

**WASCO COUNTY BOARD OF COMMISSIONERS**  
**REGULAR SESSION / AGENDA WEDNESDAY, OCTOBER 21, 2015**  
**LOCATION: Wasco County Courthouse, Room #302**  
**511 Washington Street, The Dalles, OR 97058**

**Public Comment:** Individuals wishing to address the Commission on items not already listed on the Agenda may do so during the first half-hour and at other times throughout the meeting; please wait for the current speaker to conclude and raise your hand to be recognized by the Chair for direction. Speakers are required to give their name and address. Please limit comments to five minutes, unless extended by the Chair.

**Departments:** Are encouraged to have their issue added to the Agenda in advance. When that is not possible the Commission will attempt to make time to fit you in during the first half-hour or between listed Agenda items.

**NOTE:** With the exception of Public Hearings, the Agenda is subject to last minute changes; times are approximate – please arrive early. **Meetings are ADA accessible.** For special accommodations please contact the Commission Office in advance, (541) 506-2520. TDD 1-800-735-2900.

9:00 a.m.

**CALL TO ORDER**

*Items without a designated appointment may be rearranged to make the best use of time. Other matters may be discussed as deemed appropriate by the Board.*

- Corrections or Additions to the Agenda
- [Discussion Items](#) (Items of general Commission discussion, not otherwise listed on the Agenda) [Homeland Security Grants](#), [Civic Auditorium Letter of Support](#), [SWCD Public Entity Declaration](#), [Switch Gear Box and Generator Funding](#), [OSU Extension Service Fund Balance](#), [ODFW Wolf Delisting Proposal](#), [Enterprise Zone – Letter of Support](#),
- [Consent Agenda](#) (Items of a routine nature: minutes, documents, items previously discussed.) [Minutes: 10.7.2015 Regular Session](#)

9:30 a.m.

[Supplemental Budget Hearing](#)  
[Finance Report](#)

} Debbie Smith-Wagar

10:15 a.m.

[Tobacco in Wasco County](#) – Shellie Campbell

10:30 a.m.

[Veterans Services Advisory Committee](#) – Andretta Schellinger

10:45 a.m.

[Large Value Assessment Appeals/Transfer Request](#) – Jill Amery/Tom Linhares

11:00 a.m.

[Foreclosed Property Repurchase Request](#) – Jill Amery

11:15 a.m.

[Code Compliance Violations](#) –Joseph Ramirez

11:30 a.m.

[Ballot Initiatives Process](#) – Lisa Gambee

11:45 a.m.

[State Marijuana Laws](#) –Angie Brewer

**NEW / OLD BUSINESS**  
**ADJOURN**

If necessary, an Executive Session may be held in accordance with: ORS 192.660(2)(a) – Employment of Public Officers, Employees & Agents, ORS 192.660(2)(b) – Discipline of Public Officers & Employees, ORS 192.660(2)(d) – Labor Negotiator Consultations, ORS 192.660(2)(e) – Real Property Transactions, ORS 192.660(2)(f) To consider information or records that are exempt by law from public inspection, ORS 192.660(2)(g) – Trade Negotiations, ORS 192.660(2)(h) - Conferring with Legal Counsel regarding litigation, ORS 192.660(2)(i) – Performance Evaluations of Public Officers & Employees, ORS 192.660(2)(j) – Public Investments, ORS 192.660(2)(m) –Security Programs, ORS 192.660(2)(n) – Labor Negotiations



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 21, 2015

PRESENT: Scott Hege, Commission Chair  
Rod Runyon, County Commissioner  
Steve Kramer, County Commissioner

STAFF: Tyler Stone, Administrative Officer  
Kathy White, Executive Assistant

At 9:00 a.m. Chair Hege opened the Regular Session of the Board of Commissioners with the Pledge of Allegiance.

**Public Comment**

Widge Johnson asked where the County is in the Public Health process. Mr. Stone replied that not much progress has been made since the last time she asked; the County has looked at facilitators to help with the evaluation process but they do not want to move forward with that until Chair Hege completes his work on the governance piece. The hope is that the governance work will set the stage for the two entities to work cooperatively toward a good outcome.

Chair Hege added that the target had been to be ready for public input by the end of the calendar year but that is unrealistic. He noted that Public Health is currently operating as usual; he is back on the Board and working on governance issues that he hopes to resolve in the next two months. He said that once that is complete, he hopes to continue to work cooperatively with Public Health to move the process forward.



Ms. Johnson asked if Public Health will remain a regional entity. Chair Hege said that it will for the foreseeable future; he said that it is likely to be December of 2016 before a major change would happen – if it happens at all.

**Discussion Item – The Dalles Civic Auditorium Letter of Support**

Trish Neal, Program Manager for The Dalles Civic Auditorium, said that the Auditorium was built in 1921; restoration has been in progress for many years – they are now making it a priority. She reported that they recently met with the architect and determined that it would be more costly to do the project in phases, so they are going to take on the project in its entirety. The goal is to restore the theater to its previous look but also add technology that will support a variety of uses – conference venue, ballroom, classroom, movie theater, stage theater, etc. She stated that when the project is complete, it will be the largest facility of its kind between Portland and Boise or Spokane with the ability to attract larger productions and conferences. Sherry Monroe, Civic Board Member, added that the facility can currently seat 450; once complete the capacity will be seating for over 700.

