be around the grow area. He said OLCC has very strict guidelines regarding how tall the fence has to be, for screening and so forth. He said he would follow OLCC laws/regulations. Elliott said if there were to be a grow operation, this site is secure with a double fence, 32 cameras on site, on a dead end road, and there is no residential around there. He said there was some concern about being near a school. Elliott said he Googled the distance, and it is over 1,000 feet.

Chairman Beck stated the applicant has requested that the RV storage be looked at separately from the grow operation, and he asked if anyone else wanted to comment on the grow part of this application.

Ann Niven, 3130 Lavina Dr., Forest Grove, OR. Ms. Niven asked for the definition of outdoor versus indoor grow operations.

Chairman Beck explained that indoor has to be totally enclosed within a building, and if it is indoor you can control everything including the smell. He said there is obviously better security inside a building.

Ms. Driscoll stated that outdoor/indoor grow determination depends upon whether or not artificial lighting is being used.

Ms. Niven asked if anyone knew of an available building with a removable roof, which could be closed up at night and opened during the day.

Chairman Beck explained that the City Attorney indicated that would be an outdoor grow situation.

Melody Haveluck, 2433 14th Ave., Forest Grove, OR. Ms. Havelett stated that she is president of Historic Friends of Forest Grove, and was present with Mr. Drew to answer any questions.

Bill Drew, 2027 17th Ave., Forest Grove, OR. Mr. Drew stated that he is a member of Historic Friends of Forest Grove (HFFG). He explained that the group had prepared a one page letter to be added to the record.

Chairman Beck asked Mr. Drew to read the short letter (Handout # 4), and then distribute it.

Mr. Drew read the letter which stated the HFFG's concerns: about safety for children and families who come to the historic site, about match/dry/fire, and about trespassers/vandalism. He stated that the community did not choose the location for the historic A.T. Smith House, and it needs to be protected.

Amber Buhler, 1614 Elm St., Forest Grove, OR. Ms. Buhler stated that she is a close neighbor to the grow site, and a member of the Board for the Community School. She explained that her husband is a member of the Forest Grove Historical Society. Buhler stated that she is a professor of Pharmacy at Pacific University, and wanted to make some clarifications regarding marijuana use. She stated that children gaining access to marijuana plants would not activate the plants by eating them, because the plants must be heated to activate them. Buhler stated that Butane is used in processing marijuana, but it is also used for many industrial applications. She explained that that everyone has Butane in their homes in the form of a refrigerant in their refrigerator, bottles for camping, etc. She stated that there is no medical reason to subject marijuana to more stringent regulations than alcohol – breweries in Forest Grove are located close to schools and parks. In reference to the historic A.T. Smith House, Ms. Buhler said marijuana was grown and sold back in that era. She said there have been security issues at the historic house in the past, but a highly secure facility would make it more secure rather than having no one around to monitor. She said medical grows and medical dispensaries cannot be banned. Buhler said medical grow and recreational grow use the same plants. In summary she said there are no medical or historical reasons to ban marijuana activities.

David Morelli, 1320 Cedar St., Forest Grove, OR. Mr. Morelli stated that state law says grow operations must obey all laws, and he believes staff made the correct decision per City laws, because at that time there was a ban on recreational marijuana grows.

Carol Alery, 4200 Pacific Ave., Forest Grove, OR. Ms. Alery said she has witnessed the harmful effects through personal experience in her own home. She said marijuana has an effect on the smoker and those around. She stated marijuana should not be considered close to a school – we care about our children.

Chairman Beck asked if anyone wanted to speak about the RV storage portion of the application.

MaryJo Morelli, 1320 Cedar St., Forest Grove, OR. Ms. Morelli stated that during heavy rains the berm located on the RV storage site funnels significant amounts of water onto neighboring properties to the south. She stated her concern about what might be in that runoff with more RVs stored there.

Commissioner Lawler asked whether or not the applicant would be required to build storm drains.

Chairman Beck explained that Clean Water Services (CWS) must approve runoff and where it goes. He said a property owner must regulate water that runs off his property.

Ms. Morelli stated that more building will increase runoff.

Chairman Beck said the Commission would address her comments during their discussion.

Mr. Reitz said the applicant submitted a storm drainage report with his application. He explained that it was not the applicant who placed the berms – it was the previous owner and they were not approved. Reitz explained the site plan impervious surface runoff mitigation process. He said any runoff must be directed to the water quality facility. Reitz explained that natural drainage can drain to other property, but once it has been interrupted by impervious surface, it must be mitigated.

David Morelli, 1320 Cedar St., Forest Grove, OR. Mr. Morelli stated that the berm on the property was installed on the property after the RV storage facility occupied the site.

REBUTTAL: The applicant declined a rebuttal.

Chairman Beck closed the public hearing at 7:57 p.m.

COMMISSION DISCUSSION:

Commissioner Ruder stated that the law for marijuana should be the same as for alcohol. He said the decision to ban was a last minute one and not fair, but this is not the body to review that.

Commissioner Nakajima said when an applicant is the first one in and the City is trying to get up to speed, she thought it was appropriate for the City Council to approve the temporary ban.

Commissioner Hymes expressed her sympathy for the applicant, and said the decision was made but whether the Planning Commission would have made that decision is uncertain.

Commissioner Rojas also expressed his sympathy for the applicant.

Chairman Beck said he added his voice of sympathy for the applicant, but said we must follow rules from those above us. He suggested the RV storage be divided from the marijuana grow and a condition be added about runoff mitigation.

Mr. Reitz explained that the RV storage portion of the application met all of the requirements, and the runoff goes through our Engineering Department.

Mr. Holan suggested a possible condition that the applicant shall comply with all CWS and City requirements for runoff.

Commissioner Lawler stated his concern that sometimes our town can be over regulatory. He said the City needs to look at how we treat investments in Forest Grove, and not discourage people from investing here.

Chairman Beck asked for a motion.

Commissioner Hymes made a motion to uphold staff's decision to approve the RV storage portion of the application and to deny the marijuana grow operation portion of the application

with conditions as noted. Commissioner Smith seconded. Motion passed 7-0.

Commissioner Ruder clarified that this is not a ban.

Chairman Beck called for a short break before beginning the second public hearing.

B. Planning Commission recommendation to City Council on time, place and manner restrictions for marijuana facilities. File # 311-15-00034-PLNG

Chairman Beck opened the second public hearing at 8:14 p.m. He explained that this was a Legislative because the decision would apply citywide rather than to a single property. The Chairman explained that marijuana has been legalized by the state and the City needs to figure out how to deal with it. Beck called for the staff report.

Mr. Riordan stated for the record that staff received a letter from Corinne Celko, Emerge Law Group, which stated that no buffers are warranted around marijuana activities. He said there was a memo attached to the letter from the department of Justice. The memo stated that from the federal prospective they will not put many resources into areas where marijuana is legal.

Mr. Riordan gave a brief background. He explained that, under State law, cities may impose reasonable time, place and manner restrictions on marijuana related activities, but the term "reasonable" is subjective and is interpreted to mean restrictions must not effectively create a ban. He said restrictions should address identifiable impacts and not be based on supposition, and local restrictions may add to but cannot relax State imposed requirements. Riordan explained that cities cannot prohibit possession of marijuana related items for personal use (State law allows for up to four marijuana plants for personal use.) He said there are 7 marijuana related activities regulated by the State through the Oregon Health Authority (OHA) and the Oregon Liquor Control Commission (OLCC). These include: medical marijuana dispensary, producers and processors and also recreational marijuana retailers, producers, processors and wholesalers. Riordan explained that a total ban on any one marijuana related activities makes a jurisdiction ineligible to collect sales tax revenue.

Mr. Riordan said the code amendments adopted by the City Council on March 28, 2016 were intended to be an initial set of restrictions to address immediate needs. The amendments set standards for marijuana activities other than medical dispensaries and prohibited non-personal marijuana activities in residential zones such as marijuana production and processing, home occupations, and retail sales through "corner stores".

Mr. Riordan explained that experience indicates that additional restrictions on marijuana related facilities including marijuana production and processing may be warranted. He said as other cities adopt restrictions for marijuana related activities, it has become apparent that Forest Grove's requirements are less restrictive. Riordan explained that this could result in industrial land in Forest Grove being used for marijuana related activities rather than industrial activities. He further explained that compared with industrial uses, agricultural activities such as open grow marijuana production have lower property tax value due to limited improvements, and because

marijuana is a high cash value crop it suggests that marijuana activities may not convert to other uses over time. He explained that additional restrictions may be warranted until potential impacts such as odor (outdoor grow) and hazardous materials for processing (Butane) are better understood.

Commissioner Ruder commented that you would think industrial users would out bid agricultural users for the industrial land – the market is somehow broken.

Mr. Holan said marijuana is a high value crop, and in other cities it has displaced other industrial uses. He explained there is a small investment in physical improvements for outdoor grow operations.

Commissioner Ruder asked why would a grower want to buy industrial land inside the City (expensive) when he could get cheaper land outside the City.

Mr. Holan said perhaps it was the availability of water.

Commissioner Ruder stated that he looked at the reports mentioned, and they referred to indoor grow operations, and in his research he could find nothing on outdoor grow.

Mr. Riordan showed a chart of which zones allow marijuana activities, and listed the characteristics of marijuana facilities both medical and recreational.

Chairman Beck clarified that 48 plants are allowed for medical marijuana grow operations, but the Commission can change that if it is decided to do so.

Ms. Driscoll clarified that the Commission cannot allow 56 plants, but can restrict it to 36 plants. She said that under State law processors doing extracts are monitored more closely due to volatility. She said revenue from recreational retail sales can go up to 3%, and a lot of cities are referring this sales tax to the voters.

Mr. Riordan showed a map of buffers, and what other cities have done. He then showed a list of the PSAC recommendations, and alternatives for the Planning Commission to consider along with alternative buffers. He indicated a question came up as to whether trails were included as public parks in the PSAC recommendation. He explained the marijuana related activities review process. He said Site Plan Review is an administrative (staff) review appealable to the Planning Commission. The criteria focuses on physical aspects of a development such as compliance with development standards, building mass & scale, impact to natural resources, impact to historic resources and site access. He said the Conditional Use Permit process is a quasi-judicial (Planning Commission) review appealable to City Council and focuses on the physical compatibility, public services and livability. Riordan showed the amendments that would need to be made to the Development Code, and the review criteria on which the Commission will base its decision.

Mr. Riordan explained that the Commission can (1) endorse the PSAC recommendations pertaining to time, place and manner restrictions for marijuana related facilities and activities to include in the development Code, (2) modify the PSAC recommendations with revised or no buffer requirements for adoption by City Council, or (3) accept or modify the staff

recommendations pertaining to development Code Amendments.

Mr. Holan said he wanted to clarify something. He stated that we are dealing with a legislative matter, dealing with community values, dealing with things beyond just an absolute, analytical reason. Holan said what we are trying to do is offer rationales – there may be other rationales. He said if PSAC testifies tonight, maybe they can give reasons for the recommendations they came up with, but they are probably more on the community values side than on the analytical side.

Chairman Beck agreed that was helpful.

PUBLIC TESTAMONY

Chairman Beck asked Ms. Buhler not to repeat her testimony from the previous public hearing.

Amber Buhler, 1614 Elm St., Forest Grove, OR. Ms. Bueller agreed not to repeat what she had already testified. She said one of the arguments is the lower property tax rate, but if we had enough industrial users willing to use our industrial land and to make our industrial land improvements then that would perhaps be a valid argument but we do not, so there is not a reason for the ban. She said to her knowledge we do not have a significant number of people wanting to come into Forest Grove to make substantial improvements to our industrial land. She stated that there are other ways to process marijuana without using Butane. Bueller stated that not liking something is no reason to ban it. She said as far as outdoor grow vs. indoor grow, the only reason she has heard is people do not want to see it, and that seems to be motivated by personal opinion that we should regulate what people see. She stated that there is no scientific or health reason to ban any cannabis related businesses/industries, and there should be no buffers around grow areas. She said retail sales should be treated like those of any other neurological substance.

Commissioner Nakajima asked Ms. Bueller if she had personal experience with the smell of pot plants growing . Ms. Bueller stated that she did not.

Tim Rippe, 3334 Edgeview Lane, Forest Grove, OR. Mr. Rippe said he is a member of PSAC. He explained that PSAC did not discuss trails at all, and it may have been brought up at the Parks & Recreation Commission. Rippe said commercial production refers to both medical and recreational. He said regarding health and safety, PSAC's concern was where children are or where children's activities may occur. Rippe said there is not an abundance of information about whether or not being around marijuana is healthy, so it is smart of the Commission to consider this as they make their decision. Rippe said it is easier to make restrictions and then back out of them later, rather than make a decision without the information we need. He said safety and crime was their main concern.

Chairman Beck asked if PSAC considered the differences between each of the four parts; producing, processing, etc.

Mr. Rippe said yes they did.

Chairman Beck said in terms of the ones prior to retail (processing & wholesale) for recreation

what was the reason to think that their location, whether near children or not, made any difference. He said it is processed in a building and wholesale is done in a warehouse.

Mr. Rippe said he did not think they put any restrictions on wholesale, except when PSAC said no marijuana activities in mixed-use and residential areas, and that would apply to all seven categories. He said he thought Mr. Holan was correct when he talked about taking into consideration the perception people have – people do not like marijuana. He said people do not like open burn either, so the City is going in the direction of trying to put restrictions on open burn operations because of odor, etc. so it is not unheard of for the City to put restrictions on things people do not like - whether or not they are not healthy. He said there has not been a lot of testimony with regard to the Economic Development Commission. Rippe said there was concern about businesses deciding to move away from Forest Grove if there are these activities next door to them – it would not necessarily be perceived as being good for their businesses. He said there are a lot of things to consider here, so giving the City Council more time to look at all of these things is wise and appropriate.

To clarify Chairman Beck said in terms of processing and wholesaling PSAC was not recommending anything other than it not be allowed in residential and mixed-use areas.

Mr. Rippe said that was correct. He said the buffer zone applied to parks, schools, libraries and residential zones for all four activities.

Chairman Beck said his question was why have a buffer zone around a park that happens to overlap an industrial zone for processing which is done inside a building.

Mr. Rippe said the rationale is, because there are children that could be present in the park the buffer applies.

Chairman Beck said he understood that, but what is the relationship between children in a park and 500 feet away having a building where something inside is going on.

Commissioner Lawler said he thought this was addressing the cultural stigma that pot is being processed in that building.

Chairman Beck explained that what he was saying is for processing and wholesale these things go on inside the building, and there is no interaction except for employees – unless they put a big sign out. It is just another big building in an industrial area.

Commissioner Lawler said people know Chaucer Foods has raspberries, TTM has circuit boards, etc.

Mr. Rippe said PSAC was looking for anything that was around schools, because it would be difficult to write a recommendation stating a distance of 1,000 feet from this school, but in another area it did not apply.

Carol Alery, 4200 Pacific Ave., Forest Grove, OR. Ms. Alery stated that community values are more important in our City than revenue. She stated that since we have to have dispensaries

and so forth in Forest Grove, we have to have buffer zones – you have to consider where families are, and the rise in crime. She said marijuana has a moral impact, and we need to stand for good values for families and children, and what the next generation is going to do.

Corinne Celko, Emerge Law Group, 805 SW Broadway, Ste. # 2400, Portland, OR. Ms. Celko stated that she and her two associates were there on behalf of the property owner who owns the property at 620 Elm St. in the General Industrial zone and directly west of to Saki One. She said their comments would be directly related to the PSAC recommendation for 1,000 foot distance requirements from schools, parks and residential areas. Celko said PSAC mentioned the two bases for those recommendations were safety and livability. Celko said they would address both the safety and livability issues, and then close with some other neighboring cities and what they are doing with their marijuana regulations.

Ms. Celko said first of all was safety. She said it was important at this time to note that Oregon decided that marijuana would be legal, and gave the Oregon Liquor Control Commission (OLCC) the ability to regulate marijuana activities this was based in part on the Cole memo from the Federal Deputy Attorney General attached to Ms. Celko's letter (Handout # 2) that addressed federal prosecutorial priorities regarding marijuana enforcement. She said the number one priority listed in the Cole memo was preventing the distribution of marijuana to minors. Celko said what the memo says is in states where marijuana is legal, and where those states implement strict, strong effective regulatory systems, federal prosecutors shall not go in and prosecute in those states. She said the basis for that is those strong, effective regulatory systems will take care of these federal enforcement priorities with number one being the prevention of the distribution of marijuana to minors. So within that regulatory system the OLCC has implemented very strong, effective security requirements for marijuana grows. She said she was only talking about indoor grows not wholesaling, processing or retail. She said for marijuana grows the State has prohibited minors from being an employee of a marijuana grow, and any minors on the premises must be accompanied by a chaperone over the age of 21. She said secondly all marijuana producers are required to secure their facilities with property surveillance alarm and security systems, and this includes cameras, video recorders, and an alarm system that is connected to directly alert local authorities or the owners if there has been a breech. Celko said thirdly the State requires commercial grade locks on every external door. She said these three requirements are directly related to the prevention of distribution of marijuana to minors. She said the OLCC has further lighting requirements to make sure the areas are well lit, and that there is no surreptitious crime going on. Celko said she believes these security requirements go above and beyond what any other normal industrial facility would have. In terms of access to cash, since it has been mentioned that marijuana is a cash business, an indoor grow like this is not open to the public – there are no customers that go to the site, and no cash is being delivered to the site. She said in this particular situation the product is placed into vehicles within the industrial building. The vehicle will enter the building through a roll-up door and then the roll-up door will close. After the product is loaded, the vehicle will take the product directly to the wholesalers and dealers – so there are no large amounts of cash on site at any time. She said there are also natural buffers that are important to note in regard to the schools and residential areas. The railroad runs between the school involved here and the grow site. The school is accessed from Taylor St., so the only way a child could go from the school to the grow site would be to either trespass the other industrial zone properties or to traverse the railroad tracks. She said with regard to the residential zone properties that are within the proposed 1,000 foot buffer, Highway 47 is a natural buffer. She said

any child, once they get through those natural buffers, the commercial grade locks, the motion sensors, the video recorders, the alarm systems all of those things are designed to prevent a child from getting inside and, on the awful chance that might happen, the video cameras allow the authorities to find out who those people are.

Ms. Celko said with regard to livability, one of the issues mentioned was odor control. She said it is important to mention here that, while the State may not have requirements, the City does. She said those odor control requirements are quite vigorous as well. The City requires a carbon filtration system and a negative air pressure within a facility for marijuana production. Celko said the carbon filtration system is used to clean the air, and the negative air pressure system makes it stable inside so no "non-clean" air gets outside. She said with regard to odor, even if some odor was able to escape from the building (even with the filtration system and negative air pressure) there is lots of land and lots of other odors it needs to go through to reach these areas. She said this is in an industrial area, so the City has long ago decided that this area was planned for industrial uses, and other industrial uses are not odor-free, and other industrial uses are arguably not subject to such requirements as the City requires for marijuana production.

Ms. Celko said she wanted to mention in regard to some of the earlier comments, that this building would be built to standards like any other commercial/industrial grade building in an industrial area subject to the same development standards and it would look the same as others in an industrial area. She said it would have no signage, no flashing neon signs saying marijuana produced here. Celko said it is in an industrial park and would be just another building in an industrial area. In terms of fairness, when we look at this as a legal activity now, we do not see any other type of business requirements for other types of uses. She stated that the Saki One facility is directly next door and they have no requirement for buffers from schools and residential areas, and it can be argued that liquor is just as potentially harmful to children as marijuana.

Ms. Celko said with regard to crime and the comment that this is a high cash business or a desirable crop that is worth stealing, there are no distance requirements for banks which handle a lot of cash or jewelry stores which are valuable. So in terms of fairness, she said it seems like this is a legal activity, and the State has done its job in that it is preventing the distribution of marijuana to minors, and it should be treated just like any other legal activity in the City.

Finally, Ms. Celko said she wanted to add that other cities in the area, particularly Hillsboro, has a distance requirement from residential zones, institutional zones, and there was no distance requirements from schools, libraries or parks for marijuana production. This is due to the fact, as is mentioned in the staff report, that the State has no distance requirements for marijuana. She said the only State mandated requirement is between retailers and schools, and part of that is due to the fact that retail is visible – there is a chance that a child could go there. She said but for these other uses, such as indoor producers, there is less of a chance of that occurring and the State has recognized that and has not mandated any kind of distance requirement. She said it is recognized that the Commission is concerned about making the community safe and livable, and as a property owner in the community the applicant wants to keep it safe and livable. She said the applicant believes the State has done its job. Celko said the applicant asks that the Commission sticks with what the State has mandated and only require a distance requirement between retailers and schools, and either have no distance requirement for marijuana producers or, if you feel there is some justification for it, ask that you limit it to 100 to 300 feet. She said her final comment was

some would say what is wrong with being more safe – what is the harm in an overabundance of caution. She said in this case when looking at this being a new legal industry, and that the City has already decided it is going to allow this industry inside the City limits, creating these kinds of distance requirements is unduly restrictive. Celko said it reduces opportunity for those who legitimately want to make a living.

Commissioner Lawler asked how many people these types of facilities employ.

Ms. Celko replied that it depends on the type of grow operation – how much production they have and the type of production process. She deferred to Mr. Burnett.

Don Burnett, 10651 Stevens Way, Happy Valley, OR. Mr. Burnett said they would employ 18-20 people with 24-hour security. He said they started their process in December 2015. There was one meeting December 20th and another on December 23rd to discuss the plan for developing the site. He said after the meeting on December 23rd it was required that the applicant have a LUCS filled out and signed by the Community Development Director for indoor recreational grow. He said he has been cooperative in working in concert with the Planning Commission and all State laws and regulations, and with the endorsement of indoor recreational grow in the City of Forest Grove, and the LUCS agreement, he decided to move forward with the purchase of the propertywhich cost over $310,000 to purchase the land and $30,000 for architectural plans. Burnett said this dollar amount is significant to him and his family, and he plans to adhere to all City and State regulations and will operate this business with integrity. Burnett said he was also told that the City of Forest Grove would mirror the City of Hillsboro regulations, and they had at the maximum 100 foot distance requirements. He said the property met all criteria, so based on this information he respectfully requests a removal of the ban on recreational grow.

Bill Drew, 2027 17th Ave., Forest Grove, OR. Mr. Drew said he is a member of Friends of Historic Forest Grove, and gave a brief synopsis of his one page letter. He said he has looked at the PSAC recommendations and endorses them. He agrees with having no marijuana activities within 1,000 feet of the nearby park and Community School. He suggested a buffer around historic sites such as the A.T. Smith House, and said the A.T. Smith site deserves greater protection because it is irreplaceable – there is a need to protect and preserve. Drew said their group is seeking special protection for educational and historical sites from fire damage, trespassing, vandalism and odors. He said marijuana may have been legal in A.T. Smith's day, but he would not have had it growing in his yard. He said the Commission could look at the A.T. Smith site as a park, because it was purchased with funds that can only be used for a park. Drew said Page #23 - Article #12 - Definitions as amended suggests indoor/outdoor grow is appropriate by adding the word "plants". He said it may be appropriate for fruits and vegetables, but not appropriate for pot.

Mr. Riordan explained that the original definition could be interpreted to exclude indoor marijuana grows, so if growing marijuana is a legal activity then "plants" should be added.

Ms. Driscoll clarified by stating that a person would have to get a special license to be a medical marijuana dispenser or processor, and they cannot cohabitate.

Mr. Drew said he would expect these definitions to be tighter.

Chairman Beck replied that it was a reasonable expectation.

Mr. Drew said the definition is missing the word "not". Chairman Beck instructed staff to make that correction.

At 9:45 p.m. Commissioner Lawler excused himself to go to work.

David Morelli, 1320 Cedar St., Forest Grove, OR. Mr. Morelli said he wants to live in a full service city. He said it is important to make sure what we put in place can pay for services. He said there needs to be a balance of jobs to houses, and jobs for people other than police and fire. He said stuff going off the property (such as odor) needs to be regulated.

Ann Niven, 3130 Lavina Dr., Forest Grove, OR. Ms. Nivens said she is a member of PSAC. She said the working group did not consider trails. She explained that the group considered the marijuana industry a bit more risky, so wanted to keep it in the General Industrial Zone to protect vulnerable children. Nivens said the recommendations were approved by PSAC in a 6-1 vote. She was the only dissenter, because she thought 1,000 feet was too great a buffer. She endorsed the idea of it being a Conditional Use Permit, so the public can weigh in on it at the public hearings and speak their minds. Nivens said there are a lot of community feelings that need to be considered – people should not feel disenfranchised.

Commissioner Nakajima asked Ms. Nivens if PSAC considered any other number for the buffer.

Ms. Nivens said they started at 50 feet.

Chairman Beck closed the public hearing at 9:58 p.m.

COMMISSION DISCUSSION:

Chairman Beck suggested that the Commission take the "easy ones" first.

Recommendation # 5- any marijuana activities shall be conditional uses in the affected zoning.

The Commission agreed that any marijuana activities shall be conditional uses in the affected zoning.

Recommendation # 1 – no open grow of marijuana for recreational production in the city limits of Forest Grove.

Commissioner Hymes stated that industrial land should not be used for recreational grows, because it is low yield revenue and we want a better tax base.

Commissioner Nakajima encouraged the City to be conservative to begin with in allowing outdoor grows inside the city. She stated that she did not want to see open grow inside the city limits.

Chairman Beck agreed it is not appropriate to use industrial land for grows due to the tax base – it

would just be the equipment that would be tax.

Commissioner Rojas stated that he believed people should be allowed to grow marijuana inside the city limits.

Commissioner Smith said there should be no recreational marijuana growing inside the city limits.

Commissioner Ruder said he would be concerned if Forest Grove was the only city that allowed outdoor grows, and agreed he could live with this restriction.

Chairman Beck agreed that he did not love it either, but could live with it.

Consensus of the Commission was to prohibit open grow.

Recommendation # 2 – all marijuana activities shall not be permitted in mixed use zones or residential zones.

Chairman Beck made the comment that mixed use to him is an extension of the residential zone, so marijuana grows are not appropriate.

Commissioner Ruder said alcohol has ruined as many lives as pot, so it should have the same restrictions as places that sell alcohol.

Commissioner Smith said marijuana growing should not be allowed in residential areas, but was not sure about mixed use areas.

Commissioner Ruder agreed with the recommendation.

Recommendation # 4 – any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.

Commissioner Hymes said she thought the buffer is too large.

Chairman Beck said the General Industrial Zone is where he wants indoor grow, wholesale and processing. He said he sees no reason for any other restrictions other than keeping it in the industrial zone – the building would be the buffer.

Commissioner Hymes agreed.

Chairman Beck said it keeps it localized – it is just like any other industrial process.

Recommendation # 3- all marijuana activities are not allowed within 1,000 feet of a school (public or private), city parks and libraries.

Chairman Beck recommended allowing retail in the commercial zone with the State regulated buffer of 1,000 from schools. He said it centralizes it, and keeps it away from kids.

Commissioner Nakajima asked if marijuana grows were restricted to the General Industrial zone what impact would it have on 620 Elm St. (the applicant's property).

Chairman Beck explained that it would allow indoor grows with the building as the buffer.

Commissioner Nakajima commented that so people are not looking at solid walls of arborvitae, Conditional Use Permits will come before the Planning Commission.

Mr. Holan asked for clarification on retail – if it stayed as it is.

The Commission agreed to leave it as it is.

Mr. Riordan said staff would want to edit the Development Code to be consistent with the decision.

Chairman Beck listed the recommendations as discussed and agreed upon by the Commission.

- no open grow inside the City limits.
- any marijuana activities shall be conditional uses in the affected zoning.
- no marijuana activities in residential and mixed use areas
- marijuana indoor grows, wholesale and processing in the General Industrial Zone only
- retail sales are allowed in the commercial zone only with State restrictions

Commissioner Ruder made a motion to recommend to City Council the acceptance of the Public Safety Advisory Commission's recommendations on time, place and manner restrictions for marijuana facilities with revisions as noted File # 311-15-00034-PLNG. Commissioner Hymes seconded. Motion passed 6-0.

2.3 **ACTION ITEMS:** None.

2.4 **BUSINESS MEETING:**

3.1 **APPROVAL OF MINUTES:** Commissioner Nakajima made a motion to approve the minutes from the March 21st and May 2nd meetings. Commissioner Ruder seconded. Motion passed 6-0.

3.2 **REPORTS FROM COMMISSIONERS/SUBCOMMITTEES:**

3.3 **DIRECTOR'S REPORT:** Mr. Holan stated that the next Commission meeting will take place on June 20th and it will be a public hearing on a land use permit for a multi-family building on 21st & Hawthorne.

3.4 **ANNOUNCEMENT OF NEXT MEETING:** Next meeting will be held on June 20, 2016 at 7 p.m.

3.5 **ADJOURNMENT:** The meeting was adjourned at 10:25 p.m.

Respectfully submitted by:
Marcia Phillips
Planning Commission Coordinator

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CITY OF FOREST GROVE
SUSTAINABILITY COMMISSION
COMMUNITY AUDITORIUM
THURSDAY, February 25, 2016 – 6:00 P.M.

Councilor Victoria Lowe

Brian Schimmel, Chair
Deke Gundersen
Hope Kramer
Robin Lindsley
Elaine Cole
Diane Taniguchi-Dennis
Jacob Rose

Dale Feik
John Hayes
Edgar Fausto
Karin Pfeifffer-Hoyt
Mitch Taylor
Leslie Applegate Lanzar

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CALL TO ORDER:

Sustainability Commission Present: Chair Brian Schimmel, Robin Lindsley, Edgar Fausto, Karin Pfeiffer-Hoyt, John Hayes, Leslie Applegate Lanzar, Dale Feik, Elaine Cole, Mitch Taylor, Dale Feik
Excused Absence: Diane Taniguchi-Dennis,
Absent: Leslie Applegate Lanzar, Jacob Rose
Council Present: Councilor Victoria Lowe
Staff Present: Paul Downey, Administrative Services Director, George Cress, Director of L&P, Brandi Walstead, Program Coordinator
Guests: Billy Goldsmith, Cecelia Warner

1. **REGULAR MEETING:** Call to order, Vice Chair Taylor called the meeting to order at 6:00 PM.

2. **COMMUNITY COMMUNICATIONS:** Vice Chair Taylor wanted to take this time to take nominations for the position of Chair. Nominations were called for. Vice Chair Taylor made a motion to nominate Commissioner Schimmel as the 2016 Chairman, Commissioner Cole seconded the motion. A vote was taken with a unanimous decision made by those members present for electing Commissioner Schimmel as the next Chair.

CONSENT AGENDA: Minutes for the January 28, 2016 will be reviewed at the next meeting.

3. **COUNCIL LIAISON REPORT:** Councilor Lowe, I want to mention the March 8, showing of the movie Behind the Emerald Curtain which focuses on climate change. There is stress on our forests and water resources from the growing population in Oregon. The City is going in the right direction and has a good forest plan that addresses these issues. I'm concerned about forest practices in other areas of the Pacific Northwest. Commissioner Gundersen, the horrifying thing is the aerial spraying and the lack of buffer areas from the watershed. Chair Schimmel, if there is a concern in this area we can schedule time for a future meeting for additional discussion. We also had a Council retreat and I will share the results at a later time.

4.STAFF UPDATE: Mr. Holan was not in attendance for this meeting. Mr. Downey provided an update on the compost waste proposal. Recently, staff met with Washington County Solid Waste to discuss kicking-off the program for May 1, 2016. In addition, they will be attending the Commission's next meeting in March to report on the status of the program and to discuss 60 to do items. We are still waiting to hear back from DEQ on the grant proposal for funding the waste disposal kitchen pails. Bev will be mailing out a post card to approximately 5000 single family residential customers who will be impacted by the new composting program. We would normally send out the information about the program in the utility bill. The City is not going to do that because the billing would reach multi-family customers who are not part of this program. Additional mailings will be going out in June. Washington County has budgeted funds to pay for the educational materials that will be sent out.

Councilor Lowe asked Mr. Downey if someone will be monitoring the tonnage that will be diverted from the landfill. Mr. Downey, Waste Management will monitor the program and provide us with a report. Chair Schimmel asked Mr. Downey, did the council vote on the waste proposal. Council made a motion to move forward with the plan and to provide information for folks at the Wednesday Farmers Market. They have not voted on a rate for this service. Councilor Lowe, will Nature's Needs be offering 1 yard of composting materials to our customers each year or just for the first year of the program. Mr. Downey it is my understanding that compost materials we be offered each year. We will also be asking Metro for an out of jurisdiction permit to enable Waste Management to take the waste materials to North Plains which is not in Metro's jurisdiction.

The first day for Wednesday Farmer's Market is May 4. Ms. Warner offered to provide Master Recycler's booth space for displaying the composting program's educational marketing materials.

Mr. Downey, the CEP Cycle Committee has approved the rules for the forth coming year. There are two changes for the new cycle; increase the amount of funding for each grant up to $10,000 and placed a limit on the number of applications a board or commission can submit for funding. Metro revised the rules. Commissioner Cole, does this limit our scope for our Commission. The not–for- profit organizations still have the ability to apply for grant funding too. Councilor

Lowe, how does the Committee feel about the mini-grant applications, do they still support them. Commissioner Taylor asked Mr. Downey, has the Committee seen mini-grant proposals they would not support. Mr. Downey, the Committee is concerned about allocating the grant funds equally. Chair Schimmel, I'm concerned about not having enough funds to meet the needs. Commissioner Lowe, the grant funds are to be use for projects that offset the waste flow that currently goes to the transfer station, they are not a gift to the boards and commissions. The grant funds are used to mitigate the overall waste flow that impacts the waste transfer station. The original program has changed over the years. Mr. Downey, Ms. Harrington is a member of the Metro Committee that oversees the program, so there is close observance of the grant applications. Mr. Downey, the Commission needs to prioritize their applications, do not forget, there is also a pool for not-for-profit organizations. Chair Schimmel, we will need to coach prospective applicants on their grant submittals.

PRESENTATIONS

5. FGSC Sustainability Initiatives: Billy Goldsmith, FGSD facilities director, Llene Clute, FGSD business manager presented their organization Traffic Light Report, (see handout). Mr. Goldsmith, the Traffic Light Report details the districts efforts for environmental and energy management planning and implementation for school district properties. In addition, the Report outlines future goals and objectives for controlling costs and implementing new programs. We also compare schools and see how their doing in controlling spending on utilities. Waste management is another area that is a concern for us, we are implementing recycling programs to control costs with our waste stream. We monitor the food we purchase and what food-waste goes to the landfill. We would like to purchase more local food. We have to be diligent on the food products we buy for our student meals; we have to carry liability insurance to cover us for potential illness. For the future we want to implement more sustainable efforts, we want to cut down on our use of plastic bags and the amount of white paper we use.

Vice-Chair Taylor, I'm impressed with your efforts you're undertaking, especially with your environmental controls for the school buildings. Commissioner Hope, in reading the waste audit report report I was surprised to hear the district is still using styrofoam and plastic eating utensils instead of reusable trays and flat ware. Mr. Goldsmith, I'm not the expert on this issue, it's my understanding that it is for economic reasons that we still use disposable items. Commissioner Cole, do you see any future initiative of composting efforts. Mr. Goldsmith, yes we would like to take a look at this to see if this viable. Commissioner, Fausto, we would like to place the waste audit information on the school webpage.

6. Mini-Grant: - Recyclable Produce Bags: One Less Plastic Bag Proposal (see grant application handout) - reusable Chico bags for the Farmers Market Waste Center (CEP mini-grant). Ms. Warner, I'm a big a fan of Chico bags, they are a self-contained recyclable product. The manufacturer requires the minimum purchase of 200 bags, also I thought it would be nice to have the logo placed on the bags, One Less Plastic Bag. I'm asking for $800 to purchase 500 bags including printing, there is a 9 week lead time. Vice Chair Taylor, are you going to charge $3 for the bags, and if you do, what are you going to do with the money. I'm going to purchase more bags. Commissioner Kramer, how many bags can you buy for $500 without the logo. Ms. Warner, I can buy 231 bags. General discussion followed on whether to support having a logo on the bag or not and the issue of needing to sell the bag instead of gifting them. Ms. Warner, I want

people to value the bag. Chair Schimmel, do you want to amend the application to delete the aspect of selling the bags for $3. I want to keep the application as is.

Commissioner Cole made a motion to accept the CEP mini-grant, second by Commissioner Pfeiffer-Hoyt. Vote taken, motion passed. Logo agreed upon, City of Forest Grove, Sustainability is in the Bag, 2 lines.

7. Sustainability Public Education Series: co-sponsor and deliver presentations. Ms. Warner, I want to remind members about the series of sustainability topic discussions to be presented on the last Tuesday of the month at 6:30 PM at the library. Last Tuesday, we had a good turnout for Eat Smart. Members mentioned possible topics including composting and even the UCC project proposal for raised garden beds.

8. Mini-Grant - UCC Church: Welcome Garden- community gardens accessible to wheelchairs and walkers (CEP mini-grant) presented by Mr. Paul Edwards, from Forest Grove United Church of Christ. Mr. Edwards, the application (see handouts) is for $500 to construct four garden boxes to be located in front of the church bordering Main Street. This project is designed to accommodate folks in wheelchairs and walkers. The public will be invited to participate in planting, care and harvest the food grown in the vegetable garden. The Welcome Garden is meant for public use not just for church members. Water for the gardens will be provided by the church.

Commissioner Hayes made a motion to accept the application, second by Commissioner Cole. Motion passed. Members expressed their strong support for this mini-grant application, they felt it was a great project. Commissioner Lindsley, I would like to volunteer to help with this project and to share our experiences at the Senior Center.

TOPIC AREA SUBCOMMITTEES

9. CEP Grants: Commissioner Kramer, I'm asking Melanie for help spending grant money for projects at the schools. I talked with Edgar and (name) about composting at the high school. I think this could be a good club project at the high school. We need to have more recycling containers at the school too. I also wanted to mentioned the recent Waste Audit that was done. One of the items that stood out was the amount of clothes that are left on school grounds and just thrown away; there is no Lost & Found at the high school. There are recoverable items including food that are currently thrown away in large garbage bags. There are many garbage cans located on the high school campus that leads to throwing away items that could be recycled.

Councilor Lowe suggested having the Council hold one of its meeting at the high school to help emphasize the activities of the various boards and commissions.

Chair Schimmel, I wanted to talk about ideas for future mini-grants. There is going to be a cap of $10,000. Commissioner Lindsley I would like to apply for a future mini-grant for exploring

the milling of local ground grains for bread. I would like funds to research the development of a local mill. Discussion continued on potential projects for the next round; social justice ideas, more school gardens, and mini houses and how we allow for them zoning wise in this community. The next period begins March 1 and ends March 31. Chair Schimmel, I'll take the lead for mini-grants. Commissioner Kramer, I would suggest we hold an additional meeting to discuss possible projects. Chair Schimmel, I'll check into having a workshop on March 10 for developing applications.

10. Sustainable Schools Grant: no discussion

11. Topic Area Updates: no discussion

COMMISSIONER COMMUNICATIONS: no discussion

Future Agenda Items: Next month's agenda items include; presentations, defining the role of Ms. Walstead's staff support, Mayor's Support for Water Conservation. **Next meeting** will be held on March 31, 2016.

ADJOURNMENT: The meeting was adjourned at 8:05 P.M.

Respectfully Submitted
George Cress, Director
Light & Power

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CITY OF FOREST GROVE
SUSTAINABILITY COMMISSION
COMMUNITY AUDITORIUM
THURSDAY, March 31 2016 – 6:00 P.M.

Councilor Victoria Lowe

Brian Schimmel, Chair
Deke Gundersen
Hope Kramer
Robin Lindsley
Elaine Cole
Diane Taniguchi-Dennis
Jacob Rose

Dale Feik
John Hayes
Edgar Fausto
Karin Pfeifffer-Hoyt
Mitch Taylor
Leslie Applegate Lanzar

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CALL TO ORDER:

Sustainability Commission Present: Chair Brian Schimmel, Robin Lindsley, Edgar Fausto, John Hayes, Leslie Applegate Lanzar, Dale Feik, Elaine Cole, Mitch Taylor, Dale Feik, Deke Gundersen, Jacob Rose, Hope Kramer
Excused Absence: Diane Taniguchi-Dennis, Karin Pfeiffer-Hoyt
Absent:
Council Present: Councilor Victoria Lowe
Staff Present: Paul Downey, Administrative Services Director, George Cress, Director of L&P, Brandi Walstead, Program Coordinator
Guests: Tom Huddel, Tom Englestem, Sanne Stienstram, Ana Bautista, Maria Hernandez, Alicia Ortiz, Melanie, Dale Wiley

1. **REGULAR MEETING:** Chair Schimmel called the meeting to order at 6:03 PM.

2. **COMMUNITY COMMUNICATIONS:** Commissioner Fausto presented the top three high school student winners of the "One Bag A Week Challenge". Commissioner Fausto awarded Ana Bautista a 12th grader, a check for third place. Ms. Bautista, I reorganized my family's household waste at home. The waste that we generate now we recycled. We eat less at home as a family and as a result we had less waste. Commissioner Fausto awarded second place winner 10th grader Maria Hernandez. Ms. Hernandez saw the big picture, especially the harm to the environment caused by plastic wrapped products and

the waste of paper junk mail going to the landfill. She encouraged her family to use less plastic bags and to recycle paper products used in her family home. Commissioner Fausto awarded 12th grader Alicia Ortiz the first place check. Ms. Ortiz was the overall winner for her efforts in sorting glass and paper packaging materials for recycling and getting her family to use less products packaged in plastic. She was able to reduce her five bags per week to two bags.

Commissioner Taylor asked the students where you do you go from here and was it difficult to get your families involved. The contestants stated that it wasn't easy to get started at first, but once we did, the experience was rewarding. We just had to learn how to get started. Our friends and family are involved now, we learned a lot, we got students and family members to think about the issues. There were 30 contestants that were part of the Challenge. Commissioner's applauded the contestants and Commissioner Fausto's efforts for promoting sustainability and environmental practices.

CONSENT AGENDA: Motion was made to accept the minutes of February 25, 2016 as submitted with minor edits. Minutes approved by consensus of members present.

COUNCIL LIAISON REPORT: Councilor Lowe, the Council is still working on zoning issues. I'm particularly interested in the "tiny house" concept, downsizing living space and how we accommodate variable types of housing in our community. I'm reviewing the CEP process and impacts of the recent proposed changes. The deadline for CEP grants is 5:00 PM today.

4.STAFF UPDATE: Due to illness, Mr. Holan was not in attendance for this meeting. Mr. Downey mentioned the Council's plastic bag ban item scheduled agenda for April 11 was rescheduled for May 23. Members raised concerns over the May 23, date and having Council approval in time for purchasing reusable bags. Washington County will distribute the kitchen pails; they offered the Commission to distribute the reusable bags along with the pails. The Council awarding a $5,000 grant was contingent upon ordinance approval. A role out of both the pails and reusable bags would save delivery costs for both items. Commissioner Hayes will write a letter for Council indicating sizable savings in delivery costs for rolling out the reusable bags with the pails. Mr. Downey indicated the Council could discuss this item at their April 11, meeting for partial funding for bags. Since the kitchen pales are to be delivered to approximately 3,800 single family residences, the full $5,000 would not be needed at this time for all the bags.

PRESENTATIONS

5. Recycling Building Material Awareness: Mini grant request. A grant presentation, entitled, Recycling Building Material Awareness (see handout) was given by Mr. Wiley, Media Marketing Director for the Forest Grove Habitat for Humanity ReStore. The Restore receives donated materials that would otherwise go to the landfill. We are taking about 450 tons per year that we take out of the landfill waste stream and reusing those materials in the local community. We are expecting 20,000 folks to come through our ReStore to buy recycled materials. We are requesting grant funds to develop information and educational marketing materials for our Restore customers and folks who want to donate materials. Total cost of the project is $1200, the grant funds are to be used for graphic design work, web design, social media, and posters. Chair Schimmel indicated the grant request is for $500, we have $699

remaining in the mini-grant fund. Various members express their support for this application, this is what were all about. Commissioner Rose mentioned that pacific students are available to help with the web page design and social media marketing.

Commissioner Cole made a motion to accept the grant application for the amount of $699. Commissioner Hayes seconded the motion. The motion passed unanimously. Chair Schimmel will help Mr. Wiley with updating the grant application and the procurement process. Grant funds need to be spent prior to July 1.

6. Representative on the Metro Solid Waste Alternatives Advisory Committee (SWAAC): Chair Schimmel brought up Metro's request for nominating a member for the Solid Waste Alternative Advisory Committee. Commissioner Lanzar expressed her desire to be a committee member. Commissioner Rose made a motion to nominate Commissioner Lanzar to be a representative on the Metro Advisory Committee. Commissioner Kramer seconded the motion. A vote was taken, the motion was approved to recommend to Council the nomination of Commissioner Lanzar for the Metro's Solid Waste Alternative Advisory Committee. Council will forward the nomination to Metro. The Advisory Committee is looking for future sites for solid waste disposal.

7. Presentation: Two representatives from Washington County Solid Waste & Recycling. We are here tonight to discuss the County's outreach program for solid waste programs. The City of Forest Grove is the first city in Washington County to start a residential compost program. Beaverton is also interested in starting a program too. We've been working with Bev, Paul and Brandi from City staff to roll out the composting program. Informational marketing materials (see handouts) were handed out for Commission feedback. The written information materials are in both English and Spanish. We are asking members to review the materials for any needed changes. In addition, two kitchen food scrap pales were passed around to members.. The purpose of these pails is to make a statement and send the composting message. Commissioner Cole asked why are the pails white, maybe they should be green or another color conducive to recycling.

Commissioner Hayes asked what the expected role out date for the pails is. The expected start date is June 1, 2016; the pails are to be delivered by the first week in June. Commissioner Hays, we have another initiative going on at the same time. We like to have our reusable bags handed out to residents. Can we have a joint effort to hand them out at the same time. Mr. Downey, remember, only single family residents (5,800) will receive the pails. Washington County will participate in handing out the pails with the reusable bags. June 1 we will start the information campaign. Information materials will be handed out with the pails, they will also be on our website. Councilor Lowe, what is the County doing about the multifamily recycling waste. The County is working on this issue of solid waste disposal for multifamily residences, the main problem is the contamination of materials going into the cans. DEQ is also researching the issues with multifamily recycling. Later in June, pails and marketing materials will be made available at the Wednesday Farmers Market. After the role out, post cards will be sent out later in the summer offering one yard of free compost. Commission members complemented the County's efforts on rolling out the program.

8. Tiny Houses: Commissioner Hayes met with the Planning Commission to discuss the topic of Tiny Houses. The City Code does allow alternative housing if they meet the required setbacks. A major barrier for building these homes are the permit fees. To build a new standard size home in the City is close to $30,000 in fees. The fees are charged by various regulatory agencies including, CWS, Washington County and the City. The fees to build a 400 Sq. Ft. Tiny House in the City could be as high as $15,000. The Planning Commission is looking at ways to reduce the permitting fees. The fees charged by the City are relatively small compared to the other regulatory agencies. Chair Schimmel, if we want to explore this topic further I suggest we bring this as a Focus 2016 agenda item for a later date.

Chair Schimmel indicated there were 2 recent CEP grant applications submitted today. Mr. Downey said this is the last date to submit applications. Discussion followed concerning a Dairy Creek application, should it be a Commission application or a non-profit application. Commissioner Lindsley will get a new cover page in tomorrow to Bev for submittal as a Commission sponsored grant. Further discussion centered on the dollar amount for mini grant applications for the next submittal time.

9. 2016 Focus: Chair Schimmel and Commissioner Taylor wanted to take this time for discussion on what we as members should be focusing on in 2016, should we be reviewing our Action Plan. Commissioner Taylor, asked what are our priorities? We should be focusing on identifying the priorities for 2016.

Commissioner Feik, the emphasis moving forward should be on the big picture items, like climate change, global warming. We have focused on the low hanging fruit, now it is the time to focus on big picture items moving forward. Commissioner Feik wrote a letter to the FG News Times on global warming entitled "DEQ should do the right thing". This is what we should be focused on.

Commissioner Gundersen, I've sent information regarding global climate change to Commission and Council members before and I have not received acknowledgement back. I feel folks are not listening or paying attention to these issues. Scientist, James Hanson, talks about severe sea level changes that are coming as a result of global warming. This is mind boggling to me, global change is permanent, it's a serious thing we need to talk about it. I want the Commission to write a letter to Council asking if they except what scientists are saying in regards to climate change. If they do agree, they need to consider this in their decision making. I think these larger items need to be discussed. If these things are going to happen are we prepared for them here?

Commissioner Feik, I gave a two minute presentation to the Council at their last meeting to let them know what happened in Eugene about the DEQ Water Discharge Permit. I'm trying to bring awareness to the Council on these big issues.

Commissioner Cole, I agree with sending a letter to Council, I think Deke needs to draft a letter for our review.

Vice Chair Taylor, how do we make this an action item, if we can't take on the plastic bag

issue how do we tackle climate change as a commission. We need to send letters to the paper on issues we are passionate about.

Commissioner Kramer, I feel we take on issues the Mayor or Council are concerned with, what about the issues the Commissioners are concerned about. We review things the Council wants us to look at.

Chair Schimmel, we need to work with City Manager VanderZanden on Planning Commission and Council calendar of events. We need a heads up on coming events; we need to be informed on events and issues.

Vice Chair Taylor, do we need to add additional meetings or a Commission retreat? I would like to add this topic as a discussion item for a future date. Commissioner Hayes asked the question concerning notice requirements if a quorum occurs at one of our extra meetings. Mr. Downey will ask the City Clerk for information on this issue. Commissioner Kramer, I would like to have a discussion on our by-laws on who we can have on this Commission and how often we can meet. We need to use our subcommittees to help work on these issues we discussed tonight.

10. Topic Area Updates: No discussion.

COMMISSIONER COMMUNICATIONS: Chair Schimmel, I will work on getting an update on future Council and Planning Commission topics. In addition, on behalf of the Commission, I received a proclamation from the Mayor on Water Conservation.

11. Future Agenda Items: Next month's agenda items include; presentations on Focus 16. Commissioner Gundersen will prepare a draft letter on climate change for Commission review. Councilor Lowe will look into the issue of Commission representation from Clean Water Services. Commissioner Cole, will be speaking at the City Library on April 26th, as part of the Sustainability Series.

ADJOURNMENT: The meeting was adjourned at 8:07 P.M.

Respectfully Submitted
George Cress, Director
Light & Power

CITY OF FOREST GROVE
SUSTAINABILITY COMMISSION
COMMUNITY AUDITORIUM
THURSDAY, April 28, 2016 – 6:00 P.M.

Councilor Victoria Lowe

Brian Schimmel, Chair
Deke Gundersen
Hope Kramer
Robin Lindsley
Elaine Cole
Leslie Applegate Lanzar

Dale Feik
John Hayes
Edgar Fausto
Karin Pfeifffer-Hoyt
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CALL TO ORDER:

Sustainability Commission Present: Chair Brian Schimmel, Robin Lindsley, Edgar Fausto, John Hayes, Leslie Applegate Lanzar, Elaine Cole, Mitch Taylor, Deke Gundersen, Jacob Rose, Hope Kramer
Excused Absence: Dale Feik
Absent:
Council Present: Councilor Victoria Lowe
Staff Present: Jon Holan, Community Development Director, Brandi Walstead, Program Coordinator
Guests: Cherie-Savoie Tintary, Fallon Harris, William Baneck, Juan Gonzales, Zack Hewson, Abby VanderZanden

1. REGULAR MEETING: Chair Schimmel called the meeting to order at 6:05 PM.

COMMUNITY COMMUNICATIONS: Chair Schimmel, Ms. Tintary is here tonight to comment on her concerns over backyard burning; I would like to start a movement to Ban the Burn. Chair Schimmel commented on the City's efforts a couple of years ago to limit backyard burning to a couple of days in the spring. In the interim, the City was to develop a proposal for disposing yard debris by other means than burning. Commissioner Taylor mentioned making backyard burning a future 2016 Focus topic for discussion.

Mr. Hewson and Ms.VanderZanden, Pacific University students, introduced themselves to the Commission. We are here tonight to hear from the Commission of their efforts to address

affordable housing and homelessness. Chair Schimmel, mentioned that affordable housing is a topic area in the Plan under social equity. The students are here tonight as part of a class assignment. Commission members mentioned various contacts for further information regarding homelessness and affordable housing for the students. Councilor Lowe mentioned that the Council is currently discussing these issues and made mention for the students to interview Council members to hear their opinions on this topic as well. The students are about at the end of their semester. Commissioner Rose, asked if there was earlier testimony concerning the Tokola property, was there opportunities to comment on the property's use for affordable housing.

CONSENT AGENDA: Chair Schimmel ask for amendments or additions to the minutes of the March 31 meeting. Commissioners Kramer edited her comments to read, Commissioner Kramer says, I feel we are supposed to take on the issues the Mayor or Council are concerned with. We want to review things being put before the Council. Chair Schimmel approve the minutes as edited by Commissioner's Kramer and Cole.

COUNCIL LIAISON REPORT: Councilor Lowe, I'm here for only a few minutes tonight. There's an emergency Council meeting tonight to discuss more of the details for implementing the marijuana laws. We are not flip-flopping as the local newspaper indicated. We are developing the ways and means for moving forward with the process. The City has voted to be "in" and not "out". By being "in" the City can receive the tax benefit for the sale of marijuana.
The Council will be discussing a motion for a temporary pause for fact finding the regulations of growing and processing of marijuana. At the next meeting, I will update the Commission on water issues being discussed by the Oregon state legislature.

STAFF UPDATE: Mr. Holan, the food composting plan has been discussed twice by the Council. Mr. Downey made the presentation to the Council on April 11. I was ill and not available for that meeting. The Council decided to wait until their second May meeting to allow Waste Management to make their proposal for their overall rate hike before further composting plan discussions. Councilor Lowe asked Mr. Holan if he had copy of a letter the Mayor wrote to Metro concerning the solid waste stream in the county. Mr. Holan was not aware of the letter. Councilor Lowe asked Mr. Holan upon receipt of a copy to forward it to the Commission.

Mr. Holan, the plastic bag ban ordinance will be heard on May 23. Ms. Walstead and I will be making a presentation to the Council prior to the hearing. Public comment will be taken at the public hearing, this will be the first reading of the ordinance. Commissioner Kramer, Commissioner Hayes and I are on the EDC. A presentation was made to the EDC by staff regarding the proposed ordinance. The EDC voted 6 to 3 of not being in agreement with the current wording. The EDC is not in favor of the .05 cent charge and preferred the old wording in the ordinance. Not a single person expressed their opposition to the proposed ban, the EDC's concern is over the nickel charge. Group discussion followed on changing the wording or moving forward. Chair Schimmel is there an action for us moving forward or do we wait and see what the Council does. Councilor Lowe suggested a presenting a joint or co-recommendation with EDC. Ms. Walstead, I spoke with the City of Corvallis recently and they mentioned that the five cent charge was instrumental in changing the public perception for

plastic bags and the public's use of reusable bags. Corvallis mentioned that the Winco store used over 5,000 less bags in the first month after their ordinance was passed. Commissioner Hayes, we want to remind the Council that there are two groups involved with economic development and that the Chamber of Commerce was not opposed to the proposed ordinance. Mr. Holan, I will attach all the information, letters and comments the Commission collected and make them available for the Council.

Mr. Holan, my department will be working with code modifications, land use activities, forestry plan, transportation and affordable housing issues. At this time Councilor Lowe and Mr. Holan left the meeting to attend the Council meeting.

2. PRESENTATIONS:

Chair Schimmel, Terri O'Day is here tonight to give us an update on the CALC sustainable design course, leadership through design. Ms. O'Day introduced Mr. Harris, Mr. Gonzales, and Mr. Baneck. Each student made a presentation (see handout) on their class projects. We are not from the high school. This program provides us opportunities to help other people; it matters to me, this program is a good thing to help us become successful. Projects involved changing student behavior for sustainable activities including; eating nutritional foods, developing hydroponic systems for fish rearing for helping grow healthy sustainable foods, exercise for kids for overall health. We need to develop a larger activity space for students. Active kids do better in life. We have identified a potential property for this facility but are having trouble locating the owner. Ms. Walstead is familiar with the property and will provide a contact for the students.

Chair Schimmel, a $500 mini grant provided seed money to start the CALC sustainable design course.

3. TOPIC AREA SUBCOMMITTEES:

Farmers Market: Commissioner Cole, I was asked by Ms. Warner for volunteers to staff the waste center station at the Market. Commissioner Cole passed around a sign-up sheet for volunteers to staff the station for one hour time slots.

Sustainability Series: Last Tuesday I presented the Action Plan at the library to about ten folks. I wanted to find out what the attendees interest were, and who might want to serve on our subcommittees. Colleen Winters, library director, mentioned, they wanted to partner with us for future programs.

Climate Letter: Commissioner Gundersen, these are critical issues I want the Council to move on, in my opinion these are life threating things. I want to see some action on what we can do here. We can't wait to take action until the next meeting.

Chair Schimmel asked of Commissioner Gundersen if the plan is to button up language and have ready for review and vote next month. Commissioner Gundersen stated he would not be available at the next meeting. Commissioner Kramer asked if it has to wait, can the process be done through email? Chair

Schimmel stated that is not acceptable. Commissioner Hayes stated that the paper may be approved to be sent to Council and the newspaper with minor edits to be reviewed through email correspondence. Chair Schimmel clarified that the intent for next steps are to make changes to the paper and send it to Council and the newspaper, asked about the timeline. Commissioner Schimmel stated he would like to have distribution to both City Council and the newspaper done prior to him leaving. Chair Schimmel requested that Commissioner Hayes restate the motion.
Commissioner Hayes: motion to approve distribution of Commissioner Gundersen paper to City Council and other venues with minor edits that people on the Commission want to have included, with those changes to follow through email.
Seconded by Commissioner Fausto.
Discussion: Commissioner Gundersen requested comments be sent to him via email.
Approve say yea: all Oppose: none – motion passed.

Follow up discussion: Commissioner Gundersen stated he would make sure everyone receives the final version and with agreement from other members will ensure it gets to the appropriate staff members (Jon and Brandi) for distribution to City Council. In addition, he will check with a couple of contacts at the local paper for publishing.

Commissioner Fausto, I would like to take this action up to the high school.

2016 Focus: Commissioner Taylor wanted to take this time for discussion on what we as members should be focusing on in 2016, should we be reviewing our Action Plan. Commissioner Taylor, asked, what are our priorities. We should be focusing on identifying the priorities for 2016.

Ms. Walstead, the bi-laws require the Commission to report annually on their activities and priorities to the Council. I need to know what the Commission wants to focus on to start work on the priorities and the white papers. General discussion followed on reviewing the Plan. Members are anxious to move on items like the letter we just passed. White papers are needed to review the cost and impacts of implementing the Plan.

Chair Schimmel, the intent here is to identify the areas we want to continue work on. Commissioner Cole, at a previous meetings we discussed having individual members take the lead on topic area discussion. Further discussion centered on what topic areas we want to take on including the back yard burn ban, climate issues, and the use of ad hoc committees to help move on these topics.

Chair Schimmel, there appears to be a consensus to take on the backyard burn ban. Commissioner Hayes, there has been lots of public testimony in the past, there are lots of solutions to move forward with. Ms. Walstead outlined the process for moving forward with a total burn ban proposal. Commissioner Taylor, we need people to help with sustainability issues.

Commissioner Taylor, let's take a look at the 2014 Topic Areas, and each member take on a Topic to focus on. We need to recruit help to work on implementing the Plan.

4. TOPIC AREA UPDATES: None at this time.

5. **COMMISSIONER COMMUNICATIONS:** None at this time.

6. **Future Agenda Items:** Next month's agenda items include; Action Item presentations, discussion and vote on processing mini grants, identify potential candidates for the Council election.

ADJOURNMENT: The meeting was adjourned at 8:09 P.M.

Respectfully Submitted
George Cress, Director
Light & Power

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	6
MEETING DATE:	
FINAL ACTION:	FIRST READING

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Anna Ruggles, CMC, City Recorder; Sue Rau-Hudson-Rau, Municipal Court Supervisor; Kevin Ellingsburg, Police Captain; J. F. Schutz, Police Chief; Tom Gamble, Parks and Recreation Director; and Paul Downey, Administrative Services Director*

SUBJECT TITLE: *Ordinance Amending City Code, Chapters 2 and 5*

ACTION REQUESTED:

X	Ordinance		Order		Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT:

Staff, with advisement from the City Attorney, is seeking to make Chapter 5 consistent with Chapter 6 by outlining an abatement process through Municipal Court instead of the City Council, among other provisions. With this effort, new code language is necessary in Chapter 2, Government and Administration, for purposes of delegating jurisdiction to Municipal Court over Code violations and certain offenses and authority to implement processes for conduct of hearings, ordering compliance of code provisions and imposing civil penalties on behalf of the City. The proposed amendments would allow the City to maintain the quality of life of residents and commercial tenants of Forest Grove, at the same time, shift the responsibilities and enable enforcement officers to enforce the abatement of nuisances and effectively pursue nuisance abatement actions, as well as cost recovery through the Municipal Court. Without the proposed amendments to the abatement procedures contained in Chapter 5, persons have no recourse of having abatement notices and matters heard in a court of jurisdiction. As a result, it is making it increasingly difficult for the City to enforce and administer nuisance abatements in an efficient and effective manner, consistent with Chapter 6.

In addition, the City is proposing to enact new code provisions authorizing the City the ability to exclude an individual from city parks, city-owned or leased properties and/or city-sponsored events for a period of up to 90-days, if the individual is engaging in conduct made criminal or in violation of code provisions or adopted rules of conduct. The proposed code is due to increased criminal activities and behaviors that disrupt or create a risk of harm to other users, particularly children and families, who are using city facilities, such as parks and recreational areas, and officers having no authority to exclude individuals who are engaging in such criminal activities while on city-owned properties. Other local cities have adopted similar ordinances. However, the

City recognizes that individuals excluded are entitled to due process, so the City has included provisions for appealing exclusion notices through Municipal Court.

Additionally, staff met and reviewed the proposed code amendments with Parks and Recreation Commission and Public Safety Advisory Commission and both commissions unanimously support the proposed amendments and immediate implementation of the proposed amendments and 90-day exclusion authority. The City Attorney conducted a legal review and/or drafted language pertaining to the amendments in Chapter 2 and Chapter 5. In addition, staff and City Attorney met with Council in Work Session on June 13, 2016, to discuss the amendments pertaining to Chapter 2 and 5.

BACKGROUND:

Chapter 5 and 6 of the City Code deal with nuisance violations and abatements. In 2013, Council adopted updates to Chapter 6, Vehicles & Traffic, which declares the storage of discarded vehicles on private property to be deemed as a public nuisance and outlines an abatement process through Municipal Court instead of the City Council. Staff, with advisement from the City Attorney, is seeking to make Chapter 5 consistent with Chapter 6 by outlining an abatement process through Municipal Court instead of the City Council. Staff is proposing to update only those pertinent sections in Chapter 5 that contain nuisance abatement procedures. Staff, again with advisement from the City Attorney, is also seeking a comprehensive legal review and recodification of the entire City Code. The City Code has not had legal review or technical codification since 1988. The City Code consists of all regulatory, penalty and administrative City ordinances of a general and permanent character and contains archaic or obsolete code ordinances that can be problematic on a variety of levels, including the potential to impact the City's revenue generating capabilities, due to code and safety enforcement officials are unable to enforce laws with consistency and accuracy, which results in the Municipal Court being unable to prosecute violations or offenses based on equity.

Nuisances on private property deemed as public nuisances and that may be abated pursuant to Chapter 5, include Nuisances Affecting Public Health, Safety or Welfare, i.e., accumulations of debris and rubbish, unsanitary conditions or premises, attractive nuisances, sidewalk nuisances, noxious vegetation, etc. Staff is also proposing to declare graffiti as a public nuisance, which would allow abating graffiti through Municipal Court.

Procedural changes set forth in Chapter 5, Code Sections 5.270, Abatement Procedures, allow:

- ❑ 5.270(2): The Enforcement Officer (~~City Manager~~) making the determination that a nuisance exists;
- ❑ 5.270(2&3): The Enforcement Officer (~~City Manager~~) posting a notice directing Person-in-Charge or Owner (~~person responsible~~) to abate the nuisance. At the time of posting, mailing a copy of the notice by Certified Mail (~~registered~~), which is consistent with current practice;
- ❑ 5.270(4): Allowing Person-in-Charge or Owner (~~responsible party~~) to file a written petition with Municipal Court (~~City Recorder~~) and request a hearing to challenge the abatement notice;

- ❑ 5.270(7): In the event a written petition is filed with Municipal Court (~~City Recorder~~), the Municipal Court (~~Council~~) shall schedule and a conduct hearing. The Court may alter the date and time on its own motion or at the request of the person or City for good cause;
- ❑ 5.275(1): If the nuisance is not abated within the time specified, the Enforcement Officer may file a complaint or citation with the Municipal Court (~~instead of Council causing the nuisance to be abated~~);
- ❑ 5.275(6): Upon determination by the Court that the City has carried its burden, the Court is authorized to issue a written order authorizing the City to enter the property and abate the nuisance and such other relief that the Court deems reasonably;
- ❑ 5.275(9): The Enforcement Officer shall send notice and an accounting statement showing the costs incurred by the City for abating the nuisance;
- ❑ 5.275(11): The person may challenging the reasonableness or justification of any cost, charge or fee imposed by the City as a result of the abatement by filing a written petition with Municipal Court; and
- ❑ 5.280: At the hearing, the Municipal Court shall either affirm or deny and make final determination on behalf of the City; and
- ❑ 5.305: Violations and Penalties: Allowing Municipal Court discretion to impose a penalty to a first time violator in an amount of not less than $100 and not more than $250 per day for each nuisance violation, consistent with the penalty of other nuisance-related violations, i.e., discarded vehicles.
- ❑ Section 5.180: Graffiti Removal; Notice and Procedures
- ❑ 5.180(2): The Enforcement Officer (~~City Manager~~) determining if a graffiti nuisance exists;
- ❑ 5.180(3): The Enforcement Officer (~~City Manager~~) mailing a warning notice directing Person-in-Charge or Owner (~~occupant responsible~~) to abate the nuisance; and
- ❑ 5.180(3): Allowing persons to file written hardships directly to Police Chief (~~City Manager~~); and
- ❑ 5.180(4) and 5.265: Declaring graffiti a nuisance that may be abated through Municipal Court. (Repealing 5.170 as this section was combined with 5.180(4)

The other proposed amendments to Chapter 5 include:

- ❑ 5.295: Summary Abatement: Clarifies and expands provisions to require sending notice if the City takes action to cause summary abatement and enables the person to challenge the summary abatement and costs imposed thereof by filing a written petition with Municipal Court, consistent with other nuisance abatement hearings and the Court making final findings. Currently, City Code does not contain these requirements.
- ❑ Section 5.000: Adoption of Criminal Code of 1971 (adopted in 2004): Repealing in its entirety as advised by the City Attorney as these provisions are cited into Circuit Court and not into Municipal Court jurisdiction.
- ❑ 5.505: Dog Control: Enacting Washington County Code, Ordinance No. 794, 01/20/2016, Chapter 6.04, titled "Animal Services Code" as the City's code to regulate the keeping, licensing and control of dogs within the City. Washington County repealed its 1985 "Dog Control Ordinance", so the City must reenact the County's new ordinance for compliance. The County's code includes dog bites, abuse, neglect, and abandonment of dogs, cats, livestock and other animals, aggressive or dangerous dogs, stray dogs (animals at large), and injured dogs or cats.

- ❑ 5.510: Amendments to Dog Control Ordinance: Deleting this section as it is no longer applicable.

New Code Provisions, Sections 2.705 and 2.710, Municipal Court:
With the proposed updates to Charter 5, new code provisions are necessary in Chapter 2 for purposes of delegating jurisdiction to Municipal Court and authority to implement processes for conduct of hearings, ordering compliance of code provisions and imposing civil penalties on behalf of the City. The new provisions in Chapter 2 include:

- ❑ 2.705: Jurisdiction – Limitation: Authorizing Municipal Court jurisdiction over City Code violations and certain offenses, i.e., traffic violations, minor in possession of alcohol and provisions of Oregon marijuana laws;
- ❑ 2.710: Authority of the Municipal Court: Granting authority to Municipal Court to implement processes for conduct of hearings; ordering compliance of code provisions; imposing civil penalties; and assessing costs on behalf of the City.

New Code Provisions, Sections 5.375 to 5.385, Exclusion from City Facility or Property:
The City is proposing to enact new code provisions authorizing the City the ability to exclude an individual from city parks, city-owned or leased properties or city-sponsored events for a period of up to 90 days, if the individual is engaging in conduct made criminal or in violation of code provisions or adopted rules of conduct. The proposed code is due to increased criminal activities and behaviors that disrupt or create a risk of harm to other users, particularly children and families, who are using city facilities, such as parks and recreational areas, and officers having no authority to exclude individuals who are engaging in such criminal activities while on city-owned properties. Other local cities have adopted similar ordinances. However, the City recognizes that individuals excluded are entitled to due process, so the City has included provisions for appealing exclusion notices through Municipal Court. The Exclusion provisions include:

- ❑ 5.375: Exclusion Authority: Exclusion authority is based upon substantial objective belief that the individual engaged in:
  - Conduct made criminal as either a misdemeanor or felony under state law;
  - Conduct in violation of City Code;
  - Conduct in violation of adopted rule of conduct.
- ❑ 5.380: Exclusion Notice: Requires issuance of a Exclusion Notice
- ❑ 5.385: Appeal of Exclusion: Allowing an individual to file an appeal with Municipal Court to have the exclusion rescinded or period shortened.
- ❑ 5.390: Violation – Criminal Trespass: Contains provisions warning an individual who knowingly violates a Notice of Exclusion that is effect, commits the crime of criminal trespass.
- ❑ 5.415: Conduct; Exclusion: Incorporating into Park Regulations, Code Sections 5.405 to 5.490, the provisions of Section 5.375 (90-day Exclusion Authority).

The exclusion provisions do not authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the state or federal constitutions. However, a person engaged in such protected activity who commits acts that are not protected, but that violate applicable provisions of law, may be subject to exclusion as provided by Section 5.375.

FISCAL IMPACT:
The proposed code amendments have no direct fiscal impact and no new penalties are added. The purpose of the proposed ordinance is to alleviate city costs for nuisance abatement and to improve the efficiency and effectiveness of the nuisance abatement program. The program should recover a portion of the administrative costs to abate nuisances as deemed by the Court.

STAFF RECOMMENDATION:
Staff recommends City Council adopted the attached ordinance amending City Code Chapter 2 and Chapter 5 as set forth in the attached Exhibit A.

ATTACHMENT(s):
PowerPoint Presentation
Ordinance and Exhibit A

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June 9, 2016
News Times
Legal Ads/Public Notice:
To be published: Wednesday, June 22, 2016

NOTICE OF PUBLIC HEARING
CITY OF FOREST GROVE CITY COUNCIL

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will hold a Public Hearing on **Monday, June 27, 2016**, at 7:00 p.m. or thereafter, in Community Auditorium, 1915 Main Street, to consider an ordinance that would amend City Code Chapter 2, relating to Municipal Court jurisdiction, and City Code Chapter 5, relating to nuisance abatement procedures; enacting Washington County Code 6.04, Animal Services Code; and enacting new City Code provisions, titled "Exclusion from City Facility or Property", which would authorize the City to "exclude any individual from city parks, recreational areas, city-owned property or leased properties or city-sponsored events for a period of up to ninety (90) days, if the individual has engaged in conduct made criminal as a misdemeanor or felony, conduct in violation of City Code and/or conduct in violation of City Council adopted Rule of Conduct". An exclusion issued under these code provisions would take effect upon issuance of the Notice of Exclusion and remains for the period set therein subject only to an appeal through Municipal Court. The proposed ordinance, if enacted by the City Council, would take effect 30 days immediately after enactment unless City Council declares an emergency.

This hearing is open to the public and interested parties are encouraged to attend. A copy of the staff report and proposed ordinance are available for inspection before the hearing at the City Recorder's Office or by visiting the City's website at www.forestgrove-or.gov. Written comments or testimony may be submitted at the hearing or sent to the attention of the City Recorder's Office, PO Box 326, 1924 Council Street, Forest Grove, OR 97116, prior to the hearing, or e-mail aruggles@forestgrove-or.gov, 503.992.3235, for more information.

Anna D. Ruggles, CMC, City Recorder
Published: June 22, 2016

CHAPTER 2

GOVERNMENT AND ADMINISTRATION

EXHIBIT A

The following are proposed amendments to the Chapter 2, Government and Administration.

~~Strikethrough~~ is deleted language and underline is new language in Red.

MUNICIPAL COURT

2.705 Jurisdiction – Limitation.

(1) The Municipal Court has jurisdiction over:

(a) Traffic violations as defined by State law;

(b) Violations of State law provisions denominated as offenses punishable by other than imprisonment relating to:

i. Minor in possession of alcohol (person under 21)

ii. Allowing minor (person under 21) to consume alcohol on property;

iii. Minor in possession of alcohol (person under 21) while operating a motor vehicle;

iv. Provisions of Oregon marijuana laws by a minor (person under 21) and person over 18 which are classified as violations; and

(c) Violations of the provisions of Chapter 2 through 9 of the Forest Grove City Code and Chapter 10 of the Forest Grove Development Code.

2.710 Authority of the Municipal Court.

(1) The Municipal Court may adopt rules concerning procedure, conduct of hearings and forms so as to implement the provisions of the Code.

(2) The Municipal Court may order a party found in violation of the code to comply with the provisions within such time as the Municipal Court may allow. The order may require the party to do any and all of the following:

(a) Make any and all necessary repairs, modifications and/or improvements to the building, real property or equipment involved;

(b) Abate or remove any nuisance;

(c) Change the use of the building or real property involved;

(d) Install any equipment necessary to achieve compliance;

(e) Pay the City a civil penalty of up to $1,000 per day or greater amount as authorized elsewhere in the code; or

(f) Undertake any other action reasonably necessary to correct the violation or mitigate the effects.

(3) If any person fails to comply with any of the provisions ordered by the Municipal Court (except requiring payment of a civil penalty), the Court may authorize the City to undertake such actions as the Court may believe is reasonably necessary and/or to take other actions to correct the

violation, eliminate, or mitigate the effect. The City's reasonable costs of such actions, including any unpaid civil penalties, may be made a lien against the affected real property.

CHAPTER 5

PUBLIC PROTECTION

EXHIBIT A

The following are proposed amendments to the Chapter 5, Public Protection.

~~Strikethrough~~ is deleted language and underline is new language in Red.

~~5.000 ADOPTION OF OREGON CRIMINAL CODE OF 1971.~~

Repealing in its entirety

Comment [AR1]: City Attorney advised to repeal all provisions that adopt by reference the provisions of the state criminal code and leave the prosecution of these crimes to circuit court.

~~5.170 Other Violations.~~

~~(1) Any property located in the City that becomes a graffiti nuisance property is in violation of this Ordinance and subject to abatement by the City under Code Sections 5.275, 5.280 and 5.285 and assessment of costs under Code Section 5.290.~~

~~(2) Every owner, occupant or responsible party who permits a property to become a graffiti nuisance property is in violation of this Ordinance and subject to any remedy or penalty provided by Code Chapter 5.~~

Comment [AR2]: This section was combined into 5.180(4)

5.180 Graffiti Removal; Notice and Procedures.

(1) The ~~, occupant or responsible party~~ Person-in-Charge and/or Owner of Property ~~of any within the City~~ shall remove ~~any~~ graffiti from ~~that~~ such property within ten (10) days of the graffiti's appearance ~~or discovery~~.

(2) ~~Whenever the Manager, or manager's designee,~~ Upon determination by the Enforcement Officer that graffiti nuisance exists on ~~any~~ property ~~in the City, the Manager, or manager's designee,~~ the Officer shall cause to be mailed a "Graffiti Nuisance Property Warning Notice" to ~~may give~~ the Person-in-Charge and/or Owner, ~~occupant~~ ~~responsible~~ if different at the address shown on the county tax records. ~~written notice of these Code requirements and request for removal of graffiti within 10 days.~~

(3) The notice shall contain:

(a) A statement that the Property has been identified as a potential Graffiti Nuisance Property;

(b) A statement that the Person may request a "hardship" or extension of time in which to remove the graffiti by filing a written request with the Police Chief within ten (10) days of the date of the warning notice. For the purpose of this subsection, "hardship" includes, but not limited to, serious illness or disability, inclement weather or other circumstances that prevent removal of the graffiti within ten (10) days;

(c) A statement that unless the graffiti is either removed or a "hardship" requested within the time specified in the notice, the Property may be declared a nuisance and subject to abatement by the City and civil penalties imposed.

~~Ten days after a written notice if the graffiti still exists on the property, the Manager, or manager's designee, may issue an abatement notice. The owner, occupant or responsible party has 10 days after the date of service of the notice to remove the graffiti.~~

(4) If the graffiti is not removed within the time specified in the notice and/or a hardship no longer applies, the Property shall be declared a nuisance and abated pursuant to Section 5.270.
~~The notice will be served by addressing the notice to the owner, occupant or responsible party and delivering it by personal service or by mailing it as certified mail. Service may also be accomplished by posting the notice in a clearly visible location on the subject property.~~

~~(5) The person served with the notice who is unable to remove, or cause to remove, the graffiti within 10 days due to a hardship may apply to the Manager for an extension of time or alternate resolution such as volunteer or community service clean up. For purposes of this subsection, "hardship" means serious illness or disability, extremely inclement weather that temporarily prevents removal of the graffiti, or other extraordinary circumstance.~~

~~(6) If graffiti is not removed within 10 days after service of notice, the Manager, or manager's designee, may issue a citation to the owner, occupant or responsible party, or all of them requiring appearance in Forest Grove Municipal Court.~~

(5~~7~~) Failure to remove graffiti as required by this Section is a violation punishable by a civil penalty of up to $500. Each day the graffiti remains after the notice is sent constitutes a separate offense.

~~(8) The City Manager, or manager's designee, may adopt rules and procedures to implement this Ordinance.~~

NUISANCES

5.205 **Definitions.**
As used in Code Sections 5.180, 5.210 to 5.245 and 5.260 to 5.305, the following words and terms mean as follows:

Enforcement Officer. Any person charged or designated in writing by the City Manager to enforce the ~~terms~~ provisions of this Code. ~~Sections 5.210 to 5.245 and 5.260 to 5.305 or any other sections of the Code~~.

UNENUMERATED NUISANCES

5.265 **Unenumerated Nuisances.**
(1) The acts, conditions or objects specifically enumerated and defined in Code Sections 5.180, 5.210 to 5.2612 are declared public nuisances and may be abated by the procedures set forth in Code Sections 5.270 to 5.305.

ABATEMENT PROCEDURE

5.270 **Abatement Notice.**

(1) Except in the case where summary abatement is authorized, pursuant to Section 5.295, or when a different abatement procedure is specified elsewhere in this Code, public nuisances identified in this Code shall be abated under the general abatement procedures outlined in this subchapter.

(~~1~~2) Upon determination by the ~~manager or designee~~ Enforcement Officer that a nuisance exists, the ~~manager or designee~~ Officer shall ~~cause~~ post a notice ~~to be posted on the premises or~~ consistent with 5.270(4) at the nuisance site ~~of the nuisance,~~ directing the ~~person responsible~~ Person-in-Charge and/or Owner to abate the nuisance within ten (10) days of the notice.

(~~2~~3) At the time of posting, the ~~manager or designee shall cause~~ Enforcement Officer shall send a copy of the notice ~~to be forwarded by registered or certified~~ by Certified Mail to the ~~person responsible at the person's last known address~~ Person-in-Charge and/or Owner, if different, at the address shown on the county tax records. In addition, the Officer shall prepare a declaration for the file setting out the date, time and place of the posting as well as the date and time of the mailing of the notice by Certified Mail.

(~~3~~4) The notice ~~to abate~~ shall contain:

(a) ~~A description of the real property, by~~ The street address or legal description sufficient to identify the Property or otherwise ~~on which~~ where the nuisance exists;

(~~c~~b) A brief description of the nuisance and specific code provision being violated;

(~~b~~c) ~~A direction to~~ A demand that the Person-in-Charge and/or Owner comply with the terms of the Code and abate the nuisance within ten (10) days of the date of the notice;

(d) A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of abatement therefor (including administrative costs) and any civil penalties imposed shall be made ~~will be charged to the person responsible and may become~~ an assessment lien on the Property; and

~~(e) A statement that failure to abate a nuisance may warrant imposition of a fine.~~

(~~f~~e) A statement that the ~~person responsible~~ Person-in-Charge and/or Owner may ~~protest~~ challenge the ~~order to abate~~ abatement notice by ~~giving notice~~ filing a written petition ~~to the City Recorder~~ with the Municipal Court within ten (10) days of the date of the notice to request a hearing to show cause why the nuisance should not be abated.

~~(4) If the person responsible is not the owner, an additional notice shall be sent to the owner, stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.~~

~~(5) Upon completion of the posting and mailing, the person posting and mailing shall execute and file certificates stating the date and place of the mailing and posting.~~

(~~5~~6) An error in the ~~name or address of the person responsible~~ contents of the notice shall not ~~make the notice~~ void the notice or the ability to proceed towards abatement. ~~and in such case the posted notice shall be sufficient~~.

(6) The Person-in-Charge and/or Owner may challenge the abatement notice by filing a written petition with the Municipal Court within ten (10) days of the date of the notice briefly setting out the basis for the challenge.

(7) In the event the Person-in-Charge and/or Owner files a properly and timely written petition with the Municipal Court, the Court shall schedule and conduct a hearing pursuant to Section 5.280.

Comment [AR3]: Written petition to be filed with Municipal Court instead of City Recorder and hearing held in Municipal Court instead of City Council.

~~5.285~~ 5.275 Abatement by the City; Hearing; Imposition of Costs; Assessment Lien.

(1) In the event the Person-in-Charge and/or Owner fails to abate the nuisance or challenge the abatement notice with the Municipal Court within the time specified in Section 5.270(6), the Enforcement Officer may commence an action to abate the nuisance by filing a complaint or citation with the Municipal Court. ~~If the nuisance has not been abated by the person responsible within the time allowed, the Council may cause the nuisance to be abated.~~

(2) The complaint or citation shall include:

(a) The street address or legal description sufficient to identify the property or otherwise where the nuisance exists;

(b) A brief description of the nuisance and specific code provision being violated;

(c) A copy of both the notice to abate and declaration described in Section 5.270(3); and

(d) A description of the relief being sought (i.e., order to abate, imposition of civil penalty, etc.).

~~The officer charged with abatement of the nuisance shall have the right to enter into or upon property at reasonable times to investigate or cause the removal of a nuisance.~~

(3) The Enforcement Officer shall cause a true copy of the citation or complaint be served on the Person-in-Charge and/or Owner, if different, either by personal service or Certified Mail, mailed to the address shown on the county tax records or such other address which the Enforcement Officer reasonably believes under the

circumstances will apprise the Person-in-Charge and/or Owner of the existence and pendency of the City's action. In addition, the Enforcement Officer shall prepare a declaration for the file as to the method and timing of the service of the citation or complaint and file said declaration with the Municipal Court and a copy kept with the file.

~~The code enforcement officer shall keep an accurate record of the expenses incurred by the City in abating the nuisance and shall include a charge equal to 15 percent of those expenses for administrative costs.~~

(4) The Municipal Court shall set a date and time for the hearing on the citation or complaint not less than seven (7) days nor more than 21 days after the date shown on the declaration described in Section 5.275(3). The Municipal Court may alter the date and time for the hearing on its own motion or at the request of the Person-in-Charge, Owner or City for good cause.

(5) At the hearing, the City will have the burden to show:

(a) The real property where the nuisance exists is within the City;

(b) The nature of the nuisance and its extent;

(c) That if the City is seeking an order to abate, that the nuisance is likely to be present at the time of the requested abatement; and

(d) If the City is seeking a civil penalty, the amount thereof is reasonable and justified by the circumstances.

(6) Upon its determination that the City has carried its burden, the Municipal Court is authorized to issue a written order:

(a) Authorizing the City to enter the property where the nuisance is located and abate said nuisance;

(b) Imposing a civil penalty on the Person-in-Charge or Owner for the nuisance; and

(c) Such other relief, which the Court reasonably believes, is appropriate given the nature of the nuisance and its effects on the adjoining properties and the City.

(7) A copy of the order shall be mailed to the Person-in-Charge and/or Owner, if different, by the Municipal Court to the address where the citation or complaint was served.

(8) Once the City obtains a Municipal Court order to abate the nuisance and/or take other actions to address the nuisance and proceeds to act thereon, the Enforcement Officer shall cause an accounting to be kept of all costs, charges, fees and penalties associated therewith.

(9) The Enforcement Officer shall send a notice and a copy of the accounting statement by Certified Mail to the Person-in-Charge and/or Owner, if different, within 30 days of the calculation described in subsection (8). In addition, the Officer shall prepare a

declaration for the file as to the date and time of the mailing of the notice and accounting statement by Certified Mail.

(10) The notice shall contain:

(a) The street address or legal description to identify the Property or otherwise where the nuisance was abated;

(b) A statement that if the costs, charges, fees and penalties associated therewith are not paid in full to the City within thirty (30) days of the mailing date of the notice, any unpaid costs, charges, fees and penalties will be made an assessment lien against the Property; and

(c) A statement that the Person-in-Charge and/or Owner may challenge the reasonableness or justification of any cost, charge or fee by filing a written petition with the Municipal Court with ten (10) days of the mailing date of the notice, succinctly setting out the basis for the belief that the cost, charge or fee is either unreasonable or otherwise unjustified.

(11) In the event the Person-in-Charge and/or Owner fails to timely challenge the notice and thirty (30) days has lapsed, any unpaid costs, charges, fees and penalties shall be filed in the City's lien docket as an assessment lien and thereafter enforced and collected, bearing interest at the legal rate from the day of entry on the docket until fully paid.

(12) The Person-in-Charge and/or Owner may challenge the reasonableness or justification of any cost, charge or fee imposed as a result of the abatement by filing a written petition with the Municipal Court within ten (10) days of the mailing date of the notice described in subsection (10) and request a hearing to show cause why the cost, charge or fee is either unreasonable or otherwise unjustified.

~~5.275 **Abatement by the Person Responsible.**~~

~~(1) Within 10 days after the posting and mailing of notice as provided in Section 5.270, the person responsible shall remove the nuisance or file a protest, as described in subsection (2).~~

~~(2) A person responsible, protesting that no nuisance exists, shall file a written statement that specifies the basis for the protest with the City Recorder.~~

~~(3) The statement shall be referred to the Council as a part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council. The Council shall determine whether a nuisance in fact exists, and the determination shall be entered in the official minutes of the Council. Council determination shall be required only in cases where a written statement has been filed as provided.~~

~~(4) If the Council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within 10 days after the Council determination.~~

~~5.280 **Joint Responsibility.**~~

~~If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.~~

Comment [AR4]: Moved under 5.305

~~5.290 **Assessment of Costs.**~~

~~(1) The enforcement officer shall forward to the owner and the person responsible, by registered or certified mail, a notice stating:~~

~~(a) The total cost of abatement, including the administrative costs.~~

~~(b) That the costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.~~

~~(2) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs shall constitute a lien on the property from which the nuisance was removed or abated and shall be entered in the city's lien docket.~~

~~(3) The lien shall be enforced any manner authorized by law and shall bear interest at the current statutory interest rate. The interest shall begin to run from the date of entry of the lien in the lien docket.~~

~~(4) An error in the name of the owner or the person responsible or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid lien against the property.~~

Comment [AR5]: Moved under 5.275

5.280 Hearing to Challenge Nuisance Declaration or Abatement Costs.

(1) In the event the Person-in-Charge and/or Owner files a properly and timely written petition with the Municipal Court within the time specified in Sections 5.270(6), 5.275(12) or 5.295(3),the Court shall set a date and time for the hearing not less than seven (7) days nor more than 21 days after the date shown on the declarations described in Sections 5.270(3), 5.275(9) and 5.295(2). The Municipal Court may alter the date and time for the hearing on its own motion or at the request of the Person-in-Charge, Owner or City for good cause.

(2) At the hearing, the Municipal Court shall either affirm or deny and issue a written order thereon and if requested, by the Person-in-Charge, Owner and/or City, provide a written explanation for said determination. A copy of the order and written explanation (if any) shall be provided to both petitioner(s) and the City.

GENERAL

5.295 **Summary Abatement.**

(1) If a nuisance exists on private real property which poses an imminent threat to the public health, safety or welfare and the circumstances, taken as a whole, do not allow the City to seek authorization to enter the property from the Municipal Court or other court to abate the nuisance, the Enforcement Officer or other appropriate city official is authorized to immediately enter said property and cause the summary abatement thereof.

(2) In the event the Enforcement Officer or other city official acts pursuant to the authority under subsection (1) above, said person shall provide written notice, sent by Certified Mail, to the Person-in-Charge and/or Owner, if different, at the address shown on the county tax records or such other address as is reasonably calculated to apprise the Person-in-Charge and/or Owner as to the summary abatement, in expeditious manner, but in no event more than five (5) business days after the summary abatement. In addition, the Officer shall prepare a declaration for the file setting out the date and time of the mailing of the notice by Certified Mail.

(3) The notice shall contain:

a) The street address or legal description sufficient to identify the Property or otherwise where the nuisance was summary abated;

b) A brief description of the nuisance and specific code provision(s) declaring summary abatement thereof;

c) The action(s) taken by the City to abate the nuisance;

d) What further action(s) the Person-in-Charge and/or Owner may be required to take to address the nuisance, its impacts and/or residual effects of the abatement;

e) To the extent known, the costs incurred by the City as a result of the summary abatement and whether the City will look to the Person-in-Charge and/or Owner for payment of all or part thereof;

f) The Person-in-Charge and/or Owner may challenge the summary abatement and costs thereof by filing a written petition with the Municipal Court within ten (10) days of the date of the notice briefly setting out the basis for the challenge.

(4) In the event the Person-in-Charge and/or Owner files a properly and timely written petition with the Municipal Court within the time specified in subsection (3) above, the Court shall conduct a hearing pursuant to Section 5.280.

5.300 **Non-Exclusive Nature of Abatement Process.**
The procedures and remedies provided by this subchapter are not exclusive but in addition to others available under State law as well as this Code.

~~**5.295 Summary Abatement.**~~
~~The procedure provided by Code Sections 5.270 to 5.290 is not exclusive, but is in addition to procedure provided by other code sections or ordinances. The Manager, Chief of Police or Chief of the Fire Department may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property.~~

~~**5.300 Separate Remedies**~~
~~The abatement of a nuisance is not a penalty for violation of the nuisance provisions of this code, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance. However, abatement of a nuisance within 10 days of Council determination that a nuisance exists, will relieve the person responsible from the imposition of a penalty.~~

Comment [AR6]: Amending under 5.295 and 5.300 above.

5.305 ~~**Penalty Imposed**~~ **Violations and Penalties.**

(1) In addition to any abatement ordered, the Municipal Court may impose civil penalties on the Person-in-Charge and/or Owner consistent with the following schedule:
   a) For first time violation of Code provisions, in amounts of not less than $100 and not more than $250 per day for each violation;
   b) For second violation of the same Code provision, not less than $500 per day; and
   c) $1,000 maximum for a third and subsequent violation of the same Code provision within any two-year period from the date of issuance of the first violation.

(2) The Person-in-Charge and/or Owner are jointly and severally liable for any costs, charges, fees and penalties incurred or imposed by the City under the terms of this subchapter, and the City may seek to receive said costs, charges, fees and penalties by an action at law in a court of competent jurisdiction.
   ~~A person responsible for committing, allowing, suffering or maintaining a nuisance (as defined and prohibited by the terms of Forest Grove Code sections 5.205 to 5.245 and 5.260 to 5.265) on their real property or real property under their control shall be subject to the imposition of a civil penalty in an amount of not less than $100.00 per offense for the first violation, $500 for the second~~

~~occurrence of the same type of violation and $1,000 for any subsequent violation of the same type occurring in a two year period starting from the issuance of the first notice of violation. The enforcement officer may cite the violator into Municipal Court for said violations.~~

~~DOG CONTROL~~ **ANIMAL SERVICES CODE**
~~(Ord. 1975-1059, 03/24/1975, 03/24/195)~~

5.505 ~~**Adoption of Dog Control Ordinance**~~. **Animal Services Code**.

(1) ~~The dog control ordinance of Washington County, Ordinance No. 306, enacted June 11, 1985, effective July 1, 1985, is by this reference incorporated into this code and made a part hereof as the dog control ordinance of the city, except as hereinafter specifically amended, modified or deleted, and shall be known and pled as the "City Dog Control Ordinance."~~ The City hereby incorporates the Washington County Code (WCC) Chapter 6.04, Animal Services Code, (Ord No 794, 01-20-2015) to regulate the keeping, licensing and control of dogs and other animals within the City. Violation of ~~Ordinance No. 306~~ WCC Chapter 6.04 is an offense against the City.