Shirley Colf of The Dalles asked if this project will be in the local paper. The Dalles Chronicle Reporter Derek Wiley replied that it will be in the paper.

Ms. Neal continued by saying that they are working with a grant writer to start the process of raising funds. Since phase-one represents three-quarters of the cost of the project, it makes sense to take it all on at once.

Chair Hege asked if there is an estimated cost for the project. Ms. Neal responded that it will be approximately \$6.4 million; they are looking for donations, grants and foundation contributions. She stated that plans are on display in the lobby of the theater and pictures can be viewed on the Civic website: [www.thedallescivic.org](http://www.thedallescivic.org). She said a letter of support from the Board helps gather initial support for the project.

**\*\*\*The Board was in consensus to provide a letter of support for The Dalles Civic Auditorium restoration/renovation project.\*\*\***

**Discussion Item – Homeland Security Grants**

Chief Deputy Lane Magill explained that these are the contracts for the grants approved by the Board earlier this year.



Commissioner Kramer asked when the work might begin. Chief Deputy Magill replied that they have to be finished by September 2016; he hopes to be ready by spring.

Chair Hege asked if a match is required. Chief Deputy Magill responded that there is no match, the grants fully fund the projects.

**{{{Commissioner Kramer moved to approve Oregon Military Department Office of Emergency Management Homeland Security Grant Program State Homeland Security Program CFDA #97.067 for Wasco County in the amount of \$23,477 for Grant #15-255. Commissioner Runyon seconded the motion which passed unanimously.}}}**

**{{{Commissioner Runyon moved to approve Oregon Military Department Office of Emergency Management Homeland Security Grant Program State Homeland Security Program CFDA #97.067 for Wasco County in the amount of \$22,650 for Grant #15-256. Commissioner Kramer seconded the motion which passed unanimously.}}}**

Chief Deputy Magill reported that they have completed testing for Parole and Probation officers and will conduct oral boards tomorrow for seven candidates. He said that they have received one application for a Parole and Probation Manager and will interview for that position next week. He said that he hopes to have the process for both positions completed within 60 days.

<b>Discussion Item – Soil &amp; Water Conservation District Declaration Letter</b>
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**\*\*\*The Board was in consensus to sign the letter declaring the Wasco County Soil & Water Conservation District a government entity.\*\*\***

<b>Discussion Item – Switch Gear Box &amp; Generator Funding</b>
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Facilities Manager Fred Davis reminded the Board that the County had been awarded a Department of Justice Grant for a new switch gear box; that funding was recently increased to recognize increased costs and allow for contingency. He reported that in conversation with the ODJ, he let them know that our current building generator is powering at about 70% capacity and the County would probably need to purchase a



new generator at some point in the future. Since the goal of the grant program is to create facility emergency readiness, the ODJ responded that they would be interested in making a new generator part of this grant funding cycle.

Mr. Davis reported that through discussions with the local Public Utilities District, he learned that we are well under the amount of actual power needs for the building and bringing it up to that level will be more costly than he first thought. Each party would be required to provide approximately \$88,000 for the combined project. He noted that there is market value for the generator currently in use; we could recover some funds by surplussing and selling that unit. He stated that there is nearly \$1 million in the Facility Capital Fund that could be used for this project.

Mr. Stone pointed out that the Board has already approved the switch gear box so what they are considering today is an increase to that commitment by approximately \$38,000. This will add the generator; the State recognizes that it makes more sense to do the entire project.

**\*\*\*The Board was in consensus for the Facilities Manager to move forward with the grant funding project to include the costs for both the switch gear box and new generator for the Wasco County Courthouse.\*\*\***

<b>Discussion Item – OSU Extension Service District Fund Balance</b> <b>Letter</b>
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Mr. Stone explained that this is part of the Service District's process to ensure transparency; it informs the County of the District's fund balance at the end of the fiscal year.

<b>Discussion Item – ODFW Proposed Gray Wolf Delisting</b>
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Commissioner Kramer stated that the Fish and Wildlife Commission is seeking input on the proposed delisting of the gray wolf. They have asked for a response regarding the three available options:

1. Delist wolves for all of Oregon
2. Delist Wolves only east in eastern Oregon
3. No action – do not delist

Commissioner Kramer explained that delisting requires four breeding pairs for three



years; we now have nine breeding pairs and thirteen packs in the state which far exceeds the requirement. He suggested that the Board move forward with option one to delist wolves for all of Oregon. He said that action will allow the State to move forward with their plan; we will then have only one entity managing the program – we are currently also subject to federal regulations in our region.

**\*\*\*The Board was in consensus to sign a letter to the Fish and Wildlife Commission stating the County's position that they should delist wolves for all of Oregon.\*\*\***

**Discussion Item – Mid-Columbia Medical Center Letter**

Chair Hege explained that this is a letter from the local hospital thanking local government for their work on the recent enterprise zone approved by the City of The Dalles and Wasco County for Design LLC. He said the County appreciates their support.

**Agenda Item – Supplemental Budget Hearing**

Interim Finance Director Debbie Smith-Wagar said that she feels it is more useful to the Board to have a supplemental budget rather than having budget adjustments coming in one at a time; this allows the Board to see the changes as a whole to gauge the total impact.