(2) One copy of ~~Ordinance No. 306~~ WCC Chapter 6.04, and any amendments thereof, shall be kept on file in the Office of the City Recorder. ~~Ord. 1975-1059, 03/24/75~~

~~**5.510 Amendments to Dog Control Ordinance.**~~

Comment [AR7]: This section is no longer applicable.

~~Washington County Ordinance No. 306 is amended and changed in the following particulars:~~

~~(1) References to "Washington County," "Board of County Commissioners," "County Counsel," "District Court," "District Judge," and other similar references are amended to read "City of Forest Grove," "City Council," "City Attorney," "Municipal Court of Forest Grove," "Municipal Judge of Forest Grove," and other City positions as appropriate.~~

~~(2) Section 3, relating to definitions, is amended to add an additional definition as follows:~~

~~"4) 'Dog Control Officer' means any peace officer and includes any dog control officer of the City of Forest Grove or of Washington County."~~

~~(3) Section 11, relating to claims for livestock killed by dogs, is amended to read:~~

~~"Section 11. Livestock killed or Injured by Dogs. The owner of any livestock killed by any dog may submit claims to Washington County pursuant to the provisions of the Washington County dog control ordinance."~~

~~(4) Section 12, the repealing clause, is deleted.~~

~~(5) Section 17, relating to the effective date, is deleted.~~

~~Note: A copy of the Washington County Dog Control Ordinance (Chapter 6.04 – WC CO. Code) is located in the City Recorder's Officer.~~

EXCLUSION FROM CITY FACILITY OR PROPERTY

5.375 **Exclusion Authority.**

(1) In addition to any other remedy or penalty provided by this Code or State law, an Enforcement Officer, or any person specifically authorized by the City Manager, may exclude any individual from City parks, recreational areas, city-owned or leased properties or city-sponsored events for a period of up to ninety (90)-days based upon a substantial objective belief by the Officer (or person authorized) that the individual has engaged in:

(a) Conduct made criminal as either a misdemeanor or felony under State law;

(b) Conduct in violation of City Code;

(c) Conduct in violation of a City Council adopted "rule of conduct".

(2) An exclusion issued under the provisions of subsection (1) above shall take effect upon issuance of the Notice of Exclusion and remains for the period set out therein subject only to an appeal consistent with that described in Section 5.385.

5.380 **Exclusion Notice.**

(1) The Notice of Exclusion shall include:

(a) The provision of State law, City Code or rule of conduct violated;

(b) The place(s) of exclusion;

(c) The start date and end date of the exclusion period;

(d) Prominently display a warning of the consequences for failure to comply with the exclusion as described in Section 5.390; and

(e) A statement that the excluded person has the right to file a written appeal with Municipal Court within five (5) business days of the issuance date of the Exclusion Notice and request an appeal hearing to have the exclusion rescinded or the exclusion period shortened.

5.385 **Appeal of Exclusion.**

(1) A person receiving a Notice of Exclusion under Section 5.380 may file a written appeal with the Municipal Court within five (5) business days of the issuance of the notice to have the exclusion rescinded or the exclusion period shortened.

(2) The written appeal shall contain:

(a) Appellant's name;

(b) Appellant's mailing address and contact information;

(c) A concise statement of the basis on which the decision to exclude is invalid, unauthorized or otherwise improper; and

(d) A copy of the Notice of Exclusion.

(3) The Municipal Court shall set a date and time for the appeal hearing not less than seven (7) days nor more than 21 days after the receipt of a properly and timely filed appeal. The Municipal Court may alter the date and time for the hearing on its own motion or at the request of the Appellant or City for good cause.

(4) If an appeal of the exclusion is timely filed under subsection (1) above, the notice automatically stays the exclusion period until the Municipal Court issues a decision on the appeal.

(5) The City has the burden to show by a preponderance of evidence that the exclusion is warranted given the totality of the circumstances.

(6) The Municipal Court shall issue the Court's determination in writing and provide a copy to the City and Appellant.

5.390 **Violation – Criminal Trespass.**

No person shall enter or remain in any public place at any time during which there is in effect a Notice of Exclusion issued under Section 5.380. A person who knowingly violates a Notice of Exclusion commits the crime of criminal trespass.

PARK REGULATIONS

5.415 **Conduct; Exclusion.**

(1) ~~Park users shall not conduct themselves in a disruptive, disturbing, abusive, or destructive manner so as to create a problem to other park users or neighbors.~~ No person shall engage in disruptive, disturbing, abusive, or destructive conduct that disrupts other park users or adjacent residents.

(2) Any person engaging in criminal conduct under State law or conduct that violates City Code or rules of conduct while in or upon City property is subject to the provisions of Section 5.375 (90-Day Exclusion Authority).

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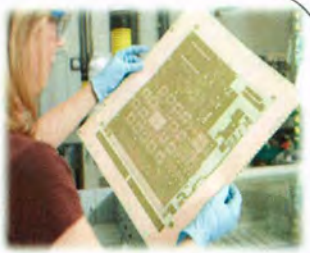

CHAPTER 2 AND CHAPTER 5 PROPOSED CODE AMENDMENTS:

City Council Meeting

June 27, 2016

FOREST GROVE OREGON

Background and Purpose:

- Chapter 5 and 6 of the City Code deal with nuisance violations and abatements.
- Chapter 6 was updated in 2013 to allow for the abatement of discarded vehicles through Municipal Court instead of City Council.
- Staff is proposing to update Chapters 5 and 2 to be consistent with Chapter 6.
  - Chapter 5 includes nuisances affecting Public Health, Safety or Welfare, i.e., accumulations of debris and rubbish, unsanitary conditions or premises, noxious vegetation, etc.
  - Current Chapter 5 abatement procedures were adopted when the City did not have a Municipal Court and requires a person to protest abatement through the City Council.
  - Without the proposed amendments persons will have no recourse of having abatement notices heard in a court of jurisdiction. This is making it difficult for the City to enforce nuisance abatements in an efficient and effective manner.
- Staff is also proposing new amendments to Chapter 5 regarding exclusion and graffiti.
- All staff recommendations have been vetted by the City Attorney.

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Proposed Amendments to Chapter 5

Procedural changes set forth in Chapter 5, Code Sections 5.270, Abatement Procedure, allow:

- 5.270(2): The Enforcement Officer (~~City Manager~~) making the determination that a nuisance exists;
- 5.270(2&3): The Enforcement Officer (~~City Manager~~) posting a notice directing Person-in-Charge or Owner (~~person responsible~~) to abate the nuisance within 10 days of the notice (as required by City Code). At the time of posting, mailing a copy of the notice by Certified Mail (~~registered~~), which is consistent with current practice;
- 5.270(4): Allowing Person-in-Charge or Owner (~~responsible party~~) to file a written petition with Municipal Court (~~City Recorder~~) within 10 days of the notice and request a hearing to challenge the abatement notice;

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Proposed Amendments to Chapter 5

- 5.270(7): In the event a written petition is filed with Municipal Court (~~City Recorder~~), the Municipal Court (~~Council~~) shall schedule and conduct a hearing;
- 5.275(1): If the nuisance is not abated within the time specified, the Enforcement Officer may file a complaint or citation with the Municipal Court (instead of Council causing the nuisance to be abated);
- 5.275(6): Upon determination by the Court that the City has carried its burden, the Court is authorized to issue a written order authorizing the City to enter the property and abate the nuisance; impose a civil penalty; and such other relief that the Court deems reasonably;
- 5.275(9): The Enforcement Officer shall send notice and an accounting statement showing the costs incurred by the City for abating the nuisance;

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Proposed Amendments to Chapter 5

- 5.275(11): The person may challenging the reasonableness or justification of any cost, charge or fee imposed by the City as a result of the abatement by filing a written petition with Municipal Court; and
- 5.280: At the hearing, the Municipal Court shall either affirm or deny and make final determination on behalf of the City; and
- 5.305: Violations and **Penalties**: Allowing Municipal Court discretion to impose a penalty to a first time violator in an amount of not less than $100 and not more than $250 per day for each nuisance violation, consistent with the penalty of other nuisance-related violations, i.e., discarded vehicles contains the same penalties.

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Proposed Amendments to Chapter 5

- 5.295: Summary Abatement: Clarifies and expands provisions to require sending notice if the City takes action to cause summary abatement and enables the person to challenge the summary abatement and costs imposed thereof by filing a written petition with Municipal Court, consistent with other nuisance abatement hearings and the Court making final findings. Currently, City Code does not contain these requirements.

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Proposed Amendments to Chapter 5

- 5.505: Dog Control: Enacting Washington County Code, Chapter 6.04, titled "Animal Services Code" as the City's code to regulate the keeping, licensing and control of dogs within the City.
- Washington County repealed its 1985 "Dog Control Ordinance, so the City must reenact the County's new ordinance for compliance. 5.510: Amendments to Dog Control Ordinance: Deleting this section as it is no longer applicable.
- Section 5.000: Adoption of **Criminal Code** of 1971 (adopted in 2004): Repealing in its entirety as advised by the City Attorney as these provisions are cited into Circuit Court and not into Municipal Court jurisdiction.

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New Proposed Amendments to Chapter 5: Graffiti

- Graffiti is currently not declared as a public nuisance and may not be abated. Staff is proposing to declare graffiti as a public nuisance as well, which would allow the City to abate through Municipal Court.
- Section 5.180: **Graffiti** Removal; Notice and Procedures
  - 5.180(2): The Enforcement Officer (~~City Manager~~) determining if a graffiti nuisance exists;
  - 5.180(3): The Enforcement Officer (~~City Manager~~) mailing a warning notice directing Person-in-Charge or Owner (~~occupant responsible~~) to abate the nuisance; and
  - 5.180(3): Allowing persons to file written hardships directly to Police Chief (~~City Manager~~) for determination thereof.
  - 5.180(4) and 5.265: Declaring graffiti a nuisance that may be abated through Municipal Court.

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New Proposed Amendments to Ch 5: Exclusion from City Property

- The City is proposing to enact new code provisions authorizing the City to exclude an individual from city parks, city-owned or leased properties or city-sponsored events for a period of up to 90 days if the individual is engaging in conduct made criminal or in violation of code provisions or adopted rules of conduct.
- The proposed code is due to increased criminal activities and behaviors that disrupt or create a risk of harm to other users, particularly children and families who are using city facilities such as parks.
- Officers currently have no authority to exclude individuals who are engaging in such criminal activities while on city-owned properties.
- The provisions include an appeal process through Municipal Court.
- Other local cities have adopted similar ordinances.

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Exclusion from City Property cont.:

- 5.375: **Exclusion Authority**: Exclusion authority is based upon a substantial objective belief that the individual has engaged in 1) conduct made criminal as either a misdemeanor or felony under state law, 2) conduct in violation of City Code, and/or 3) conduct in violation of City Council adopted rules of conduct.
- 5.380: **Exclusion Notice**: Requires issuance of a Exclusion Notice
- 5.385: **Appeal of Exclusion**: Allows an individual to file an appeal with Municipal Court within five business days of the issuance of the notice to have the exclusion rescinded or the exclusion period shortened.
- 5.390: **Violation – Criminal Trespass**: Provisions warning an individual who violates a Notice of Exclusion they are committing criminal trespass.
- The exclusion provisions do not authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the state or federal constitutions. However, a person engaged in such protected activity violates applicable provisions of law may be subject to exclusion under Section 5.375.

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New Proposed Amendments to Ch 5: Park Regulations:

- 5.415: Conduct; **Exclusion**: Incorporating in Park Regulations, Code Sections 5.405 to 5.490, the provisions of Section 5.375 (90-day Exclusion Authority).

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New Proposed Amendments to Ch. 2: Municipal Court

New Code Sections 2.705 and 2.710: Municipal Court:

With the proposed updates to Charter 5, new code provisions are necessary in Chapter 2 to delegate jurisdiction to Municipal Court and to implement processes for conduct of hearings, ordering compliance of code provisions and imposing civil penalties on behalf of the City.

- 2.705: Jurisdiction – Limitation: Authorizes Municipal Court jurisdiction over city code violations and certain offenses, i.e., traffic violations, minor in possession of alcohol and provisions of marijuana laws;

- 2.710: Authority of the Municipal Court: Grants authority to Municipal Court to implement processes for conduct of hearings; ordering compliance of code provisions; imposing civil penalties; and assessing costs on behalf of the City.

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Recodification of City Code

- On a related matter, staff is moving forward with a comprehensive legal review and recodification of the entire City Code. The City Code has not had legal review or technical codification since 1988.

FOREST GROVE OREGON

Next Steps:

- Staff is asking Council to consider first reading of the proposed ordinance at the June 27th meeting.

FIRST READING: 6.

ORDINANCE NO. 2016-13

ORDINANCE AMENDING FOREST GROVE CITY CODE CHAPTER 2, GOVERNMENT AND ADMINISTRATION, BY ADDING NEW CODE SECTIONS 2.705 TO 2.710, ESTABLISHING MUNICIPAL COURT JURISDICTION; ADDING NEW CODE SECTIONS 5.375 TO 5.390, ESTABLISHING EXCLUSION FROM CITY FACILITY OR PROPERTY; AND AMENDING CITY CODE CHAPTER 5, PUBLIC PROTECTION, RELATING TO ABATEMENT PROCEDURES AND PROVISIONS

WHEREAS, the current abatement procedures in Chapter 5, for nuisances affecting public health, safety and welfare, were adopted when the City do not have a Municipal Court; as such, the code requires protesting abatements through City Council, which is outdated and inconsistent with other abatement procedures found in City Code; and

WHEREAS, it is in the public interest of the City to delegate authority to the Municipal Court for city code violations and certain offenses as well as conduct of hearings and all matters heard in Municipal Court; and

WHEREAS, the City is adding new code provisions in City Code Chapter 2, Municipal Court, delegating jurisdiction to Municipal Court over city code violations and certain offenses and authorizing to implement processes for conduct of hearings, ordering compliance of code provisions and imposing civil penalties on behalf of the City;

WHEREAS, the City is adding new code provisions in City Code Chapter 5, Public Protection, Sections 5.375 to 5.385, Exclusion from City Facility or Property, authorizing the City the ability to exclude an individual from city parks, city-owned or leased properties and/or city-sponsored events for a period of up to 90 days, if individual has engaged in conduct made criminal or in violation of city code provisions or Council adopted rules of conduct; and

WHEREAS, and the City is proposing other housekeeping amendments to City Code Chapter 5, including repealing Section 5.000, Adoption of 1971 Criminal Code, in its entirety as advised by City Attorney; reenacting Section 5.505, Washington County Animal Services Code (dog control); and amendments relating to abatement procedures and other provisions; and

WHEREAS, the City Council held a duly-noticed Public Hearing on June 27 and continued the hearing on July 11, 2016, on the proposed ordinance.

NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1. Forest Grove City Council hereby amends Forest Grove City Code Chapter 2 by adding new Code Section 2.705 to 2.710, titled Municipal Court; adding new Code Section 5.375 to 5.390, titled Exclusion from City Facility or Property; and amending Chapter 5, as set forth in the attached Exhibit A.

Section 2. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 3. This ordinance shall be effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading the 27th day of June, 2016.

PASSED the second reading this 11th day of July, 2016.

_____
Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 11th day of July, 2016.

_____
Peter B. Truax, Mayor

CHAPTER 2

GOVERNMENT AND ADMINISTRATION

EXHIBIT A

(AS AMENDED)

MUNICIPAL COURT

2.705 **<u>Jurisdiction – Limitation</u>.**

(1) The Municipal Court has jurisdiction over:

(a) Traffic violations as defined by State law;

(b) Violations of State law provisions denominated as offenses punishable by other than imprisonment relating to:

i. Minor in possession of alcohol (person under 21)

ii. Allowing minor (person under 21) to consume alcohol on property;

iii. Minor in possession of alcohol (person under 21) while operating a motor vehicle;

iv. Provisions of Oregon marijuana laws by a minor (person under 21) and person over 18 which are classified as violations; and

(c) Violations of the provisions of Chapter 2 through 9 of the Forest Grove City Code and Chapter 10 of the Forest Grove Development Code.

2.710 **<u>Authority of the Municipal Court</u>.**

(1) The Municipal Court may adopt rules concerning procedure, conduct of hearings and forms so as to implement the provisions of the Code.

(2) The Municipal Court may order a party found in violation of the code to comply with the provisions within such time as the Municipal Court may allow. The order may require the party to do any and all of the following:

(a) Make any and all necessary repairs, modifications and/or improvements to the building, real property or equipment involved;

(b) Abate or remove any nuisance;

(c) Change the use of the building or real property involved;

(d) Install any equipment necessary to achieve compliance;

(e) Pay the City a civil penalty of up to $1,000 per day or greater amount as authorized elsewhere in the code; or

(f) Undertake any other action reasonably necessary to correct the violation or mitigate the effects.

(3) If any person fails to comply with any of the provisions ordered by the Municipal Court (except requiring payment of a civil penalty), the Court may authorize the City to undertake such actions as the Court may believe is reasonably necessary and/or to take other actions to correct the violation, eliminate, or mitigate the effect. The City's reasonable costs of such actions, including any unpaid civil penalties, may be made a lien against the affected real property.

CHAPTER 5

PUBLIC PROTECTION

EXHIBIT A

GRAFFITI PREVENTION, PROHIBITION AND REMOVAL

5.180 **<u>Graffiti Removal; Notice and Procedures</u>.**

(1) The Person-in-Charge and/or Owner of Property shall remove graffiti from such property within ten (10) days of the graffiti's appearance.

(2) Upon determination by the Enforcement Officer that graffiti nuisance exists on property, the Officer shall cause to be mailed a "Graffiti Nuisance Property Warning Notice" to the Person-in-Charge and/or Owner, if different, at the address shown on the county tax records.

(3) The notice shall contain:

(a) A statement that the Property has been identified as a potential Graffiti Nuisance Property;

(b) A statement that the Person may request a "hardship" or extension of time in which to remove the graffiti by filing a written request with the Police Chief within ten (10) days of the date of the warning notice. For the purpose of this subsection, "hardship" includes, but not limited to, serious illness or disability, inclement weather or other circumstances that prevent removal of the graffiti within ten (10) days;

(c) A statement that unless either the graffiti is removed or a "hardship" requested within the time specified in the notice, the Property may be declared a nuisance and subject to abatement by the City and civil penalties imposed.

(4) If the graffiti is not removed within the time specified in the notice and/or a hardship no longer applies, the Property shall be declared a nuisance and abated pursuant to Section 5.270.

(5) Failure to remove graffiti as required by this Section is a violation punishable by a civil penalty of up to $500. Each day the graffiti remains after the notice is sent constitutes a separate offense.

NUISANCES

5.205 **Definitions.**

As used in Code Sections 5.180, 5.210 to 5.245 and 5.260 to 5.305, the following words and terms mean as follows:

Enforcement Officer. Any person charged or designated in writing by the City Manager to enforce the provisions of this Code.

UNENUMERATED NUISANCES

5.265 **Unenumerated Nuisances.**

(1) The acts, conditions or objects specifically enumerated and defined in Code Sections 5.180, 5.210 to 5.261 are declared public nuisances and may be abated by the procedures set forth in Code Sections 5.270 to 5.305.

ABATEMENT PROCEDURE

5.270 **<u>Abatement Notice</u>.**

(1) Except in the case where summary abatement is authorized, pursuant to Section 5.295, or when a different abatement procedure is specified elsewhere in this Code, public nuisances identified in this Code shall be abated under the general abatement procedures outlined in this subchapter.

(2) Upon determination by the Enforcement Officer that a nuisance exists, the Officer shall post a notice consistent with 5.270(4) at the nuisance site, directing the Person-in-Charge and/or Owner to abate the nuisance within ten (10) days of the notice.

(3) At the time of posting, the Enforcement Officer shall send a copy of the notice by Certified Mail to the Person-in-Charge and/or Owner, if different, at the address shown on the county tax records. In addition, the Officer shall prepare a declaration for the file setting out the date, time and place of the posting as well as the date and time of the mailing of the notice by Certified Mail.

(4) The notice shall contain:

(a) The street address or legal description sufficient to identify the Property or otherwise where the nuisance exists;

(b) A brief description of the nuisance and specific code provision being violated;

(c) A demand that the Person-in-Charge and/or Owner comply with the terms of the Code and abate the nuisance within ten (10) days of the date of the notice;

(d) A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of abatement therefor (including administrative costs) and any civil penalties imposed shall be made an assessment lien on the Property; and

(e) A statement that the Person-in-Charge and/or Owner may challenge the abatement notice by filing a written petition with Municipal Court within ten (10) days of the notice and request a hearing to show cause why the nuisance should not be abated.

(5) An error in the contents of the notice shall not void the notice or the ability to proceed towards abatement.

(6) The Person-in-Charge and/or Owner may challenge the abatement notice by filing a written petition with the Municipal Court within ten (10) days of the date of the notice briefly setting out the basis for the challenge.

(7) In the event the Person-in-Charge and/or Owner files a properly and timely written petition with the Municipal Court within the time specified in Section 5.270(6), the Court shall conduct a hearing pursuant to Section 5.280.

5.275 **Abatement by the City; Hearing; Imposition of Costs; Assessment Lien.**

(1) In the event the Person-in-Charge and/or Owner fails to abate the nuisance or challenge the abatement notice with the Municipal Court within the time specified in Section 5.270(6), the Enforcement Officer may commence an action to abate the nuisance by filing a complaint or citation with the Municipal Court.

(2) The complaint or citation shall include:

(a) The street address or legal description sufficient to identify the property or otherwise where the nuisance exists;

(b) A brief description of the nuisance and specific code provision being violated;

(c) A copy of both the notice to abate and declaration described in Section 5.270(3); and

(d) A description of the relief being sought (i.e., order to abate, imposition of civil penalty, etc.).

(3) The Enforcement Officer shall cause a true copy of the citation or complaint be served on the Person-in-Charge and/or Owner, if different, either by personal service or Certified Mail, mailed to the address shown on the county tax records or such other address which the Enforcement Officer reasonably believes under the circumstances will apprise the Person-in-Charge and/or Owner of the existence and pendency of the City's action. In addition, the Enforcement Officer shall prepare a declaration for the file as to the method and timing of the service of the citation or complaint and file said declaration with the Municipal Court and a copy kept with the file.

(4) The Municipal Court shall set a date and time for the hearing on the citation or complaint not less than seven (7) days nor more than 21 days after the date shown on the declaration described in Section 5.275(3). The Municipal Court may alter the date and time for the hearing on its own motion or at the request of the Person-in-Charge, Owner or City for good cause.

(5) At the hearing, the City will have the burden to show:

(a) The real property where the nuisance exists is within the City;

(b) The nature of the nuisance and its extent;

(c) That if the City is seeking an order to abate, that the nuisance is likely to be present at the time of the requested abatement; and

(d) If the City is seeking a civil penalty, the amount thereof is reasonable and justified by the circumstances.

(6) Upon its determination that the City has carried its burden, the Municipal Court is authorized to issue a written order:

(a) Authorizing the City to enter the property where the nuisance is located and abate said nuisance;

(b) Imposing a civil penalty on the Person-in-Charge or Owner for the nuisance; and

(c) Such other relief, which the Court reasonably believes, is appropriate given the nature of the nuisance and its effects on the adjoining properties and the City.

(7) A copy of the order shall be mailed to the Person-in-Charge and/or Owner, if different, by the Municipal Court to the address where the citation or complaint was served.

(8) Once the City obtains a Municipal Court order to abate the nuisance and/or take other actions to address the nuisance and proceeds to act thereon, the Enforcement Officer shall cause an accounting to be kept of all costs, charges, fees and penalties associated therewith.

(9) The Enforcement Officer shall send a notice and a copy of the accounting statement by Certified Mail to the Person-in-Charge and/or Owner, if different, within 30 days of the calculation described in subsection (8). In addition, the Officer shall prepare a declaration for the file as to the date and time of the mailing of the notice and accounting statement by Certified Mail.

(10) The notice shall contain:

(a) The street address or legal description to identify the Property or otherwise where the nuisance was abated;

(b) A statement that if the costs, charges, fees and penalties associated therewith are not paid in full to the City within thirty (30) days of the mailing date of the notice, any unpaid costs, charges, fees and penalties will be made an assessment lien against the Property; and

(c) A statement that the Person-in-Charge and/or Owner may challenge the reasonableness or justification of any cost, charge or fee by filing a written petition with the Municipal Court with ten (10) days of the mailing date of the notice, succinctly setting out the basis for the belief that the cost, charge or fee is either unreasonable or otherwise unjustified.

(11) In the event the Person-in-Charge and/or Owner fails to timely challenge the notice and thirty (30) days has lapsed, any unpaid costs, charges, fees and penalties shall be filed in the City's lien docket as an assessment lien and thereafter enforced and collected, bearing interest at the legal rate from the day of entry on the docket until fully paid.

(12) The Person-in-Charge and/or Owner may challenge the reasonableness or justification of any cost, charge or fee imposed as a result of the abatement by filing a written petition with the Municipal Court within ten (10) days of the mailing date of the notice described in subsection (10) and request a hearing to show cause why the cost, charge or fee is either unreasonable or otherwise unjustified.

5.280 **Hearing to Challenge Nuisance Declaration or Abatement Costs.**

(1) In the event the Person-in-Charge and/or Owner files a properly and timely written petition with the Municipal Court within the time specified in Sections 5.270(6), 5.275(12) or 5.295(3),the Court shall set a date and time for the hearing not less than seven (7) days nor more than 21 days after the date shown on the declarations described in Sections 5.270(3), 5.275(9) and 5.295(2). The Municipal Court may alter the date and time for the hearing on its own motion or at the request of the Person-in-Charge, Owner or City for good cause.

(2) At the hearing, the Municipal Court shall either affirm or deny and issue a written order thereon and if requested, by the Person-in-Charge, Owner and/or City, provide a written explanation for said determination. A copy of the order and written explanation (if any) shall be provided to both petitioner(s) and the City.

GENERAL

5.295 **Summary Abatement.**

(1) If a nuisance exists on private real property which poses an imminent threat to the public health, safety or welfare and the circumstances, taken as a whole, do not allow the City to seek authorization to enter the property from the Municipal Court or other court to abate the nuisance, the Enforcement Officer or other appropriate city official is authorized to immediately enter said property and cause the summary abatement thereof.

(2) In the event the Enforcement Officer or other city official acts pursuant to the authority under subsection (1), said person shall provide written notice, sent by Certified Mail, to the Person-in-Charge and/or Owner, if different, at the address shown on the county tax records or such other address as is reasonably calculated to apprise the Person-in-Charge and/or Owner as to the summary abatement, in expeditious manner, but in no event more than five (5) business days after the summary abatement. In addition, the Officer shall prepare a declaration for the file setting out the date and time of the mailing of the notice by Certified Mail.

(3) The notice shall contain:

a) The street address or legal description sufficient to identify the Property or otherwise where the nuisance was summary abated;

b) A description of the nuisance and specific code provision(s) declaring summary abatement thereof;

c) The action(s) taken by the City to abate the nuisance;

d) What further action(s) the Person-in-Charge and/or Owner may be required to take to address the nuisance, its impacts and/or residual effects of the abatement;

e) To the extent known, the costs incurred by the City as a result of the summary abatement and whether the City will look to the Person-in-Charge and/or Owner for payment of all or part thereof; and

f) The Person-in-Charge and/or Owner may challenge the summary abatement by filing a written petition with the Municipal Court within ten (10) days of the date of the notice briefly setting out the basis for the challenge.

(7) In the event the Person-in-Charge and/or Owner files a properly and timely written petition with the Municipal Court within the time specified in subsection (3) above, the Court shall conduct a hearing pursuant to Section 5.280.

5.300 **Non-Exclusive Nature of Abatement Process.**

The procedures and remedies provided by this subchapter are not exclusive but in addition to others available under State law as well as this Code.

5.305 **Violations and Penalties.**

(1) In addition to any abatement ordered, the Municipal Court may impose civil penalties on the Person-in-Charge and/or Owner consistent with the following schedule:

a) For first time violation of Code provisions, in amounts of not less than $100 and not more than $250 per day for each violation;

b) For second violation of the same Code provision, not less than $500 per day; and

c) $1,000 maximum for a third and subsequent violation of the same Code provision within any two-year period from the date of issuance of the first violation.

(2) The Person-in-Charge and/or Owner are jointly and severally liable for any costs, charges, fees and penalties incurred or imposed by the City under the terms of this subchapter, and the City may seek to receive said costs, charges, fees and penalties by an action at law in a court of competent jurisdiction.

ANIMAL SERVICES CODE

5.505 **Animal Services Code**.

(1) The City hereby incorporates the Washington County Code (WCC) Chapter 6.04, Animal Services Code, (Ord No 794, 01-20-2015) to regulate the keeping, licensing and control of dogs and other animals within the City. Violation of WCC Chapter 6.04 is an offense against the City.

(2) One copy of WCC Chapter 6.04, and any amendments thereof, shall be kept on file in the Office of the City Recorder.

EXCLUSION FROM CITY FACILITY OR PROPERTY

5.375 **Exclusion Authority.**

(1) In addition to any other remedy or penalty provided by this Code or State law, an Enforcement Officer, or any person specifically authorized by the City Manager, may exclude any individual from City parks, recreational areas, city-owned or leased properties or city-sponsored events for a period of up to ninety (90)-days based upon a substantial objective belief by the Officer (or person authorized) that the individual has engaged in:

(a) Conduct made criminal as either a misdemeanor or felony under State law;

(b) Conduct in violation of City Code;

(c) Conduct in violation of a City Council adopted "rule of conduct".

(2) An exclusion issued under the provisions of subsection (1) above shall take effect upon issuance of the Notice of Exclusion and remains for the period set out therein subject only to an appeal consistent with that described in Section 5.385.

5.380 **Exclusion Notice.**

(1) The Notice of Exclusion shall include:

(a) The provision of State law, City Code or rule of conduct violated;

(b) The place(s) of exclusion;

(c) The start date and end date of the exclusion period;

(d) Prominently display a warning of the consequences for failure to comply with the exclusion as described in Section 5.390; and

(e) A statement that the excluded person has the right to file a written appeal with Municipal Court within five (5) business days of the issuance date of the notice and request an appeal hearing to have the exclusion rescinded or the exclusion period shortened.

5.385 **Appeal of Exclusion.**

(1) A person receiving a Notice of Exclusion under Section 5.380 may file a written appeal with the Municipal Court within five (5) business days of the issuance of the notice to have the exclusion rescinded or the exclusion period shortened.

(2) The written appeal shall contain:

(a) Appellant's name;

(b) Appellant's mailing address and contact information;

(c) A concise statement of the basis on which the decision to exclude is invalid, unauthorized or otherwise improper; and

(d) A copy of the Notice of Exclusion.

(3) The Municipal Court shall set a date and time for the appeal hearing not less than seven (7) days nor more than 21 days after the receipt of a properly and timely filed appeal. The Municipal Court may alter the date and time for the hearing on its own motion or at the request of the Appellant or City for good cause.

(4) If an appeal of the exclusion is timely filed under subsection (1) above, the notice automatically stays the exclusion period until the Municipal Court issues a decision on the appeal.

(5) The City has the burden to show by a preponderance of evidence that the exclusion is warranted given the totality of the circumstances.

(6) The Municipal Court shall issue the Court's determination in writing and provide a copy to the City and Appellant.

5.390 **Violation – Criminal Trespass.**

No person shall enter or remain in any public place at any time during which there is in effect a Notice of Exclusion issued under Section 5.380. A person who knowingly violates a Notice of Exclusion commits the crime of criminal trespass.

PARK REGULATIONS

5.415 **Conduct; Exclusion**.

(1) No person shall engage in disruptive, disturbing, abusive, or destructive conduct that disrupts other park users or adjacent residents.

(2) Any person engaging in criminal conduct under State law or conduct that violates City Code or rules of conduct while in or upon City property is subject to the provisions of Section 5.375 (90-Day Exclusion Authority).

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	7.
MEETING DATE:	
FINAL ACTION:	FIRST READING

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Daniel Riordan, Senior Planner, Brandi Walstead, Program Coordinator, Paul Downey, Administrative Services Director, Jon Holan, Community Development Director*

SUBJECT TITLE: *Public Hearing and First Reading of Proposed Ordinance Amending Forest Grove Development Code Articles 3, 8 and 12 - Adopting Time, Place and Manner Restrictions for Marijuana Facilities*

ACTION REQUESTED:	X	Ordinance		Order		Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT: City Council consideration of an ordinance adopting Planning Commission's recommendations:

- Imposing and clarifying time, place and manner restrictions on marijuana facilities in Forest Grove,
- Classifying permissible marijuana related facilities as conditional uses requiring Planning Commission review and approval, and
- Adopting definitions for marijuana related facilities.

If approved, the ordinance as written would become effective upon adoption.

BACKGROUND:

This memorandum summarizes recommendations to regulate marijuana related facilities as allowed under state law (ORS 475B). Legalization of certain marijuana activities in Oregon dates back to 1998. In 1998, Oregon voters approved Ballot Measure 67 known as the Oregon Medical Marijuana Act. In November 2014, Oregon voters approved Ballot Measure 91 known as the Control and Regulation of Marijuana Act. The Control and Regulation of Marijuana Act legalized recreational marijuana use in Oregon by persons 21 years of age and older. In 2015, the Oregon Legislature approved and the Governor signed House Bill 3400 to implement, clarify and augment aspects or the Control and Regulation of Marijuana Act.

Among other things, House Bill 3400 (now codified as Oregon Revised Statues Chapter (ORS) 457B) provides authority to municipalities to impose reasonable restrictions on the seven types of marijuana facilities allowed in Oregon. The seven marijuana facility types include:

- Medical marijuana dispensaries, producers, and processors;
- Recreational marijuana retailers, producers, processors, and wholesalers

On March 28, 2016, City Council adopted Ordinance 2016-07, imposing initial time, place and manner restrictions on marijuana facilities other than medical marijuana dispensaries. Regulations pertaining to medical marijuana dispensaries were adopted by City Council in 2015 (Ordinance 2015-03).

Ordinance 2016-07 was intended to put general restrictions in place prior to state licensing of marijuana facilities. Ordinance 2016-07 was not intended to address all possible aspects of where and how marijuana facilities should operate.

Subsequent to Ordinance 2016-07, City Council adopted Ordinance 2016-10, temporarily prohibiting the establishment of recreational marijuana producer facilities within the City of Forest Grove. The temporary prohibition on recreational marijuana production ends on August 5, 2016. This provides an opportunity for City Council to assess the time, place and manner restrictions currently in place. It also provides an opportunity to consider any additional restrictions that may be desirable to address any lingering community concerns related to marijuana facilities.

In their role advising on matters of community safety, the Public Safety Advisory Commission (PSAC) met on April 27, 2016, to discuss perspectives on marijuana facilities locating in Forest Grove. As a result of that discussion PSAC adopted recommendations for restricting marijuana facilities. As listed below, the PSAC recommendations supplement the time, place and manner restrictions for marijuana facilities previously adopted by City Council:

1. No open grow of marijuana for recreational production in the city limits of Forest Grove;
2. All marijuana activities shall not be permitted in mixed use zones or residential zones;
3. All marijuana activities are not allowed within 1,000 feet of a school (public or private), city parks and libraries;
4. Any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone;
5. Any marijuana activities shall be conditional uses in the affected zone.

The PSAC Recommendations were endorsed by the Economic Development Commission on May 5, 2016. Members of the Parks and Recreation Commission reached consensus two weeks prior to the Planning Commission public hearing to endorse the PSAC recommendation for separation of marijuana facilities from parks. Subsequently, the Parks and Recreation Commission endorsed the PSAC proposal at their meeting on June 16, 2016. The Forest Grove School District adopted Resolution 15-16:R03 on May 23, 2016, endorsing the PSAC recommendation pertaining to separation of marijuana facilities from schools.

The Planning Commission conducted a public hearing on June 6, 2016 to consider the PSAC recommendations and to receive public testimony on time, place and manner restrictions. The written staff report provided to the Planning Commission is attached for reference (ATTACHMENT 1) as it provides considerable detail on the matter. Written testimony provided to the Planning Commission is also attached for reference (ATTACHMENT 2). In addition, the Planning Commission minutes are attached for Council review (ATTACHMENT 3).

After consideration of public testimony, the staff report, and deliberation among the Planning Commission members, the Planning Commission adopted a motion modifying the PSAC recommendations for City Council consideration as follows:

PSAC Recommendation #1: No open grow of marijuana for recreational production in the city limits of Forest Grove.

Planning Commission Recommendation: Support

Planning Commission Rationale: The Planning Commission rationale FOR supporting the PSAC recommendations is based on two reasons. First, marijuana production creates odors. When produced and cultivated outdoors this odor can't be mitigated to reduce off-site impacts. Second, although marijuana is a high value crop, outdoor production requires few improvements and therefore has little taxable property value. As such, outdoor marijuana production is not the best use of industrial land. Furthermore, given the high value nature of marijuana it is unlikely that marijuana production will convert to another "industrial" activity.

PSAC Recommendation #2: All marijuana activities shall not be permitted in mixed use zones or residential zones.

Planning Commission Recommendation: Support

Planning Commission Rationale: The Planning Commission rational for supporting the PSAC recommendations is based on the following considerations. First, Neighborhood Mixed Use areas will be predominately residential. Marijuana activities, except personal grow, are prohibited in residential areas. Second, since commercial centers in the NMU are limited in size the commercial areas should be treated similar to Neighborhood Commercial zones and prohibited. During deliberations, the Planning Commission affirmed that medical marijuana dispensaries and recreational retailers should be limited to the Community Commercial zone and Town Center zones.

PSAC Recommendation #3: All marijuana activities are not allowed within 1,000 feet of a school (public or private), city parks and libraries.

Planning Commission Recommendation: Did Not Support

Planning Commission Rationale: The Planning Commission did not find a supportable basis for recommending the proposed buffer if outdoor marijuana production is banned. Since recommendation #1 requires marijuana activities indoors, buildings will provide adequate buffer

from surrounding areas and provide opportunity to control odor and enhance safety with higher security requirements compared to outdoor production. In addition, the Planning Commission found that indoor marijuana facilities in the General Industrial zone will likely be indistinguishable from other businesses in the zone.

PSAC Recommendation #4: Any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.

Planning Commission Recommendation: Did Not Support

Planning Commission Rationale: The Planning Commission did not find a supportable basis for recommending the proposed buffer if outdoor production is banned. Since recommendation #1 requires marijuana activities indoors, buildings will provide adequate buffer from surrounding areas and provide opportunity to control odor and enhance safety with higher security requirements compared to outdoor production.

PSAC Recommendation #5: Any marijuana activities shall be conditional uses in the affected zone.

Planning Commission Recommendation: Support

Planning Commission Rationale: The Planning Commission supported the PSAC recommendation to classify permissible marijuana facilities as conditional uses. Currently, marijuana facilities allowed in the City are assessed through the administrative site plan review process. Site plan review mostly focuses on the physical aspects of a development proposal. In contrast, conditional use approval focuses on physical aspects as well as livability and compatibility considerations. Furthermore, conditional use review requires a public hearing and approval by the Planning Commission. Site plan review does not. For these reasons the Planning Commission supported PSAC Recommendation #5.

The Planning Commission written decision, including findings of fact supporting the decision, is attached for reference (ATTACHMENT 4). The Planning Commission recommendations are consistent with state law (ORS 457B) including authority to impose reasonable time, place and manner restrictions on marijuana facilities. The Planning commission recommendations allow medical marijuana production or personal growing and use in compliance with state law.

Staff Proposed Development Code Text Amendments

The Planning Commission accepted the staff proposed Development Code text amendments. The text amendments are shown on Exhibit A to Attachment 5 (Proposed Ordinance). The text amendments affect the following Development Code Articles:

- Article 3 (Zoning Districts) to classify permissible and prohibited marijuana facilities. The proposed Article 3 text amendment includes classifying outdoor recreational marijuana production as a prohibited use consistent with the PSAC and Planning Commission recommendations. The amendments also include prohibiting marijuana producers,

processors and wholesalers in the City's Light Industrial zone consistent with the Planning Commission recommendation (ATTACHMENT 4). If the proposed ordinance is adopted, permissible marijuana facilities would be subject conditional use approval. Consistent with the Planning Commission recommendations, marijuana processors, wholesalers and indoor producers would be allowed as conditional uses in the General Industrial zone.

- Article 8 (General Development Standards). Development Code Section 10.8.1100 establishes standards for marijuana facilities allowed to operate in the City. If the proposed ordinance is adopted, Section 10.8.1100 will be revised to include three sections. The first section establishes general standards applicable to all marijuana facilities. This includes. The second section establishes standards for medical marijuana dispensaries and recreational retailers. The third section establishes standards for marijuana producers, processors and wholesalers.

- Article 12 (Definitions). If adopted, the proposed ordinance will amend Article 12 to add marijuana related definitions to the Development Code consistent with state administrative rule. The proposed ordinance will also amend Article 12 to clarify the definition of "agriculture/horticulture" uses to include indoor agricultural activities such as indoor marijuana production and hydroponic agriculture.

Proposed Effective Date of Ordinance

Ordinance 2016-10 prohibiting the establishment of recreational marijuana producer locations within the City will automatically sunset on August 5, 2016. Under the City Charter, ordinances are typically effective 30 days after passage. If City Council passes the proposed time, place and manner ordinance on July 11, 2016 without an immediate effective date it will become effective on August 10, 2016. As a result, there will be two business days between the date when Ordinance 2016-10 sunsets and the proposed ordinance time, place and manner ordinance becomes effective. Should an application for a marijuana facility be filed before the proposed ordinance becomes effective, the time, place and manner restrictions adopted on March 28, 2016 will apply to the filed application rather than proposed restrictions subject to the attached ordinance (ATTACHMENT 5). This means outdoor recreational marijuana productions would be allowed during this two business day period as well as marijuana production, processing and wholesaling in the Light Industrial zone. To address this issue, staff recommends that the proposed ordinance include a provision making the ordinance effective immediately upon passage at second reading on July 11, 2016.

FISCAL IMPACT:

Adoption of the Planning Commission recommended time, place and manner restrictions will have no direct fiscal impact on the City since the recommendations do not result in an effective ban on any one of the seven marijuana facility types including recreational marijuana production since indoor production would be allowed in the General Industrial zone. Therefore, the Planning Commission recommendation would allow the City to impose up to a 3% sales tax on recreational marijuana sales as allowed by state law.

As described above, the Planning Commission recommends prohibiting marijuana facilities on land zoned Light Industrial. This recommendation is intended to preserve land for high value and value added manufacturing and processing. Such high value activities use machinery and equipment with the potential to generate higher property tax revenue compared to marijuana plants with little property tax revenue potential. This is noted since it is a fiscal consideration.

STAFF RECOMMENDATION: Staff recommends, City Council:

Adopt the Planning Commission recommendation as follows:

1. Approve the proposed ordinance amendment Development Code Article 3, Article 8 and Article 12 as shown on Attachment 5 including:

    a. Banning outdoor marijuana production within the Forest Grove city limits;
    b. Adopting and clarifying time, place and manner restrictions for marijuana facilities in Forest Grove;
    c. Classify permissible marijuana related facilities as conditional uses requiring review and approval by the Planning Commission; and
    d. Clarifying and establishing marijuana facility related definitions as recommended by the Planning Commission

2. Discussion Point: Ordinance Effective Date

ATTACHMENT(s):

1. Staff Report to Planning Commission, May 27, 2016
2. Written Testimony to Planning Commission, June 6, 2016
3. Planning Commission Minutes, June 6, 2016
4. Planning Commission Decision and Findings of Fact, June 9, 2016.
5. Proposed Ordinance

FOREST GROVE OREGON

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June 9, 2016
News Times
Legal Ads/Public Notice:
To be published: Wednesday, June 22, 2016

NOTICE OF PUBLIC HEARING
CITY OF FOREST GROVE CITY COUNCIL

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will hold a Public Hearing on **Monday, June 27, 2016, at 7:00 p.m.** or thereafter, in the Community Auditorium, 1915 Main Street, to consider an ordinance pertaining to the Planning Commission's recommendations to approve the following proposal. The proposed ordinance, if enacted by the City Council, would take effect 30 days immediately after enactment unless City Council declares an emergency.

Proposal: Amendments to the text of the Forest Grove City Code and Development Code to establish and clarify time, place, and manner restrictions for marijuana facilities regulated by the State of Oregon. The following City Code Section is affected by this proposal: Chapter 5 (Public Protection). The following Development Code sections are affected by this proposal: 10.3.120, Table 3-10 (Commercial and Mixed-Use Zones Use Table), 10.3.520, Table 3-14 (Industrial Zones Use Table), 10.8.1100 et. seq. (Marijuana Development Standards), 10.12.200 et. seq.(Definitions). If adopted, the proposal will prohibit outdoor recreational marijuana production in the city limits and all marijuana facilities on property zoned Light Industrial on the Official Zoning Map. If adopted, marijuana processors, wholesalers and indoor producers will be allowed on property zoned General Industrial on the Official Zoning Map. Medical Marijuana dispensaries and recreational marijuana retailers will be prohibited on property zoned Neighborhood Mixed-Use on the Official Zoning Map and permitted on property zoned Community Commercial subject to State of Oregon regulations. Under this proposal, all applications for marijuana facilities will require a conditional use permit subject to Planning Commission approval.

Applicant: City of Forest Grove

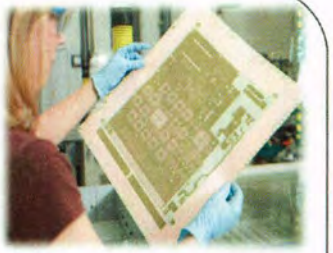
File Number: 311-16-00034

Criteria: Forest Grove Development Code Section 10.2.630(A): The text amendment is consistent with the relevant goals and policies of the Forest Grove Comprehensive Plan; and 10.2.630(B): The text amendment is consistent with the relevant statewide and regional planning goals, program and rules.

All persons will be given a reasonable opportunity to give testimony about this proposal responding to the review criteria. If an issue is not raised in the hearing (by person or letter) or if the issue is not explained in sufficient detail to allow the City Council to respond to the issue, then that issue cannot be used for an appeal to the Land Use Board of Appeals. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. A copy of the report is available for inspection before the hearing at the City Recorder's Office or by visiting the City's website at www.forestgrove-or.gov. Written comments or testimony may be submitted at the hearing or e-mailed to City Recorder's Office, aruggles@forestgrove-or.gov, or sent to P.O. Box 326, 1924 Council Street, Forest Grove, OR 97116, prior to hearing. For further information, pertaining to this proposal, please contact Community Development Department, 1924 Council Street, 503.992.3226, 9 a.m. to 5 p.m., Daniel Riordan, Senior Planner, driordan@forestgrove-or.gov.

Anna D. Ruggles, CMC, City Recorder
Published: June 22, 2016

FOREST GROVE OREGON



Marijuana Related Facilities
Time, Place and Manner Recommendations

City Council Public Hearing

June 27, 2016

Project Team:

Daniel Riordan, Senior Planner

Brandi Walstead, Program Coordinator

Paul Downey, Administrative Services Director

Jon Holan, Community Development Director

Jesse VanderZanden, City Manager

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Purpose of Tonight's Hearing

- Council consideration of an ordinance to implement:
  - Recommendations prepared by the Public Safety Advisory Commission (PSAC), as modified by the Planning Commission, pertaining to time, place and manner restrictions for marijuana facilities allowed to operate in Forest Grove.
  - The Planning Commission's recommendations, if adopted by City Council, will modify and supplement the time, place and manner restrictions adopted by City Council on March 28, 2016 and currently in place.

Background

- Legal Requirements
  - Under state law, cities may impose reasonable time, place and manner restrictions on marijuana related activities. (ORS 475B.340)
    - The term "Reasonable" is subjective. Interpreted to mean restrictions must not effectively create a ban on any one of seven marijuana related activities.
    - Restrictions should address quality of life consideration and identifiable impacts.
    - Local restrictions may add to but cannot relax state imposed requirements.
  - Cities cannot prohibit possession of marijuana related items for personal use. (ORS 475B.335)
    - State law allows for up to four marijuana plants for personal use.
  - There are 7 marijuana related activities regulated by the state through the Oregon Health Authority (OHA) and Oregon Liquor Control Commission (OLCC).
    - Medical marijuana dispensary, producer and processor
    - Recreational marijuana retailer, producer, processor and wholesaler
  - A total ban on any one marijuana related activities makes a jurisdiction ineligible to collect sales tax revenue. (ORS 475B.345)

Background

- Public Safety Advisory Commission (PSAC) adopted five recommendations for marijuana facilities.

- These recommendations and the Planning Commission's recommendations are summarized on the following slides.

- PSAC's Recommendations reviewed and endorsed by:
  - Economic Development Commission (all PSAC recommendations)
  - Parks and Recreation Board (recommendation for separation of facilities from parks)
  - Forest Grove School Board (recommendation for separation of facilities from schools)

Time, Place and Manner Recommendations

- ***PSAC Recommendation #1: No open grow of marijuana for recreational production in the city limits of Forest Grove.***

  - Planning Commission Action: Support

  - Planning Commission Rationale: 1. Marijuana production results in odor. When produced outdoor this odor can't be mitigated to reduce off-site impacts. 2. Although marijuana is a high value crop, outdoor production requires few improvements and therefore has little taxable property value. As such, outdoor marijuana production is not the best use of industrial land in the city limits. Furthermore, given the high value nature of marijuana it is unlikely that marijuana production will convert to an industrial activity.

Time, Place and Manner Recommendations

- ***PSAC Recommendation #2: All marijuana activities shall not be permitted in mixed use zones or residential zones.***

  - Planning Commission Action: Support.

  - Planning Commission Rationale: 1. Personal grow and use is protected by state law. 2. Neighborhood Mixed Use (NMU) areas will be predominately residential and existing City ordinance is to prohibit all marijuana facilities in res. zones. 3. Since commercial centers in the NMU is limited, the commercial areas should be treated similar to Neighborhood Commercial zones and prohibited. The Planning Commission affirms that medical marijuana dispensaries and recreational retailers should be limited to the Town Center and Community Commercial zone.

Time, Place and Manner Recommendations

- ***PSAC Recommendation #3*: *All marijuana activities are not allowed within1,000 feet of a school (public or private), city parks and libraries*.**

  - Planning Commission Action: Did Not Support

  - Planning Commission Rationale: The Planning Commission did not find a supportable basis for recommending the proposed buffer if outdoor marijuana production is banned. Since Recommendation #1 requires marijuana activities indoors, buildings will provide adequate buffer from surrounding areas and provide opportunity to control odor and enhance safety.

Time, Place and Manner Recommendations

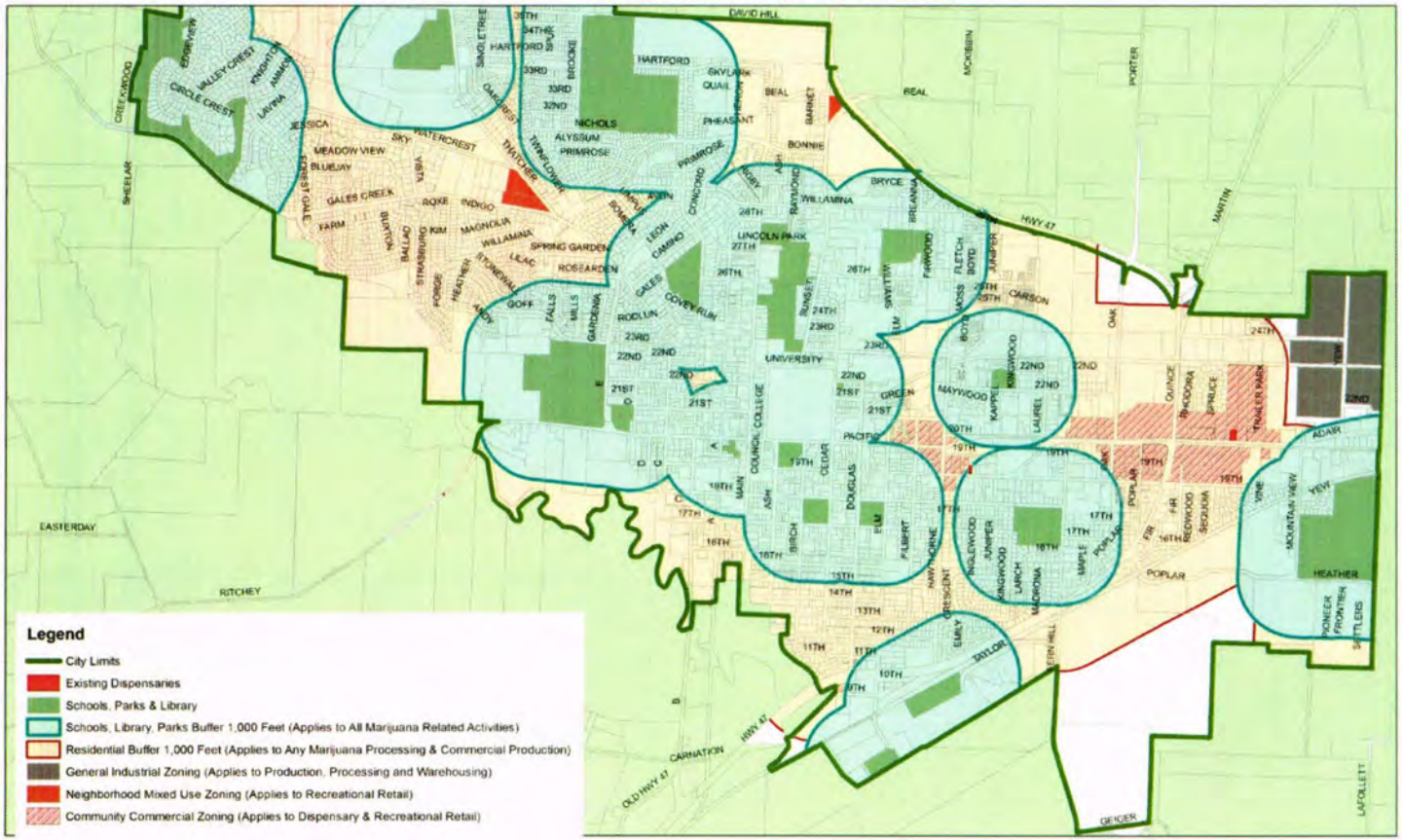
- ***PSAC Recommendation #4: Any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.***

  - Planning Commission Action: Did Not Support

  - Planning Commission Rationale: The Planning Commission did not find a supportable basis for recommending the proposed buffer if outdoor production is banned. Since Recommendation #1 requires marijuana activities indoors buildings will provide adequate buffer from surrounding areas and provide opportunity to control odor and enhance safety. The Planning Commission based their recommendation on the premise that taken together, the PSAC buffers would have limited marijuana producers, processors and wholesalers to one area of the City (24th Avenue and Yew Street) as shown on the next slide.

PSAC Recommendations

Schools, Parks, Library & Residential Buffer
(Recommended by PSAC & EDC)



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Time, Place and Manner Recommendations

- ***Recommendation #5*: *Any marijuana activities shall be conditional uses in the affected zone.***

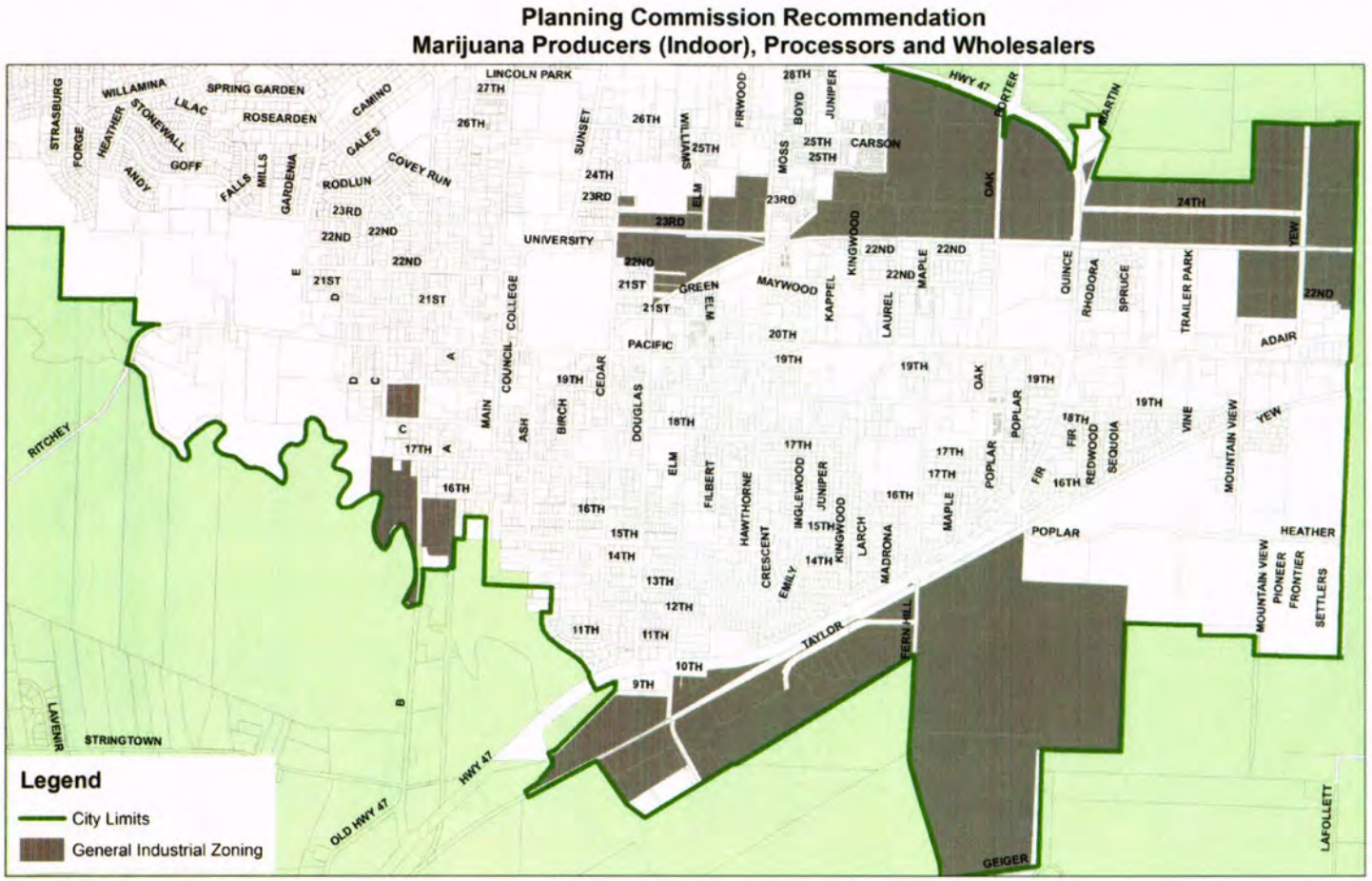
  - Planning Commission Action: Support

  - Planning Commission Rationale: Under current regulations marijuana facilities are reviewed through the administrative site plan approval process. Site plan review focuses on the physical aspects of development. The Planning Commission found that conditional use approval criteria addresses physical aspects and livability issues. Unlike site plan review, conditional use approval requires a public hearing and review by the Planning Commission. Conditional use approval provides an opportunity to impose reasonable conditions of approval to address compatibility concerns.

Time, Place and Manner Recommendations

- Additional Planning Commission Recommendations:
  - *Prohibit* marijuana producers, processors and wholesalers in the City's Light Industrial zone. Continue to *Permit*, as a conditional use, marijuana producers (indoor), processors and wholesalers in the City's General Industrial zone.
  - Rationale: Light industrial land should be preserved for high value added manufacturing and production which yields more employment. Marijuana producers (indoor), processors and wholesalers can be compatible with other uses permitted in the General Industrial zone.

Planning Commission Recommendation
Marijuana Producers (Indoor), Processors and Wholesalers



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Planning Commission Recommendations

- The Planning Commission also supported retaining separation areas (buffers) for medical marijuana dispensaries and recreational marijuana retailers that are established by state law:
  - Medical Marijuana Dispensary: 1,000 feet between dispensary and school and 1,000 feet between individual dispensaries.
  - Recreational Marijuana Retailer: 1,000 feet between retailer and schools.
- The required buffers are shown on the next slide.

State Mandated Buffers

- Dispensaries allowed in areas shown in color outside green and red lines
- Recreational Retailers allowed in areas shown in color outside green line (red line does not apply)

Time, Place and Manner Recommendations

- Other Planning Commission Recommendations (continued)
  - Amend Forest Grove Development Code.
    - Article 3 (Zoning Districts) to:
      - Identify zones where marijuana facilities are permissible, and
      - Classify marijuana facilities as conditional uses
    - Article 8 (General Development Standards) to:
      - Establish and clarify time, place and manner restrictions for marijuana facilities:
        - General Restrictions
        - Restrictions for Medical Marijuana Dispensaries and Recreational Marijuana Retailers
        - Marijuana producers, processors and wholesalers
    - Article 12 (Definitions) to:
      - Clarify that indoor marijuana production is an agricultural/horticultural use
      - Add definitions for marijuana facilities consistent with state administrative rule
      - Add definition for school consistent with state law

Staff recommendation:

- Adopt Planning Commission recommendations as follows:
  - Approve the proposed ordinance amending Development Code Article 3, Article 8, and Article 12:
    - Banning outdoor marijuana production within the Forest Grove city limits;
    - Adopting and clarifying time, place and manner restrictions for marijuana facilities in Forest Grove;
    - Classify permissible marijuana related facilities as conditional uses requiring review and approval by the Planning Commission; and
    - Clarifying and establishing marijuana facility related definitions as recommended by the Planning Commission.

Discussion Point:

- Ordinance Effective Date

Questions?

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ATTACHMENT 1

FOREST GROVE OREGON

Marijuana Related Facilities Time, Place and Manner Recommendations

Planning Commission

Work Session and Public Hearing

June 6, 2016

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Background

- Legal Requirements
  - Under state law, cities may impose reasonable time, place and manner restrictions on marijuana related activities. (ORS 475B.340)
    - The term "Reasonable" is subjective. Interpreted to mean restrictions must not effectively create ban.
    - Restrictions should address identifiable impacts and not be based on supposition.
    - Local restrictions may add to but cannot relax state imposed requirements.
  - Cities cannot prohibit possession of marijuana related items for personal use. (ORS 475B.335)
    - State law allows for up to four marijuana plants for personal use.
  - There are 7 marijuana related activities regulated by the state through the Oregon Health Authority (OHA) and Oregon Liquor Control Commission (OLCC).
    - Medical marijuana dispensary, producer and processor
    - Recreational marijuana retailer, producer, processor and wholesaler
  - A total ban on any one marijuana related activities makes a jurisdiction ineligible to collect sales tax revenue. (ORS 475B.345)

Background Continued

- Code amendments adopted by City Council on March 28, 2016:
  - Intended to be an initial set of restrictions to address immediate needs.
  - Standards for marijuana activities other than medical dispensaries;
  - Prohibit non-personal marijuana activities in residential zones
    - Marijuana production and processing
    - Home occupations
    - Retail sales through "corner stores"

Background Continued

- Experience indicates that additional restrictions on marijuana related facilities including marijuana production and processing may be warranted:

  - As other cities adopt restrictions for marijuana related activities, it has become apparent that Forest Grove's requirements are less restrictive.
    - This could result in industrial land in Forest Grove being absorbed for marijuana related activities rather than industrial activities.
    - Compared with industrial uses, agricultural activities such as marijuana production, have lower property tax value due to limited improvements.
    - Marijuana is a high cash value crop suggesting that marijuana activities may not convert to other uses over-time.

  - Potential impacts related to outdoor production (e.g. odor) is better understood.
    - Denver, CO & Puget Sound experience

  - Potential impacts related to use of hazardous materials for marijuana processing is better understood.
    - Butane

Requirements of Regulated Marijuana Activities within Forest Grove

District	Medical Dispensary	Medical Processor	Medical Producer	Recreational Retail	Recreational Processor	Recreational Producer	Recreational Wholesaler
Residential	N	N	N	N	N	N	N
Mixed Use	P	N	N	P	N	N	N
Neighborhood Commercial	N	N	N	N	N	N	N
Community Commercial	P	N	N	P	N	N	N
Town Center	P*	N	N	P*	N	N	N
Light Industrial	N	N	P	N	N	P	P
General Industrial	N	P	P	N	P	P	P
County Zoning	N	N	P	N	N	P	N

*Not allowed due to State school buffer requirements

P = Currently Permitted
N= Not Allowed

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Characteristics of Marijuana Facilities - Medical

- Medical Marijuana Producer
  - Production of marijuana for a designated medical marijuana cardholder authorized by the Oregon Health Authority. (ORS 465B.415)
  - Medical marijuana producer may produce no more than six mature marijuana plants per cardholder. (ORS 475B.428(2)(b))
  - State law allows up to 12 mature marijuana plants at an address in a residential zone (ORS 475B.428(3)(a)). However, Development Code Article 3 prohibits medical marijuana production in residential zones.
  - No more than 48 mature marijuana plants may be produced at an address not in a residential zone after January 1, 2015. (ORS 475B.428(4)(a))

- Medical Marijuana Processor
  - This category manufactures marijuana edibles or concentrates for medicinal purposes.

- Medical Marijuana Dispensary
  - This category transfers marijuana from a producer or processor to medical marijuana patient.
  - Dispensaries may seek authorization to sell recreational marijuana until December 31, 2016. Recreational marijuana retailers will be licensed by OLCC to sell marijuana after January 1, 2017.
  - Under state law, dispensaries cannot be located closer than 1,000 feet from a school as defined by the state.
  - Under state law, dispensaries cannot be located closer than 1,000 feet from another dispensary.
  - Dispensaries are classified as Medical Centers in the Development Code.

Characteristics of Marijuana Facilities - Recreational

- Recreational Marijuana Producer
  - May be indoor or outdoor unless restricted by local ordinance
  - Production area limited to:
    - Indoor: Canopy area: 10,000 square feet per licensee and address/Outdoor: 40,000 square feet per licensee
  - Security measures required by state law
    - Outdoor grow must be fenced or walled with solid material at least 8' in height
    - Video surveillance
    - Other measures
  - Considered an Agricultural/Horticulture use in Development Code

- Recreational Marijuana Processor
  - Manufacture edibles and concentrates
    - Methods include:
      - Mechanical extraction process
      - Extraction using hydrocarbon based process such as butane
      - Extraction using CO2
    - Allowed only in GI zone since use of raw materials involved

- Recreational Marijuana Retailer
  - Cannot be located closer than 1,000 feet from a school
  - No separation requirement between recreational marijuana retailers

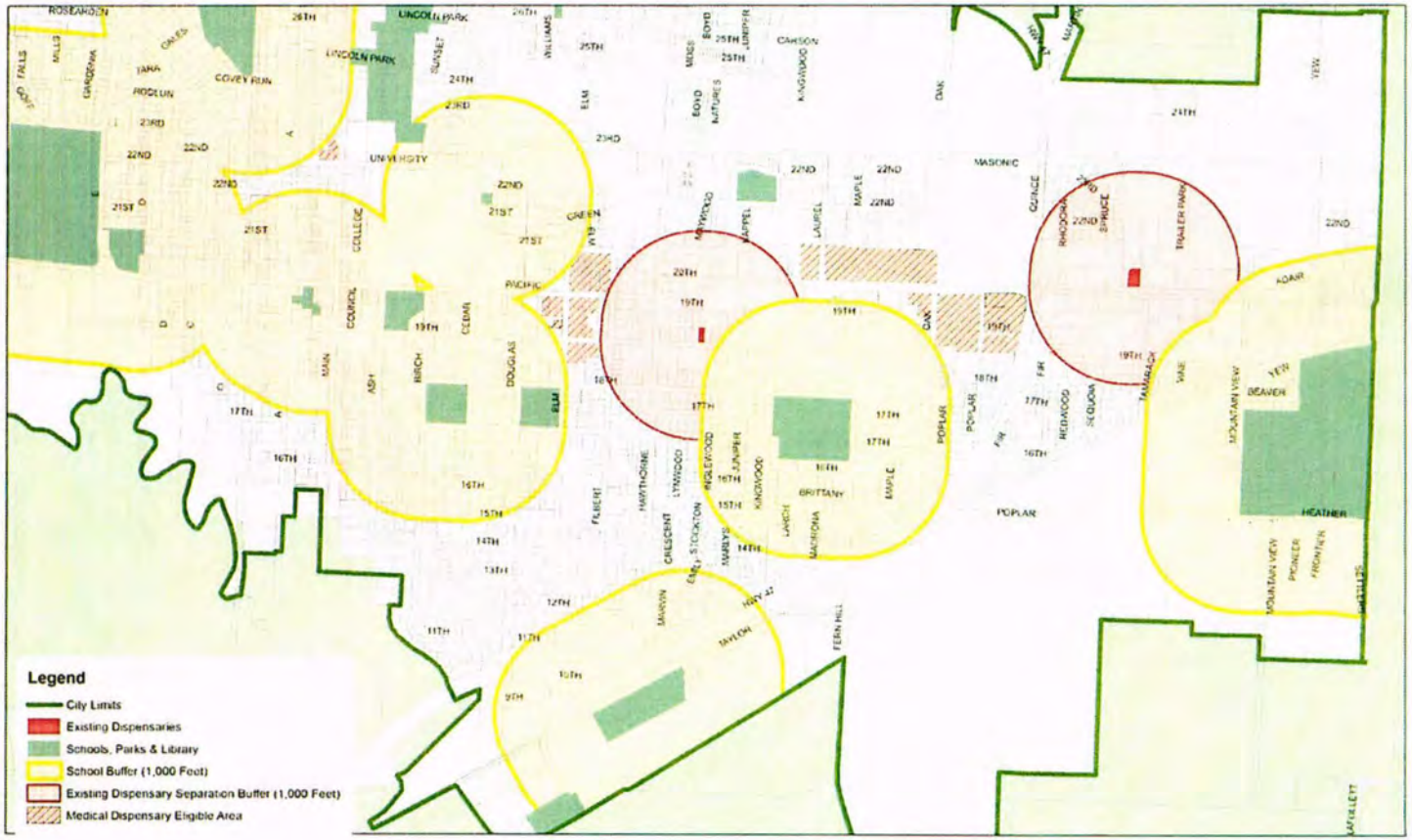
- Recreational Marijuana Wholesaler
  - Store marijuana on-site for transfer from producer or processor to retailer

Marijuana Related Activities

Location Maps

Medical Marijuana Dispensary

Medical Dispensary Eligible Areas (Under Existing Regulations)



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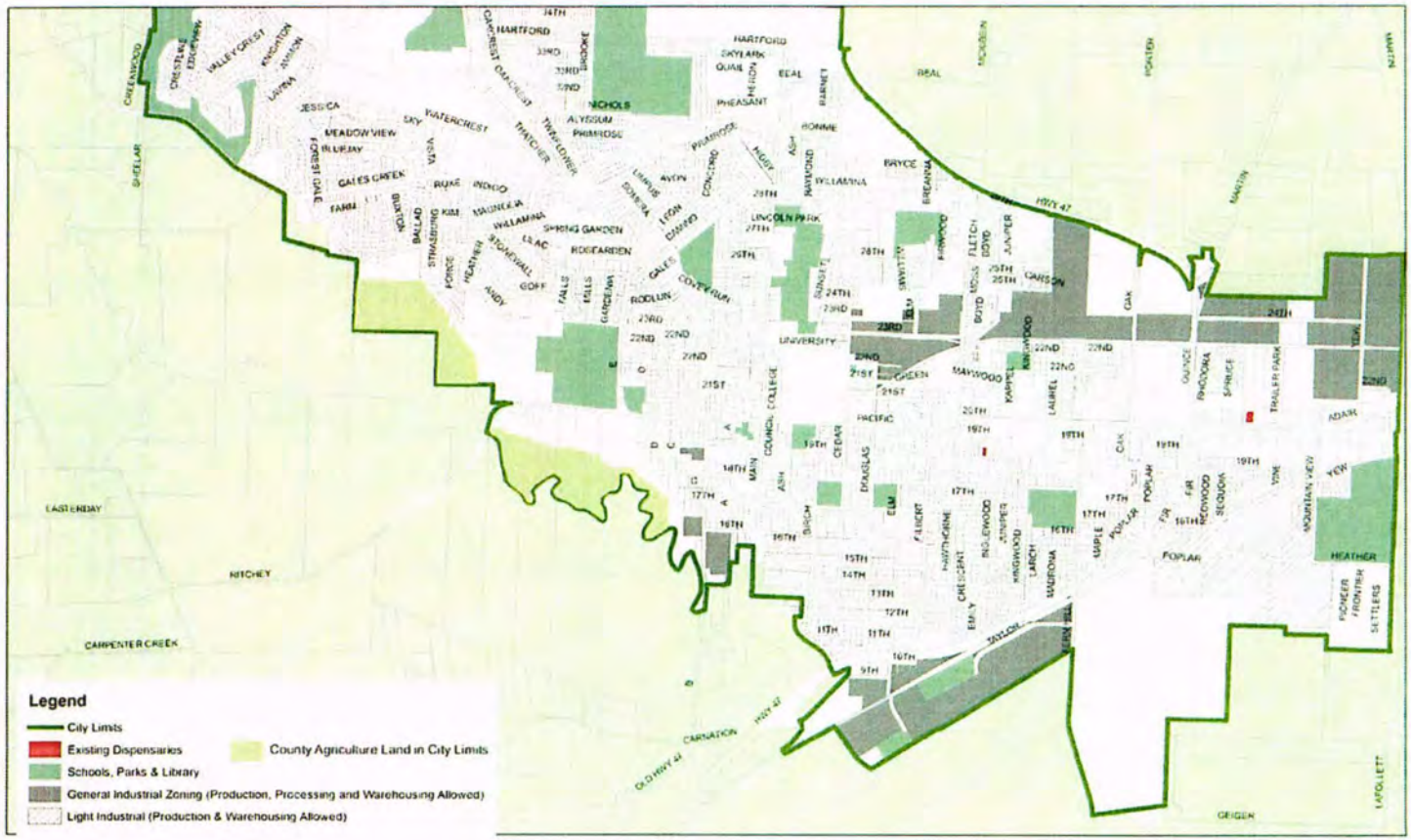
Medical Marijuana Producer

Medical Producer Eligible Areas (Under Existing Regulations)



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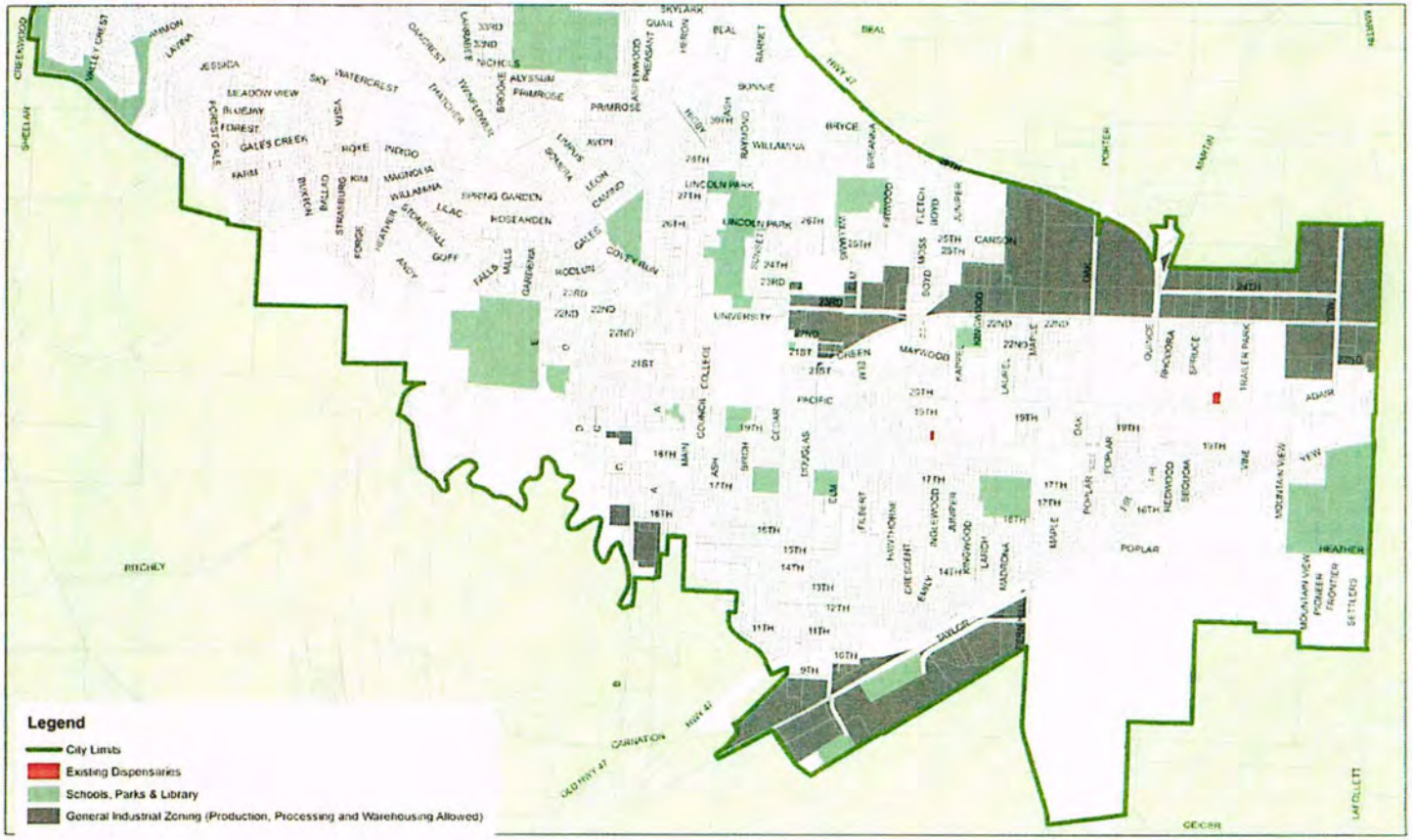
Medical Marijuana Processor

Medical Processor Eligible Areas (Under Existing Regulations)



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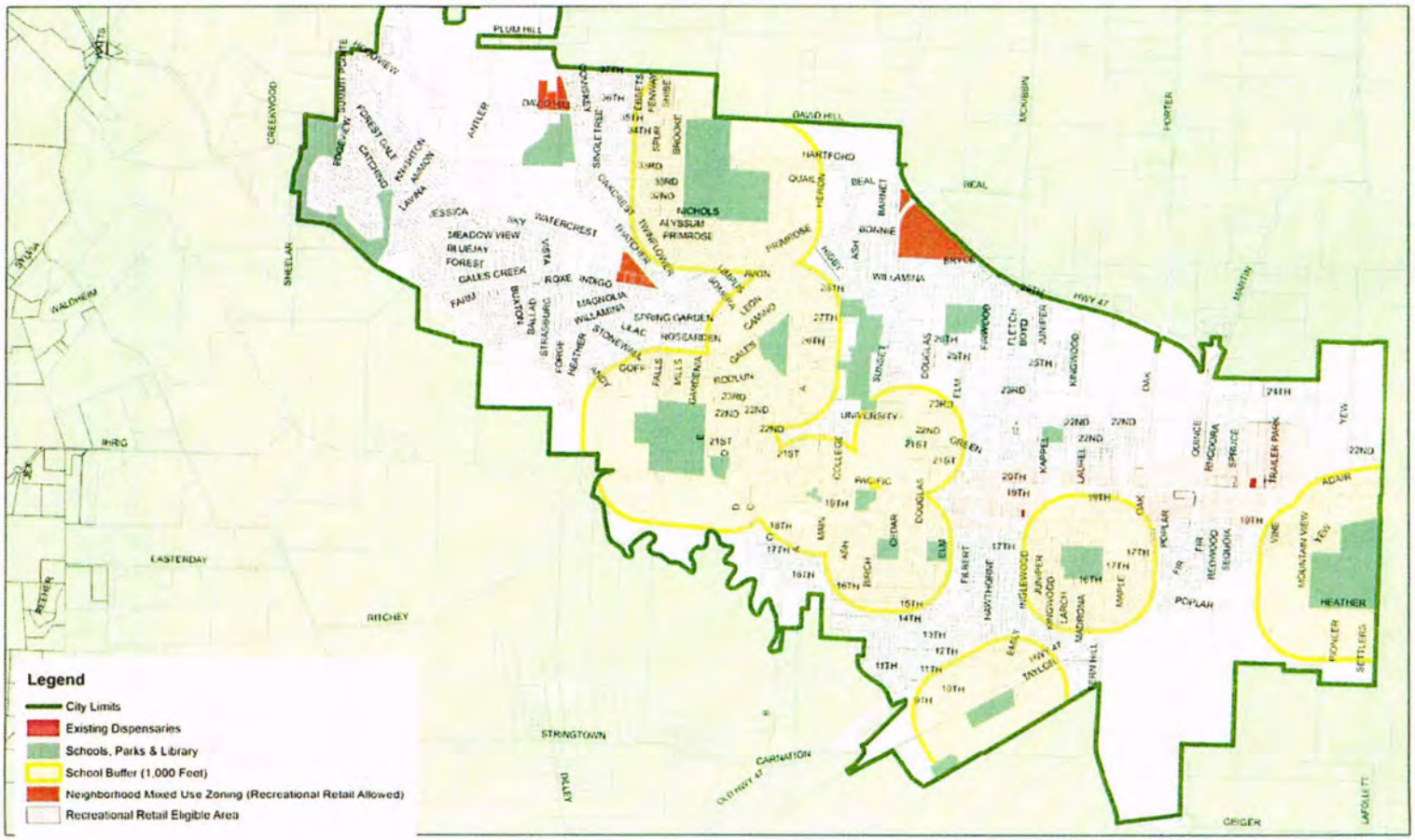
Recreational Marijuana Retailer

Recreational Retail Eligible Areas (Under Existing Regulations)



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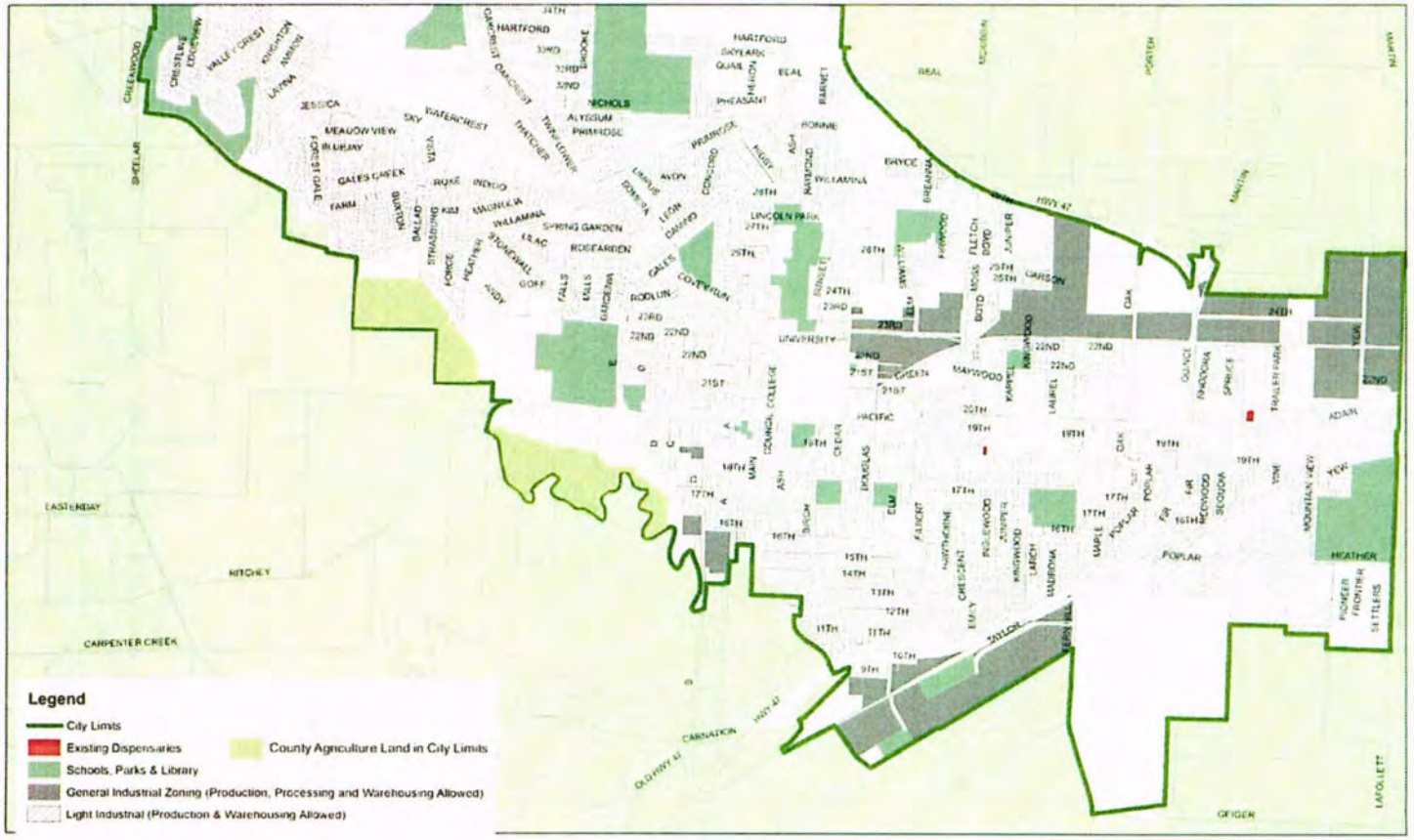
Recreational Marijuana Producer

Recreational Producer Eligible Areas (Under Existing Regulations)



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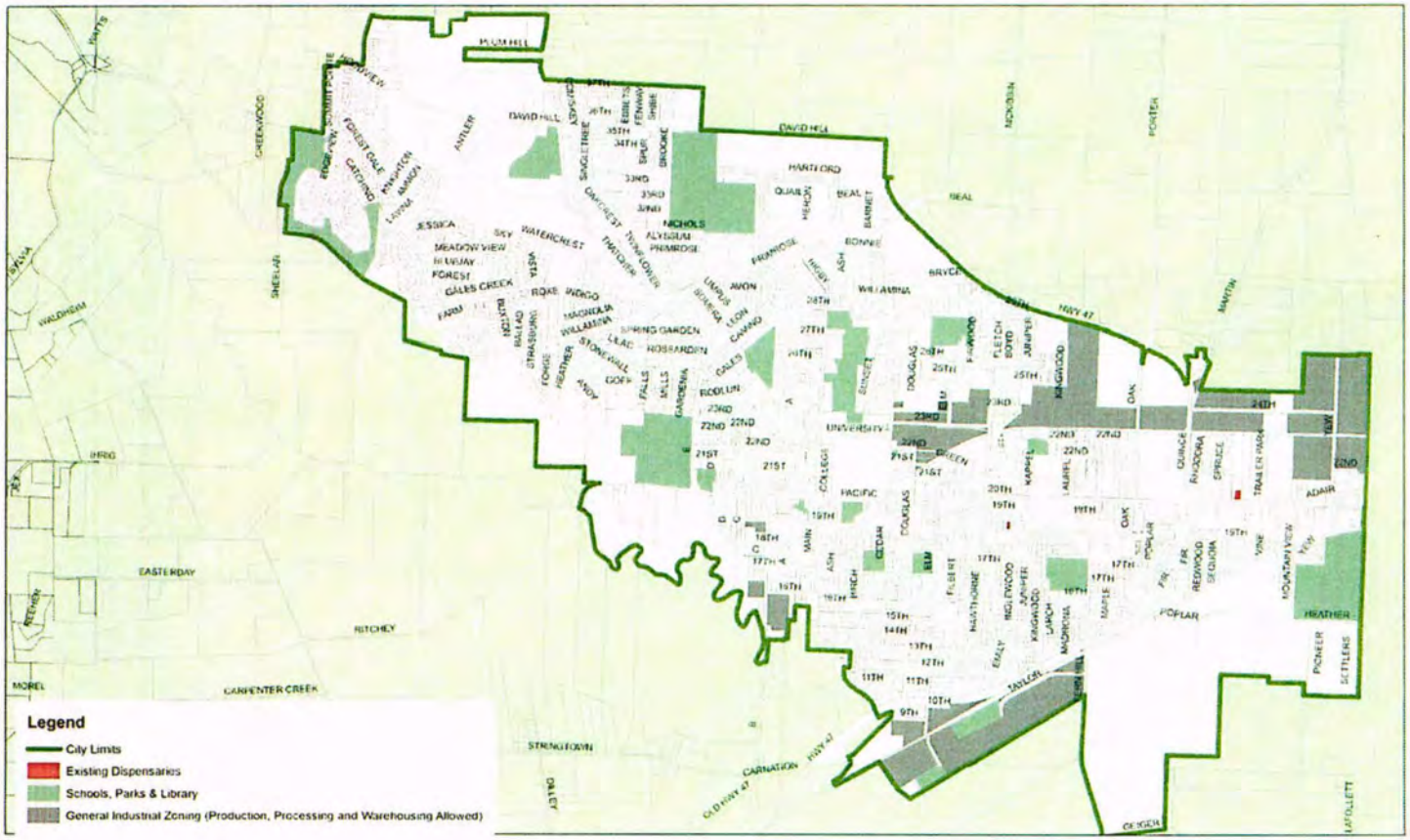
Recreational Marijuana Processors

Recreational Processor Eligible Areas (Under Existing Regulations)



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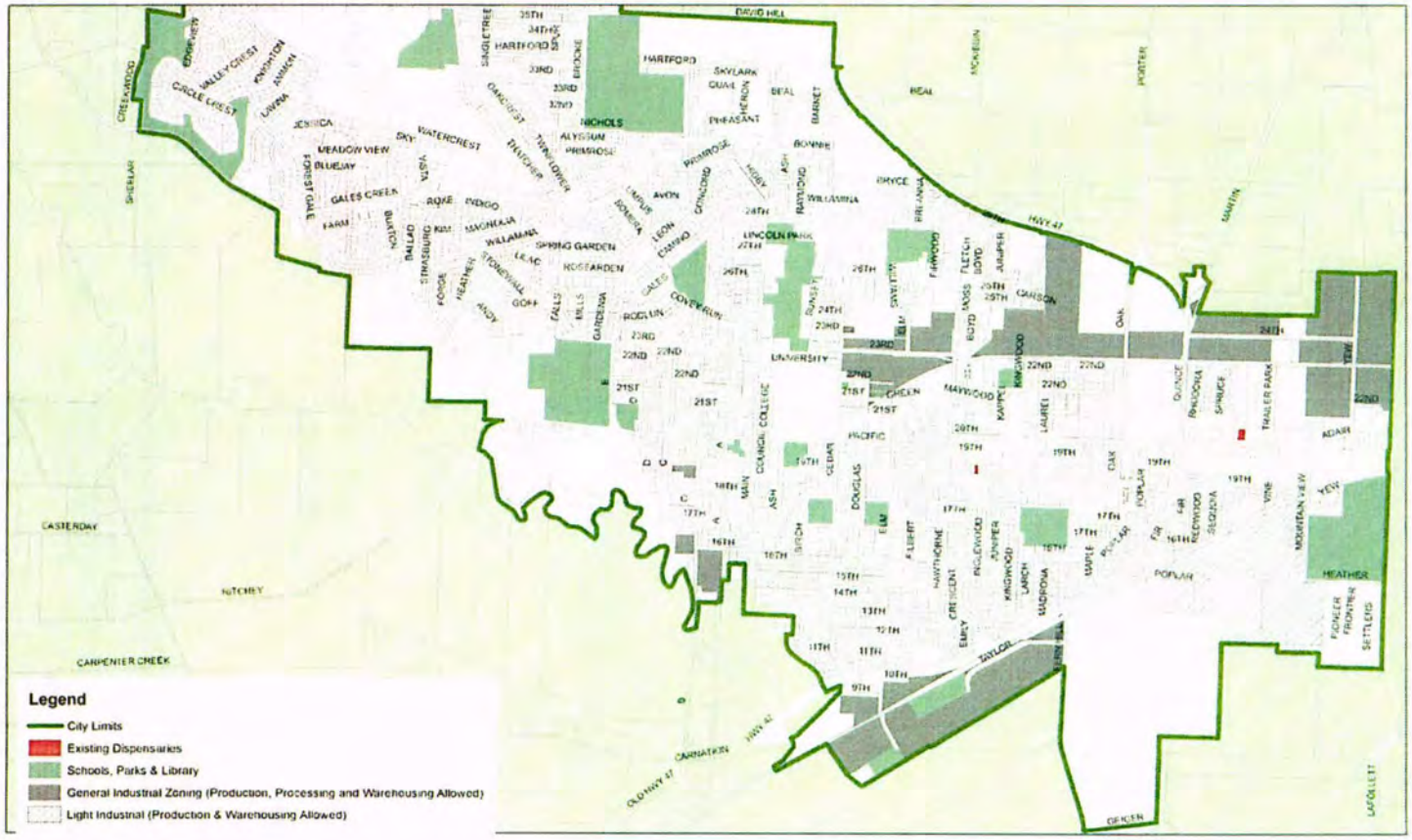
Recreational Marijuana Wholesaler

Recreational Wholesale Eligible Areas (Under Existing Regulations)



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Washington County Cities
Marijuana Restrictions for Industrial Zones

Community	Total Ban?	Banned from Industrial Zone?	Banned Open Grow?	Additional Set-backs Adopted?
Sherwood, OR*	Yes			
Tigard, OR	No	No	Yes	Yes
Hillsboro, OR	No	No	Yes	Yes
Beaverton, OR	No	Only growing**	Yes	No
Cornelius, OR	No	Yes	Yes	No
Tualatin, OR	No	No	Yes	Yes
Banks, OR	No	No	No***	No

Notes:
1. Additional Set-backs referenced throughout slides range between 100-3,000 ft.