Ms. Smith-Wagar reviewed the Finance Memo outlining the adjustments to the budget.

Mr. Stone noted that the salary matrix update was in the budget but requests for re-evaluation consumed a portion of that line item.

Chair Hege asked Mr. Stone to inquire about the increase for the insurance premium.

Ms. Smith Wagar stated that there will be additional items coming forward for the budget but she did not have enough information to add them at this time. She noted that if the facilities grant increase comes through, it will require an adjustment. In addition, Wasco Cooperative Electric has raised rates 7.5%; most affected departments can absorb it, but if not – there will be adjustments related to that. She said she recommends adoption of the supplemental budget.

At 9:37 a.m. Chair Hege opened a public hearing to take comments regarding the



supplemental budget.

Rodger Nichols asked about the amount being added to the legal budget. Ms. Smith-Wagar responded that the increase she is asking for is the result of calculating the year-to-date legal expenditures and extrapolating that out for the remainder of the year to approximate what the budget for that should be.

There being no further public comment Chair Hege closed the public testimony portion of the hearing and opened deliberations.

**{{{Commissioner Kramer moved to approve Resolution 15-012 appropriating unanticipated resources in a supplemental budget request. Commissioner Runyon seconded the motion which passed unanimously.}}}**

<b>Agenda Item – Finance Report</b>
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Ms. Smith-Wagar reviewed her report saying that she added comments to the independent auditors' letters – adding her observations through the work she has been doing as Interim Finance Director. She cautioned that there will still be findings in the upcoming audit explaining that it is the nature of audits for findings to occur for two consecutive years. By the time an organization receives an audit, they are already well into the next fiscal year without the knowledge of the findings and therefore corrective action is not taken until after the audit report – too late to avoid similar findings in the next audit. She noted that Pauley Rogers came in after last year's independent audit to expand on the findings; they did not look for additional issues – her report also addresses their concerns.

Mr. Stone commented that there were three levels to this process – the initial independent audit identifying weaknesses, the Pauley Rogers review to ascertain root causes and the contract with Smith-Wagar Consulting to identify and implement solutions.

Ms. Smith-Wagar went on to say that all the issues raised by the independent audit have been addressed and processes are now in place. She stated that 2014/15 reconciliations are almost caught up and she expects that will be done by the end of the month. Bank statements and deposits are all tied out and recent reconciliations have balanced to the penny. She stated that the period closing will be submitted in much the same format as the supplemental budget.



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 21, 2015  
PAGE 7

Ms. Smith-Wagar continued to review the report saying that internal control issues have been addressed; the Treasurer had un-deposited checks and cash – it seemed to be common for the Treasurer to hold deposits when it initially could not be determined into which account they should go. She said that there is a line item in which those deposits can reside until it is determined where they should go; deposits are being made daily.

Ms. Smith-Wagar concluded by saying that all of the recommendations have been implemented. Chair Hege asked if there are any that have not been fully implemented. Ms. Smith-Wagar replied that 2015 is not entirely reconciled but it will be soon. She said that she thinks the independent auditor will be pleased. She added that internal controls can always be better, but they are significantly better than what they were in April.

The Board praised the work Ms. Smith-Wagar has done and thanked her for all her efforts.

Chair Hege asked what the status of the audit is. Ms. Smith-Wagar replied that it is behind from where it would be in a perfect schedule and we may have to ask for an extension which is not uncommon especially in light of all the issues that had to be addressed. She stated that we want to make sure that everything is resolved so that we can put it behind us.

Ms. Smith-Wagar reported that she has extended an offer for the Human Resources Manager position and hopes that the candidate will be able to start work next week. She said that we have not received any really qualified applicants for the Finance Director position which is a situation not unique to Wasco County – people in this field are retiring and there are not enough candidates in the pool to fill the open positions. She said that she is getting a lot of information from head-hunting groups and noted that this is an issue not only in the finance field but also in IT and other highly professional jobs – there is a lack of candidates.

Mr. Stone observed that this is the single most critical position in the organization and we really want to make sure we do it right – we need someone like Ms. Smith-Wagar. She is filling the void but cannot do that forever – we want to make a good decision.



**Agenda Item – Tobacco in Wasco County**

NCPHD Tobacco Prevention & Education Program Coordinator Shellie Campbell reviewed the documents provided in the Board Packet. She said that the ultimate goal would be to make Wasco County tobacco- and smoke-free. She said that they are working to reduce exposure for children; currently the tobacco industry markets in stores with advertisements and product placements that entice children. There are products available in aromas and flavors that appeal to children. She reported that most people start smoking before the age of 18 – if we can prevent that, they will likely not smoke at all.

Ms. Campbell said that they promote smoke-free environments and encouraged the Board to considering adopting something that would prevent smoking on County property – it reduces health costs not only for staff but also for visitors to the County facilities. She observed that the Surgeon General has stated that there is no safe level of second-hand smoke. She added that Parks and Recreation Districts could also become smoke-free.