*North Plains, Lake Oswego, Sherwood, and Wilsonville have banned all marijuana activities through moratorium until Aug/Nov 2016
**Beaverton does not allow agricultural activities in city limits, therefore growing is banned.
***Only retail sales have been addressed at this time due to lack of Industrial Zone space

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Public Safety Advisory Commission Recommendations – April 27, 2016

- *Recommendation #1:* **No open grow** of marijuana for **recreational production** in the city limits of Forest Grove.
  - Medical production not addressed by recommendation.

- *Recommendation #2:* **All marijuana activities** shall **not** be **permitted** in **mixed use zones** or **residential zones.**
  - Personal grow cannot be prohibited under state law.

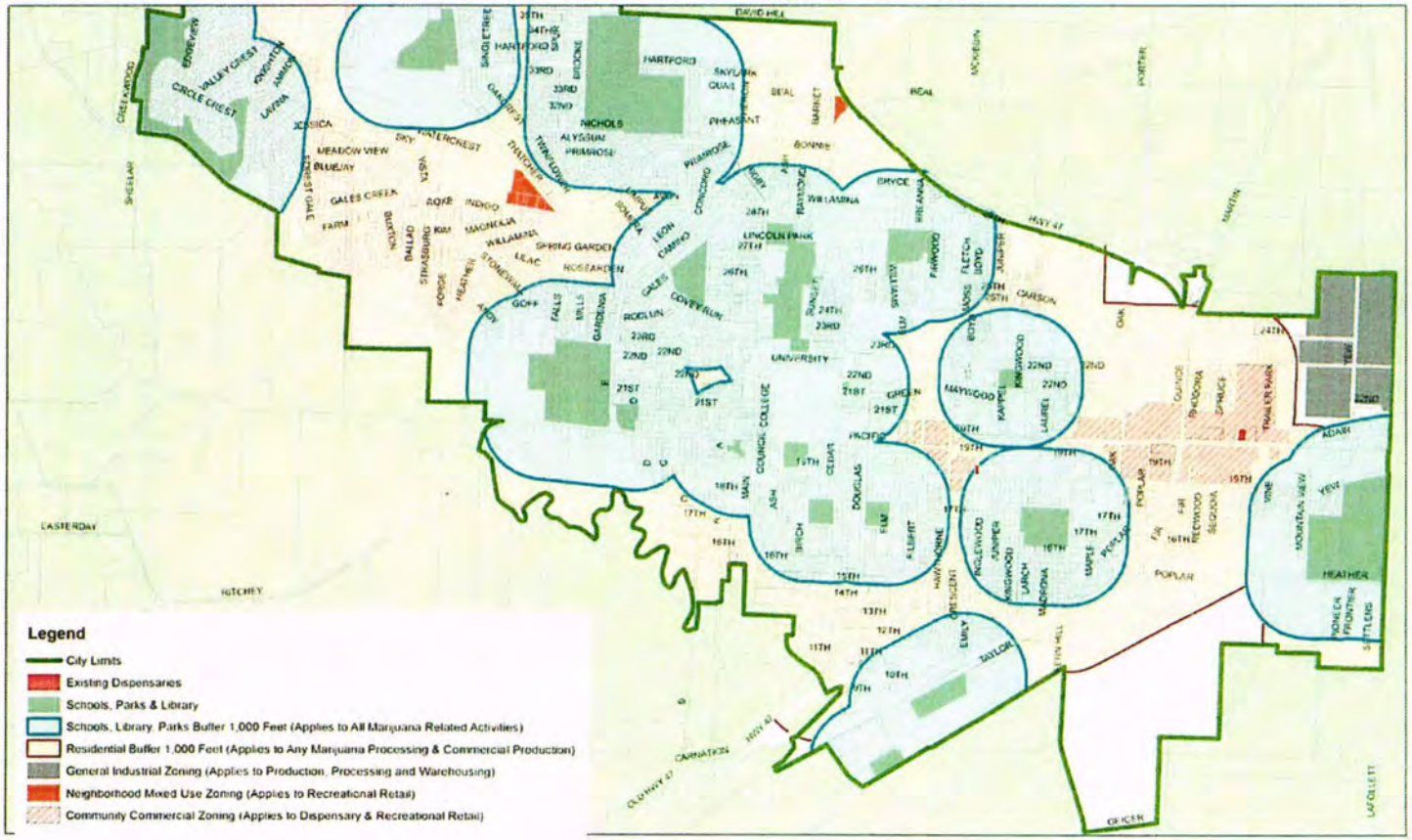
- *Recommendation #3:* **All marijuana activities** are **not allowed** within1,000 feet of a **school (public or private), city parks and libraries**.

- *Recommendation #4:* Any marijuana **processing** or **commercial production**, whether enclosed or not, shall not be permitted within 1,000 feet of a **residential zone.**
  - Applies to medical and recreational processing and production

- *Recommendation #5:* Any marijuana activities shall be **conditional uses** in the affected zone.
  - Currently reviewed through site plan review process

PSAC Recommendation

Schools, Parks, Library & Residential Buffer
(Recommended by PSAC & EDC)



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Public Safety Advisory Commission Recommendation

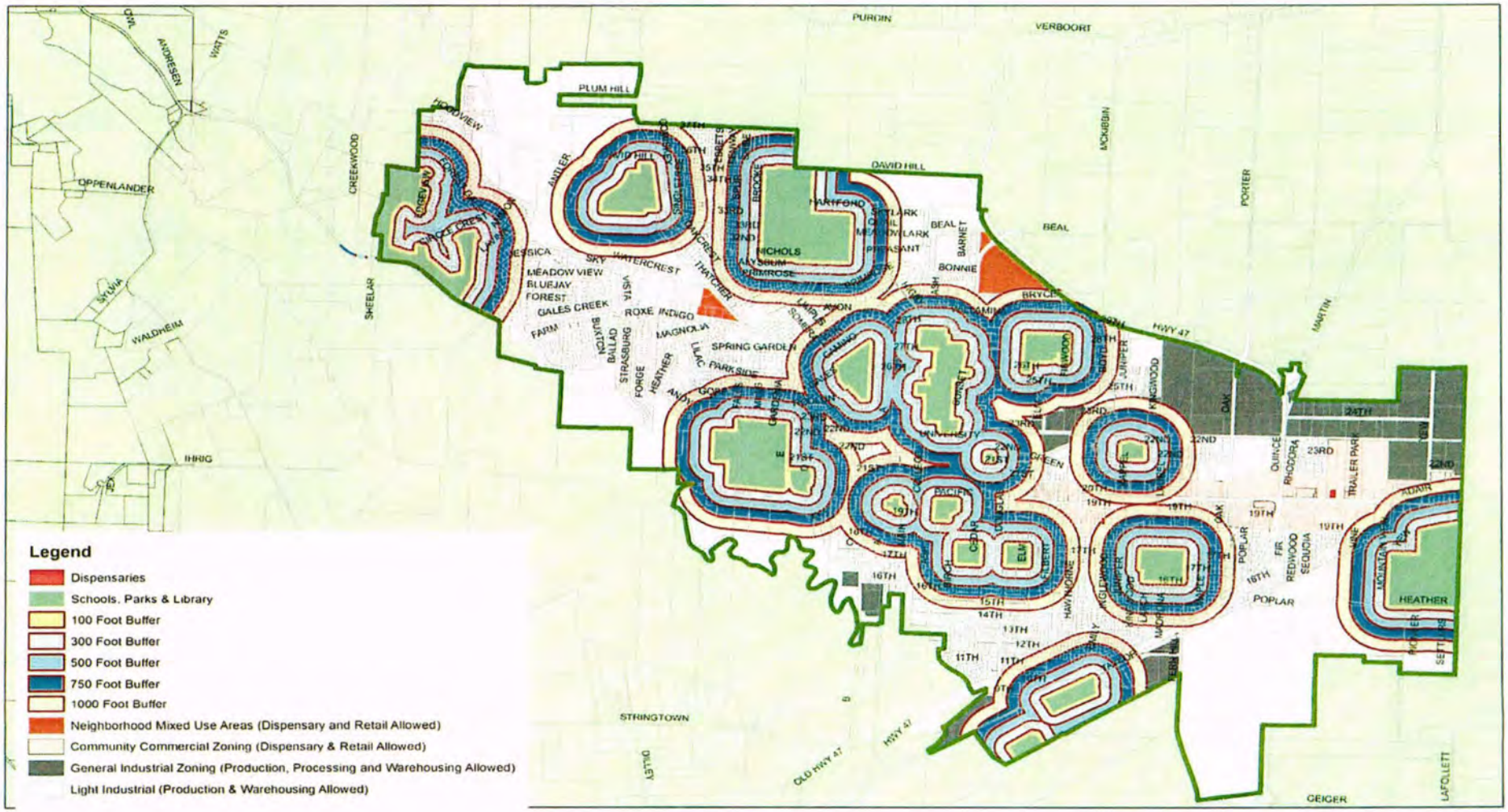
- PSAC Recommendations Endorsed By:
  - Economic Development Commission on May 5, 2016
    - Endorsed all five PSAC recommendations
  - Parks and Recreation Commission Members Consensus
    - Support proposed PSAC buffers from parks
    - Full Commission action expected June 15, 2016
  - Forest Grove School District School Board
    - Support proposed PSAC buffers from schools
    - Resolution adopted May 23, 2016

Alternatives Available for Planning Commission Consideration

- School, Park and Libraries Buffer for marijuana related activities
  - Apply buffers to these three uses
  - Intended to address safety
    - Hazardous materials
    - Visible to minors
  - Intended to address Odor
    - Outdoor production
- Residential Zone Buffer for marijuana related activities
  - Safety
    - Hazardous materials
  - Odor
    - Outdoor production
- Buffer Between Specific Marijuana Related Activities
  - Distribute marijuana related activities rather than concentrate

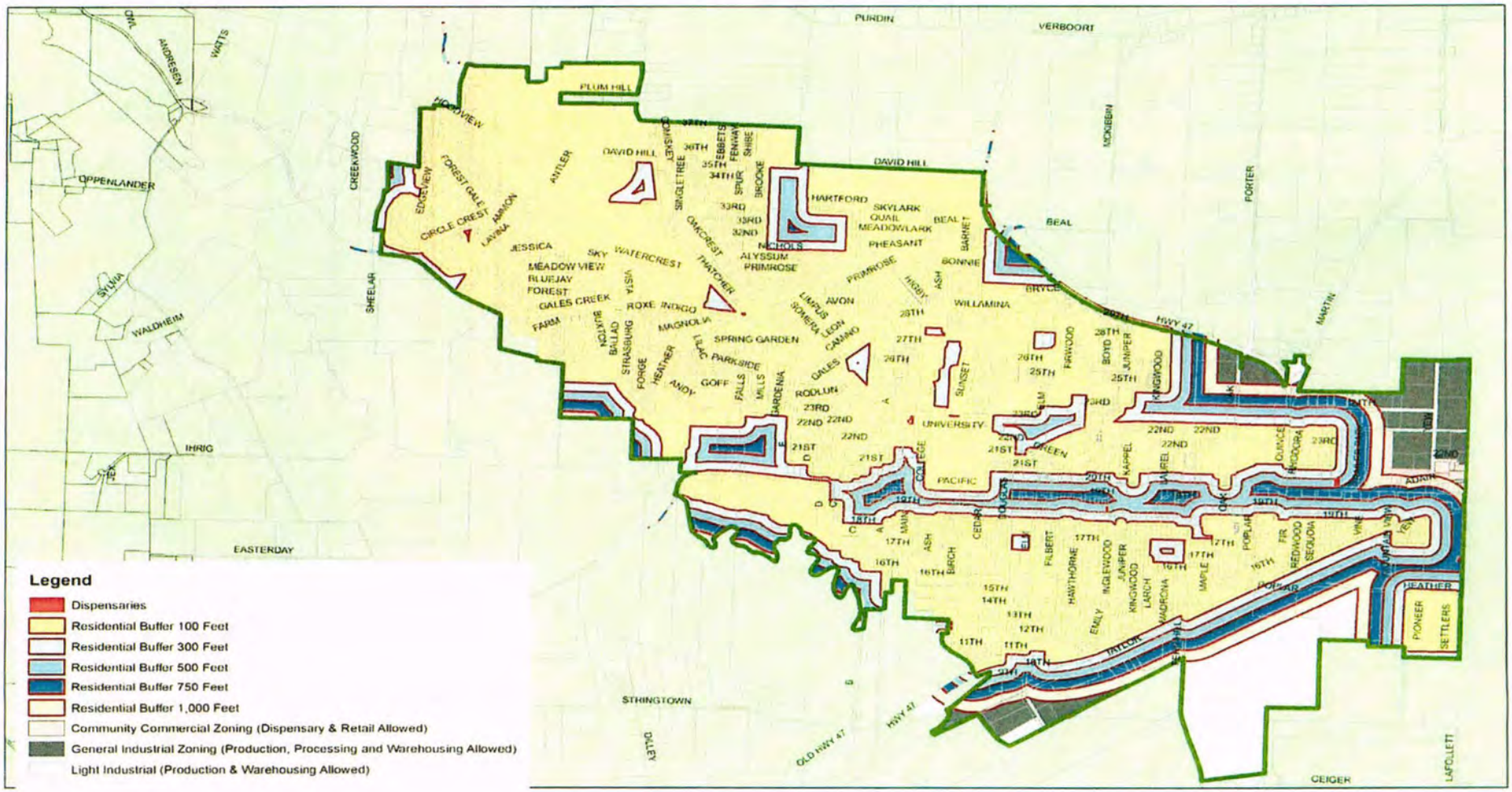
Alternatives – Schools, Parks and Library Buffers

Schools, Parks and Library Buffer Alternatives



Alternatives – Residential Zoning Buffers

Residential Zoning Buffer Alternatives



Marijuana Related Activities – Review Process

- Site Plan Review (DC 10.2.400 et. seq.)
  - Administrative (staff) Review appealable to Planning Commission
  - Criteria focuses on physical aspects of a development
    - Compliance with development standards
    - Building mass and scale
    - Impact to natural resources
    - Impact to historic resources
    - Site access
- Conditional Use Permit (DC 10.2.200 et. seq.)
  - Quasi-judicial (Planning Commission) review appealable to City Council
    - Physical compatibility
    - Public services
    - Livability
      - Proposed use will not have significant adverse impact on nearby lands

Development Code Amendments

- Create Three Sections (Article 8)
  - General Requirements
  - Dispensary and Retailer Requirements
  - Other Marijuana Facilities
    - Producers
    - Processors
    - Wholesalers
    - Testing Laboratories
- Amend Development Code Use Tables (Article 3)
  - Prohibit outdoor marijuana production
  - Clarify that marijuana testing laboratories are classified as Commercial: Office
  - Require review of marijuana related activities as a Conditional Use
- Amend Development Code Definitions Section (Article 12)
  - Add marijuana related definitions
  - Clarify Agriculture/Horticulture definition to allow indoor agriculture
  - Add definition for "school" consistent with state law

Review Criteria

- Development Code Section 10.2.630 (Development Code Text Amendment – Review Criteria)
  - The text amendment is consistent with the relevant goals and policies of the Forest grove Comprehensive Plan;
  - The text amendment is consistent with the relevant statewide and regional planning goals, programs and rules.
- The written staff report includes findings demonstrating that the proposed text amendments comply with the applicable review criteria.

Recommendation

- That the Planning Commission:
  - Endorse the PSAC recommendations pertaining to Time, Place and Manner restrictions for marijuana related facilities and activities to include in the Development Code;
  - Modify the PSAC recommendations with revised or no buffer requirements for adoption by City Council:
    - Revise buffer requirement
    - Allow in LI zone
  - Accept or modify the staff recommendations pertaining to Development Code Amendments (development standards and requirements) as shown on report Attachment P.

Questions?

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Development Code Amendment
Staff Report and Recommendation

Community Development Department, Planning Division

Report Date:	May 27, 2016
Hearing Date:	June 6, 2016
Request:	Planning Commission recommendation to City Council on time, place and manner restrictions for marijuana facilities.
File Number	311-16-00034-PLNG
Property Location:	Not Applicable
Legal Description:	Not Applicable
Owner/Applicants:	City of Forest Grove, PO Box 326, Forest Grove, OR 97116
Review Process	Type IV (Legislative)
Applicable Standards and Criteria	Development Code Section 10.1.700 et. seq. Legislative Land Use Decision Development Code Section 10.2.600 et. seq. ▪ The text amendment is consistent with relevant goals and policies of the Forest Grove Comprehensive Plan; and ▪ The text amendment is consistent with relevant statewide and regional planning goals, programs and rules. Development Code Section 10.3.300 Commercial and Mixed Use Zones Development Code Section 10.3.500 Industrial Zones Development Code Section 10.8.1100 Medical Marijuana Dispensaries, Retailers, and Other Facilities
Reviewing Staff	Daniel Riordan, Senior Planner Jon Holan, Community Development Director
Recommendation	Staff recommends the Planning Commission: 1. Consider the PSAC, EDC and Staff recommendations pertaining to time, place and manner restrictions for marijuana related facilities and activities to include in the Development Code, and 2. Endorse or modify the PSAC, EDC and Staff recommendations for adoption by City Council.

INTRODUCTION

Regulating medical and recreational marijuana in Oregon is complex. This stems from lack of history administering the programs, the multitude of approaches that a city could take to regulate marijuana related activities, and the fact that state law establishes seven types of facilities with different operational characteristics and legal requirements to meet. This memo is structured to help navigate the complexity inherent with regulating marijuana related activities and to provide a framework for considering additional time, place and manner regulations for certain marijuana related activities as recommended by the Public Safety Advisory Committee and Economic Development Commission. The structure of the memo is described below.

Section One of this memo describes what cities can do under the state law (ORS chapter 475B) and home rule authority with respect to regulating marijuana facilities. . This section also describes what the City has done so far and why the Planning Commission and City Council may want to consider additional regulations.

Section Two of this memo describes the seven regulated marijuana activities in Oregon. It is important to understand these activities and how they may operate in order to evaluate reasonable time, place and manner restrictions.

Section Three provides an overview of the City's current review process for marijuana facilities. The City currently reviews application for marijuana facilities by administrative site plan review.

Section Four describes recommendations the Public Safety Advisory Commission (PSAC) and Economic Development Commission (EDC) adopted pertaining to marijuana related activities (Attachment A). City Council asked PSAC and EDC to provide their perspectives on regulating marijuana facilities in Forest Grove. Staff is asking that the Planning Commission evaluate the PSAC and EDC recommendation and either endorse the recommendation, suggest modifications, or recommend that City Council retain the regulations adopted on March 28, 2016, with no further changes.

In addition to PSAC and EDC, the Forest Grove School District adopted a resolution (Attachment B) endorsing the PSAC recommendation pertaining to prohibiting marijuana related activities within 1,000 feet of schools. The Parks and Recreation Commission members also reached consensus to endorse the PSAC recommendation including prohibiting marijuana activities within 1,000 feet of parks. The Parks and Recreation Commission is expected to take formal action on the recommendation at their June meeting.

Section Five identifies possible alternatives to the PSAC and EDC recommendations.

Section Six describes possible implications for imposing additional time, place and manner restrictions including the City's ability to receive future sales tax on marijuana sales.

Section Seven provides an overview of proposed amendments to the Development Code pertaining to time, place and manner restrictions for marijuana related activities.

Section Eight provides findings supporting additional time, place and manner restrictions. This section also describes how additional regulations comply with applicable criteria for Development Code text amendments.

SECTION ONE: BACKGROUND

In 2014, Oregon voters approved Ballot Measure 91 to allow the recreational sale and use of marijuana. Ballot Measure 91 complemented Ballot Measure 67, approved by voters in 1998, creating the medical marijuana program.

To implement the intent of Ballot Measure 91, the Oregon legislature passed, and the Governor signed, House Bill (HB) 3400. HB 3400 became effective on June 30, 2015 and created four categories of recreational marijuana facilities (recreational marijuana retailers, recreational marijuana producers, recreational marijuana processors and recreational marijuana wholesalers). The recreational marijuana activities are in addition to three categories established for medical marijuana activities (medical marijuana dispensaries, medical marijuana producers, and medical marijuana processors). Additional information about these activities is provided in Section Two below.

Under HB 3400 (now codified as ORS chapter 475B), the recreational marijuana program in Oregon became operative on January 1, 2016. This afforded little time to establish comprehensive time, place and manner regulations for marijuana related activities without the City instituting a ban on such activities under ORS 475B.800. A ban under ORS 475B.800 must be referred to the voters at a statewide general election (election in November of an even-numbered year).

ORS chapter 475B and the corresponding administrative rules provide a floor for establishing time, place and manner regulation for recreational and medical marijuana facilities in Oregon. The law expressly provides that cities may adopt additional reasonable time, place and manner regulations. ORS Chapter 475B allows for the personal use and growing of marijuana. These regulations do not address banning or regulating personal use or growth, but focus solely on regulating marijuana facilities or businesses.

In April 2015, City Council adopted regulations for medical marijuana dispensaries. On March 28, 2016, City Council adopted basic regulations in response to inquiries received about establishing marijuana related facilities in Forest Grove. Since that effort was necessary to address an immediate need, staff recognized further work may be needed. The regulations adopted in March are contained in the Forest Grove Municipal Code and Article 8 of the Forest Grove Development Code (Attachment C).

As other cities in Washington County adopted rules for recreational marijuana related activities it became apparent that Forest Grove's previously adopted regulations were less restrictive than those adopted by other cities in Washington County. This is especially apparent in the area of recreational marijuana production (growing). City staff conducted a survey of cities in Washington County showing that as of April 11, 2016, Forest Grove was the only city in Washington County that allowed for outdoor recreational marijuana production on industrial land. This could have considerable impact on how industrial land is used in Forest Grove because marijuana is such a high value crop. It may also impact future property tax collections and future City budgets since agricultural activities on industrial land has less property tax assessment value than manufacturing activities.

To provide an opportunity for additional public input into the matter of regulating marijuana related activities, City Council adopted an ordinance on April 28, 2016 placing a temporary ban on recreational marijuana production in the city limits. As stipulated in the ordinance the ban will sunset on August 5, 2016. The ordinance provides time for the Planning Commission and City Council to consider, and possible to adopt, recommendations from the PSAC and EDC regarding potential regulations for marijuana facilities. If City Council chooses do no nothing further with respect to regulating marijuana facilities, the time, place and manner regulations adopted on March 28, 2016 will remain in effect after August 5th.

This memo summarizes PSAC's and EDC's recommendations for additional time, place and manner regulations on recreational and medical marijuana related activities. This memo also provides an analysis of possible implications of the recommendations and identifies alternatives for Planning Commission and City Council to consider.

For context, the next section of this memo provides an overview of the seven state regulated marijuana facility types.

SECTION TWO: OVERVIEW OF REGULATED MARIJUANA FACILITY TYPES

This section provides an overview of the marijuana related facilities allowed under state law. Evaluation of applications for marijuana retailed facilities currently requires a Type II (administrative) site plan review to ensure compliance with City code requirements including compatibility with surrounding uses in terms of building scale, impacts to designated historic resources and traffic/access needs. The site plan review process is explained in more detail under the PSAC and EDC recommendations in Section Three.

The seven marijuana facility types established by state law include:

- Medical marijuana dispensaries;
- Medical marijuana producers (growers);
- Medical marijuana processors;
- Recreational retailers;
- Recreational producers;
- Recreational processors; and

- Recreational wholesalers

It is important to understand the differences between the facility types and to have a sense of their operational characteristics. This understanding provides a basis for evaluating and recommending time, place and manner regulations.

MEDICAL MARIJUANA FACILITIES

Medical Marijuana Dispensaries

Pursuant to ORS 475B.450(3) medical dispensaries:

- Must not locate within a *1,000 feet of a schools*
- Must not locate within a *1,000 feet from another medical marijuana dispensary*
- Must not be located in a residential zone
- Must not be located at the same address as a marijuana grow site

Medical marijuana dispensaries are distinct from recreational marijuana retailers because medical marijuana dispensaries may only transfer usable marijuana, immature marijuana plants, seed, medical products, concentrates and extracts to patients and caregivers registered under ORS 475B.415. However, under state law, medical dispensaries may temporarily sell recreational marijuana until Oregon Liquor Control Commission (OLCC) issues licenses for recreational retail sales beginning January 1, 2017. OLCC is expected to begin processing license applications during late-summer or early-fall. The Oregon Health Authority (OHA) regulates medical marijuana dispensaries.

Under the Forest Grove Development Code, medical marijuana dispensaries are classified as "Medical Centers". Medical Centers, including medical marijuana dispensaries, are allowed in the City's Community Commercial zone subject to the state's buffer/separation requirements as shown on the attached map (Attachment D).

The City currently has two approved medical marijuana dispensaries (2743 19th Avenue and 3821 Pacific Avenue). The dispensary at 3821 Pacific Avenue is the only outlet currently operating and is selling to medical marijuana card holders and recreational consumers.

Medical Marijuana Production

Medical marijuana production includes businesses engaged in planting, cultivating, growing, trimming, or harvesting marijuana or drying marijuana leaves or flowers. Medical production sites must be registered under ORS 475B.420. The Oregon Health Authority (OHA) regulates medical marijuana producers.

Medical production is limited to growing marijuana plants for four medical marijuana patients. A medical producer may only grow a maximum of six mature plants per patient. State law establishes a maximum 12 mature plants per registration within city limits in areas zoned residential and 48 mature plants within city limits not zoned

residential. Staff is not aware of any registered medical marijuana producers operating within the City.

Medical marijuana production is currently allowed as an agricultural/horticultural use in the City's General Industrial and Light Industrial zones as shown on the attached map (Attachment E). Medical marijuana production is also currently allowed on lands within the city limits zoned Agricultural and Forestry and Exclusive Farm Use. These are parcels that were annexed by the City and only a portion of the property is within the urban growth boundary. The area outside the urban growth boundary is zoned for agricultural uses.

Medical Marijuana Processors

Medical marijuana processors include compounding or converting marijuana into medical products, concentrates or extracts. Medical marijuana processors must be registered with the state under ORS 475B.435 and cannot locate in an area zoned for residential use if the facility processes cannabinoid extracts. The Oregon Health Authority (OHA) regulates medical marijuana processors.

Medical marijuana processors are allowed as permitted uses in the City's General Industrial zone as shown on the attached map (Attachment F). Staff is not aware of any medical marijuana processors operating in the City.

RECREATIONAL MARIJUANA FACILITIES

The Oregon Liquor Control Commission (OLCC) regulates recreational marijuana activities, including recreational retailers, producers, processors and wholesalers. Testing laboratories and research facilities are also activities regulated by OLCC. Regulations pertaining to recreational marijuana facilities are contained in ORS chapter 475B and OAR Section 845 Division 25. These activities are described in more detail below.

Recreational Marijuana Retailers

Under state law, recreational retailers must be located at least *1,000 feet from schools* and must not located in an exclusively residential zone State law does not impose a separation requirement between retailers like as it does for medical dispensaries. If recreational retailers are allowed in a city it is a local decision whether to concentrate or disperse the facilities. Recreational marijuana retailers are regulated by the OLCC.

Recreational marijuana retailers are allowed as permitted uses in the City's Community Commercial and Neighborhood Mixed-Use zones as shown on the attachment map. (Attachment G).

Recreational Marijuana Producers

Under ORS 475B.075, and OLCC regulations, recreational producers are limited based on whether growing occurs outdoors or indoors. Indoor grow operations are limited to 10,000 square feet per licensee and no more than one licensee may operate at a site or address. However, there is nothing in state law to prevent a large industrial space from being divided into multiple 10,000 square foot spaces with separate addresses. Outdoor grow operations are limited to 40,000 square feet per licensee. Producers may engage in both outdoor and indoor production, however operations may not exceed grow area limitations based on ratio applied by OLCC.

The Development Code identifies recreational marijuana producers (indoor and outdoor) as permitted agricultural/horticultural uses in the City's General Industrial and Light Industrial zones and land zoned Agricultural and Forestry and Exclusive Farm Use in the City limits as shown on the attached map. (Attachment H). As a result of adoption of the ordinance placing a temporary ban on recreational marijuana producers until August 5, 2016, the City cannot approve land use applications for recreational marijuana producers until the ban sunsets or is rescinded.

Recreational Marijuana Processors

Recreational marijuana processors are businesses engaged in preparing, compounding or converting marijuana into products, concentrates or extracts. Recreational marijuana processors do not include businesses engaged in packaging or labeling. Under state law, marijuana processors facilities that process marijuana extracts cannot locate in any area zoned exclusively for residential use.

Recreational marijuana processors are currently allowed as permitted uses in the City's General Industrial as shown on the attached map. (Attachment I) Processors must be licensed by the state under ORS 475B.090 and are regulated by the OLCC.

The category of recreational marijuana processing includes the following sub-categories:

- Cannabinoid edible processor;
- Cannabinoid topical processor;
- Cannabinoid concentrate processor; and
- Cannabinoid extract processor

OLCC regulates recreational marijuana processing. OAR 845-025-3230 identifies acceptable and prohibited methods of processing and requires safety checks prior to commencing processing. State law also requires proper handling storage of any solvent, gas or other chemical used in processing in accordance with material safety data sheets, establishing emergency procedures in case of fire, chemical spill, or other emergency.

Evaluation of applications for recreational marijuana processors requires a Type II (administrative) site plan review under existing regulations to ensure compliance with City code requirements including compatibility with surrounding uses in terms of building scale, impacts to designated historic resources and traffic/access needs.

Cannabinoid *Edible* Processor

Under OAR 845-025-3250, a cannabinoid edible processor may only process in a food processing establishment licensed by the Oregon Department of Agriculture. An edible processor may not locate in a restaurant, commissary, mobile unit, bed and breakfast, or warehouse.

Cannabinoid Edible Processors are similar to food processing under the City's Development Code. Food processors are permitted in the City's General Industrial zone. They are not permitted in the Light Industrial zone since food processing uses raw materials in the production process rather than production from previously prepared materials or components.

Cannabinoid *Extract* and *Concentrate* Processor

Under OAR 845-025-3260(3), a cannabinoid concentrate processor may use:

- A mechanical extraction process;
- A chemical extraction process using a nonhydrocarbon based or other solvent such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or
- A chemical extraction process using the hydrocarbon based solvent carbon dioxide; provided that the process does not involve the use of heat over 180 degrees or pressure.

The method of extraction is an important consideration for assessing compatibility with surrounding land use and amount of separation (buffering) from other uses, if any, to maximize safety. Under OAR 845-025-3260(2)(a), a processor with an endorsement to make cannabinoid extracts may not use pressurized canned butane. However, other forms of butane storage and use are permitted. Butane is related to propane and is very flammable and explosive. Butane is used in a variety of industrial processes including as a refrigerant and in glass making.

The use of carbon dioxide for extraction is an accepted practice and has less of a safety risk compared with butane.

Recreational Marijuana Wholesalers

Recreational marijuana wholesalers purchase marijuana items for resale to a person other than a consumer. Wholesalers must be licensed under ORS 475B.100 and cannot be located in a in an exclusively residential zone.

Recreational marijuana wholesalers are identified as permitted uses in the General Industrial and Light Industrial zones as shown on the attachment map (Attachment J). The Development Code does not regulate recreational marijuana wholesalers differently than any other wholesaling activity.

The OLCC permits a recreational marijuana wholesaler to transport and store marijuana items on behalf of other marijuana licensees. This includes usable marijuana from a producer, marijuana waste from a producer or other marijuana licensee, and cannabinoid concentrates, extracts, and products from a processor.

State law and the OLCC regulate the transport of marijuana items to and from a wholesaler but does not appear to address how much marijuana may be stored at a warehouse or type of building construction (for example concrete tilt-up, CMU or stick built). The City of Hillsboro requires concrete tilt-up or concrete masonry unit (CMU) construction in certain industrial zones.

Evaluation of applications for recreational marijuana wholesalers requires a Type II (administrative) site plan review to ensure compliance with City code requirements including compatibility with surrounding uses in terms of building scale, impacts to designated historic resources and traffic/access needs.

Marijuana Testing Laboratories

Under state law a marijuana testing laboratory may obtain samples of marijuana items from licensees for testing purposes. Under the City's Development Code marijuana testing laboratories are classified as Office. If a laboratory includes a manufacturing component it is classified as Research and Development.

Office is a permitted use in the Neighborhood Commercial, Community Commercial Zone and Town Center zones. Office is a limited use in the Neighborhood Mixed Use, General Industrial and Light Industrial zones. Research and Development is a permitted use in the General Industrial and Light Industrial zones and a conditional use in the Town Center Transition zone. Research and Development is not permitted in the Neighborhood Commercial, Community Commercial and Neighborhood Mixed Use zones.

SECTION THREE: MARIJUANA FACILITY REVIEW PROCESS

Applications for marijuana related activities are currently reviewed through administrative site plan review. The reason for this the Development Code requires site plan review for any change of use or new development of vacant sites. At a minimum a new marijuana facility will be a change of use triggering site plan review.

The purpose of site plan review is to promote the general welfare and enhance the appearance and function of the City by careful attention to site planning. Site plan review focuses on how a particular use will be developed with attention to design elements of a project.

Since site plan reviews focus on the physical aspects of how a site will develop, the review criteria focuses on compliance with development standards such as parking, access, building mass and scale, impacts to unique or distinctive natural features, and impacts to designated historic resources. In contrast, a conditional use approval focuses on livability issues such the risk of developing an attractive nuisance and the potential for trespass on adjacent properties. In other words, livability and offsite impacts are addressed through conditional use review but not through site plan review. The differences between site plan review and conditional use review is discussed further in Section Four in relation to the PSAC and EDC recommendations.

SECTION FOUR: PSAC AND EDC RECOMMENDATIONS

At the request of the Mayor, the Public Safety Advisory Commission (PSAC) discussed time, place and manner regulations for marijuana facilities on April 27th. PSAC is charged with advising City Council regarding public safety, service levels, fiscal budgetary impacts and sustaining safe and livable neighborhoods.

Also at the request of the Mayor, the Economic Development Commission (EDC) met on May 5th to discuss time, place and manner regulations. The EDC makes recommendations to City Council on business development strategies for the betterment of the City. The EDC endorsed the PSAC recommendations described below.

PSAC, and subsequently EDC, adopted five recommendations:

1. No open grow of marijuana for recreational production in the city limits of Forest Grove.

2. All marijuana activities shall not be permitted in mixed-use zones or residential zones.

3. All marijuana activities are not allowed within 1,000 feet of a school (public or private), city parks and libraries.

4. Any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.

5. Any marijuana activities shall be conditional uses in the affected zone.

The Forest Grove School District School Board adopted a resolution on May 23, 2016, requesting that the Forest Grove City Council prohibit all marijuana operations of any kind within 1,000 feet of a school consistent with the PSAC and EDC recommendation. As noted in the resolution, state law does not prohibit marijuana production near schools (Attachment B).

Members of the Forest Grove Parks and Recreation Commission reached consensus to endorse the PSAC recommendations. The Parks and Recreation Commission is primarily interested in prohibiting marijuana related activities near parks and recreation facilities. The full Commission will take formal action to adopt a motion on this matter at their next regular meeting in June.

The PSAC and EDC recommendations are discussed in more detail below.

1. No open grow of marijuana for recreational production in the City limits of Forest Grove.

As stated above, research demonstrates Forest Grove is the only city in Washington County that allows for open production/growing. Forest Grove currently allows open growing as an agriculture/horticulture use in the General Industrial and Light Industrial Zones. Open growing is also allowed in the AF-20 and EFU lands outside the urban growth boundary but inside the city limits. These lands are adjacent to residential zoned land.

There are several examples of ongoing agricultural use on industrial zoned land in the City.

Outdoor production of marijuana has different characteristics than traditional agricultural crops. Although deemed safe, flowering marijuana creates a noticeable odor that may generate odor complaints from adjacent properties. For example, The City of Denver reports t. about 30% of the odor complaints their code enforcement office receives are about marijuana odors emanating from industrial areas away from most homes, schools and parks (source: Denver Department of Environmental Health from USA Today Article, dated August 11, 2014).

Property owners with indoor operations can address odors through carbon filtration, but outdoor operations do not provide that opportunity. Due to possible odors, outdoor growing near schools, parks, libraries, industrial areas, and residential zones could result in code enforcement complaints which are largely unenforceable. As such, staff considers odor from outdoor grow as being unmitigatable.

State law and regulations also imposes additional requirements on the outdoor cultivation of marijuana that do not apply to other crops. The OLCC requires licensees of a marijuana facility to have adequate security measures in place to protect public safety, prevent diversion and prohibit access to minors. In addition, licensees must have alarm and video surveillance systems and restrict public access.

Recreational marijuana producers must provide additional security measures to prevent public access and obscure from public view all areas of marijuana production. This requirement may be satisfied by:

- Having an approved security plan which demonstrates to OLCC that a producer will effectively prevent public access and obscure from public view all areas of marijuana production;
- Fully enclosing indoor production on all sides so that no aspect of the production area is visible from the exterior; or
- Erecting a solid wall or fence on all exposed sides of an outdoor production area that is at least (8) eight feet high.

When considering additional time, place and manner regulations for outdoor marijuana production, cities must determine whether or not the security measures required by state law and the OLCC are adequate in an urban area. Marijuana is a high value crop and marijuana facilities operate on a cash only basis. Does a minimum 8 foot tall solid wall or fence, along with an alarm system and video surveillance, provide adequate security for outdoor production operations in a city environment?

Given the characteristics associated with outdoor production, there is a rationale and legitimate basis for additional time, place, and manner regulations for this type of marijuana facility. PSAC and EDC approached this issue by recommending a prohibition against the outdoor production of marijuana in the city limits.

Considering the PSAC and EDC recommendation, the policy question for the Planning Commission is whether the City should completely ban outdoor marijuana growing within the city limits or restricted to certain zoning districts such as the agriculture zoned lands. The agricultural zoned lands in the city limits are adjacent to land zoned for residential development. As such, there is potential for odor complaints associated with marijuana production from nearby residents.

2. All marijuana facilities shall not be permitted in mixed-use or residential zones.

The recommendation is to slightly change the City's March 28 regulations to prohibit all types of marijuana facilities in all mixed use and residential zones.

Under the City's March 28 regulations, only recreational retail sales are allowed in the Neighborhood Mixed Use zone. Furthermore, within the Neighborhood Mixed Use zone, recreational retail sales are restricted to the commercial village center with planned development approval.

The Development Code amendments adopted on March 28, 2016 prohibit all marijuana facilities in residential zones.

Prohibiting marijuana activities in the Neighborhood Mixed Use zone is consistent with Council direction of precluding marijuana facilities in residential districts. While Neighborhood Mixed Use is not a residential district it allows residential uses and under current restrictions recreational retail sales of marijuana would be allowed in close proximity to residential areas due to the limited size of commercial areas in the Neighborhood Mixed Use zone. The proposal prohibits marijuana facilities from establishing in close proximity to residential areas.

3. All marijuana facilities are not allowed within 1,000 feet of a school (public or private), city parks and libraries.

This recommendation would prohibit medical and recreational marijuana facilities within 1,000 feet of a school, park or library as shown on the attachment map (Attachment K). Under state law medical dispensaries and recreational retail operations may not locate within 1,000 feet of a school. This recommendation expands the restriction to medical and recreational processing, producing, and wholesalers and also expands the buffer separation to include parks and libraries. Each of type of marijuana facilities has different characteristics that should be taken into account when establishing a buffer requirement. For example, outdoor and indoor growing operations have very different characteristics as explained further below.

The following table provides an evaluation of how Recommendation #3 relates to the seven marijuana related activities.

Activity	Comments
Medical Dispensary	State law currently imposes a 1,000 foot separation area between medical marijuana dispensaries and schools. The rationale is to limit access to the dispensary grounds by children. State law does not impose a separation requirement between medical dispensaries and parks or libraries. State law imposes a 1,000 foot separation area between individual medical marijuana dispensaries. The separation requirement has the effect of dispersing dispensaries within a community.
Recreational Retail	State law currently imposes a 1,000 foot separation area between recreational retailers and schools. The rational is to limit access to the retailer's grounds by children. State law does not impose a separation requirement between recreational retailers and parks or libraries.
Medical Production (outdoor)	State law does not impose a separation requirement between medical marijuana producers and schools, parks or libraries. ORS 475B.428 limits the outdoor production of medical marijuana plants to 12 mature plants in residential areas and 48 mature plants in non-residential zones. Under the City's Development Code, medical marijuana production is permitted in the City's General and Light Industrial zone and agricultural lands outside the urban growth boundary but inside the city limits.

	Given the limitations on the number of mature plants allowed under a medical marijuana production registration, external off-site impacts such as odor will be limited. Adequate security measures are necessary to protect outdoor production. For outdoor production, state law requires video surveillance; alarm system and a solid wall or fence at least eight feet in height.
Medical Production (indoor)	State law does not impose a separation requirement between medical marijuana producers and schools, parks or libraries. ORS 475B.428 limits the indoor production of medical marijuana plants to 12 mature plants in residential areas and 48 mature plants in non-residential zones. Under the City's Development Code, medical marijuana production is permitted in the City's General and Light Industrial zone and agricultural lands outside the urban growth boundary but inside the city limits. Given the limitations on the number of mature plants allowed under a medical marijuana production registration, external off-site impacts such as odor will be limited.
Medical Processing	State law does not impose a separation requirement between medical marijuana processors and schools, parks or libraries. Medical marijuana processing facilities that process extracts cannot locate in an exclusively residential zone. The rational for a separation requirement between medical marijuana processors and schools is addressing safety concerns due to method of processing including possible use of chemicals and flammable and explosive gases such as butane. The Material Safety Data Sheets shows that butane is highly flammable and explosive.
Recreational Production (outdoor)	State law does not impose a separation requirement between recreational marijuana producers and schools, parks or libraries. Although deemed safe, flowering marijuana creates an odor that is noticeable. About 30% of the odor complaints coming into Denver's code enforcement office are about marijuana odors coming from largely industrial areas away from most homes, schools and parks (source Denver Department of Environmental Health from USA Today Article). Odor from indoor marijuana production is

	addressed in the Development Code by requiring through carbon filtration. Outdoor operations do not provide that opportunity. Allowing outdoor growing near schools, parks, libraries, industrial areas, and residential zones could result in unmitigated odor impacts. For outdoor production, state law requires video surveillance; alarm system and a solid wall or fence at least eight feet in height.
Recreational Production (indoor)	State law does not impose a separation requirement between recreational marijuana producers and schools, parks or libraries. Odor control for indoor marijuana producers is current required by the Development Code. This limits possible external impacts to neighboring properties. Therefore, a separation requirement must be based on some other tangible reason addressing the operational characteristics of the activity.
Recreational Processing	State law does not impose a separation requirement between recreational marijuana processors and schools, parks or libraries. Recreational marijuana processing facilities that process extracts cannot locate in an exclusively residential zone. The rationale for a separation requirement between recreational marijuana processors and schools is addressing safety concerns due to method of processing including use of chemicals and flammable and explosive gases such as butane. The Material Safety Data Sheets shows that butane is highly flammable and explosive.
Recreational Wholesaling	State law does not impose a separation requirement between recreational marijuana processors and schools, parks or libraries. State law does not limit the size of a recreational marijuana wholesaler. Recreational marijuana wholesalers are located within buildings. The rationale for imposing a separation requirement is reducing impact from fire. This could be addressed by allowing marijuana wholesalers only within concrete tilt-up or CMU construction with a sprinkler system approved by the Fire Marshal. Such construction may also improve security. The City of Hillsboro currently requires concrete tilt-up or CMU construction for marijuana related activities in some industrial zones.

As stated above, medical marijuana dispensaries and retail marijuana activities are already not allowed within 1,000 feet of a public or private school based on property lines and "as the crow flies". The 1,000 foot buffer around libraries as proposed by PSAC and EDC would likely have little impact on the location of marijuana facilities. However, the 1,000 foot buffer from parks could preclude certain locations in the Community Commercial zone due to the presence of Rogers Park. The most significant potential impact of the proposed buffer separation from parks is within the General Industrial zone. Due to the location of land purchased for park near the AT Smith house off Elm Street and presence of the Forest Grove School District CREATE facility on Taylor Way marijuana facilities would be precluded in this part of the City. As a result, marijuana facilities could concentrate in the 24th Avenue and Yew Street area. The Planning Commission should consider the reasonableness of allowing indoor marijuana production in the Elm Street to provide a variety of locations for such activities.

4. Any marijuana processing or commercial[1] production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.

This recommendation intends to separate marijuana processing and recreational production from land zoned for residential use to address safety and possible external impacts. This recommendation would limit marijuana processing and recreational production to the area near Yew Street and 24th Avenue as shown on the attached map. (Attachment L)

Marijuana processing and recreational production have different operational characteristics that may or may not support a 1,000 foot separation requirement. The implications of this are discussed in more detail below.

Marijuana Processing: includes manufacturing edibles, concentrates and extracts for medical or recreational purposes. Such operations must comply with state law including applicable Oregon Department of Environmental Quality requirements for handling hazardous waste. Methods for recreational marijuana processing are regulated by the OLCC. Methods for medical marijuana processing are regulated by the OHA.

OAR 825-3260(3)(c), pertaining to recreational marijuana processing, and OAR 333-008-1800(3)(c), pertaining to medical marijuana processing, restricts marijuana concentrate processing methods to:

1. A mechanical extraction process;

2. A chemical extraction process using nonhydrocarbon based or other solvents such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol, or ethanol; or

[1] Based on further discussion with the PSAC Chair staff interprets the term "commercial" to apply to both non-personal medical and recreational marijuana production.

3. A chemical extraction process using the hydrocarbon based solvent carbon dioxide; provided that the process does not involve the use of heat over 180 degrees or pressure.

By definition a chemical extraction process means extraction using a nonhydrocarbon based solvent or hydrocarbon based solvent such as butane, hexane or propane. A processor with an endorsement to cannabinoid extracts may not use pressurized canned butane. This prohibition does not appear to extend to other forms of butane storage. Butane is highly flammable and explosive. The OSHA Material Data Safety Sheet is attached for more information about butane (Attachment L).

The flammable and combustible nature of butane, as described in the Material Safety Data Sheet, provides a basis for establishing separation between marijuana processors and residential zoned property. Based on information from the 2016 Emergency Response Guidebook, the initial Isolation area for a large butane spill is 330 feet (2016 ERG Initial Isolation of Butane, guide Number 115, UN 1011) (Attachment M). The downwind area is ½ mile. Therefore, 330 feet should be the minimum separation area between a building containing a marijuana processor and residential zoned areas. The policy question then is whether 1,000 feet is too restrictive based on the potential hazard.

"Commercial" Production: PSAC Recommendation #1 prohibits outdoor (open) recreational production in the city limits. Recommendation #4 expands on Recommendation #1 to apply to indoor and outdoor marijuana production for both medical and recreational purposes within 1,000 feet of a residential zone. Therefore, Recommendation #4 is more restrictive than Recommendation #1. The policy question inherent in Recommendation #4 is whether indoor recreational production for both medical and recreational marijuana should be prohibited within 1,000 feet of a residential zone.

As stated above, odors associated with growing marijuana could be adequately controlled through a condition imposed on indoor operations. The Development Code currently requires:

1. Installation of activated carbon filters on all exhaust outlets to the building exterior; and

2. Location of exhaust outlets a minimum 10 feet from the property line, 3 feet from exterior walls, and 10 feet above finished grades; and

3. Maintenance of negative pressure within the facility; or

4. An alternative odor control system approved by the Building Official based on a report by a mechanical engineer licensed in the State of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

So if indoor odors can be controlled, why are the committees recommending the PC and CC prohibit indoor recreational producers within 1000ft of a residential zone?

5. All marijuana facilities shall be conditional uses in the affected zone.

PSAC and EDC have recommended that the City review marijuana facilities through the conditional use approval process. For context, examples of conditional uses in commercial zones include:

- Major utility transmission facilities;
- Emergency services;
- Schools;
- Self-service storage; and
- Light industrial

Examples of conditional uses in industrial zones include:

- Major utility transmission facilities;
- Emergency services;
- Waste related activities;
- Detention facilities; and
- Mining

The review criteria for site plan review and conditional use approval are provided below for comparison. The policy issue is which process to apply to review applications for marijuana facilities taking into account the review criteria. The Planning Commission may propose additional criteria, specific to marijuana facilities, for City Council to consider. Additional criteria could address livability, compatibility and off-site impact concerns. For example, criteria could relate to screening, safety, or trespassing on adjacent properties. The conditional use approval process lends itself to addressing these concerns.

SITE PLAN REVIEW CRITERIA

Applications for site plan review are evaluated through a Type II (administrative) review process based on the following criteria:

A. The site development plan complies with all applicable standards of the base zoning district, any overlay district, and the applicable general development standards of Article 8.

B. The site development plan ensures reasonable compatibility with surrounding uses as it relates to the following factors:

   1. Building mass and scale do not result in substantial visual and privacy impacts to nearby residential properties; and

2. Proposed structures, parking lots, outdoor use areas or other site improvements that could cause substantial off-site impacts such as noise, glare and odors are oriented away from nearby residential uses and/or adequately mitigated through other design techniques.

C. The site development plan preserves or adequately mitigates impacts to unique or distinctive natural features including, but not limited to:

1. Significant on-site vegetation and trees;

2. Prominent topographic features; and

3. Sensitive natural resource areas such as wetlands, creek corridors and riparian areas.

D. The site development plan preserves or adequately mitigates impacts to designated historic resources.

E. The site development plan provides adequate right-of-way and improvements to abutting streets to meet the street standards of the City. This may include, but not be limited to, improvements to the right-of-way, sidewalks, bikeways, and other facilities needed because of anticipated vehicular and pedestrian traffic generation.

F. The site development plan promotes safe, attractive and usable pedestrian facilities that connect building entrances, public sidewalks, bicycle and auto parking spaces, transit facilities, and other parts of a site or abutting properties that may attract pedestrians.

CONDITIONAL USE CRITERIA

In contrast to site plan review, a conditional use application for a new use is reviewed by the Planning Commission through a Type III (Quasi-Judicial) process. Conditional use applications are reviewed based on the following criteria:

All of the following criteria must be met for approval of a new conditional use, or the major modification of an existing conditional use:

A. Physical Compatibility

1. The proposed use will be compatible with adjacent developments based on characteristics such as the site size, building scale and style, setbacks, and landscaping; or

2. The proposed use will mitigate differences in appearance or scale through setbacks, screening, landscaping, and other design features.

B. Public Services

1. The transportation system is capable of safely supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity and level of service, access to arterials, transit availability, on-street parking impacts, access requirements, neighborhood impacts, and pedestrian safety; and

2. Public services for water supply, sanitary sewer, stormwater disposal, police and fire protection are capable of serving the proposed use and previously approved uses.

C. Livability

The proposed conditional use will not have significant adverse impacts on the livability of nearby lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and

2. Privacy and safety issues.

Staff understands that PSAC and EDC recommended review of marijuana related facilities through the Conditional Use process in order to require a greater level of scrutiny and to better address potential off-site impacts.

SECTION FIVE: ALTERNATIVES

There are many alternatives for regulating the time, place and manner of marijuana related activities. This includes establishing reasonable separation requirements for between specific marijuana facilities and schools, parks, and residential zoned areas as shown on the attached maps (Attachment N and Attachment O). The attachments show buffers ranging from 100 feet to 1,000 feet. There will be an opportunity to review and discuss alternatives on June 6th.

SECTION SIX: MARIJUANA SALES TAX

ORS 475B.345 permits a city to impose a tax or fee of up to three percent on the sale of marijuana items by recreational retail facilities. To impose a tax or a fee on the sale of marijuana items, the city council must adopt an ordinance to be referred to the city's electors at the next general statewide election.

In addition, currently ten percent of state marijuana tax revenues will be distributed to cities on a per capita basis to assist local law enforcement in performing their duties under Measure 91. In subsequent years, such revenues will be distributed based on the number of marijuana facilities located in the jurisdiction (50% distributed by the number licenses for producer, processor, and wholesale activities and 50% based on the number of licenses for retail).

If a city prohibits the establishment of any marijuana facilities within the city limits, the city is ineligible to impose a tax or fee on the sale of marijuana items or receive any state marijuana tax revenues.

Under ORS chapter 475B, local regulations on marijuana related activities must be reasonable. If the local regulations are overly restrict and amount to an effective prohibition on establishing marijuana facilities within the city it is possible the city may be ineligible to impose a sales tax or fee and receive sale tax revenue.

SECTION SEVEN: PROPOSED DEVELOPMENT CODE AMENDMENTS

Staff identified possible amendments to the Development Code and Municipal Code related to marijuana facilities for the Planning Commission to consider (Attachment P). The identified amendments are intended to clarify requirements and bring Forest Grove's code requirements in line with other cities in Washington County. The amendments are summarized below.

Development Code Article 3

Based on the PSAC and EDC recommendation, staff proposes to amend Table 3-14 (Industrial Use Table) to address marijuana wholesalers. The proposal prohibits marijuana wholesaler in the Light Industrial zone. The City's Light Industrial zone is intended for high value manufacturing and processing with limited external impacts. High value manufacturing and processing generally employs more personnel than wholesale activities. Given this, the basis for prohibiting marijuana wholesalers in the Light Industrial zone is related to preserving land for high value manufacturing and to encourage light industrial employment in Forest Grove. Encouraging light industrial employment is consistent with the findings contained in the Land Use element of the Forest Grove Comprehensive Plan as stated below:

> "Strengths for Forest Grove in the [high technology] cluster include proximity to Oregon's largest high technology manufacturing center...Development within the high technology corridor of Washington County demonstrates that high technology firms favor large sites with ample room for expansion. The Forest Grove Economic Opportunity Analysis and 2011 Land Use Inventory indicates a lack of large sites designated for light industrial uses with services within the urban growth boundary." --Forest Grove Comprehensive Plan (2014), Page 58

Under the current propose, marijuana wholesaler are prohibited in the Light Industrial zone but allowed in the General Industrial zone subject to conditional use approval. Medical and recreational marijuana processors would also be prohibited in the Light Industrial zone consistent with the zone's purpose and intent.

Also based on the PSAC and EDC recommendations, staff proposes to amend Table 3-14 to specifically prohibit outdoor production of recreational marijuana in the Light Industrial, General Industrial and Business Industrial Park zones. Indoor production of

recreational marijuana would be a conditional use in the Light Industrial, General Industrial and Business Industrial Park zones.

Staff also recommends amending Table 3-10 (Development Code Section 10.3.320) to clarify that medical marijuana dispensaries will require conditional use approval and to recognize that medical marijuana testing laboratories fall under the "Office" use classification in the Development Code and will also require conditional use approval.

Development Code Article 8

Staff proposes to amend to Development Code Section 10.8.1100 pertaining to marijuana facilities. The purpose of the amendments is to:

- Clarify compliance with local land use permit conditions of approval for code enforcement purposes;
- Prohibit marijuana facilities on publicly owned lands;
- Clarify requirements for visibility from public rights-of-way and exterior lighting for marijuana facilities;
- Clarify requirements restricting public access to marijuana facilities other than dispensaries and retail outlets;
- Clarify requirements for restricting views into production or processing areas from building exteriors;
- Address hazardous materials and waste;
- Clarify requirements for odor control for producers, processors, wholesalers, and testing laboratories;
- Establish separation/buffer requirements from schools, parks, libraries and residentially zoned property;
- Require a pre-application meeting for marijuana related activities;
- State that the City shall not issue any other permit for development until final Conditional Use approval has been granted.

Development Code Article 12 (Definitions)

The purpose of the proposed amendments to Article 12 is to clarify and add definitions for marijuana facilities.

Staff is proposing to amend the definition of Agriculture/Horticulture to clarify that indoor agriculture and horticulture are allowed activities:

(A): Agriculture/Horticulture: ~~Open areas~~ *An area (open or enclosed)* devoted to the raising of *plants*, fruits, vegetables, nuts, nursery stock and/or flowers; may include on-site sales of products grown on the site. *Agriculture/Horticulture includes hydroponic agriculture within buildings*. Excludes nurseries, which are classified under Outdoor Sales (see 10.12.130(D)(5)).

Add marijuana related definitions:

- Recreational marijuana producer;
- Recreational marijuana processor;
- Recreational marijuana wholesaler;
- Marijuana testing laboratories; and
- Marijuana retailer

The definitions are shown on Attachment P.

SECTION SEVEN: FINDINGS

The proposed recommendations for time, place and manner regulations for marijuana facilities are based on the operational characteristics associated with the facilities including:

Odor: Flowering marijuana plants create a noticeable odor. A USA Today article, dated August 11, 2014, indicated that 30% of code enforcement complaints in Denver, Colorado are related marijuana growing operations in industrial areas.

Safety: Marijuana processing uses methods for extraction that involves highly flammable substances including butane.

Security: Marijuana industry is a cash only business unlike other industrial activities. The cash only nature of the business warrants a higher level of scrutiny. The outdoor production of marijuana requires a high level of security in an urban environment to ensure protection of this high value crop.

Based on a survey conducted by staff, all other Washington County cities either prohibit or effectively prohibit the outdoor growing of marijuana in industrial zones.

The basis for prohibiting marijuana wholesalers in the Light Industrial zone is related to preserving land for light industrial employment consistent with the Land Use element of the Comprehensive Plan.

Although the Forest Grove Comprehensive Plan does not specifically address marijuana related activities, the proposed amendments to the Development Code are consistent with the following policies of the Comprehensive Plan:

Land Use Industrial Policy 7: Provide that industrial activity shall be separated from established residential neighborhoods and all future residential development, and require either natural or man-made buffers between industrial and residential land. This policy is support by establishing separation (buffer) distances between marijuana related industrial activities and residential areas as proposed by PSAC and EDC.

Land Use Industrial Policy 15: Implement development standards to promote the efficient use of industrially zoned land. This policy is supported by prohibiting marijuana related production and wholesaler activities in the City's Light Industrial zone to preserve land for light industrial employment including high value manufacturing and processing activities.

Land Use Industrial Policy 21: Implement a land use concept to increase jobs-housing ratio in Forest Grove from 1.2 to 1.5. This policy is supported by preserving land zoned for Light Industrial activities that are more labor intensive than marijuana related wholesale and marijuana related production.

The Statewide Land Use Planning Goals do not address marijuana related activities and are therefore not applicable to the proposed Development Code amendments.

ATTACHMENTS

A. PSAC Letter Dated April 27, 2016 and EDC Endorsement
B. Forest Grove School District Resolution 15-16:R03
C. Current Article 8 Development Code Regulations for Marijuana Related Facilities
D. Medical Marijuana Dispensaries Eligible Areas Under Current Regulations
E. Medical Marijuana Production (Grow) Eligible Areas Under Current Regulations
F. Medical Marijuana Processor Eligible Areas Under Current Regulations
G. Recreational Marijuana Retailer Eligible Areas Under Current Regulations
H. Recreational Marijuana Producer Eligible Areas Under Current Regulations
I. Recreational Marijuana Processor Eligible Areas Under Current Regulations
J. Recreational Marijuana Wholesaler Eligible Areas Under Current Regulations
K. PSAC and EDC Recommendation Schools, Parks, Libraries Buffer
L. OSHA Material Data Safety Sheet for Butane
M. 2016 Emergency Response Guidebook, Isolation Area for Butane Screenshot
N. Separation/Buffer Area Alternatives (Schools, Parks and Libraries)
O. Separation/Buffer Area Alternatives (Residential Areas)
P. Proposed Development Code Amendments

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Consider the PSAC, and EDC recommendations pertaining to time, place and manner regulations for marijuana facilities to include in the Development Code;

2. Endorse or modify the PSAC and EDC recommendations for adoption by City Council. Alternatives include:
    - Altering the PSAC and EDC recommendation prohibiting open grow of marijuana for recreational production in the city limits of Forest Grove. This could include allowing outdoor grow or restricting outdoor to specific zoning districts;
    - Modifying the PSAC and EDC recommendation prohibiting all marijuana activities in mixed use or residential zones;
    - Changing the PSAC and EDC recommendation prohibiting all marijuana activities within 1,000 feet of a school (public or private), city parks and libraries. This could include imposing different buffering requirements;
    - Modifying the PSAC and EDC recommendation prohibiting medical and recreational marijuana processing and recreational production, whether enclosed or not, within 1,000 feet of a residential zone. This could include different buffering requirements;
    - Altering the PSAC and EDC recommendation to require conditional use review for any marijuana facility. This could include continuing review through site plan review;
    - Modifying the proposed marijuana development standards shown on Attachment N to address additional concerns or issues; and

3. Accept or modify the staff recommendations pertaining to Development Code text amendments (Attachment P).

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ATTACHMENT 2

EMERGE
law group
805 SW Broadway, Suite 2400, Portland, OR 97205

CORINNE S. CELKO
Admitted in Oregon
(503) 467-0396
corinne@emergelawgroup.com

June 6, 2016

Thomas Beck, Chair
City of Forest Grove Planning Commission
PO Box 326
Forest Grove, OR 97116-0326

Re: File No. 311-16-00034-PLNG; Proposed Distance Requirements for Marijuana Producers

Dear Chair Beck and Members of the Planning Commission:

This office represents Jon Burnett and Ryan Lundahl. Mr. Burnett and Mr. Lundahl own property located at 2336 9th Avenue in the City of Forest Grove, which is within the City's Elm Street industrial area (the "Property"). They seek to locate a recreational marijuana production facility at the Property, and they had been working closely with City staff to obtain approval for such use prior to these proceedings for the consideration of time, place, and manner regulations for marijuana businesses. The purpose of this letter is to request that the Planning Commission recommend to City Council that no distance requirements, or very limited distance requirements, shall apply to marijuana producers, consistent with State law. Please include this letter in the official record of these proceedings.

As you may know, the City of Forest Grove Public Safety Advisory Committee ("PSAC") has recommended 1,000-foot buffers between marijuana producers and schools, parks, libraries, and residential zones. We understand that the PSAC proposed these distance requirements to meet the concerns of residents with regard to prevention of access to minors and livability. Notably, however, the State has already implemented a strong and effective regulatory system for marijuana businesses, with one of the primary goals being the prevention of distribution of marijuana to minors. Under State law, there are **no** distance requirements for marijuana producers. The only distance requirements under State law are for marijuana retailers, which are considered to be more prone to access by minors using fake IDs.

As discussed in more detail below, State law already provides significant protection against access to minors and protection of livability for residents. Furthermore, the requirement that marijuana producers be located at least 1,000 feet from any school, park, or residentially-zoned property is unduly restrictive and will prevent the opportunity for marijuana producers, such as Messrs. Burnett and Lundahl, to locate in the City's Elm Street industrial area, which Planning Staff notes in its Staff Report is the type of area best suited for a marijuana production facility. For these reasons, we respectfully request that the Planning Commission remove or reduce the distance requirements for marijuana producers recommended by the PSAC.

Oregon's Marijuana Regulatory System

Under the U.S. Deputy Attorney General's memo to federal prosecutors, dated August 29, 2013 (the "Cole Memo"), it was determined that jurisdictions which have enacted laws legalizing marijuana and which have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution,

sale, and possession of marijuana should not be subject to federal enforcement efforts because such jurisdiction is less likely to threaten federal enforcement priorities. The Cole Memo is attached for your convenience. The first enforcement priority listed in the Cole Memo is "Preventing the distribution of marijuana to minors." Cole Memo, pg. 1.

In order to comply with the Cole Memo, the State of Oregon, through the Oregon Liquor Control Commission ("OLCC"), has established rigorous standards for marijuana producers. With regard to prevention of minors' access to a marijuana production facility, state laws and regulations provide ample protection in the form of strict security requirements. First, minors are prohibited from being an employee of a marijuana production facility and from being on the licensed premises of a marijuana producer without a chaperone who is over 21 years of age. Second, all marijuana producers are required to secure their facilities through the use of a comprehensive surveillance and alarm system. The state requires that this system consists of a combination of cameras, motion sensors, and alarms, which will ensure that any person inside or directly outside of the facility may be monitored and identified. Third, the state requires that commercial-grade locks are used on every external door to the facility. These security requirements have been put in place to ensure that minors, or any person who is not authorized to enter the facility, may not do so. If individuals manage to access the facility illegally, the video and alarm system will ensure that they are swiftly caught or identified for future apprehension.

Despite these strong and effective safety standards mandated by the State, the PSAC is proposing additional distance requirements. The distance requirements that would preclude the use of the Property as a marijuana production facility are discussed below.

PSAC Proposed Distance Requirement for Schools and Parks

PSAC's draft proposed regulations for marijuana facilities, at section 10.8.1130(D), provide that "a marijuana producer, processor, warehouse or testing laboratory may not locate within 1,000 feet of a school park, or library. If any portion of a parcel is within 1,000 feet of a school, park or library the entire parcel is considered ineligible for any marijuana related activity." The distance requirement is recommended by the PSAC and the Forest Grove School District, on the justification that this requirement will cause the least impact on livability and safety.

Impact on Safety

A 1,000-foot distance requirement between marijuana producers and schools or parks will foreclose the use of any property in the Elm Street industrial area, without promoting the City's goal of preventing minors' access to marijuana. The buffers of the Community Alternative Learning Center and the recently created park on the grounds of the Alvin T. Smith House will prevent marijuana related businesses from locating in this area. The school is separated from the majority of this industrial area by railroad tracks, the school takes access by way of Taylor Road, and the school's fence prevents students from easily accessing Elm Street. A student would have to trespass through other industrial sites or traverse the train tracks in order to access the Elm Street industrial area.

Additionally, the safety of visitors to the nearby park should not be impacted by a marijuana production facility at the Property. The Property will utilize an industrial building and the marijuana production facility will

operate as any other industrial facility. Furthermore, such impacts to safety will be mitigated by the state's rigorous security requirements, as detailed above.

Impact on Livability

A 1,000-foot distance requirement from schools and parks will not enhance livability for the school and park that are within 1,000 feet of the Property. The school is approximately 900 feet away, and any odor coming from the Property would have to pass through a large industrial site prior to mixing with the school's air. Furthermore, the air will have been treated before exiting the Property, in compliance with the City's existing requirement of an odor control system. There will be no impact on school livability that the school does not already suffer from permitted industrial businesses in the Elm Street industrial area.

The same is true for the park on the grounds of the A.T. Smith House, which was established only recently and is adjacent to an existing industrial zone. There will be no impact on park livability that the new park will not already suffer from permitted industrial businesses in the adjacent industrial zone and the Elm Street industrial area. Any odors from the marijuana production facility will be eliminated or mitigated by the City's existing requirement of an odor control system, and the marijuana production facility will look like any other industrial facility.

PSAC Proposed Distance Requirement for Residential Zones

The draft proposed regulations for marijuana facilities, at section 10.8.1130(E), provide that "A marijuana producer, processor, warehouse or testing laboratory may not be located within 1,000 feet of any property zoned primarily single family or multifamily residential (SR, R10, R7, R5, RML, RMH, NMU). If any portion of a parcel is within 1,000 feet of property zoned primarily single family or multifamily residential the entire parcel is considered ineligible for any marijuana use." This distance requirement is recommended by the PSAC on the justification that this requirement will cause the least impact on livability and safety. However, as noted by the Planning Staff in their report, at page 15, the odor control currently required by the Development Code will limit possible external impacts on neighboring properties. They further state that a separation requirement must be based on some other tangible reason addressing the operational characteristics of the activity.

Impact on Safety

There will be no significant impact on the safety of nearby residential zones due to a marijuana production facility on the Property. Any issues regarding potential break-ins or other theft will be mitigated by state-required security measures as described above. The Property will take vehicle access semi-directly from Highway 47, and no vehicles will be required to pass through any residential area to reach the facility. This will reduce the potential for traffic impacts and not generate any additional truck traffic in such residential areas. There is also no heightened risk of fire for marijuana production as compared to other industrial uses, and likely a lower fire risk due to the high-CO2 environments and humidity associated with cannabis production. Any fire risk to residential areas will be further mitigated by the fact that Highway 47 separates the Property from any residential areas.

Impact on Livability

A 1,000-foot distance requirement from residential zones will not tangibly enhance the livability of the residentially-zoned properties that are located within 1,000 feet of the Property. The closest residential zone is located across Highway 47, approximately 350 feet from property line to property line, and the closest point of the proposed marijuana production facility would be approximately another 100 feet. Any odor that exits the

Property must pass through another industrial site, and will mix with exhaust odors from the busy highway, prior to entering the air space of any residential zone. Furthermore, the air will have been treated before exiting the Property, in compliance with the City's existing requirement of an odor control system.

Furthermore, the Forest Grove Comprehensive Plan Land Use Industrial Policy 7 provides that industrial activity shall be separated from residential development and require either natural or man-made buffers between industrial and residential land. We believe that this policy is already satisfied without the need for additional separation requirements. Highway 47 is a man-made buffer, which is the reason why the Elm Street industrial area is located across the highway from the nearest residential zone. Furthermore, the odor control requirements could reasonably be considered to be a type of man-made buffer that will satisfy the comprehensive plan.

Conclusion

We believe that the PSAC's concerns regarding impacts to safety and livability are well-justified in order to ensure that the City of Forest Grove remains a safe and livable community. However, for the reasons stated above, we also believe that the State and existing City development standards allow the City to achieve the goal of a safe and livable community. Not only are the proposed distance requirements unnecessary to achieve such goal, but they also create a barrier to entry into this new industry and prevent well-suited industrial land from being utilized for marijuana production. Therefore, we respectfully request that you recommend to City Council that no distance requirements shall apply to marijuana producers, consistent with State law. In the alternative, understanding that compromise may be necessary to ensure community wellness, we request that you reduce the proposed distance requirements to between 100 feet and 300 feet, which is a level that would enable use of the Property for marijuana production.

Sincerely,

Corinne S. Celko

Attachment

cc: Clients

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

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

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

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

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

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

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

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

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

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

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

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

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

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

Testimony before the Forest Grove Planning Commission
Friends of Historic Forest Grove
June 6, 2016

A. This list is intended to provide further testimony on several of the "policy questions" identified in the staff report on the Planning Commission Recommendation to the City Council on time place and manner restrictions for marijuana facilities

1. The "reasonableness of allowing marijuana production in the Elm Street Area, to provide a variety of locations for such activities." (p. 16). For the reasons stated in the testimony of Melody Haveluck, it is unreasonable to permit indoor production in the Elm Street area. The area contains a school. The area is designated as a "light industrial park" by its CC&Rs, and therefore is worthy of protection for light industrial uses which may generate economic growth. The area contains a public park and an irreplaceable Historic Educational Resource, which should both be protected for the public interest.

2. Development Code Article 3: Light Industrial Zones v. General Industrial Zones. (p. 21). City staff proposes to preserve "Light Industrial Zones" for high value manufacturing and processing with limited external impacts, while allowing marijuana wholesale, and indoor grow operations in "General Industrial Zones," subject to conditional use approval. The commission should also consider that the Taylor Industrial Park (otherwise known as the Elm Street property) is designated a "light industrial park" by its own CC&Rs. While the city may have zoned that land "General Industrial" it is restricted to light industrial use. It also contains a park, a school, and a historic educational resource. The Elm Street Property, is not an area in the City that should be designated as the pot growing and wholesaling area of town.

3. Development Code Article 12 (Definitions) (p. 23). This proposed amendment seems to allow any grow operation (open or enclosed) devoted to the raising of pot "plants" to conduct on-site sales of products grown on the site, akin to a farm stand on a farm property. Is that the intent? If not, then this language should be clarified. In this highly regulated area, we do not wish to permit onsite public sales of marijuana products within indoor or outdoor grow operations.

4. Regarding attachment P: 10.12.150 definitions M11 and M12: These two definitions of indoor and outdoor grow operations seem to permit someone to claim they were "indoor" if they provide artificial lights in a greenhouse. It would seem that indoor grow operations should need to be fully enclosed, not just inside a greenhouse with artificial lights. These definitions seem very loose.

5. Proposed Marijuana Development Standards, Attachment P. The following edits are proposed.

    a. 10.8.1120 G: Insert "Historic Educational Resource" after the word "park."
    b. 10.8.1120 H: Insert the word "not" between may, and locate. This is a typo.
    c. 10.8.1130 D: Insert "Historic Educational Resource" after the word "park."
    d. Define "Historic Educational Resource" as "A historic landmark, building or facility that is preserved (publicly or privately) to educate the public about the history of our location or region."

Testimony before the Forest Grove Planning Commission
Melody Haveluck, President of the Friends of Historic Forest Grove
June 6, 2016

A. Re: Planning Commission Recommendation to the City Council on time place and manner restrictions for marijuana facilities.

1. The Friends of Historic Forest Grove support the time place and manner recommendations of the Public Safety Advisory Commission (PSAC) and the Economic Development Commission (EDC).

2. If those recommendations are followed, our concerns for our own security and the safety of school children and families in the area surrounding both the AT Smith House and the public park being designed next to it will be satisfied. No marijuana activities would be permitted within 1,000 feet of the nearby FG Alternative School, or the within 1,000 feet of the park property next door to the AT Smith House. Our historic resource would be protected by those buffers.

3. Should this commission consider *alternatives* to the PSAC recommendations, to allow any marijuana activities within those buffer zones, we would urge the commission to create a 1,000 foot buffer to protect "Historic Educational Resources" for the same reasons that the City has proposed buffers around "parks, libraries, and schools". Like a library, a school, or a park, the AT Smith House is a learning center where families, children, and communities can gather. Yet it is different, and deserves even greater protection than ordinary parks and other centers of learning, *because it is an irreplaceable resource*. The AT Smith House could be forever lost in a fire. It could be forever diminished by criminal behaviors, and could be forever forgotten if families decide not to frequent the "pot growing" part of town. Resources like the AT Smith property must be preserved, and protected by time place and manner restrictions. Therefore, if this commission decides to reduce the size of the 1,000 foot buffer zones around parks and schools, or to allow particular marijuana uses inside the General Industrial Zone adjacent to the AT Smith House, we seek special protections for Historic Educational Resources.

4. The rationale for the protection of Historical Educational Resources, would be as follows:

    a. To limit access to marijuana activity grounds by children coming to learn about history, just like at schools.
    b. To protect places where children, families and communities may gather and learn away from drug influences (legal or illegal), as with schools and parks.
    c. To protect important historical and teaching resources from security threats that may be presented by their proximity to a marijuana activity, including fire damage, vandalism, trespassing, criminal conduct, and nuisance odors.
    d. To preserve the historical context, if necessary, from modern day intrusions such as strong odors from growing or smoking of marijuana, or tagging done by vandals attracted to the site.

5. For these reasons, we support PSAC's recommendations, including: (1) No open grow operations within the city limits; (2) No marijuana activities in mixed-use or residential zones, (3) No marijuana activities within 1,000 feet of a school (public or private), city parks and libraries (and we would add to that list, "Historic Educational Resources" such as the AT Smith House, as well as land purchased to <u>become</u> a city park), (4) No processing or commercial production within 1,000 of a residential zone, and (5) the condition that all marijuana activities should be treated as a "conditional use" in the affected zones.

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ATTACHMENT 3

1. CALL TO ORDER:

WORK SESSION:

Planning Commission Present: Tom Beck, Carolyn Hymes, Sebastian B. Lawler, Lisa Nakajima, Dale Smith, Phil Ruder and Hugo Rojas.
Staff Present: Jon Holan, Community Development Director; James Reitz, Senior Planner; Dan Riordan, Senior Planner; Ashley Driscoll, City Attorney; Marcia Phillips, Assistant Recorder.

Chairman Beck called the work session to order at 6:03 p.m. He explained that the work session was to facilitate the public hearing to follow. There would be no testimony or arguments – just the facts.

A. Appeal of Community Development Department's decision to deny the application for agricultural use (outdoor marijuana grow operation). Forest Grove Storage Site Review – File # 311-16-000005-PLNG.
B. Planning Commission recommendation to City Council on time, place and manner restrictions for marijuana facilities.

Chairman Beck called for the staff report.

Mr. Reitz explained that on February 23, 2016, the applicant, Wayde Elliott, submitted a site plan review application for an indoor and outdoor vehicle storage area, which would be an expansion of the existing use located at 620 Elm St. He stated this was a Type II review process in which Staff renders a decision following a public notice and comment period. Notice of this proposal was mailed to surrounding property owners on February 29, 2016. The public comment period expired March 15, 2016. The Friends of Historic Forest Grove (FHFG) submitted the only public comment.

On March 17, 2016, the applicant submitted a revised application including an "Open Grow Agricultural Use". The additional proposed use warranted a second notice period. City staff mailed the second notice on March 17th with public comments required to be submitted by March 31, 2016. He stated that, as before, the FHFG submitted the only public comment.

Reitz explained that on April 18, 2016, staff issued a preliminary notice of decision approving the application. As the notice provided, the preliminary approval was not final until the end of the appeal period, which extended through May 2, 2016.

Reitz stated that on April 28, 2016, the City Council adopted an ordinance prohibiting the establishment of recreational marijuana production facilities within the City of Forest Grove and declared an immediate effective date. He explained that because the immediate effective date of April 28th preceded the site plan approval appeal period expiration date of May 2nd, the City issued a modified notice of decision on April 29th. Reitz said the modified decision provided that Section 10.1.125 of the Forest Grove Development Code requires all actions initiated under the

Code be consistent with applicable regional, state and federal laws. Reitz stated that because the proposed agricultural use (marijuana grow) is prohibited by ORS 475B.800 which the City implemented by adopting Ordinance No. 2016-10, the City denied the site review application. City staff mailed the notice of the modified decision to the applicant and the FHFG as the only affected parties. He said the new notice of decision had an appeal period extending through May 13, 2016.

Reitz explained that on May 9, 2016, the applicant appealed the denial, and although the Applicant's appeal did not specifically state the issues being appealed, the City determined it met the technical requirements for an appeal.

Reitz stated that on May 12th, 2016, FHFG filed an appeal, which also did not specifically state the issues being appealed, but the City again determined that the appeal met the technical requirements for an appeal. Reitz showed maps and pictures of the site, and answered questions from the Commission.

Chairman Beck asked how legal it is to change the rules.

Ms. Driscoll stated that the "fixed goal post rule" still applies. She said that during the application process this operation became illegal with the State and the City, and even though the application was approved they would not be allowed to have a grow operation (unless they were "grandfathered in").

Time, place and manner regulations: she reviewed the quasi-judicial and legislative procedure for the Commissioners. Driscoll explained that for a ban to be permanent it must go before the voters.

Mr. Holan said that there is a revenue aspect to this. He explained that the City cannot collect revenue if any marijuana activity is totally banned.

Ms. Driscoll stated that the City banned recreational marijuana production, and that ban sunsets on August 5th. She said the City Council put the ban into effect until time, place and manner is in place – more or less a moratorium. Driscoll explained that on a Federal level, the Feds will not use their resources to pursue prosecution if a local jurisdiction approves. She stated there is a 1,000-foot buffer around schools per State law.

Mr. Riordan gave an overview of the Public Safety Advisory Committee's (PSAC) recommendation which includes:

Recommendation # 1 – No open grow of marijuana for recreational production in the city limits of Forest Grove. (Medical production not addressed by recommendation)

Recommendation # 2 – All marijuana activities shall not be permitted in mixed use zones or residential zones. (Personal grow cannot be prohibited under state law)

Recommendation # 3 – All Marijuana activities are not allowed within 1,000 feet of schools (public or private), city parks and libraries

Recommendation # 4 – Any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.

Recommendation # 5 – Any marijuana activities shall be conditional uses in the affected zone. (Currently reviewed through site plan review process)

Mr. Riordan explained that if marijuana activities are not allowed within 1,000 feet of a park and If trails are included; this would effectively create a citywide ban due to location of these trails. He showed a map of the buffers, and explained that if a buffer area touches any part of a parcel, the whole parcel is included. Riordan said if the PSAC recommendation is adopted, the two medical marijuana dispensaries would be allowed to continue, and could later convert to recreational dispensaries through the OLCC process. He explained that some areas of the PSAC recommendation are not clear such as whether or not trails are included. Mr. Riordan explained that the recommendation in the staff report is the PSAC recommendation not a staff recommendation.

The work session ended at 6:46 p.m. and after a 15-minute break the Commission began the public hearings.

2. PUBLIC MEETING:

Planning Commission Present: Tom Beck, Carolyn Hymes, Sebastian B. Lawler, Lisa Nakajima, Dale Smith, Phil Ruder and Hugo Rojas.
Staff Present: Jon Holan, Community Development Director; James Reitz, Senior Planner; Dan Riordan, Senior Planner; Ashley Driscoll, City Attorney; Brandi Walstead, City Program Coordinator; Marcia Phillips, Assistant Recorder.

2.1 PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS: None.

2.2 PUBLIC HEARING:

A. Appeal of Community Development Department's decision to deny the application for agricultural use (outdoor marijuana grow operation). Forest Grove Storage Site Review File # 311-16-000005-PLNG.

Chairman Beck read the hearing procedures and asked for disclosure of any conflicts of interest, ex-parte contacts, bias, or abstentions. There was only one disclosure. Chairman Beck stated that

he is a member of the Friends of Historic Forest Grove, but believed he could make a fair decision on this matter. He then asked if there were any challenges from the audience. There were none. For the audience's benefit, Beck explained the meaning of opponent, proponent and other and how they applied to this situation. He stated that the Commission would hear from the applicant on the appeal, and then decide whether or not the second appeal by the Friends of Historic Forest Grove (FHFG) would need to be addressed since the FHFG was basically appealing the appeal. He then called for the staff report.

Mr. Reitz explained that on February 23, 2016, the applicant, Wayde Elliott, submitted a site plan review application for an indoor and outdoor vehicle storage area, which would be an expansion of the existing use located at 620 Elm St. He stated this was a Type II review process in which Staff renders a decision following a public notice and comment period. Notice of this proposal was mailed to surrounding property owners on February 29, 2016. The public comment period expired March 15, 2016. The Friends of Historic Forest Grove (FHFG) submitted the only public comment. On March 17, 2016, the applicant submitted a revised application including an "Open Grow Agricultural Use". The additional proposed use warranted a second notice period. City staff mailed the second notice on March 17th with public comments required to be submitted by March 31, 2016. He stated that, as before, the FHFG submitted the only public comment.

Reitz explained that on April 18, 2016, staff issued a preliminary notice of decision approving the application. As the notice provided, the preliminary approval was not final until the end of the appeal period, which extended through May 2, 2016.

Reitz stated that on April 28, 2016, the City Council adopted an ordinance prohibiting the establishment of recreational marijuana production facilities within the City of Forest Grove and declared an immediate effective date. He explained that because the immediate effective date of April 28th preceded the site plan approval appeal period expiration date of May 2nd, the City issued a modified notice of decision on April 29th. Reitz said the modified decision provided that Section 10.1.125 of the Forest Grove Development Code requires all actions initiated under the Code be consistent with applicable regional, state and federal laws. Reitz stated that because the proposed agricultural use (marijuana grow) is prohibited by ORS 475B.800 which the City implemented by adopting Ordinance No. 2016-10, the City denied the site review application. City staff mailed the notice of the modified decision to the applicant and the FHFG as the only affected parties. He said the new notice of decision had an appeal period extending through May 13, 2016.

Reitz explained that on May 9, 2016, the Applicant appealed the denial, and although the Applicant's appeal did not specifically state the issues being appealed, the City determined it met the technical requirements for an appeal.

Reitz stated that on May 12th, 2016, FHFG filed an appeal, which also did not specifically state the issues being appealed, but the City again determined that the appeal met the technical requirements for an appeal. Reitz showed maps and pictures of the site, and answered questions from the Commission.

APPLICANT

Wayde Elliott, 34509 Millard Rd., Warren OR 97053. Mr. Elliott said he would just like to give another perspective. He explained that he did not actually own the marijuana grow operation – he is leasing the ground to the grower. Elliott stated that beginning in March he tried to give a Land Use Compatibility Statement (LUCS) to staff on several occasions, but each time they said the LUCS needs to come from the Oregon Liquor Control Commission (OLCC). He said each time he emailed OLCC they stated he needed to give it to City staff because they did not have the time to do it. Elliott said he did a Google search about who to give the LUCS to for recreational marijuana, and what came up was if he wanted to apply for a recreational marijuana license the LUCS should be submitted to the local jurisdiction and local fees paid. He said on the LUCS statement that is to be handed in it says, "On this form submit to the appropriate city or county planning department". So he explained that he was under the assumption that was State law, and he tried to get that to Staff and was not able to do that. Elliott said he has emails from OLCC stating that it does go to Staff. He said he thought if he had been able to submit the LUCS a little bit earlier, this whole thing probably would not have come to fruition.

Mr. Elliott said the other thing he wanted to make note of is on March 28th there was a motion to ban outdoor marijuana grow by the City Council, which failed 6-1 essentially allowing outdoor marijuana grow, which he said led him to believe this was going to be a viable project. He spent close to $20,000 on planning to provide the space to lease out, and had a secured lease for five years that was $30,000/yr. for the two plots which was another loss. Elliott said when he started this whole process, this was an outright permitted use in that area with no gray areas – no conditional use - it was an outright permitted use. Elliott said he assumed it would be O.K. to do this. After getting an approved site design review plan for everything – both the RV storage and that – he said he assumed it was done. He stated that what he did find out was there was a special planning session during the work session and the first reading came out at the work session he was not a part of because he assumed it was done. He said that three days later there was a special City Council meeting to have a second reading to ban outdoor marijuana grow. Elliott said this did not seem like coincidence to him just days before his final site design review appeal period ended and it would have gone into effect. He said he has talked to several people about how often emergency City Council meetings are held, and was told it is very, very rare. Elliott said he feels like all this was done to single him out, and it just does not feel right to him.

Elliott said the Planning Commission is the governing body, and he knows the right decision will be made, and he will accept what it is. Eliott said he felt like he was railroaded, because when he started the process, it was an outright permitted use. He said he felt like he tried to follow all the steps to get it done, and it did not happen.

Mr. Elliott said somebody had made comments, and there were several comments to City Council about smell complaints. He said there was also a comment about a cash only business, and stated that the cash only business was not true. He said the people who were leasing his ground had a security contract for $6.7 million which was not going to be paid in cash. It was going to be paid by check or cashier's check.

Mr. Elliott said he wanted to comment about smell. He said there was something in the Commission's packet that focuses on 'USA Today' down below from Seattle that says the smell from marijuana is not harmful. He said the City does not have any regulations for odors that are not considered harmful. It also says that for departments to take action on an odor it would have to be from the type of business that creates an odor or fume that can be harmful to your health. He

said this is an agricultural plant – it is a flower. Mr. Elliott said he wants to be a good neighbor, and to do the right thing. He said he is doing what he can, but to regulate something based on an odor from a natural plant - he does not agree that it is fair. Mr. Elliott requested that if the Commission does decide to deny the outdoor marijuana grow operation, he would like to ask that the Commission approve the RV storage portion of the application.

In response to a question from Commissioner Lawler regarding concerns about security, Mr. Elliott stated that there is a fence around the entire site, and he would essentially build a fence inside the existing fence. The second fence would be around the grow area. He said OLCC has very strict guidelines regarding how tall the fence has to be, for screening and so forth. He said he would follow OLCC laws/regulations. Elliott said if there were to be a grow operation, this site is secure with a double fence, 32 cameras on site, on a dead end road, and there is no residential around there. He said there was some concern about being near a school. Elliott said he Googled the distance, and it is over 1,000 feet.

Chairman Beck stated the applicant has requested that the RV storage be looked at separately from the grow operation, and he asked if anyone else wanted to comment on the grow part of this application.

Ann Niven, 3130 Lavina Dr., Forest Grove, OR. Ms. Niven asked for the definition of outdoor versus indoor grow operations.

Chairman Beck explained that indoor has to be totally enclosed within a building, and if it is indoor you can control everything including the smell. He said there is obviously better security inside a building.

Ms. Driscoll stated that outdoor/indoor grow determination depends upon whether or not artificial lighting is being used.

Ms. Niven asked if anyone knew of an available building with a removable roof, which could be closed up at night and opened during the day.

Chairman Beck explained that the City Attorney indicated that would be an outdoor grow situation.

Melody Haveluck, 2433 14th Ave., Forest Grove, OR. Ms. Havelett stated that she is president of Historic Friends of Forest Grove, and was present with Mr. Drew to answer any questions.

Bill Drew, 2027 17th Ave., Forest Grove, OR. Mr. Drew stated that he is a member of Historic Friends of Forest Grove (HFFG). He explained that the group had prepared a one page letter to be added to the record.

Chairman Beck asked Mr. Drew to read the short letter (Handout # 4), and then distribute it.

Mr. Drew read the letter which stated the HFFG's concerns: about safety for children and families who come to the historic site, about match/dry/fire, and about trespassers/vandalism. He stated that the community did not choose the location for the historic A.T. Smith House, and it needs to be protected.

Amber Buhler, 1614 Elm St., Forest Grove, OR. Ms. Buhler stated that she is a close neighbor to the grow site, and a member of the Board for the Community School. She explained that her husband is a member of the Forest Grove Historical Society. Buhler stated that she is a professor of Pharmacy at Pacific University, and wanted to make some clarifications regarding marijuana use. She stated that children gaining access to marijuana plants would not activate the plants by eating them, because the plants must be heated to activate them. Buhler stated that Butane is used in processing marijuana, but it is also used for many industrial applications. She explained that that everyone has Butane in their homes in the form of a refrigerant in their refrigerator, bottles for camping, etc. She stated that there is no medical reason to subject marijuana to more stringent regulations than alcohol – breweries in Forest Grove are located close to schools and parks. In reference to the historic A.T. Smith House, Ms. Buhler said marijuana was grown and sold back in that era. She said there have been security issues at the historic house in the past, but a highly secure facility would make it more secure rather than having no one around to monitor. She said medical grows and medical dispensaries cannot be banned. Buhler said medical grow and recreational grow use the same plants. In summary she said there are no medical or historical reasons to ban marijuana activities.

David Morelli, 1320 Cedar St., Forest Grove, OR. Mr. Morelli stated that state law says grow operations must obey all laws, and he believes staff made the correct decision per City laws, because at that time there was a ban on recreational marijuana grows.

Carol Alery, 4200 Pacific Ave., Forest Grove, OR. Ms. Alery said she has witnessed the harmful effects through personal experience in her own home. She said marijuana has an effect on the smoker and those around. She stated marijuana should not be considered close to a school – we care about our children.

Chairman Beck asked if anyone wanted to speak about the RV storage portion of the application.

MaryJo Morelli, 1320 Cedar St., Forest Grove, OR. Ms. Morelli stated that during heavy rains the berm located on the RV storage site funnels significant amounts of water onto neighboring properties to the south. She stated her concern about what might be in that runoff with more RVs stored there.

Commissioner Lawler asked whether or not the applicant would be required to build storm drains.

Chairman Beck explained that Clean Water Services (CWS) must approve runoff and where it goes. He said a property owner must regulate water that runs off his property.

Ms. Morelli stated that more building will increase runoff.

Chairman Beck said the Commission would address her comments during their discussion.

Mr. Reitz said the applicant submitted a storm drainage report with his application. He explained that it was not the applicant who placed the berms – it was the previous owner and they were not approved. Reitz explained the site plan impervious surface runoff mitigation process. He said any runoff must be directed to the water quality facility. Reitz explained that natural drainage can drain to other property, but once it has been interrupted by impervious surface, it must be

mitigated.

David Morelli, 1320 Cedar St., Forest Grove, OR. Mr. Morelli stated that the berm on the property was installed on the property after the RV storage facility occupied the site.

REBUTTAL: The applicant declined a rebuttal.

Chairman Beck closed the public hearing at 7:57 p.m.

COMMISSION DISCUSSION:

Commissioner Ruder stated that the law for marijuana should be the same as for alcohol. He said the decision to ban was a last minute one and not fair, but this is not the body to review that.

Commissioner Nakajima said when an applicant is the first one in and the City is trying to get up to speed, she thought it was appropriate for the City Council to approve the temporary ban.