Ms. Campbell stated that there is support and resources for quitting – it is very difficult to quit nicotine. She said there is a 1-800 number for support. She is also working with CCOs – the Affordable Care Act has provisions for that as well. She said that the local CCO recognizes becoming tobacco- and smoke-free as a goal. Tobacco use is the number one cause of preventable death and illness.

Ms. Campbell reported that through a community readiness assessment conducted last year, they learned that Wasco County is at the preplanning stage – there is a high level of awareness in the community but we are not yet ready to implement policies. We need planning and education to get the public on board. Wasco County has a higher than average smoking population and one of the higher rates in Oregon of pregnant women who smoke.

Ms. Campbell described the retail assessment that was conducted (see Board Packet). She said the participating kids help educate retailers and students. She noted that the government conducts “stings” in which penalties are imposed, but the kids program is to educate and encourage. She reported that she has also worked successfully with Columbia Gorge Community College which now has a 100% smoke-free campus. She is also working with Mid-Columbia Medical Center and the Parks and Recreation District.



Chair Hege asked if she works with Youth Think. Ms. Campbell replied that she does although Youth Think's focus is more on drugs and alcohol; there will be more cross-over now that recreational marijuana is legal.

Commissioner Kramer thanked Ms. Campbell for stepping up to the plate on this tremendous issue. He asked if Public Health has a tobacco-free campus. She replied that it is not as there is still a designated smoking area. Commissioner Kramer noted that he has seen people smoking on the ramp area right in front of the no-smoking sign; he asked how that is being addressed. Ms. Campbell replied that when she sees that she approaches the people and explains the policy to them; generally people are receptive and cooperative. She said that it takes a long time, but progress is being made.

Chair Hege called for a recess at 10:22 a.m.

The session reconvened at 10:27 a.m.

#### **Consent Agenda – 10.07.2015**

Commissioner Runyon noted that he had brought a change to Ms. White that is not in the packet. Ms. White stated that on the first page, third paragraph she had written the word "diversity" when it should have been "adversity." She has corrected that in the hard copy for signature.

**{{{Commissioner Kramer moved to approve the Consent Agenda with the noted change to the minutes. Commissioner Runyon seconded the motion which passed unanimously.}}}**

#### **Agenda Item – Veterans Advisory Committee (VSAC)**

Andretta Schellinger, Chair-elect for VSAC, said that at their last meeting the Committee talked about their future and wants input from the Board as to what their role is for the County. She said that they have plans to bring different veterans organizations to their meetings and then report to the Board on what is happening within the community and where the Board might help. She noted that their bylaws state that they are to advise the Board and seek funding.

Commissioner Runyon asked if they have a tentative list of what they want to do. Ms. Schellinger replied that they do not. Commissioner Runyon said he would like to see them develop that and bring it to the Board.



Mr. Stone commented that he has not been attending the VSAC meetings regularly but had been to the last one where it seemed the group was struggling with focus and purpose – they questioned if there is a need for the Committee. He said that he suggested that they come to the Board to talk about their role – does the Board want them doing projects, advising, or something else?

Commissioner Runyon observed that staffing at the Veterans Services Office is an issue; exploring what is needed there would be valuable. Ms. Schellinger responded that they want to look at the VSO budget for next year before it comes before the Board to provide a second set of eyes. Chair Hege thought that would be helpful.

VSAC member Jim Burris said that the original charge of the Committee was to implement the Ad Hoc Committee's plans. Ms. Schellinger stated that they plan to do that and more. She said that there is a stand-down planned for November 7<sup>th</sup>. She said that they also plan to communicate with the Board on a more regular basis.

Mr. Burris said that research has been ongoing for about two years through the state for a bond. He provided a memo (see attached) he received from the office of the Secretary of State regarding the formation of a special district.

<b>Agenda Item – Large Value Assessment Appeals/Transfer Request</b>
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Tom Linhares, Assessment Consultant, explained that there was an appeal from Seattle City Light which had an agreement with BPA to use a transmission line for which Seattle City Light was assessed; Seattle City Light's position was that it was not appropriate to tax them for that. The Court has ruled that they are subject to taxation as part-owner. That appeal is completed; however, it was not large enough to set up a reserve account – the effects for this year in Wasco County was \$38,000 and it would have been refunded back to 2010 had Seattle City Light won the appeal.

Mr. Linhares went on to say that the Supreme Court had said that Charter/Comcast is subject to taxes as a utility. Comcast appealed and lost, however, the Court remanded a portion of the suit. DOR and Comcast are working on how the cable company will be valued – once that is decided there will probably be another appeal. All the smaller companies are waiting for this to be finalized; it is likely to take 3-4 years. In the meantime, the cable companies are continuing to pay taxes based on current value system.

Mr. Linhares explained that every year since the appeal, Wasco County has set aside



the amount that would be in question. Last year no money was set aside based on the decision made by the Court that they are subject to taxes as a utility. However, with the remand of the portion of the suit, he and the Assessor recommend putting money into that account at a lower rate – they will be assessed, we just don't know how much it will be. He stated that their total for this year will be \$146,561; they recommend that \$75,000 be placed in reserve – even if the appeal is decided in Comcast's favor that should be enough. The difference will be put back for distribution to the County and the taxing districts. Ms. Amery said that they want to minimize the impact to the taxing districts; they don't want to be in the position of having to ask for money back from the districts. Currently the account has \$563,956.07.

Chair Hege asked if a lot of the money would need to be given back. Mr. Linhares replied that it is hard to know; they advise being conservative.

Commissioner Kramer made a motion that the Treasurer set aside \$75,000 from the tax pool or the person designated to do so. Commissioner Runyon seconded the motion.

Commissioner Kramer questioned the language for the motion considering the restructuring of duties for the Treasurer and Finance Offices in Wasco County. He asked if this has to be done today.

Mr. Linhares replied that it does not need to be done until mid-November.

Commissioner Kramer withdrew his motion, saying that he wants to make sure the correct language is used when making the motion.

Ms. Amery said they will bring it back at the November 4<sup>th</sup> session with the appropriate language.

#### **Agenda Item – Foreclosure Repurchase Request**

Ms. Amery reported that she had received an inquiry from Rocky Webb on a property for which they had a sale pending. They were surprised to find that the County is the owner of the property having taken deed through foreclosure as a result of unpaid taxes. She explained that there is statute that allows the County to sell the property back and that is what the previous owners would like to have happen. She said that the purchase price will be the amount of back taxes, our costs,



the recording fee and interest for a total of \$10,920.06.

{{{Commissioner Kramer moved to sell back the property at 2365 E. 2nd Street, The Dalles, OR Parcel 1 of Partition 2009-0005, recorded on 02-25-2009 as 2009-000712 Wasco County Records, located in the NE1/4 of the SW1/4 and the NW1/4 of the SE1/4 of Section 2, Township 1 North, Range 13 East of the Willamette Meridian, City of The Dalles, County of Wasco and State of Oregon. to J Rose Development LLC for \$10,920.06. Commissioner Runyon seconded the motion which passed unanimously.}}}

**Agenda Item – Code Compliance Violation**

Planning Director Angie Brewer said that Codes Compliance Officer Joseph Ramirez has been working through a backlog of 60 cases; this is one of the longer outstanding cases and has been difficult to resolve through the normal process. That is why an order is being sought from the Board.

Mr. Ramirez said that progress has been slow. He reported that he did an abatement agreement with them to see if he could get them to cooperate. He said that he had set up 10 square foot sections to clear but they did not attend the last meeting and although they called they did not leave a complete phone number at which they could be reached. He pointed out that there have been multiple abatement agreements and the last notice was issued on September 3, 2015. He stated that the property is in Rowena off of Hwy 30 and is quite visible; there is quite a bit of accumulation as evidenced in the photographs (attached).

Commissioner Runyon pointed out that our system is complaint driven. Mr. Ramirez confirmed saying that the complainants have been very patient with this lengthy process. Ms. Brewer added that staff has exhausted all their possibilities having visited the property 29 times and spent many staff hours.

Chair Hege asked what the next step will be. Mr. Ramirez said that the next step will be to record a notice of violation and place a lien. Staff is recommending recording the notice, implementing fines and placing a lien on the property. He said that the Board can add additional charges for staff time, but that is not his recommendation - \$10,000 is already a lot without adding more.

Commissioner Runyon asked what happens after the lien is placed. Mr. Ramirez said that the next step, after 90 days, will be County cleanup for which the owners would



be charged. He said that he hopes this works and that does not become necessary.

Commissioner Kramer observed that the surrounding landowners seem to be keeping their places in order. Ms. Brewer said that there are other houses close by this one – it is a nuisance and we don't want to see it continue.

Chair Hege commented that the lien would likely not be paid until the property is sold. He asked if the lien increases as the per-day penalty is assessed. Ms. Brewer responded that staff recommends the date of notice be the start date for assessing the penalties – that would mean it has already reached the \$10,000 maximum.

Chair Hege asked how the case would close. Mr. Ramirez replied that the property owners would notice him that they are ready to be checked for compliance.

Commissioner Runyon stated that he would like to use today's date to start assessing the fine. Mr. Ramirez stated that he believes that they will continue to accumulate because they scrap metal and are waiting for prices to rise.

**}}}Commissioner Runyon moved to approve Option 2 to affirm the Notice of Violation/Administrative Civil Penalties and potentially faster progress or long-term progress towards abatement for Compliance Code Case: CODENF-10-07-0059 with fines to begin as of October 21, 2015. Commissioner Kramer seconded the motion which passed unanimously.}}}**

#### **Agenda Item – Ballot Initiative Process**

County Clerk Lisa Gambec said there was a question at the last Board Session about what elective initiatives are available should the Board elect to not opt out of the State marijuana laws. She reported that she has spoken to AOC's Rob Bovette, main author of the bill.

Ms. Gambec went on to explain that there is a provision in the bill for a citizen led initiative process to put a measure on the ballot for November 2016. She stated that it follows the typical process for which the State provides a manual online. She said that it is recommended that anyone wishing to start the process engage legal counsel. She said that because it is county-wide, it will need 6% of the votes that were cast for governor in the 2014 election which would be 549 signatures.

Commissioner Runyon asked if those signatures could be from residents of both



incorporated and unincorporated portions of the County. Ms. Gambree replied that it would be the entire County but anyone wishing to initiate the process should carefully read the manual as to how those signatures are to be gathered. She added that any County initiative will not impact what the cities choose to do. She stated that she has a copy of the bill; if anyone wants it they can contact her. She added that she does not have an exact date by which the signatures would need to be submitted but for this year it would have been August 5<sup>th</sup> – that indicates a rough estimate of a submission date for 2016.