Commissioner Hymes expressed her sympathy for the applicant, and said the decision was made but whether the Planning Commission would have made that decision is uncertain.

Commissioner Rojas also expressed his sympathy for the applicant.

Chairman Beck said he added his voice of sympathy for the applicant, but said we must follow rules from those above us. He suggested the RV storage be divided from the marijuana grow and a condition be added about runoff mitigation.

Mr. Reitz explained that the RV storage portion of the application met all of the requirements, and the runoff goes through our Engineering Department.

Mr. Holan suggested a possible condition that the applicant shall comply with all CWS and City requirements for runoff.

Commissioner Lawler stated his concern that sometimes our town can be over regulatory. He said the City needs to look at how we treat investments in Forest Grove, and not discourage people from investing here.

Chairman Beck asked for a motion.

Commissioner Hymes made a motion to uphold staff's decision to approve the RV storage portion of the application and to deny the marijuana grow operation portion of the application with conditions as noted. Commissioner Smith seconded. Motion passed 7-0.

Commissioner Ruder clarified that this is not a ban.

Chairman Beck called for a short break before beginning the second public hearing.

B. Planning Commission recommendation to City Council on time, place and manner restrictions for marijuana facilities. File # 311-15-00034-PLNG

Chairman Beck opened the second public hearing at 8:14 p.m. He explained that this was a Legislative because the decision would apply citywide rather than to a single property. The Chairman explained that marijuana has been legalized by the state and the City needs to figure out how to deal with it. Beck called for the staff report.

Mr. Riordan stated for the record that staff received a letter from Corinne Celko, Emerge Law Group, which stated that no buffers are warranted around marijuana activities. He said there was a memo attached to the letter from the department of Justice. The memo stated that from the federal prospective they will not put many resources into areas where marijuana is legal.

Mr. Riordan gave a brief background. He explained that, under State law, cities may impose reasonable time, place and manner restrictions on marijuana related activities, but the term "reasonable" is subjective and is interpreted to mean restrictions must not effectively create a ban. He said restrictions should address identifiable impacts and not be based on supposition, and local restrictions may add to but cannot relax State imposed requirements. Riordan explained that cities cannot prohibit possession of marijuana related items for personal use (State law allows for up to four marijuana plants for personal use.) He said there are 7 marijuana related activities regulated by the State through the Oregon Health Authority (OHA) and the Oregon Liquor Control Commission (OLCC). These include: medical marijuana dispensary, producers and processors and also recreational marijuana retailers, producers, processors and wholesalers. Riordan explained that a total ban on any one marijuana related activities makes a jurisdiction ineligible to collect sales tax revenue.

Mr. Riordan said the code amendments adopted by the City Council on March 28, 2016 were intended to be an initial set of restrictions to address immediate needs. The amendments set standards for marijuana activities other than medical dispensaries and prohibited non-personal marijuana activities in residential zones such as marijuana production and processing, home occupations, and retail sales through "corner stores".

Mr. Riordan explained that experience indicates that additional restrictions on marijuana related facilities including marijuana production and processing may be warranted. He said as other cities adopt restrictions for marijuana related activities, it has become apparent that Forest Grove's requirements are less restrictive. Riordan explained that this could result in industrial land in Forest Grove being used for marijuana related activities rather than industrial activities. He further explained that compared with industrial uses, agricultural activities such as open grow marijuana production have lower property tax value due to limited improvements, and because marijuana is a high cash value crop it suggests that marijuana activities may not convert to other uses over time. He explained that additional restrictions may be warranted until potential impacts such as odor (outdoor grow) and hazardous materials for processing (Butane) are better understood.

Commissioner Ruder commented that you would think industrial users would out bid agricultural users for the industrial land – the market is somehow broken.

Mr. Holan said marijuana is a high value crop, and in other cities it has displaced other industrial

uses. He explained there is a small investment in physical improvements for outdoor grow operations.

Commissioner Ruder asked why would a grower want to buy industrial land inside the City (expensive) when he could get cheaper land outside the City.

Mr. Holan said perhaps it was the availability of water.

Commissioner Ruder stated that he looked at the reports mentioned, and they referred to indoor grow operations, and in his research he could find nothing on outdoor grow.

Mr. Riordan showed a chart of which zones allow marijuana activities, and listed the characteristics of marijuana facilities both medical and recreational.

Chairman Beck clarified that 48 plants are allowed for medical marijuana grow operations, but the Commission can change that if it is decided to do so.

Ms. Driscoll clarified that the Commission cannot allow 56 plants, but can restrict it to 36 plants. She said that under State law processors doing extracts are monitored more closely due to volatility. She said revenue from recreational retail sales can go up to 3%, and a lot of cities are referring this sales tax to the voters.

Mr. Riordan showed a map of buffers, and what other cities have done. He then showed a list of the PSAC recommendations, and alternatives for the Planning Commission to consider along with alternative buffers. He indicated a question came up as to whether trails were included as public parks in the PSAC recommendation. He explained the marijuana related activities review process. He said Site Plan Review is an administrative (staff) review appealable to the Planning Commission. The criteria focuses on physical aspects of a development such as compliance with development standards, building mass & scale, impact to natural resources, impact to historic resources and site access. He said the Conditional Use Permit process is a quasi-judicial (Planning Commission) review appealable to City Council and focuses on the physical compatibility, public services and livability. Riordan showed the amendments that would need to be made to the Development Code, and the review criteria on which the Commission will base its decision.

Mr. Riordan explained that the Commission can (1) endorse the PSAC recommendations pertaining to time, place and manner restrictions for marijuana related facilities and activities to include in the development Code, (2) modify the PSAC recommendations with revised or no buffer requirements for adoption by City Council, or (3) accept or modify the staff recommendations pertaining to development Code Amendments.

Mr. Holan said he wanted to clarify something. He stated that we are dealing with a legislative matter, dealing with community values, dealing with things beyond just an absolute, analytical reason. Holan said what we are trying to do is offer rationales – there may be other rationales. He said if PSAC testifies tonight, maybe they can give reasons for the recommendations they came up with, but they are probably more on the community values side than on the analytical side.

Chairman Beck agreed that was helpful.

PUBLIC TESTAMONY

Chairman Beck asked Ms. Buhler not to repeat her testimony from the previous public hearing.

Amber Buhler, 1614 Elm St., Forest Grove, OR. Ms. Bueller agreed not to repeat what she had already testified. She said one of the arguments is the lower property tax rate, but if we had enough industrial users willing to use our industrial land and to make our industrial land improvements then that would perhaps be a valid argument but we do not, so there is not a reason for the ban. She said to her knowledge we do not have a significant number of people wanting to come into Forest Grove to make substantial improvements to our industrial land. She stated that there are other ways to process marijuana without using Butane. Bueller stated that not liking something is no reason to ban it. She said as far as outdoor grow vs. indoor grow, the only reason she has heard is people do not want to see it, and that seems to be motivated by personal opinion that we should regulate what people see. She stated that there is no scientific or health reason to ban any cannabis related businesses/industries, and there should be no buffers around grow areas. She said retail sales should be treated like those of any other neurological substance.

Commissioner Nakajima asked Ms. Bueller if she had personal experience with the smell of pot plants growing . Ms. Bueller stated that she did not.

Tim Rippe, 3334 Edgeview Lane, Forest Grove, OR. Mr. Rippe said he is a member of PSAC. He explained that PSAC did not discuss trails at all, and it may have been brought up at the Parks & Recreation Commission. Rippe said commercial production refers to both medical and recreational. He said regarding health and safety, PSAC's concern was where children are or where children's activities may occur. Rippe said there is not an abundance of information about whether or not being around marijuana is healthy, so it is smart of the Commission to consider this as they make their decision. Rippe said it is easier to make restrictions and then back out of them later, rather than make a decision without the information we need. He said safety and crime was their main concern.

Chairman Beck asked if PSAC considered the differences between each of the four parts; producing, processing, etc.

Mr. Rippe said yes they did.

Chairman Beck said in terms of the ones prior to retail (processing & wholesale) for recreation what was the reason to think that their location, whether near children or not, made any difference. He said it is processed in a building and wholesale is done in a warehouse.

Mr. Rippe said he did not think they put any restrictions on wholesale, except when PSAC said no marijuana activities in mixed-use and residential areas, and that would apply to all seven categories. He said he thought Mr. Holan was correct when he talked about taking into consideration the perception people have – people do not like marijuana. He said people do not like open burn either, so the City is going in the direction of trying to put restrictions on open burn operations because of odor, etc. so it is not unheard of for the City to put restrictions on things people do not like - whether or not they are not healthy. He said there has not been a lot of testimony with regard to the Economic Development Commission. Rippe said there was concern

about businesses deciding to move away from Forest Grove if there are these activities next door to them – it would not necessarily be perceived as being good for their businesses. He said there are a lot of things to consider here, so giving the City Council more time to look at all of these things is wise and appropriate.

To clarify Chairman Beck said in terms of processing and wholesaling PSAC was not recommending anything other than it not be allowed in residential and mixed-use areas.

Mr. Rippe said that was correct. He said the buffer zone applied to parks, schools, libraries and residential zones for all four activities.

Chairman Beck said his question was why have a buffer zone around a park that happens to overlap an industrial zone for processing which is done inside a building.

Mr. Rippe said the rationale is, because there are children that could be present in the park the buffer applies.

Chairman Beck said he understood that, but what is the relationship between children in a park and 500 feet away having a building where something inside is going on.

Commissioner Lawler said he thought this was addressing the cultural stigma that pot is being processed in that building.

Chairman Beck explained that what he was saying is for processing and wholesale these things go on inside the building, and there is no interaction except for employees – unless they put a big sign out. It is just another big building in an industrial area.

Commissioner Lawler said people know Chaucer Foods has raspberries, TTM has circuit boards, etc.

Mr. Rippe said PSAC was looking for anything that was around schools, because it would be difficult to write a recommendation stating a distance of 1,000 feet from this school, but in another area it did not apply.

Carol Alery, 4200 Pacific Ave., Forest Grove, OR. Ms. Alery stated that community values are more important in our City than revenue. She stated that since we have to have dispensaries and so forth in Forest Grove, we have to have buffer zones – you have to consider where families are, and the rise in crime. She said marijuana has a moral impact, and we need to stand for good values for families and children, and what the next generation is going to do.

Corinne Celko, Emerge Law Group, 805 SW Broadway, Ste. # 2400, Portland, OR. Ms. Celko stated that she and her two associates were there on behalf of the property owner who owns the property at 620 Elm St. in the General Industrial zone and directly west of to Saki One. She said their comments would be directly related to the PSAC recommendation for 1,000 foot distance requirements from schools, parks and residential areas. Celko said PSAC mentioned the two bases for those recommendations were safety and livability. Celko said they would address both the safety and livability issues, and then close with some other neighboring cities and what they are doing with their marijuana regulations.

Ms. Celko said first of all was safety. She said it was important at this time to note that Oregon decided that marijuana would be legal, and gave the Oregon Liquor Control Commission (OLCC) the ability to regulate marijuana activities this was based in part on the Cole memo from the Federal Deputy Attorney General attached to Ms. Celko's letter (Handout # 2) that addressed federal prosecutorial priorities regarding marijuana enforcement. She said the number one priority listed in the Cole memo was preventing the distribution of marijuana to minors. Celko said what the memo says is in states where marijuana is legal, and where those states implement strict, strong effective regulatory systems, federal prosecutors shall not go in and prosecute in those states. She said the basis for that is those strong, effective regulatory systems will take care of these federal enforcement priorities with number one being the prevention of the distribution of marijuana to minors. So within that regulatory system the OLCC has implemented very strong, effective security requirements for marijuana grows. She said she was only talking about indoor grows not wholesaling, processing or retail. She said for marijuana grows the State has prohibited minors from being an employee of a marijuana grow, and any minors on the premises must be accompanied by a chaperone over the age of 21. She said secondly all marijuana producers are required to secure their facilities with property surveillance alarm and security systems, and this includes cameras, video recorders, and an alarm system that is connected to directly alert local authorities or the owners if there has been a breech. Celko said thirdly the State requires commercial grade locks on every external door. She said these three requirements are directly related to the prevention of distribution of marijuana to minors. She said the OLCC has further lighting requirements to make sure the areas are well lit, and that there is no surreptitious crime going on. Celko said she believes these security requirements go above and beyond what any other normal industrial facility would have. In terms of access to cash, since it has been mentioned that marijuana is a cash business, an indoor grow like this is not open to the public – there are no customers that go to the site, and no cash is being delivered to the site. She said in this particular situation the product is placed into vehicles within the industrial building. The vehicle will enter the building through a roll-up door and then the roll-up door will close. After the product is loaded, the vehicle will take the product directly to the wholesalers and dealers – so there are no large amounts of cash on site at any time. She said there are also natural buffers that are important to note in regard to the schools and residential areas. The railroad runs between the school involved here and the grow site. The school is accessed from Taylor St., so the only way a child could go from the school to the grow site would be to either trespass the other industrial zone properties or to traverse the railroad tracks. She said with regard to the residential zone properties that are within the proposed 1,000 foot buffer, Highway 47 is a natural buffer. She said any child, once they get through those natural buffers, the commercial grade locks, the motion sensors, the video recorders, the alarm systems all of those things are designed to prevent a child from getting inside and, on the awful chance that might happen, the video cameras allow the authorities to find out who those people are.

Ms. Celko said with regard to livability, one of the issues mentioned was odor control. She said it is important to mention here that, while the State may not have requirements, the City does. She said those odor control requirements are quite vigorous as well. The City requires a carbon filtration system and a negative air pressure within a facility for marijuana production. Celko said the carbon filtration system is used to clean the air, and the negative air pressure system makes it stable inside so no "non-clean" air gets outside. She said with regard to odor, even if some odor was able to escape from the building (even with the filtration system and negative air pressure) there is lots of land and lots of other odors it needs to go through to reach those areas. She said

this is in an industrial area, so the City has long ago decided that this area was planned for industrial uses, and other industrial uses are not odor-free, and other industrial uses are arguably not subject to such requirements as the City requires for marijuana production.

Ms. Celko said she wanted to mention in regard to some of the earlier comments, that this building would be built to standards like any other commercial/industrial grade building in an industrial area subject to the same development standards and it would look the same as others in an industrial area. She said it would have no signage, no flashing neon signs saying marijuana produced here. Celko said it is in an industrial park and would be just another building in an industrial area. In terms of fairness, when we look at this as a legal activity now, we do not see any other type of business requirements for other types of uses. She stated that the Saki One facility is directly next door and they have no requirement for buffers from schools and residential areas, and it can be argued that liquor is just as potentially harmful to children as marijuana.

Ms. Celko said with regard to crime and the comment that this is a high cash business or a desirable crop that is worth stealing, there are no distance requirements for banks which handle a lot of cash or jewelry stores which are valuable. So in terms of fairness, she said it seems like this is a legal activity, and the State has done its job in that it is preventing the distribution of marijuana to minors, and it should be treated just like any other legal activity in the City.

Finally, Ms. Celko said she wanted to add that other cities in the area, particularly Hillsboro, has a distance requirement from residential zones, institutional zones, and there was no distance requirements from schools, libraries or parks for marijuana production. This is due to the fact, as is mentioned in the staff report, that the State has no distance requirements for marijuana. She said the only State mandated requirement is between retailers and schools, and part of that is due to the fact that retail is visible – there is a chance that a child could go there. She said but for these other uses, such as indoor producers, there is less of a chance of that occurring and the State has recognized that and has not mandated any kind of distance requirement. She said it is recognized that the Commission is concerned about making the community safe and livable, and as a property owner in the community the applicant wants to keep it safe and livable. She said the applicant believes the State has done its job. Celko said the applicant asks that the Commission sticks with what the State has mandated and only require a distance requirement between retailers and schools, and either have no distance requirement for marijuana producers or, if you feel there is some justification for it, ask that you limit it to 100 to 300 feet. She said her final comment was some would say what is wrong with being more safe – what is the harm in an overabundance of caution. She said in this case when looking at this being a new legal industry, and that the City has already decided it is going to allow this industry inside the City limits, creating these kinds of distance requirements is unduly restrictive. Celko said it reduces opportunity for those who legitimately want to make a living.

Commissioner Lawler asked how many people these types of facilities employ.

Ms. Celko replied that it depends on the type of grow operation – how much production they have and the type of production process. She deferred to Mr. Burnett.

Don Burnett, 10651 Stevens Way, Happy Valley, OR. Mr. Burnett said they would employ 18-20 people with 24-hour security. He said they started their process in December 2015. There was one meeting December 20th and another on December 23rd to discuss the plan for developing the

site. He said after the meeting on December 23rd it was required that the applicant have a LUCS filled out and signed by the Community Development Director for indoor recreational grow. He said he has been cooperative in working in concert with the Planning Commission and all State laws and regulations, and with the endorsement of indoor recreational grow in the City of Forest Grove, and the LUCS agreement, he decided to move forward with the purchase of the propertywhich cost over $310,000 to purchase the land and $30,000 for architectural plans. Burnett said this dollar amount is significant to him and his family, and he plans to adhere to all City and State regulations and will operate this business with integrity. Burnett said he was also told that the City of Forest Grove would mirror the City of Hillsboro regulations, and they had at the maximum 100 foot distance requirements. He said the property met all criteria, so based on this information he respectfully requests a removal of the ban on recreational grow.

Bill Drew, 2027 17th Ave., Forest Grove, OR. Mr. Drew said he is a member of Friends of Historic Forest Grove, and gave a brief synopsis of his one page letter. He said he has looked at the PSAC recommendations and endorses them. He agrees with having no marijuana activities within 1,000 feet of the nearby park and Community School. He suggested a buffer around historic sites such as the A.T. Smith House, and said the A.T. Smith site deserves greater protection because it is irreplaceable – there is a need to protect and preserve. Drew said their group is seeking special protection for educational and historical sites from fire damage, trespassing, vandalism and odors. He said marijuana may have been legal in A.T. Smith's day, but he would not have had it growing in his yard. He said the Commission could look at the A.T. Smith site as a park, because it was purchased with funds that can only be used for a park. Drew said Page #23 - Article #12 - Definitions as amended suggests indoor/outdoor grow is appropriate by adding the word "plants". He said it may be appropriate for fruits and vegetables, but not appropriate for pot.

Mr. Riordan explained that the original definition could be interpreted to exclude indoor marijuana grows, so if growing marijuana is a legal activity then "plants" should be added.

Ms. Driscoll clarified by stating that a person would have to get a special license to be a medical marijuana dispenser or processor, and they cannot cohabitate.

Mr. Drew said he would expect these definitions to be tighter.

Chairman Beck replied that it was a reasonable expectation.

Mr. Drew said the definition is missing the word "not". Chairman Beck instructed staff to make that correction.

At 9:45 p.m. Commissioner Lawler excused himself to go to work.

David Morelli, 1320 Cedar St., Forest Grove, OR. Mr. Morelli said he wants to live in a full service city. He said it is important to make sure what we put in place can pay for services. He said there needs to be a balance of jobs to houses, and jobs for people other than police and fire. He said stuff going off the property (such as odor) needs to be regulated.

Ann Niven, 3130 Lavina Dr., Forest Grove, OR. Ms. Nivens said she is a member of PSAC. She said the working group did not consider trails. She explained that the group considered the

marijuana industry a bit more risky, so wanted to keep it in the General Industrial Zone to protect vulnerable children. Nivens said the recommendations were approved by PSAC in a 6-1 vote. She was the only dissenter, because she thought 1,000 feet was too great a buffer. She endorsed the idea of it being a Conditional Use Permit, so the public can weigh in on it at the public hearings and speak their minds. Nivens said there are a lot of community feelings that need to be considered – people should not feel disenfranchised.

Commissioner Nakajima asked Ms. Nivens if PSAC considered any other number for the buffer.

Ms. Nivens said they started at 50 feet.

Chairman Beck closed the public hearing at 9:58 p.m.

COMMISSION DISCUSSION:

Chairman Beck suggested that the Commission take the "easy ones" first.

Recommendation # 5- any marijuana activities shall be conditional uses in the affected zoning.

The Commission agreed that any marijuana activities shall be conditional uses in the affected zoning.

Recommendation # 1 – no open grow of marijuana for recreational production in the city limits of Forest Grove.

Commissioner Hymes stated that industrial land should not be used for recreational grows, because it is low yield revenue and we want a better tax base.

Commissioner Nakajima encouraged the City to be conservative to begin with in allowing outdoor grows inside the city. She stated that she did not want to see open grow inside the city limits.

Chairman Beck agreed it is not appropriate to use industrial land for grows due to the tax base – it would just be the equipment that would be tax.

Commissioner Rojas stated that he believed people should be allowed to grow marijuana inside the city limits.

Commissioner Smith said there should be no recreational marijuana growing inside the city limits.

Commissioner Ruder said he would be concerned if Forest Grove was the only city that allowed outdoor grows, and agreed he could live with this restriction.

Chairman Beck agreed that he did not love it either, but could live with it.

Consensus of the Commission was to prohibit open grow.

Recommendation # 2 – all marijuana activities shall not be permitted in mixed use zones or residential zones.

Chairman Beck made the comment that mixed use to him is an extension of the residential zone, so marijuana grows are not appropriate.

Commissioner Ruder said alcohol has ruined as many lives as pot, so it should have the same restrictions as places that sell alcohol.

Commissioner Smith said marijuana growing should not be allowed in residential areas, but was not sure about mixed use areas.

Commissioner Ruder agreed with the recommendation.

Recommendation # 4 – any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.

Commissioner Hymes said she thought the buffer is too large.

Chairman Beck said the General Industrial Zone is where he wants indoor grow, wholesale and processing. He said he sees no reason for any other restrictions other than keeping it in the industrial zone – the building would be the buffer.

Commissioner Hymes agreed.

Chairman Beck said it keeps it localized – it is just like any other industrial process.

Recommendation # 3- all marijuana activities are not allowed within 1,000 feet of a school (public or private), city parks and libraries.

Chairman Beck recommended allowing retail in the commercial zone with the State regulated buffer of 1,000 from schools. He said it centralizes it, and keeps it away from kids.

Commissioner Nakajima asked if marijuana grows were restricted to the General Industrial zone what impact would it have on 620 Elm St. (the applicant's property).

Chairman Beck explained that it would allow indoor grows with the building as the buffer.

Commissioner Nakajima commented that so people are not looking at solid walls of arborvitae, Conditional Use Permits will come before the Planning Commission.

Mr. Holan asked for clarification on retail – if it stayed as it is.

The Commission agreed to leave it as it is.

Mr. Riordan said staff would want to edit the Development Code to be consistent with the decision.

Chairman Beck listed the recommendations as discussed and agreed upon by the Commission.

- no open grow inside the City limits.

- any marijuana activities shall be conditional uses in the affected zoning.
- no marijuana activities in residential and mixed use areas
- marijuana indoor grows, wholesale and processing in the General Industrial Zone only
- retail sales are allowed in the commercial zone only with State restrictions

Commissioner Ruder made a motion to recommend to City Council the acceptance of the Public Safety Advisory Commission's recommendations on time, place and manner restrictions for marijuana facilities with revisions as noted File # 311-15-00034-PLNG. Commissioner Hymes seconded. Motion passed 6-0.

2.3 **ACTION ITEMS:** None.

2.4 **BUSINESS MEETING:**

3.1 **APPROVAL OF MINUTES:** Commissioner Nakajima made a motion to approve the minutes from the March 21st and May 2nd meetings. Commissioner Ruder seconded. Motion passed 6-0.

3.2 **REPORTS FROM COMMISSIONERS/SUBCOMMITTEES:**

3.3 **DIRECTOR'S REPORT:** Mr. Holan stated that the next Commission meeting will take place on June 20th and it will be a public hearing on a land use permit for a multi-family building on 21st & Hawthorne.

3.4 **ANNOUNCEMENT OF NEXT MEETING:** Next meeting will be held on June 20, 2016 at 7 p.m.

3.5 **ADJOURNMENT:** The meeting was adjourned at 10:25 p.m.

Respectfully submitted by:
Marcia Phillips
Planning Commission Coordinator

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ATTACHMENT 4

FOREST GROVE OREGON

NOTICE OF PLANNING COMMISSION RECOMMENDATION AND FINDINGS

TO: Affected Parties

FROM: Daniel Riordan
Senior Planner

DATE: June 9, 2016

RE: Planning Commission Recommendation and Findings Regarding Time, Place and Manner Restrictions for Marijuana Facilities

Planning Commission Recommendation and Findings: Decision 16-07
City File: 311-16-000034

This is your notice that on June 6, 2016, the Forest Grove Planning Commission voted 6-0 to recommend to City Council time, place and manner restrictions for marijuana facilities within the city limits. A copy of the Planning Commission Findings is attached.

In making their recommendation, the Planning Commission considered the review criteria for a Development Code text amendment (Section 10.2.630):

A. The text amendment is consistent with the relevant goals and policies of the Forest Grove Comprehensive Plan; and

B. The text amendment is consistent with relevant statewide and regional planning goals, programs and rules.

The City Council will conduct a public hearing to consider the Planning Commission's recommendations on June 27, 2016, and July 11, 2016, at 7:00 PM or thereafter. The public hearing will take place at the Forest Grove Community Auditorium (1915 Council Street).

Please contact me at (503) 992-3226 or driordan@forestgrove-or.gov if you have any questions.

Planning Commission Recommendation and Findings
Decision Number 16-07

Time, Place, and Manner Restrictions Pertaining to Marijuana Facilities
June 6, 2016

WHEREAS, the Oregon Legislature enacted House Bill 3400 (2015) now codified as Oregon Revised States (ORS) Chapter 457B; and

WHEREAS, ORS 457B.340 provides authority for local adoption of reasonable time, place and manner restrictions for certain marijuana facilities and activities; and

WHEREAS, City Council adopted Ordinance 2016-07, on March 28, 2016, amending Development Code Articles 3, 7 and 8 to establishing certain time, place and manner restrictions for marijuana facilities in the City of Forest Grove; and

WHEREAS, City Council adopted Ordinance 2016-10, on April 28, 2016, prohibiting the establishment of recreational marijuana producer locations within the City of Forest Grove until August 5, 2016; and

WHEREAS, adoption of Ordinance 2016-10 provided an opportunity for Planning Commission consideration of additional time, place and manner restrictions for marijuana facilities in the City; and

WHEREAS, on April 27, 2016, the Public Safety Advisory Commission (PSAC) adopted recommendations pertaining to additional time, place and manner restrictions for marijuana facilities for consideration by the Planning Commission; and

WHEREAS, on May 5, 2016, the Economic Development Commission (EDC) endorsed the PSAC recommendations; and

WHEREAS, the Parks and Recreation Board reached consensus in support of the PSAC recommendation for consideration in June 2016, to prohibit marijuana facilities within 1,000 feet of a park; and

WHEREAS, the Forest Grove School Board adopted a resolution on May 23, 2016 expressing support for the PSAC recommendation to prohibit marijuana facilities within 1,000 feet of schools; and

WHEREAS, the Planning Commission held a duly-noticed public hearing on June 6, 2016, to receive testimony and consider the PSAC recommendations; and

WHEREAS, after careful consideration of the recommendations made by PSAC, EDC, Parks and Recreation Commission, Forest Grove School District, the staff report dated May 27, 2016, and public testimony provided to the Planning Commission on June 6, 2016, the Planning Commission hereby makes the following recommendation to City Council pertaining to time, place and manner recommendations for marijuana facilities in the City of Forest Grove.

NOW, THEREFORE, be it further resolved, the Planning Commission of the City of Forest Grove recommends to the City Council adoption of time, place and manner restrictions for marijuana facilities, making the following findings in support of the recommendation:

Finding: on April 27, 2016, the Public Safety Advisory Commission adopted the following recommendations pertaining to time, place and manner restrictions for marijuana facilities in the City of Forest Grove:

1. No open grow of marijuana for recreational production in the city limits of Forest Grove.

2. All marijuana activities shall not be permitted in mixed-use zones or residential zones.

3. All marijuana activities are not allowed within 1,000 feet of a school (public or private), city parks and libraries.

4. Any marijuana processing or commercial production, whether enclosed or not, shall not be permitted within 1,000 feet of a residential zone.

5. Any marijuana activities shall be conditional uses in the affected zone.

Finding: on June 6, 2016, the Planning Commission held a duly-noticed public hearing to consider the PSAC recommendations.

Finding: on June 6, 2016, the Planning Commission, on a 6-0 vote, adopted a motion making the following recommendations for marijuana facilities in Forest Grove:

1. Prohibit open recreational production of marijuana within the city limits. This recommendation does not apply to personal outdoor growing or medical marijuana production.

2. Require Conditional Use review for marijuana facilities permitted in the City of Forest Grove.

3. Limit marijuana production, processing and wholesaling as conditional uses on land identified as General Industrial on the official zoning map.

4. Maintain state requirements for marijuana dispensary and retailer locations
    a. 1,000 foot separation between dispensaries;
    b. 1,000 foot separation between dispensaries and schools; and
    c. 1,000 foot separation between recreational retailer and schools.

5. Continue to allow medical marijuana dispensaries and recreational marijuana retailers in the Community Commercial zone subject to the requirements of state law.

6. Prohibit marijuana facilities on land zoned Neighborhood Mixed Use (NMU) on the official zoning map.

7. Modify the Development Code to implement the Planning Commission recommendations pertaining classification of marijuana facilities in the City of Forest Grove as follows:

Revise Development Code Section 10.3.520 (Use Regulations) as follows:

TABLE 3-14: Industrial Zones Use Table

USE CATEGORY	LI	GI	BIP
- General Industrial	N	P	L[8]
-Medical and Recreational Marijuana Processors	*N*	*C*	*N*
Wholesale Sales	P[8]/N[X]	P[8]/C[Y]	C
OTHER Agriculture / Horticulture	P[8]	P[8]	P
- Medical and Recreational Marijuana Producers (Outdoor)	*N*	*N*	*N*
- Medical and Recreational Marijuana Producers (Indoor)	*N*	*C*	*N*

P = Permitted L = Limited C = Conditional Use N = Not Permitted

[X] Wholesale activities for marijuana are prohibited in the LI zone.

[Y] Wholesale activities for marijuana requires a conditional use permit in the GI zone.

Revise Development Code Section 10.3.320 (Use Regulations) as follows:

TABLE 3-10
Commercial and Mixed Use Zones Use Table

USE CATEGORY	NC	CC	NMU
Office	~~P~~ L[18]	~~P~~ L[18]	L[16][18]

P = Permitted L = Limited C = Conditional Use N = Not Permitted

[7] Marijuana retailers are prohibited in the Neighborhood Commercial zone district and conditionally permitted within the Community Commercial zone district, consistent with the locational requirements of State law and compliance with the requirements of Section 10.8.1100 of this code.

[12] Medical marijuana dispensaries must be located consistent with the requirements of State law and comply with the provisions of Section 10.8.1100 of this code. Medical marijuana dispensaries are classified as a conditional use.

[18] Marijuana testing laboratories are prohibited in the NC and NMU and conditional uses in the CC zone.

MARIJUANA DEVELOPMENT STANDARDS

10.8.1100 GENERAL STANDARDS FOR ALL MARIJUANA FACILITIES

A. *The application shall demonstrate compliance with the locational requirements of ORS 475B and must maintain State certification at all times.*

B. *Marijuana-related activities are prohibited on publicly-owned lands.*

C. *Entrances and off-street parking areas shall be well-lit and not visually obscured from public view / right-of-way. Landscaping shall be continuously maintained to provide clear lines of sight from public rights-of-way to all building entrances. Interior building lighting, exterior building lighting and parking area lighting shall be of sufficient foot-candles and color rendition so as to allow the ready identification of any individual at a distance of no less than forty (40) feet. Exterior lighting shall be provided in accordance with required security measures and shall be continuously maintained.*

D. *The facility must provide for secure disposal or render impotent marijuana remnants or by-products, or items with marijuana residue of any kind.*

E. *All hazardous materials shall be stored and processed in a manner approved by the City Fire Marshal. Hazardous waste shall be disposed of properly through a properly licensed solid waste disposal or recycling facility.*

F. *A pre-application conference and conditional use approval (Development Code Section 10.2.200 et. seq.) is required for any marijuana producer, processor, wholesaler, or testing laboratory. A neighborhood meeting may be required as part of the pre-application process pursuant to Section 10.2.200 et. seq.*

G. *The City shall not issue any other permit for development until final Conditional Use approval has been granted.*

10.8.1120 MEDICAL MARIJUANA DISPENSARIES AND MARIJUANA RETAILERS

A medical marijuana dispensary and marijuana retailer activities shall comply with the following design standards and operational requirements in addition to all other applicable City requirements:

A. *May not be open to the public between the hours of 10:00 p.m. and 8:00 a.m.*

B. *Entrances and off-street parking areas shall be well-lit and not visually obscured from public view / right-of-way.*

C. *The facility must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the facility is prohibited.*

D. *Any modification to the site or the exterior of the building housing the facility must be consistent with the Design Standards of Section 10.8.700 et. seq.*

Security bars or grates on windows and doors are prohibited unless integrated into the design.

E. *The dispensary or retail operation may not have facilities for drive-up use.*

F. *The dispensary must provide for secure disposal or render impotent marijuana remnants or by-products, or items with marijuana residue of any kind.*

G. *A medical marijuana dispensary may not locate within 1,000 feet from a school (public or private). A medical marijuana dispensary may not locate within 1,000 feet of another medical marijuana dispensary. Distance shall be measured property line to property line.*

H. *A recreational marijuana retailer may not locate within 1,000 feet of a school (public or private). Distances shall be measure property line to property line.*

10.8.1130 OTHER MARIJUANA FACILITIES

The following requirements apply to marijuana-related wholesaler, processing, producers, and testing laboratories.

A. *facility must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the facility is prohibited. Views into a production or processing area or testing laboratory from the exterior of a building are prohibited.*

B. *Public access to a marijuana facility shall be limited to employees, personnel, and persons over the age of 21 legally authorized to conduct business with the operator.*

C. *All, producers, processors, wholesalers, and testing laboratories shall provide a method to control odors. Such facilities shall install and maintain enhanced ventilation systems designed to prevent detection of marijuana odor from adjacent properties or the public right-of-way. The systems shall include the following features:*

1. *Installation of activated carbon filters on all exhaust outlets to the building exterior; and*

2. *Location of exhaust outlets a minimum of 10 feet from the property line; 3 feet from exterior walls; and 10 feet above finished grade; and*

3. *Maintenance of negative air pressure within the facility; or*

4. *An alternative odor control system approved by the Building Official based on a report by a mechanical engineer licensed in the State of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.*

10.12.150 OTHER USE CATEGORY

(A): Agriculture/Horticulture: ~~Open areas~~ An area (open or enclosed) devoted to the raising of plants, fruits, vegetables, nuts, nursery stock and/or flowers; may include on-site sales of products grown on the site. Agriculture/Horticulture includes hydroponic agriculture within buildings. Excludes nurseries, which are classified under Outdoor Sales (see 10.12.130(D)(5)).

10.12.210 MEANING OF SPECIFIC WORDS AND TERMS

M6. A facility registered with the Oregon Health Authority or for which an application has been submitted to the Oregon Health Authority that transfers usable marijuana, immature marijuana plants, seeds, and cannabinoid products, concentrates and extracts to registrants and primary caregivers. Dispensaries also receive transfers of cannabinoid products, concentrates and extracts from marijuana processing facilities. Dispensaries receive transfers of usable marijuana, immature marijuana plants and seeds from registrants and primary caregivers. Medical marijuana dispensaries are classified as Commercial: Medical Centers.

M7. Marijuana Facilities. Facilities including recreational marijuana producers, recreational marijuana processors, recreational marijuana retailers, recreational marijuana wholesalers and medical marijuana dispensaries, medical marijuana producers, and medical marijuana processors.

M8. Marijuana Processor. A facility licensed by the Oregon Liquor Control Commission or registered by the Oregon Health Authority to process, compound or convert marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extract. Marijuana processors are classified as Industrial: Manufacturing and Production.

M9. Medical Producer – Medical. A specific location registered by the Oregon Health Authority (OHA) used by a medical marijuana grower to manufacture, plant, cultivate, grow, or harvest marijuana or dry marijuana leaves or flowers for medical use by a specific patient. Medical marijuana producers are classified as Other: Agriculture/Horticulture.

M10. Marijuana Producer – Recreational. A facility that is licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana. Recreational Marijuana Producers are classified as Other: Agriculture/Horticulture

M11. Marijuana Production - Indoor. According to OAR 845-025-2000(2) means producing marijuana in any manner (a) utilizing artificial light on mature marijuana plants or (b) other than outdoor production.

M12. Marijuana Production – Outdoor. According to OAR 845-025-2000(3) means producing marijuana (a) in an expanse of open or cleared ground or (b) in a greenhouse, hoop house or similar non-rigid structure that does not utilize any artificial light on mature marijuana plants, including but not limited to electrical lighting sources.

M13. Marijuana Retailer. A facility licensed by the Oregon Liquor Control Commission to sell marijuana to a consumer. Marijuana retailers are classified as General Retail: Sales-Oriented.

M14. Marijuana Testing Laboratories. A state licensed laboratory for testing of marijuana items licensed by the Oregon Liquor Control Commission. Marijuana testing laboratories are classified as Commercial: Office.

M15. Marijuana Wholesaler. A facility licensed by the Oregon Liquor Control Commission to purchase marijuana items in Oregon for resale to a person other than

a consumer. Recreational marijuana wholesalers are classified as Industrial: Wholesale Sales.

S1. School A public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).

Finding: The Planning Commission finds the recommendations for time, place and manner restrictions pertaining to marijuana facilities furthers the public interest and quality of life for Forest Grove residents as follows:

- The Planning Commission finds the voters of Oregon legalized recreational marijuana facilities and activities including growing marijuana for personal use and certain recreational marijuana facilities should be allowed to operate in Forest Grove while minimizing impacts to surrounding properties and the community;
- The Planning Commission finds that marijuana facilities, except for outdoor non-personal production, are suitable land uses that should be restricted to the minimum extent necessary to mitigate potential off-site impacts including odor and safety; and
- The Planning Commission finds that while indoor recreational marijuana production, processing and wholesaling should be allowed as conditional uses in the General Industrial zone such activities should be prohibited in the Light Industrial zone to ensure that land set-aside for light industrial purposes is used for light industrial employment consistent with the Land Use element of the Comprehensive Plan.

Finding: Odor: Flowering marijuana plants create a noticeable odor. A USA Today article, dated August 11, 2014, indicated that 30% of code enforcement complaints in Denver, Colorado are related marijuana growing operations in industrial areas.

Finding: Safety: Marijuana processing uses methods for extraction that involves highly flammable substances including butane.

Finding: Security: The outdoor production of marijuana requires a high level of security in an urban environment to ensure protection of this high value crop.

Finding: Based on a survey conducted by staff, all other Washington County cities either prohibit or effectively prohibit the outdoor growing of marijuana in industrial zones.

Finding: Although the Forest Grove Comprehensive Plan does not specifically address marijuana related activities, the proposed amendments to the Development Code are consistent with the following policies of the Comprehensive Plan:

Land Use Industrial Policy 15: Implement development standards to promote the efficient use of industrially zoned land. This policy is supported by prohibiting marijuana related production and wholesaler activities in the City's Light Industrial zone to preserve land for light industrial employment including high value manufacturing and processing activities.

Land Use Industrial Policy 21: Implement a land use concept to increase jobs-housing ratio in Forest Grove from 1.2 to 1.5. This policy is supported by preserving land zoned for Light Industrial activities that are more labor intensive than marijuana related wholesale and marijuana related production.

Finding: The Planning Commission finds that the Oregon Statewide Land Use Planning Goals, programs and rules do not specifically address marijuana facilities. Therefore, the Planning Commission finds the Oregon Statewide Land Use Planning goals, programs, and rules are not applicable to the recommendations.

Tom Beck

Tom Beck, Chair

6-5-16

Date

FIRST READING: 7.

ORDINANCE NO. 2016-14

ORDINANCE AMENDING FOREST GROVE DEVELOPMENT CODE ARTICLE 3, ARTICLE 8 AND ARTICLE 12 FOR PURPOSES OF ADOPTING TIME, PLACE AND MANNER RESTRICTIONS FOR MARIJUANA FACILITIES, CLASSIFYING MARIJUANA FACILITIES, AND ADOPTING DEFINITIONS; FILE NO. 311-16-00034

WHEREAS, the Oregon Legislature enacted House Bill 3400 (2015) now codified as Oregon Revised States (ORS) Chapter 457B; and

WHEREAS, ORS 457B.340 authorizes local jurisdictions to adopt time, place and manner regulations for the operation of marijuana facilities; and

WHEREAS, on April 27, 2016, the Public Safety Advisory Commission (PSAC) adopted recommendations pertaining to additional time, place and manner restrictions for marijuana facilities for consideration by the Planning Commission; and

WHEREAS, on May 5, 2016, the Economic Development Commission (EDC) endorsed the PSAC recommendations; and

WHEREAS, the Parks and Recreation Board adopted a motion on June 15, 2016, to endorse the PSAC recommendation to prohibit marijuana facilities near parks; and

WHEREAS, the Forest Grove School Board adopted a resolution on May 23, 2016, expressing support for the PSAC recommendation to prohibit marijuana facilities near schools; and

WHEREAS, the Planning Commission held a duly-noticed public hearing on June 6, 2016, to consider the PSAC recommendations; and

WHEREAS, the Planning Commission considered the PSAC recommendations, staff report and public testimony and adopted a motion modifying the PSAC recommendations; and

WHEREAS, City Council held a duly-noticed public hearing on June 27, 2016, and continued the hearing on July 11, 2016, to consider the Planning Commission's recommendations.

NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1. The City Council adopts the Planning Commission Findings 16-07 dated June 9, 2016.

Section 2. Based on the findings set forth on Section 1, the City Council adopts the Planning Commission recommendation and approves the Development Code text amendment as shown on Exhibit A.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. This ordinance is effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading this 27th day of June, 2016.

PASSED the second reading this 11th day of July, 2016.

_____

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 11th day of July, 2016.

_____

Peter B. Truax, Mayor

EXHIBIT A

Highlighted text indicates text to add.

Revise Development Code Section 10.3.520 (Use Regulations) as follows:

TABLE 3-14: Industrial Zones Use Table

USE CATEGORY	LI	GI	BIP
- General Industrial	N	P	L[8]
-Medical and Recreational Marijuana Processors	*N*	*C*	*N*
Wholesale Sales	P[8]/N[X]	P[8]/C[Y]	C
OTHER Agriculture / Horticulture	P[8]	P[8]	P
- Medical and Recreational Marijuana Producers (Outdoor)	*N*	*N*	*N*
- Medical and Recreational Marijuana Producers (Indoor)	*N*	*C*	*N*

P = Permitted L = Limited C = Conditional Use N = Not Permitted

[X] Wholesale activities for marijuana are prohibited in the LI zone.

[Y] Wholesale activities for marijuana requires a conditional use permit in the GI zone.

Revise Development Code Section 10.3.320 (Use Regulations) as follows:

TABLE 3-10
Commercial and Mixed Use Zones Use Table

USE CATEGORY	NC	CC	NMU
Office	~~P~~ L[18]	~~P~~ L[18]	L[16][18]

P = Permitted L = Limited C = Conditional Use N = Not Permitted

[7] Marijuana retailers are prohibited in the Neighborhood Commercial zone district and conditionally permitted within the Community Commercial zone district, consistent with the locational requirements of State law and compliance with the requirements of Section 10.8.1100 of this code.

[12] Medical marijuana dispensaries must be located consistent with the requirements of State law and comply with the provisions of Section 10.8.1100 of this code. Medical marijuana dispensaries are classified as a conditional use.

[18] Marijuana testing laboratories are prohibited in the NC and NMU and conditional uses in the CC zone.

MARIJUANA DEVELOPMENT STANDARDS

10.8.1100 GENERAL STANDARDS FOR ALL MARIJUANA FACILITIES

A. *The application shall demonstrate compliance with the locational requirements of ORS 475B and must maintain State certification at all times.*

B. *Marijuana-related activities are prohibited on publicly-owned lands.*

C. *Entrances and off-street parking areas shall be well-lit and not visually obscured from public view / right-of-way. Landscaping shall be continuously maintained to provide clear lines of sight from public rights-of-way to all building entrances. Interior building lighting, exterior building lighting and parking area lighting shall be of sufficient foot-candles and color rendition so as to allow the ready identification of any individual at a distance of no less than forty (40) feet. Exterior lighting shall be provided in accordance with required security measures and shall be continuously maintained.*

D. *The facility must provide for secure disposal or render impotent marijuana remnants or by-products, or items with marijuana residue of any kind.*

E. *All hazardous materials shall be stored and processed in a manner approved by the City Fire Marshal. Hazardous waste shall be disposed of properly through a properly licensed solid waste disposal or recycling facility.*

F. *A pre-application conference and conditional use approval (Development Code Section 10.2.200 et. seq.) is required for any marijuana producer, processor, wholesaler, or testing laboratory. A neighborhood meeting may be required as part of the pre-application process pursuant to Section 10.2.200 et. seq.*

G. *The City shall not issue any other permit for development until final Conditional Use approval has been granted.*

H. *Any person or property in violation of Section 10.8.1100 et. seq. is subject to abatement and assessment by the City under the abatement procedures of Municipal Code Sections 5.270 through 5.290.*

10.8.1120 MEDICAL MARIJUANA DISPENSARIES AND MARIJUANA RETAILERS

A medical marijuana dispensary and marijuana retailer activities shall comply with the following design standards and operational requirements in addition to all other applicable City requirements:

A. *May not be open to the public between the hours of 10:00 p.m. and 8:00 a.m.*

B. *The facility must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the facility is prohibited.*

C. *Any modification to the site or the exterior of the building housing the facility must be consistent with the Design Standards of Section 10.8.700 et. seq. Security bars or grates on windows and doors are prohibited unless integrated into the design.*

D. *The dispensary or retail operation may not have facilities for drive-up use.*

E. *The dispensary must provide for secure disposal or render impotent marijuana remnants or by-products, or items with marijuana residue of any kind.*

F. *A medical marijuana dispensary may not locate within 1,000 feet from a school (public or private). A medical marijuana dispensary may not locate within 1,000 feet of another medical marijuana dispensary. Distance shall be measured property line to property line.*

G. *A recreational marijuana retailer may not locate within 1,000 feet of a school (public or private). Distances shall be measure property line to property line.*

10.8.1130 OTHER MARIJUANA FACILITIES

The following requirements apply to marijuana-related wholesaler, processing, producers, and testing laboratories.

A. ~~*With the exception of outdoor grow operations including the use of removable greenhouses*~~*, The facility must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the facility is prohibited. Views into a production or processing area or testing laboratory from the exterior of a building are prohibited.*

B. *Public access to a marijuana facility shall be limited to employees, personnel, and persons over the age of 21 legally authorized to conduct business with the operator.*

C. *All, producers, processors, wholesalers, and testing laboratories shall provide a method to control odors. Such facilities shall install and maintain enhanced ventilation systems designed to prevent detection of marijuana odor from adjacent properties or the public right-of-way. The systems shall include the following features:*

1. *Installation of activated carbon filters on all exhaust outlets to the building exterior; and*

2. *Location of exhaust outlets a minimum of 10 feet from the property line; 3 feet from exterior walls; and 10 feet above finished grade; and*

3. *Maintenance of negative air pressure within the facility; or*

4. *An alternative odor control system approved by the Building Official based on a report by a mechanical engineer licensed in the State of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.*

10.12.150 OTHER USE CATEGORY

(A): Agriculture/Horticulture: ~~Open areas~~ An area (open or enclosed) devoted to the raising of plants, fruits, vegetables, nuts, nursery stock and/or flowers; may include on-site sales of products grown on the site. Agriculture/Horticulture includes hydroponic agriculture within buildings. Excludes nurseries, which are classified under Outdoor Sales (see 10.12.130(D)(5)).

10.12.210 MEANING OF SPECIFIC WORDS AND TERMS

M6. A facility registered with the Oregon Health Authority or for which an application has been submitted to the Oregon Health Authority that transfers usable marijuana, immature marijuana plants, seeds, and cannabinoid products, concentrates and extracts to registrants and primary caregivers. Dispensaries also receive transfers of cannabinoid products, concentrates and extracts from marijuana processing facilities. Dispensaries receive transfers of usable marijuana, immature marijuana plants and seeds from registrants and primary caregivers. Medical marijuana dispensaries are classified as Commercial: Medical Centers.

M7. Marijuana Facilities. Facilities including recreational marijuana producers, recreational marijuana processors, recreational marijuana retailers, recreational marijuana wholesalers and medical marijuana dispensaries, medical marijuana producers, and medical marijuana processors.

M8. Marijuana Processor. A facility licensed by the Oregon Liquor Control Commission or registered by the Oregon Health Authority to process, compound or convert marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extract. Marijuana processors are classified as Industrial: Manufacturing and Production.

M9. Medical Producer – Medical. A specific location registered by the Oregon Health Authority (OHA) used by a medical marijuana grower to manufacture, plant, cultivate, grow, or harvest marijuana or dry marijuana leaves or flowers for medical use by a specific patient. Medical marijuana producers are classified as Other: Agriculture/Horticulture.

M10. Marijuana Producer – Recreational. A facility that is licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana. Recreational Marijuana Producers are classified as Other: Agriculture/Horticulture

M11. Marijuana Production - Indoor. According to OAR 845-025-2000(2) means producing marijuana in any manner (a) utilizing artificial light on mature marijuana plants or (b) other than outdoor production.

M12. Marijuana Production – Outdoor. According to OAR 845-025-2000(3) means producing marijuana (a) in an expanse of open or cleared ground or (b) in a greenhouse, hoop house or similar non-rigid structure that does not utilize any artificial light on mature marijuana plants, including but not limited to electrical lighting sources.

M13. Marijuana Retailer. A facility licensed by the Oregon Liquor Control Commission to sell marijuana to a consumer. Marijuana retailers are classified as General Retail: Sales-Oriented.

M14. Marijuana Testing Laboratories. A state licensed laboratory for testing of marijuana items licensed by the Oregon Liquor Control Commission. Marijuana testing laboratories are classified as Commercial: Office.

M15. Marijuana Wholesaler. A facility licensed by the Oregon Liquor Control Commission to purchase marijuana items in Oregon for resale to a person other than a consumer. Recreational marijuana wholesalers are classified as Industrial: Wholesale Sales.

S1. School A public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).

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A place where families and businesses thrive.

CITY RECORDER USE ONLY:	
AGENDA ITEM #:	8.
MEETING DATE:	
FINAL ACTION:	FIRST READING

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Jon Holan, Community Development, Jesse VanderZanden*

SUBJECT TITLE: *Proposed Three Percent Sales Tax on Retail Marijuana Sales*

ACTION REQUESTED:	X	**Ordinance**		**Order**		**Resolution**		**Motion**		**Informational**

X all that apply

ISSUE STATEMENT: ORS 475B.345 authorizes local jurisdictions to impose up to a three percent tax or fee on the recreational sale of marijuana items. A jurisdiction can only impose a tax or fee on the sale of marijuana items if it does not ban any of the seven types of marijuana facilities defined in ORS 475B. If the Council adopts the tax, the proposed tax must be approved by the voters of Forest Grove at the next general election in November 2016.

To establish the authority for the tax, ordinance number 2016-xx is proposed for Council consideration. If Council adopts the ordinance, then Council must subsequently adopt a resolution referring the tax to the electorate for the November 2016 election. That resolution would be considered by the Council at the second reading of the ordinance on the July 11th City Council meeting.

BACKGROUND: The Council adopted ordinance number 2014-09 on September 22, 2014 which established a 10 percent tax on the sale of marijuana and marijuana-infused products in the City of Forest Grove. The Council repealed the ordinance on May 23, 2016 due to its inconsistency with state law.

The current proposal is for the Council to adopt an ordinance establishing a sales tax on retail sales of marijuana. As stated previously, under state law, a local government can only impose a tax or fee on the sale of marijuana items if the government does not ban any type of marijuana facility. Marijuana items are defined by ORS 475B.015 (16) as marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts. Paraphernalia to help consume marijuana is not subject to this tax.

The proposed ordinance does not have the details of the ordinance repealed by the Council for two reasons. First, there will be further discussions at the state level as to how the tax revenue will be collected. Second, staff does not advise creating a detailed ordinance until the outcome of

the election is known. If approved by the voters, staff will come back to the Council with a more detailed ordinance once the collection process has been established. This ordinance would be an amendment to the City Code.

FISCAL IMPACT: The establishment of the sales tax would generate additional revenue to the City. Using a methodology developed by Happy Valley staff, it is estimated that the sales tax may range from $36,846.72 to $40,425.18 per year for Forest Grove (see Attachment A). The range varies on the price of marijuana and the amount of sales from residents and others residing outside the city limits.

STAFF RECOMMENDATION: Staff recommends the City Council adopt the attached Ordinance provided that the time, place and manner regulations being considered by the Council under separate action do not ban any of the seven regulated marijuana activities.

ATTACHMENT(s):
Ordinance
Attachment A – Forest Grove Marijuana Revenue Estimate Using Happy Valley Methodology

FOREST GROVE OREGON

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June 9, 2016
News Times
Legal Ads/Public Notice:
To be published: Wednesday, June 22, 2016

NOTICE OF PUBLIC HEARING
CITY OF FOREST GROVE CITY COUNCIL

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will hold a Public Hearing on **Monday, June 27, 2016, 7:00 p.m**. or thereafter, in Community Auditorium, 1915 Main Street, to consider an ordinance imposing a three percent (3%) tax on the sale of marijuana items by a marijuana retailer and referring the ordinance to the electors of Forest Grove at the next General Election on November 8, 2016. The proposed ordinance, if enacted by the City Council, would take effect 30 days immediately after enactment unless City Council declares an emergency.

This hearing is open to the public and interested parties are encouraged to attend. A copy of the staff report and proposed ordinance are available for inspection before the hearing at the City Recorder's Office or by visiting the City's website at www.forestgrove-or.gov. Written comments or testimony may be submitted at the hearing or sent to the attention of the City Recorder's Office, PO Box 326, 1924 Council Street, Forest Grove, OR 97116, prior to the hearing, or e-mail aruggles@forestgrove-or.gov, 503.992.3235, for more information.

Anna D. Ruggles, CMC, City Recorder
Published: June 22, 2016

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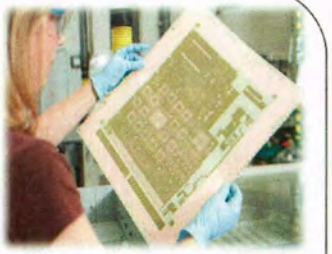
FOREST GROVE OREGON



Marijuana Sales Tax Ordinance

City Council Meeting

June 27, 2016

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History and Background

- Ordinance Number 2014-09 adopted by City Council on September 22, 2014
  - Established a 10 percent tax on the sale of marijuana and marijuana infused products
- HB 3400 (ORS 475B.345) authorizes communities to establish a tax up to 3 percent
- Ordinance Number 2016-11 was adopted by the Council repealing the previous sales tax adopted by the Council

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Proposed Ordinance

- Ordinance authorizes City to impose a 3 percent sales tax
- Estimated annual revenue to City between $36,486.72 to $40,425.18
- Can only be considered if all seven marijuana regulated activities are allowed in the community (i.e. no ban on any activity)
- Applies only to retail sales of marijuana products
- Marijuana items defined as: marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

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Proposed Ordinance (continued) and Next Steps

- If approved by the Council, must be referred to the voters at the next general election in November
- Intentionally general at this time
  - Determine voter outcome in November
  - Determine the method of collecting and distributing tax revenue statewide
- If approved, staff will prepare an amendment to the City Code for implementation of the tax once statewide administrative details are determined
- Will forward a resolution for consideration to place the tax on the ballot at the Council's next meeting on July 11th

Attachment A

Forest Grove Marijuana Revenue Estimate Using Happy Valley Methodology

Assumptions

- 3,919,202 million residents in the state of Oregon
- 321,815 recreational marijuana (rm) users in the state of Oregon
- 1,862,996 oz of RM will be consumed per year
- 60 percent of consumption will be satisfied through the grey market, resulting in only 745,198.4 oz. of rm being purchased through regulated markets.[1]
- The average consumer price in regulated markets is $277 - $279 per oz of rm.[2]
- An estimate of 10% sales to customers residing outside of the Forest Grove was used.[3]

Proportion of state residents who are recreational marijuana users over the age of 21:
321,815 legal RM statewide users/3,919,202 total population =
.082 proportion of state residents

Number of City residents who are recreational marijuana users over the age of 21:
23,080 City residents (.082 proportion of users) =
1,892.56 FG RM users

Average statewide regulated consumption (oz) per recreational patron over the age of 21
745,198.4 regulated oz. consumed/321,815 RM users =
2.32 oz. consumed per user statewide

Projected RM consumption in Forest Grove:
1,892.56 FG users *2.32 statewide regulated oz consumption average =
4,390.7 oz. consumed per year

Projected Local Sales (base year)

	Low consumer price	Mid consumer price	High consumer price
Consumer Price/Ounce RM	$ 277.00	$ 278.00	$ 279.00
Gross local sales assuming 4390.7 oz. of regulated rm purchased (residents only)	$ 1,216,223.90	$ 1,220,614.60	$ 1,225,005.30
Gross local sales with 10% increase from residents from nearby areas and tourism	$ 1,337,846.30	$ 1,342,676.10	$ 1,347505.80
Local tax	0.03	0.03	0.03
Local revenue (FG resident only)	**$ 36,486.72**	**$ 36,618.44**	**$ 36,750.16**
Local revenue with nearby residents and tourism	**$ 40,135.39**	**$ 40,280.28**	**$ 40,425.18**

Notes:

1. LRO* reports stipulate 66 percent of consumption will be satisfied through the grey market, resulting in only 670,678 oz. of recreational marijuana being purchased through regulated markets, however this data was affected by passage of HB 2041. Listed data unofficial, but more accurate. It was retrieved orally by LRO* on 5/4/16.

2. LRO* reports from 2014 indicate the average consumer price in regulated markets is $330 - $340 per oz of rm. This data was affected by the passage of HB 4021. Listed data unofficial, but more accurate. It was retrieved orally by LRO on 5/4/16.

3. Ten percent is based on a conversation with Adrian Perte of Shango on 6/15/16. He indicated that there is no good data on the percentage of medical marijuana sales at the Forest Grove dispensary to customers outside of Forest Grove. He thought it was no more than about 12%. To be conservative, a 10% estimate was used. It is possible the 10 to 12 percent estimate may be low when considering recreational marijuana sales. It is estimated that Tourism and Commuters may increase recreational marijuana revenue by 19.6 percent statewide.

*"LRO" is the Legislative Revenue Office

FIRST READING: 8.

ORDINANCE NO. 2016-15

ORDINANCE OF THE CITY OF CITY OF FOREST GROVE IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE TO ELECTORS OF FOREST GROVE AT THE NEXT GENERAL ELECTION ON NOVEMBER 8, 2016

WHEREAS, on September 22, 2014, the Forest Grove City Council adopted Ordinance 2014-09 imposing a ten percent tax on the sale or transfer of marijuana and marijuana-infused products within the City; and

WHEREAS, the Oregon state legislature subsequently passed ORS 475B.345, which purportedly preempts the City from imposing any tax or fee on the sale of marijuana items other than imposing up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city if such a tax is approved by the voters of the City; and

WHEREAS, the Ordinance Number 2016-11 repealed the previously adopted ten percent tax, which is now purportedly preempted by state law; and

WHEREAS, consistent with ORS 475B.345, the Forest Grove City Council wishes to impose a three percent tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city; and

WHEREAS, City Council held a duly-noticed Public Hearing on June 27, 2016, and continued to hearing on July 11, 2016, on the purposed ordinance.

NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1: Definitions.

"Marijuana item" has the meaning given that term in ORS 475B.015(16).

"Marijuana retailer" means a person who holds a license under ORS 475B.110 and sells marijuana items to a consumer in this state.

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

Section 2: Tax Imposed. As authorized by ORS 475B.345, the City of Forest Grove hereby imposes a tax of three percent on the retail sale price of all marijuana items sold by a marijuana retailer in the city.

Section 3: Collection. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items. If approved by voters, the Council shall take actions necessary to implement the tax.

Section 4: Referral. This ordinance shall be referred to the electors of Forest Grove at the next statewide general election on Tuesday, November 8, 2016.

Section 5: Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does not affect the validity of the remaining sections, subsections, paragraphs or clauses.

Section 6: Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, remain valid and in full force and effect for purposes of all cases filed or commenced ruing the times this ordinance or portions thereof were operative.

Section 7. Effective date. This ordinance shall be effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading the 27th day of June, 2016.

PASSED the second reading this 11th day of July, 2016.

_____
Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 11th day of July, 2016.

_____
Peter B. Truax, Mayor

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	9.
MEETING DATE:	10. 11.
FINAL ACTION:	

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Paul Downey, Administrative Service Director*

SUBJECT TITLE: *Resolutions to Adopt FY 2016-17 Budget, Make Appropriations for FY 2016-17, and Levy Property Taxes for FY 2016-17*

ACTION REQUESTED:		Ordinance		Order	X	Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT: The Budget Committee approved the Proposed FY 2016-17 Budget of $98,246,884 on May 12, 2016. The City Council now needs to adopt the FY 2016-17 Approved Budget with any changes approved by the City Council, levy the property taxes for FY 2016-17, and make the appropriations that set the legal expenditure level in each fund.

BACKGROUND: Staff is proposing the following four changes to the Approved Budget:

- Increase in the Small Equipment line item in the Administrative Services Department of the General Fund of $27,256 to purchase 6,200 kitchen pails as part of the implementation of the food waste recycling program. The purchase of the kitchen pails is funded by a grant from the Oregon Department of Environmental Quality. General Fund Revenue has been increased to reflect the grant revenue.
- Increase in the Attorney Services line item in the Administrative Services Department of the General Fund of $20,000 to reflect the increase in legal services being provided by the City Attorney's Office. Implementation of recent legislation, complex development issues, and City Attorney attending more Council meetings are some of the reasons for the increased costs. The increased costs were offset by lowering anticipated reserves at June 30, 2017.
- Increase in the Library Budget of $49,000 in Capital Outlay to carry-over to FY 2016-17 a one-time payment from WCCLS which will not be spent by the end of the current fiscal year. General Fund Beginning Fund Balance will be increased as the funds have been received but will not be spent by June 30, 2016.
- Increase of $35,000 in Capital Outlay in the Equipment Fund for the unanticipated replacement of a 2016 Ford Explorer that was totaled in an accident. Revenue in the Equipment Fund will be increased by that amount for the receipt of the payment from the City's insurance company.

After proposed staff changes, the Adopted Budget will total $98,358,140 for an increase of $111,256 from the Approved Budget. Staff has prepared the necessary resolutions for the Council's consideration.

FISCAL IMPACT: The fiscal impact of the changes has been discussed above.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached resolutions to adopt the FY 2016-17 Budget, levy the appropriate taxes for FY 2016-17, and establish the legal appropriations for FY 2016-17.

ATTACHMENT(s): Resolutions Adopting Budget for Fiscal Year Commencing July 1, 2016, and Ending June 30, 2017; Levying and Categorizing Taxes for the City of Forest Grove, Washington County, Oregon, for the Fiscal Year Commencing July 1, 2016, and Ending June 30, 2017; and Making Appropriations for the City of Forest Grove, Washington County, Oregon, for the Fiscal Year Commencing July 1, 2016, and Ending June 30, 2017

FORM LB-1

NOTICE OF BUDGET HEARING

A public meeting of the City of Forest Grove will be held on Monday, June 27, 2016 at 7:00 pm at the Community Auditorium, 1915 Main Street, Forest Grove, Oregon. The purpose of this meeting is to discuss the budget for the fiscal year beginning July 1, 2016, as approved by the City of Forest Grove Budget Committee. A summary of the budget is presented below. A copy of the budget may be inspected or obtained at City Hall, 1924 Council Street, Forest Grove Oregon, between the hours of 9:00 a.m. and 5:00 p.m. or online at www.forestgrove-or.gov. This budget is for an annual budget period. This budget was prepared on a basis of accounting that is the same as the preceding year.

Contact: Paul Downey, Director of Administrative Services Telephone: 503-992-3200 Email: pdowney@forestgrove-or.gov

FINANCIAL SUMMARY - RESOURCES			
TOTAL OF ALL FUNDS	Actual Amount 2014-15	Adopted Budget This Year 2015-16	Approved Budget Next Year 2016-17
Beginning Fund Balance/Net Working Capital	39,320,840	38,247,861	43,433,275
Fees, Licenses, Permits, Fines, Assessments & Other Service Charges	35,851,485	35,054,837	34,778,120
Federal, State and all Other Grants, Gifts, Allocations and Donations	4,643,442	5,012,716	5,962,581
Revenue from Bonds and Other Debt	0	3,800,000	0
Interfund Transfers / Internal Service Reimbursements	2,418,242	2,749,922	3,783,190
All Other Resources Except Current Year Property Taxes	349,007	2,027,396	2,205,625
Current Year Property Taxes Estimated to be Received	8,486,001	8,764,686	8,084,093
Total Resources	**91,069,017**	**95,657,418**	**98,246,884**

FINANCIAL SUMMARY - REQUIREMENTS BY OBJECT CLASSIFICATION			
Personnel Services	17,953,865	19,318,961	20,312,771
Materials and Services	25,273,728	27,173,210	28,494,385
Capital Outlay	4,702,964	19,373,800	19,069,452
Debt Service	537,718	1,257,244	955,905
Interfund Transfers	2,272,708	2,578,174	1,686,218
Contingencies	0	4,902,303	5,027,368
Special Payments	0	0	965,000
Unappropriated Ending Balance and Reserved for Future Expenditure	40,328,034	21,053,726	21,735,785
Total Requirements	**91,069,017**	**95,657,418**	**98,246,884**

FINANCIAL SUMMARY - REQUIREMENTS AND FULL-TIME EQUIVALENT EMPLOYEES (FTE) BY ORGANIZATIONAL UNIT OR PROGRAM *			
Name of Organizational Unit or Program FTE for that unit or program			
Administration	5,751,285	9,430,749	8,912,281
FTE	22.13	29.98	27.53
Public Safety	9,224,955	10,397,008	11,258,243
FTE	56.00	57.00	57.00
Community Services	1,596,845	3,157,456	3,271,988
FTE	40.50	27.59	31.80
Public Works	14,703,632	43,869,317	47,100,161
FTE	22.88	28.89	29.61
Light & Power	615,000	23,008,006	21,811,011
FTE	25.57	25.90	26.36
Not Allocated to Organizational Unit or Program	59,177,301	5,794,882	5,893,200
FTE	0.00	0.00	0.00
Total Requirements	**91,069,017**	**95,657,418**	**98,246,884**
Total FTE	**167.08**	**169.36**	**172.29**

STATEMENT OF CHANGES IN ACTIVITIES and SOURCES OF FINANCING *

The FY 2016-17 Budget will be similar to the FY 2015-16 Budget with respect to services provided. Major capital outlay proposed is the completion of the upgrade of two electric substations and the purchase of new aerial platform for the Fire Department.

PROPERTY TAX LEVIES			
	Rate or Amount Imposed 2014-15	Rate or Amount Imposed This Year 2015-16	Rate or Amount Approved Next Year 2016-17
Permanent Rate Levy (rate limit 3.955 per $1,000)	3.9554	3.9554	3.9554
Local Option Levy	1.6	1.6	1.6
Levy For General Obligation Bonds	523,280	490,605	0

STATEMENT OF INDEBTEDNESS		
LONG TERM DEBT	Estimated Debt Outstanding on July 1.	Estimated Debt Authorized, But Not Incurred on July 1
General Obligation Bonds	$0	$0
Other Bonds	$2,275,000	$0
Other Borrowings	$5,064,044	$0
Total	**$7,339,044**	**$0**

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9.

RESOLUTION NO. 2016-40

RESOLUTION ADOPTING BUDGET FOR FISCAL YEAR COMMENCING JULY 1, 2016, AND ENDING JUNE 30, 2017

WHEREAS, the Budget Committee of the City of Forest Grove has approved a budget for the City for the Fiscal Year commencing July 1, 2016, pursuant to the provisions of the Oregon Local Budget Law; and

WHEREAS, changes have been proposed to the Budget approved by the Budget Committee, and

WHEREAS, a hearing has been held before the City Council as required by law and it appears to the Council that the Approved Budget as changed by the City Council should be adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. That the City Council hereby adopts the FY 2016-17 Budget approved by the Budget Committee of the City of Forest Grove in the amount of $98,358,140.

Section 2. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of June, 2016.

_____

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of June, 2016.

_____

Peter B. Truax, Mayor

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10.

RESOLUTION NO. 2016-41

RESOLUTION MAKING APPROPRIATIONS FOR THE CITY OF FOREST GROVE, WASHINGTON COUNTY, OREGON, FOR THE FISCAL YEAR COMMENCING JULY 1, 2016, AND ENDING JUNE 30, 2017

WHEREAS, the City Council has adopted the FY 2016-17 Budget now on file in the office of the City Recorder.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. That the amounts shown below are hereby appropriated for the fiscal year beginning July 1, 2016, and for the following purposes are hereby appropriated as follows:

General Fund		
Legislative & Executive	$	548,787
Administrative Services		2,706,969
Library		1,224,811
Planning		468,016
Engineering		892,992
Police Services		5,611,199
Fire Department		3,926,045
Aquatics		644,756
Parks and Recreation		758,499
Municipal Court		375,708
Contingencies		750,000
Total General Fund Appropriations	**$**	**17,907,782**

Light Fund		
Electric Services	$	17,580,136
Debt Service		398,778
Transfers		946,345
Contingencies		1,000,000
Total Light Fund Appropriations	**$**	**19,925,259**

Sewer Fund		
Sewer Services	$	5,262,361
Transfers		81,094
Contingencies		750,000
Total Sewer Fund Appropriations	**$**	**6,,093,455**

Sewer SDC Fund		
Sewer Infrastructure Construction	$	903,800
Debt Service		121,995
Contingencies		100,000
Total Sewer SDC Fund Appropriations	**$**	**1,125,795**

Water Fund		
Water Services	$	4,309,920
Debt Service		435,132
Transfers		221,450
Contingencies		1,198,250
Total Water Fund Appropriations	**$**	**6,164,752**

Water SDC Fund		
Water Infrastructure Construction	$	1,186,273
Transfers		1,400
Contingencies		100,000
Total Water SDC Fund Appropriations	**$**	**1,287,673**

Surface Water Management Fund		
SWM Services	$	1,222,232
Transfers		61,500
Contingencies		60,000
Total SWM Fund Appropriations	**$**	**1,343,732**
SWM SDC Fund		
SWC Infrastructure Construction		200,000
Contingencies		279,118
Total SWM SDC Fund Appropriations	**$**	**479,118**
Street Fund		
Street Services	$	1,678,656
Transfers		17,500
Contingencies		100,000
Total Street Fund Appropriations	**$**	**1,796,156**
Building Permits Fund		
Building Permit Services	$	746,109
Transfers		39,063
Contingencies		250,000
Total Building Permits Fund Appropriations	**$**	**1,035,172**
Community Enhancement Fund		
Materials & Services	$	124,484
Transfers		6,500
Total Community Enhancement Fund Appropriations	**$**	**130,984**
Library Endowment Fund		
Materials & Services	$	961
Total Library Endowment Fund Appropriations	**$**	**961**
Street Tree Fund		
Materials & Services	$	34,314
Transfers		800
Total Street Tree Fund Appropriations	**$**	**35,114**
Transportation System Fund		
Materials & Services	$	550,000
Total Transportation System Fund Appropriations	**$**	**550,000**

Public Arts Donations Fund		
Materials & Services	$	30,260
Total Public Arts Donations Fund Appropriations	**$**	**30,260**
Fire SAFER Fund		
Fire Safer GRANT Services	$	16,000
Total Forfeiture Sharing Fund Appropriations	**$**	**16,000**
Facility Major Maintenance Fund		
Capital Outlay	$	500,000
Total Facility Major Maint. Fund Appropriations		**500,000**
Forfeiture Fund		
Materials & Services	$	4,638
Total Forfeiture Fund Appropriations		**4,638**
Equipment Fund		
Vehicle Services	$	872,803
Contingencies		250,000
Total Equipment Fund Appropriations	**$**	**1,122,803**
Fire Equipment Replacement Fund		
Capital Outlay	$	1,075,100
Contingencies		100,000
Total Fire Equip. Replacement Fund Appropriations	**$**	**1,175,100**
Information Systems Fund		
Information System Services		358,312
Contingencies		40,000
Total Information Systems Fund Appropriations	**$**	**398,312**
City Utility Fund		
Materials & Services	$	217,611
Total City Utility Appropriations & Fund	**$**	**217,611**
Risk Management Fund		
Risk Management Services	$	873,622
Transfers		40,000
Contingencies		50,000
Total Risk Management Fund Appropriations	**$**	**963,622**

Bikeway Improvements Fund		
Capital Outlay	$	47,344
Total Bikeway Improvements Fund Appropriations	**$**	**47,344**
Park System Development Fund		
Park System Construction	$	2,827,242
Total Park System Develop. Fund Appropriations	**$**	**2,827,242**
Traffic Impact Fund		
Capital Outlay	$	3,254,427
Total Traffic Impact Fund Appropriations	**$**	**3,254,427**
Transportation Development Tax Fund		
Capital Outlay	$	5,992,010
Total Traffic Impact Fund Appropriations	**$**	**5,992,010**
Capital Projects Fund		
Capital Outlay	$	772,712
Special Payments		965,000
Total Capital Projects Fund Appropriations	**$**	**1,7837,712**
CIP Excise Tax Fund		
Capital Outlay	$	208,755
Transfers		256,177
Total CIP Excise Tax Fund Appropriations	**$**	**464,932**
General Debt Service Fund		
Transfers	$	1,500
Total General Debt Service Appropriations	**$**	**1,500**
SPWF Debt Service Fund		
Transfers		12,889
Total SPWF Debt Service Appropriations	**$**	**12,889**
Total APPROPRIATIONS, All Funds	**$**	**76,642,355**
Total Unappropriated Amounts, All Funds	**$**	**21,715,785**
TOTAL ADOPTED BUDGET	**$**	**98,358,140**

Section 2. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of June, 2016.

_____
Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of June, 2016.

_____
Peter B. Truax, Mayor

11.

RESOLUTION NO. 2016-42

RESOLUTION LEVYING AND CATEGORIZING TAXES FOR THE CITY OF FOREST GROVE, WASHINGTON COUNTY, OREGON, FOR THE FISCAL YEAR COMMENCING JULY 1, 2016, AND ENDING JUNE 30, 2017

WHEREAS, the City Council has adopted the FY 2016-17 Budget now on file in the office of the City Recorder.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. That the following ad valorem property taxes are hereby imposed and categorized for tax year 2016-17 upon the assessed value of all taxable property within the district for tax year 2016-17: 1) at the rate of $3.9554 per $1,000 of assessed value for the permanent rate tax; and 2) at the rate of $1.60 per $1,000 of assessed value for the local option levy expiring June 30, 2018.

Section 2. The taxes imposed are hereby categorized for purposes of Article XI section 11b as:

	Subject to the General Government Limitation	Excluded from the Limitation
General Fund – Permanent Rate	$3.9554/$1,000	
General Fund – Local Option Levy	$1.6000/$1,000	
	---	---
Category Total	$5.5554/$1,000	$0

Section 3. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of June, 2016.

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of June, 2016.

Peter B. Truax, Mayor

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	12.
MEETING DATE:	
FINAL ACTION:	

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Paul Downey, Administrative Services Director*

SUBJECT TITLE: *Resolution Adopting the FY 2016-21 Capital Improvements Program*

ACTION REQUESTED:

	Ordinance		Order	X	Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT: The Capital Improvements Program (CIP) for FY 2016-21 was approved by the Budget Committee and now needs to be approved by the City Council.

BACKGROUND: The CIP forms the basis of the capital projects that the City is planning to accomplish over the next five years. Projects funded by SDC funds need to be listed in the CIP in order for SDC funds to be expended on those projects.

FISCAL IMPACT: Projects to be completed in FY 2016-17 are reflected in the appropriate funds in the FY 2016-17 Budget that the Council will be asked to adopt tonight.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached resolution adopting the FY 2016-21 Capital Improvement Program.

ATTACHMENT(s): Resolution Adopting the FY 2016-21 Capital Improvements Program

RESOLUTION NO. 2016-43

RESOLUTION ADOPTING THE FY 2016-21 CAPITAL IMPROVEMENTS PROGRAM

WHEREAS, the Capital Improvements Program is an ongoing five-year schedule of physical improvements and major equipment purchases; and

WHEREAS, the Capital Improvements Program is a planning and budgeting tool used to ensure residents continue to receive services in the future; and

WHEREAS, projects to be funded with system development charges need to be included in the Capital Improvements Program; and

WHEREAS, the Budget Committee has reviewed and approved the Capital Improvements Program, and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. That the City Council hereby adopts the FY 2016-21 Capital Improvements Program.

Section 2. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of June, 2016.

_____

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of June, 2016.

_____

Peter B. Truax, Mayor

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	13.
MEETING DATE:	14.
FINAL ACTION:	

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Paul Downey, Administrative Services Director*

SUBJECT TITLE: *State Revenue Sharing Resolutions*

ACTION REQUESTED:		Ordinance		Order	X	Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT: In order to receive State Revenue Sharing, the City is required by the State to elect to participate in the State Revenue Sharing Program and to certify services. The attached resolutions fulfill the requirement of certifying the services provided by the City and electing to receive state revenues for FY 2016-17.

BACKGROUND: Before the City can elect to participate in the State Revenue Sharing Program, the City is required to hold two hearings on the use of the funds. The Budget Committee meeting of May 5, 2016, was one of those meetings and the second will occur June 27, 2016, when the Council holds its public hearing on the budget. For fiscal year 2016-17, the City is projected to receive $342,969 in alcohol tax revenue, $27,465 in cigarette tax revenue and $240,078 in State Revenue Sharing. For budgetary purposes, the Alcohol Tax is allocated to the Police Department, the Cigarette Tax is allocated to the Fire Department, and the State Shared Revenue is put in General Fund Discretionary Revenue.

FISCAL IMPACT: If the City decided not to accept the State Shared Revenue, the City will have to reduce General Fund expenditures by $610,512 or use General Fund reserves to make up for the loss of that revenue.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached resolutions so the City can receive State Shared Revenue in FY 2016-17.

ATTACHMENT(s): Resolution Certifying Services Provided by the City of Forest Grove and Resolution Declaring the City's Election to Receive State Revenues

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13.

RESOLUTION NO. 2016-44

RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUES

The City of Forest Grove resolves as follows:

Section 1: Pursuant to ORS 221.770, the City hereby elects to receive state revenues for Fiscal Year 2016-17.

Section 2: This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th ay of June, 2016.

_____
Anna D. Ruggles, City Recorder

APPROVED By the Mayor this 27th day of June, 2016.

_____
Peter B. Truax, Mayor

I certify that a Public Hearing before the Budget Committee was held May 5, 2016, and a Public Hearing before the City Council was held June 27, 2016, giving citizens an opportunity to comment on use of State Revenue Sharing.

Attested: _____
Anna D. Ruggles, City Recorder

14

RESOLUTION NO. 2016-45

RESOLUTION CERTIFYING SERVICES PROVIDED BY THE CITY OF FOREST GROVE

WHEREAS, ORS 221.760 provides as follows:

Section 1: The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820 and 471.805 shall, in the case of a city located within a county having more than 100,000 inhabitants according to the most recent federal decennial census, disburse such funds only if the city provides four or more of the following services:

(1) Police Protection
(2) Fire Protection
(3) Street Construction, Maintenance and Lighting
(4) Sanitary Sewer
(5) Storm Sewers
(6) Planning, Zoning and Subdivision Control
(7) One or more Utility Services

WHEREAS, City officials recognize the desirability of assisting the State Officer responsible for determining the eligibility of cities to receive such funds in accordance with ORS 221.760;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1: That the City of Forest Grove hereby certifies that it provides the following municipal services enumerated in Section 1, ORS 221.760:

(1) Police Protection
(2) Fire Protection
(3) Street Construction, Maintenance and Lighting
(4) Sanitary Sewer
(5) Storm Sewers
(6) Planning, Zoning and Subdivision Control
(7) Municipal Electric and Water Utility Services

Section 2: This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of June, 2016.

_____
Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of June, 2016.

_____
Peter B. Truax, Mayor

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	15.
MEETING DATE:	
FINAL ACTION:	

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Paul Downey, Administrative Services Director*

SUBJECT TITLE: *Capital Excise Tax Renewal for FY 2016-17*

ACTION REQUESTED:

	Ordinance		Order	X	Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT: The ordinance that created the Capital Improvements Program Excise Tax requires the tax to be re-authorized by resolution each fiscal year.

BACKGROUND: The CIP excise tax was initiated in 1990. The City Code restricts the use of the revenue generated by the CIP excise tax to the General Government and Public Safety programs within the Capital Improvements Program. The Code requires the tax be reviewed on an annual basis by the Budget Committee and be approved each year by the City Council. If the tax is not reauthorized, the City cannot collect the revenue.

The City last increased the tax rate on July 1, 2014. Staff is not proposing any fee increase for FY 2016-17. The City expects to collect about $330,000 in revenue from the CIP excise tax in FY 2015-16.

Most of the excise tax is used to fund public safety capital needs particularly police and fire vehicle replacements. As in prior years, 90% of the revenue will be used in the Fire and Police Departments, while the other 10% will be used in General Government Programs. Other proposed expenditures in the CIP Excise Tax Fund in FY 2016-17 include police body-worn cameras if the program is approved by the City Council and sound system improvements in the Community Auditorium.

The CIP Excise Tax is accounted for in a separate fund to ensure that the tax proceeds are spent as required by the resolution.

FISCAL IMPACT: If the CIP Excise Tax is not renewed, the City will need to find an alternative source of revenue for police vehicle and fire apparatus replacement. Also, some of the other projects that would be funded with this revenue will not occur unless alternative revenue is found for those projects.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached resolution adopting the renewal of the CIP Excise Tax for FY 2016-17.

ATTACHMENT(s): Resolution Adopting the Capital Improvements Program Excise Tax and Repealing Resolution 2015-49

15.

RESOLUTION NO. 2016-46

RESOLUTION ADOPTING THE CAPITAL IMPROVEMENTS PROGRAM EXCISE TAX AND REPEALING RESOLUTION 2015-49

WHEREAS, the Budget Committee has reviewed and the City Council has adopted the FY 2016-21 Capital Improvements Program (CIP); and

WHEREAS, the City has an ordinance to impose a CIP Excise Tax to fund the Public Safety and General Government programs within the Capital Improvements Program; and

WHEREAS, the City Council recognizes the relationship between quality service delivery and investments in capital equipment and facilities; and

WHEREAS, funding for capital equipment and facilities is necessary to ensure residents of Forest Grove continue to receive quality services in the future.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1: Resolution 2015-49 is repealed effective June 30, 2016.

Section 2: The City shall impose a CIP Excise Tax for the purpose of funding the Public Safety and General Government Programs within the CIP.

Section 3: The tax shall be based on the amount of required revenue distributed among residential, general service and industrial classes of utility customers. The tax will appear on each utility bill. The CIP Excise Tax shall be fixed as follows:

CLASS	MONTHLY RATE
Residential	$3.00
Commercial – Single Phase	$7.50
All Others	$15.00

Section 4: The CIP Excise Tax will be effective July 1, 2016.

Section 5: This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of June, 2016.

_____
Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of June, 2016.

_____
Peter B. Truax, Mayor

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	16.
MEETING DATE:	
FINAL ACTION:	

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Paul Downey, Administrative Services Director*

SUBJECT TITLE: *FY 2015-16 Appropriations Transfers*

ACTION REQUESTED:		Ordinance		Order	X	Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT: The adopted budget for a fiscal year is based upon best estimates at the time the budget is adopted. During the fiscal year, unanticipated events may occur and actual expenditures become known.

At the end of the fiscal year, it is standard procedure to review expenditures throughout the budget and to modify appropriations, which are legal expenditure limits, for expenditures which may exceed the appropriated levels by the end of the fiscal year. ORS Chapter 294 permits the governing body to transfer appropriations within a fund so the budgeted appropriations are not exceeded. The attached resolution authorizes the appropriation transfers necessary for FY 2015-16.

BACKGROUND: Upon review of the preliminary year-to-date expenditures as of June 20, 2016, staff has prepared a resolution for Council consideration to avoid potential appropriation overexpenditures in the General and Risk Management funds at the end of FY 2015-16. The reasons for the proposed transfers are discussed below. The numbers for the reasons correspond to the transfer numbers in the proposed resolution:

1. In the Fire Department, wages and benefits need to be increased to account for additional wages and benefits incurred to send fire personnel to assist on conflagrations declared by the State. Payment has been received from the State to fully cover the additional costs incurred so there is no fiscal impact to the City.
2. In the Planning Department, funds need to be transferred to cover wages and attorney services. Wages are close to being over-expended so staff is recommending transferring funds to prevent an overexpenditure. Attorney expenses have been greater than anticipated due to marijuana and development issues and a transfer is needed to cover those costs. Fiscal impact will be minimal as some revenues are higher than projected and that will offset these increased costs.

3. In the Water Fund, debt services payments for the Scoggins Reservoir debt to the Bureau of Reclamation were under-budgeted for FY 2015-16 so a transfer is necessary to prevent an overexpenditure for Debt Service. Water Fund expenditures will be $11,000 higher than projected.

FISCAL IMPACT: Fiscal impact was explained above.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached resolution transferring appropriations within the FY 2015-16 Budget.

ATTACHMENT(s): Resolution Transferring Appropriations Within Various Funds for the Fiscal Year 2015-16

16.

RESOLUTION NO. 2016-47

RESOLUTION TRANSFERRING APPROPRIATIONS WITHIN VARIOUS FUNDS FOR THE FISCAL YEAR 2015-16

WHEREAS, the City Council has determined that due to unforeseen expenditures it is necessary to increase the appropriations for the operation of the General and Risk Management Funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. The following appropriations transfers for FY 2015-16 will be made:

1. Transfer $140,000 from General Fund Contingency (100-18-10-580206) to Fire Department Regular Wages (100-22-10-511005). Total Fire Department expenditures are increased to $3,846,213.

2. Transfer $30,000 from General Fund Contingency (100-18-10-580206) to General Fund Planning Department for: 1) Regular Employee Wages (100-31-10-511005) for $15,000; and 2) Attorney Services (100-31-10-521113) for $15,000. Total Planning Department expenditures are increased to $486,233.

3. Transfer $11,000 from Water Fund Contingency (630-53-10-580206) to Water Fund Debt Service: 1) for Principal – Scoggins Reservoir (630-53-10-562030) for $9,600; and 2) for Interest – Scoggins Reservoir (630-53-10-562070) for $1,400. Total Water Fund Debt Service budgeted funds are increased to $444,078.

Section 2. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of June, 2016.

_____
Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of June, 2016.

_____
Peter B. Truax, Mayor

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CITY RECORDER USE ONLY:	
AGENDA ITEM #:	17.
MEETING DATE:	
FINAL ACTION:	

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 27, 2016*

PROJECT TEAM: *Rob Foster, Public Works Director*
Paul Downey, Administrative Services Director

SUBJECT TITLE: *Clean Water Services Rate Increases for FY 2016-17*

ACTION REQUESTED:		Ordinance		Order	X	Resolution		Motion		Informational

X all that apply

ISSUE STATEMENT: Each year, Clean Water Services proposes to increase sewer and storm water management rates and sewer system development charges, and Forest Grove adopts a Resolution passing these charges through to rate payers.

BACKGROUND: The City of Forest Grove collects rates and charges for sanitary sewer and storm water management (SWM) pursuant to the Intergovernmental Agreement (IGA) with Clean Water Services (CWS). The Agreement sets forth that CWS will set rates for the fundamental service and that member cities can select to add a portion for additional local operational costs.

For FY16-17, CWS is proposing the following increases effective July 1, 2016:

1) A 3.0% increase to sanitary sewer rates which will increase costs by $1.21, from $40.80 to $42.01, for a typical residential consumption of 8ccf.

2) Increase the sanitary sewer System Development Charge (SDC) by $200. This will raise the fee from the current $5,100 per EDU (Equivalent Dwelling Unit) to $5,300. Forest Grove will retain 20% of the SDC revenue, and pass-through the rest to CWS.

3) Increasing surface water management rates by 50¢ per month. This will raise the current rate CWS charges from $7.25 to $7.75. Forest Grove is not proposing to increase its separate surcharge. SWM fees cover the cost of leaf-pick up, catch basin cleaning, flood control, and street sweeping and debris disposal, and other programs which lessen the pollution in local streams and rivers.

4) Increasing the SWM System Development Charge of $10, which will increase the fee from $500 to $510.

FISCAL IMPACT: These rates are built into the FY2016-17 budget which outlines the fiscal impact of these rate increases.

STAFF RECOMMENDATION: Staff recommends the City Council approve the attached Resolutions increasing sanitary sewer rates, storm water management rates and sewer and SWM System Development Charges for the City of Forest Grove.

ATTACHMENT(s): Resolution

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NOTICE OF PUBLIC HEARING
PASS-THROUGH RATE INCREASES APPROVED
BY CLEAN WATER SERVICES
FOR THE CITY OF FOREST GROVE

NOTICE IS HEREBY GIVEN that the Forest Grove City Council will holding a Public Hearing **Monday, June 27, 2016, at 7:00 p.m.** or thereafter, in the Community Auditorium, 1915 Main Street, Forest Grove, to consider enacting a resolution implementing the pass-through rate increases approved by Clean Water Services (www.cleanwaterservices.org), effective July 1, 2016.

This hearing is open to the public and interested parties are encouraged to attend. A copy of the report and list of the rates are available for inspection before the hearing at the City Recorder's Office or by visiting the City's website at www.forest-grove-or.gov. Written comments or testimony may be submitted at the hearing or sent to the attention of the City Recorder's Office, P.O. Box 326, 1924 Council Street, Forest Grove, OR 97116, prior to the hearing. or further information, please contact Anna Ruggles, City Recorder, at 503.992.3235, or via e-mail aruggles@forestgrove-or.gov.

Anna D. Ruggles, CMC, City Recorder
City of Forest Grove

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17.

RESOLUTION NO. 2016-48

RESOLUTION ESTABLISHING CERTAIN CLEAN WATER SERVICES UTILITY RATES AND CHARGES FOR THE CITY OF FOREST GROVE, EFFECTIVE JULY 1, 2016, AND REPEALING RESOLUTION NO. 2015-52

WHEREAS, Forest Grove Code Section 3.705 and as set forth in the Agreement with Clean Water Services, Page 5, Section 4.B., of the Agreement requires the City to collect rates and charges set by Clean Water Services; and

WHEREAS, Clean Water Services provides the City of Forest Grove sanitary sewer treatment and surface water management billed on per dwelling unit; and

WHEREAS, Clean Water Services Board of Directors approved a budget with a 3.0% Sewer rate increase on June 21, 2016; and

WHEREAS, Clean Water Services Board of Directors also approved to increase its Sanitary Sewer System Development Charges (SDC) by $200, raising the fee from $5,100 to $5,300 per EDU, on June 21, 2016; and

WHEREAS, the City of Forest Grove will retain 20 percent (20%) of the Sanitary Sewer System Development Charges as set forth by Clean Water Services Board of Directors on June 21, 2016; and

WHEREAS, Clean Water Services Board of Directors also approved a $0.50 Surface Water Management (SWM) rate increase, raising the rate from $7.25 to $7.75 per EDU, on June 21, 2016

WHEREAS, Clean Water Services Board of Directors also approved a $10 SWM System Development Charge (SDC) rate increase, raising the rate from $500 to $510, on June 21, 2016;

WHEREAS, Clean Water Services held its Public Hearing(s) on June 21, 2016, notifying customers of the above-proposed rate increases.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1: The City Council authorizes the City to collect Sewer rates and charges as set forth by Clean Water Services Board of Directors on June 21, 2016.

Section 2: The City Council authorizes the City to collect Sanitary Sewer System Development Charges as set forth by Clean Water Services Board of Directors on June 21, 2016.

Section 3: The City of Forest Grove shall retain 20 percent (20%) of the Sanitary Sewer System Development Charges as set forth by Clean Water Services Board of Directors on June 21, 2016.

Section 4: The City Council authorizes the City to collect Surface Water Management (SWM) rates and charges as set forth by Clean Water Services Board of Directors on June 21, 2016.

Section 5: The City Council authorizes the City to collect SWM System Development Charges rates and charges as set forth by Clean Water Services Board of Directors on June 21, 2016.

Section 6: The above rates shall become effective July 1, 2016.

Section 7: Resolution No. 2015-52 is hereby repealed upon the effective implementation date of the foregoing rates.

Section 8: This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 27th day of June, 2016.

_____

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 27th day of June, 2016.

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Peter B. Truax, Mayor