Chair Hege stated that in Maupin there was a discussion around this issue and they talked about the fact that this can come back up every two years. He said that he would like to verify that. Mr. Burris interjected that it probably has to do with the limitations of how often you can bring the same issue to the ballot – you have to wait two years.

Chair Hege said that he would like to know if the signatures have to be from registered voters only. Ms. Gambree replied that she would confirm but noted that when last she was asked to sign a petition, she was first asked if she was a registered voter. She said that an initiative is an extensive process; the Clerk's job is to make sure that it is recorded properly. Clerks cannot give legal advice; citizens should do their due diligence and seek legal counsel.

Ms. Gambree announced that the November 2016 ballot will be very full; the budget will need to be increased to handle that.

#### **Agenda Item – State Marijuana Laws**

Planning Director Angie Brewer reviewed the memo included in the packet saying that it addresses questions raised at the last Board session. She said that the prediction of first retail stores opening next fall is an assumption based on the amount of time needed to cycle from obtaining a license to producing a product. She said that the OLCC draft rules are online; they will not just stamp a license – it has other agency components.

Ms. Brewer reported that at the recent Planners Conference, many speakers clarified and confirmed that if the smell and lights are within the exclusive farm zone (EFU), they cannot be regulated. Outside the EFU, it is possible to enact regulations. She stated that with more hemp coming in, the market will drive the marijuana grows



indoors to avoid the conflict created by hemp. She said that greenhouses near residences are often windowless to avoid the light pollution issues.

Ms. Brewer went on to say that from now to 2017 the State tax formula for retail sales will be based on populations in jurisdictions that do not opt-out; after that it will be based on OLCC licenses, with 50% based on the number of growers, processors and wholesalers and the other 50% based on the number of retailers.

Chair Hege noted that based on those formulas, Wasco County will see very little revenue through the State tax distribution. He said that AOC is working to change that to a more equitable formula.

Ms. Brewer said that she has been talking with the Gorge Commission and pressing for their position on regulations within the scenic area.

Chair Hege observed that the six business uses listed in HB3400 do not address medical marijuana grows; there is an assumption that it will all become recreational marijuana that can supply to medical dispensaries. Ms. Brewer stated that medical marijuana grows are currently not a farm use – greenhouses for medical marijuana grows are not farm buildings; they are accessory buildings which means planning does not need to know what is going on inside the building as long as it is not farm use. She said that if they are licensed medical grows, Planning does not pursue; if they are not licensed, Planning works with the Sheriff's Department to pursue the issue.

Chair Hege asked if the medical marijuana grows have to have water rights and are not allowed to use an exempt well. Ms. Brewer replied that it is not yet clear; we are assuming that the medical marijuana card system will give way to the recreational market. Commissioner Kramer noted that it will mean confidentiality will go away. Ms. Brewer agreed that it is possible, but if they continue under the current system, we may not know.

Chair Hege stated that the County endorsement on the OLCC application will be our check; he asked how the County will handle that. Ms. Brewer replied that if they need a new building, we require quite a bit of detail and it is all public. Commissioner Kramer said that the Farm bureau is pushing for the Department of Agriculture to be in control. Ms. Brewer concurred, saying this is not over yet. Personal grows are not regulated and cannot be regulated – that applies to all zones.



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 21, 2015  
PAGE 16

Commissioner Kramer asked if the County has had any applications. Ms. Brewer replied that they have not, just an inquiry.

Ms. Brewer reported that Clackamas and Deschutes have both moved forward with time, manner and use regulations – the most neutral path forward is to establish setbacks to provide protections for residents. Clackamas County is finished and Deschutes is wrapping up.

Referencing the table included in the packet, Chair Hege noted that in Wamic/Tygh Valley it lists “no” for the ability to grow. He asked why in those particular areas it is not allowed. Ms. Brewer replied that zones where farming is expressly allowed it is a “yes”; if it is not listed as expressly allowed then it is “no.” It is not listed in Tygh Valley or Wamic’s zoning.

Chair Hege stated that no matter what the Board does or does not do, it could still be fall, 2016 before we know. He said he would like to start the process for time, manner and place regulations so that something is in place. He said he believes growers want that as well as residents so that they know how and what they can do.

Commissioner Kramer asked what the zoning is for Pine Grove. Ms. Brewer responded that she will get that information to him.

Commissioner Runyon thanked Ms. Brewer for the matrix which has been useful when talking to citizens. Chair Hege concurred saying that it is also appropriate for landowners who may be adjacent to grows.

Ms. Brewer stated that pursuing the time, manner and place regulations will also help reduce the possibility of grandfathered uses. The date an application is submitted determines what regulations apply; even if the regulations change, the applicant is subject only to those regulations in place at the date of application.

Chair Hege asked how that applies to someone who changes what they are growing, say from pumpkins to marijuana. Ms. Brewer replied that in that case they would be changing use – if we have ordinances in place by January 4<sup>th</sup>, they will apply to anyone growing marijuana. If we want to prevent grandfathered uses, we need to act now.

Commissioner Runyon noted that there is a process for that. Ms. Brewer agreed



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 21, 2015  
PAGE 17

adding that it will be critical to have stakeholders involved; it is a 2-3 month process if you hurry. She said we have a lot of good examples from similar counties that we can use as a template.

Mr. Stone noted that Planning is very busy and already working mandatory overtime.

Chair Hege said that we definitely need to get something in place and talk about how or if we are going to protect residents. He said that others have already taken this step and he doesn't know why we wouldn't; we want to avoid conflicts.

Ms. Brewer agreed saying that as things are becoming clearer, this is a prudent step. She said it will start with the Planning Commission and then come to the Board.

**\*\*\*The Board was in consensus to direct the Planning Director to move forward in a process to institute time, manner and place regulations in regard to recreational marijuana.\*\*\***

Ms. Brewer asked if the intent is for her to return with a recommendation and draft ordinances. All members of the Board indicated that, that is the intent. Chair Hege said that it needs to be done by January 4<sup>th</sup> to avoid grandfathered uses. Ms. Brewer pointed out that we will benefit from the work that other counties have already done.

Ms. Johnson stated that this is a lot of great information and with Wasco County voting 51.24% against Measure 91, this is a close call for the Board. She said she is glad to know there is a way for citizens to get this on the ballot – it is great for people to know that. She said that all the information is not available right now for how this will be managed; it is good to get it done soon so that people know. She said that if the Board decides to not opt-out, they should declare that so that people know.

Ms. Brewer said she will need other staff involvement for this process. Ms. Rogers said that she can offer some of her staff's time. She said that she also wants to point out that the personal grows are regulated in that it is illegal to use under the age of 18. Ms. Brewer agreed that the message is important.

Commissioner Kramer observed that in Section two of HB2041 it states that the tax will be 17% and in Section 21 they talk about 25%; he asked if that is the early-start provision. Chair Hege said that he thinks it starts at 25% and then goes to 17%.

Mr. Stone advised Ms. Brewer to let administration know what she needs from the



rest of the management team.

Chair Hege said that Maupin opted out last night; they wanted the citizens to make the decision in the 2016 election. Commissioner Kramer stated that Dufur has not addressed it. Mr. Stone said he believes Shaniko has opted out.

Chair Hege adjourned the session at 12:33 p.m.

### Summary of Actions

#### Motions Passed

- To approve Oregon Military Department Office of Emergency Management Homeland Security Grant Program State Homeland Security Program CFDA #97.067 for Wasco County in the amount of \$23,477 for Grant #15-255.
- To approve Oregon Military Department Office of Emergency Management Homeland Security Grant Program State Homeland Security Program CFDA #97.067 for Wasco County in the amount of \$22,650 for Grant #15-256.
- To approve Resolution 15-012 appropriating unanticipated resources in a supplemental budget request.
- To approve the Consent Agenda with the noted change to the minutes – Page 1 Paragraph 3 – “adversity” instead of “diversity”.
- To sell back the property at 2365 E. 2nd Street, The Dalles, OR Parcel 1 of Partition 2009-0005, recorded on 02-25-2009 as 2009-000712 Wasco County Records, located in the NE1/4 of the SW1/4 and the NW1/4 of the SE1/4 of Section 2, Township 1 North, Range 13 East of the Willamette Meridian, City of The Dalles, County of Wasco and State of Oregon. to J Rose Development LLC for \$10,920.06.
- To approve Option 2 to affirm the Notice of Violation/Administrative Civil Penalties and potentially faster progress or long-term progress towards abatement for Compliance Code Case: CODENF-10-07-0059 with fines to begin as of October 21, 2015.

**Consensus**

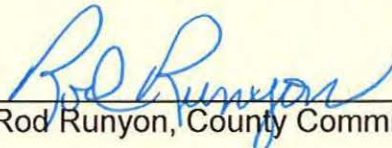
- To provide a letter of support for The Dalles Civic Auditorium restoration/renovation project.
- To sign the letter declaring the Wasco County Soil & Water Conservation District a government entity.
- For the Facilities Manager to move forward with the grant funding project to include the costs for both the switch gear box and new generator for the Wasco County Courthouse.
- To sign a letter to the Fish and Wildlife Commission stating the County's position that they should delist wolves for all of Oregon.
- To direct the Planning Director to move forward in a process to put in place time, manner and place regulations in regard to recreational marijuana.

WASCO COUNTY BOARD  
OF COMMISSIONERS



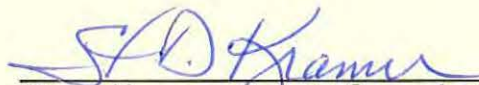
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Scott Hege, Commission Chair



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Rod Runyon, County Commissioner



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Steve Kramer, County Commissioner



**WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 21, 2015**

**DISCUSSION LIST**

**ACTION AND DISCUSSION ITEMS:**

1.     [Homeland Security Grant](#) – Kristy Beachamp
2.     [Civic Auditorium Letter of Support](#) – Trish Neal
3.     [Soil & Water Conservation District Public Entity Declaration](#) – Josh Thompson
4.     [Switch Gear Box and Generator Funding](#) – Fred Davis
5.     [OSU Extension Service Fund Balance](#)
6.     [ODFW Wolf Delisting Proposal](#)
7.     [Enterprise Zone - Letter of Support](#)

**Discussion Item**  
**Homeland Security Grant Agreements**

- [Grant #15-255 Agreement](#)
- [Grant #15-256 Agreement](#)



**OREGON MILITARY DEPARTMENT  
OFFICE OF EMERGENCY MANAGEMENT  
HOMELAND SECURITY GRANT PROGRAM  
STATE HOMELAND SECURITY PROGRAM  
CFDA # 97.067  
WASCO COUNTY  
\$23,477  
Grant No: 15-255**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as “OEM,” and **Wasco County**, hereinafter referred to as “Subrecipient,” and collectively referred to as the “Parties.”

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2015** and ending, unless otherwise terminated or extended, on **September 30, 2016** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM’s obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**  
Exhibit B: **Federal Requirements and Certifications**  
Exhibit C: **Subcontractor Insurance**  
Exhibit D: **Information required by 2 CFR 200.331(a)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **\$23,477** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2015 State Homeland Security Program (SHSP) grant.
4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
5. **Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

### **a. Performance Reports.**

- i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2015 State Homeland Security Program.
- ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

### **b. Financial Reimbursement Reports.**

- i. To receive reimbursement, Subrecipient must submit a signed Request for Reimbursement (RFR), using a form provided by OEM, that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant may be used for expenses incurred before or after the Grant Award Period.

## **6. Disbursement and Recovery of Grant Funds.**

- a. Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the State Homeland Security Program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at [http://www.oregon.gov/OMD/OEM/Pages/plans\\_train/grant\\_info.aspx](http://www.oregon.gov/OMD/OEM/Pages/plans_train/grant_info.aspx).
- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
  - i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.



## Return to Agenda

- ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
- iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

**c. Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

**7. Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:

- a. Organization and Authority.** Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.
- b. Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. NIMS Compliance.** By accepting FY 2015 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through the OEM at [http://www.oregon.gov/OMD/OEM/Pages/plans\\_train/NIMS.aspx#Oregon\\_NIMS\\_Requirements](http://www.oregon.gov/OMD/OEM/Pages/plans_train/NIMS.aspx#Oregon_NIMS_Requirements).

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

**8. Records Maintenance and Access; Audit.**

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement

and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, sub-recipients (collectively hereafter “contractors”), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

**b. Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

**c. Audits.**

- i. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$ 750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
- ii. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

**9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance**

- a. Subagreements.** Subrecipient may enter into agreements (hereafter “subagreements”) for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for



contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

- i. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.
  - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
  - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
  - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
  - ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
  - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
  - iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.

## Return to Agenda

- v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
  - vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
  - vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
  - viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
  - ix. Subrecipient shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.
- c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.



## 10. Termination

- a. Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
- i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
  - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
  - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
  - iv. The Project would not produce results commensurate with the further expenditure of funds; or
  - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
  - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
  - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.
- d. Settlement upon Termination.** Immediately upon termination under Sections 10.a.i, v. or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

## 11. GENERAL PROVISIONS

- a. Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against OEM or Subrecipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party

Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which OEM is jointly liable with Subrecipient (or would be if joined in the Third Party Claim), OEM shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Subrecipient in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of Subrecipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OEM on the one hand and of Subrecipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if OEM had sole liability in the proceeding.

With respect to a Third Party Claim for which Subrecipient is jointly liable with OEM (or would be if joined in the Third Party Claim), Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OEM in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of OEM on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subrecipient on the one hand and of OEM on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. Responsibility for Grant Funds.** Any Subrecipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Subrecipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.



- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.
- j. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must

## Return to Agenda

be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an “officer”, “employee”, or “agent” of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW



**WASCO COUNTY**

By \_\_\_\_\_

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**  
(If required for Subrecipient)

By \_\_\_\_\_  
Subrecipient's Legal Counsel

Date \_\_\_\_\_

**Subrecipient Program Contact:**

Lane Magill  
Chief Deputy Sheriff  
Wasco County Sheriff's Office  
511 Washington St, Ste 102  
The Dalles, OR 97058  
541-506-2592  
lanem@co.wasco.or.us

**Subrecipient Fiscal Contact:**

Debbie Smith-Wagar  
Finance Manager  
Wasco County  
511 Washington St  
The Dalles, OR 97058  
541-506-2770  
debbies@co.wasco.or.us

**OEM**

By \_\_\_\_\_

Matthew T. Marheine  
Operations and Preparedness Section Manager, OEM

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By Cynthia Byrnes via email  
Senior Assistant Attorney General

Date October 8, 2015

**OEM Program Contact:**

Sidra Metzger-Hines  
Grants Coordinator  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-2911 extension 22251  
Sidra.metzgerhines@state.or.us

**OEM Fiscal Contact:**

Dan Gwin  
Grants Accountant  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-2911 extension 22290  
dan.gwin@state.or.us

**Exhibit A**  
**Grant No: 15-255**  
**Subrecipient: Wasco County**

**I. Project Description**

Project Title: Bake Oven Repeater Upgrades

This project will upgrade the Bake Oven public safety communications site by installing a backup generator, fuel supply, automatic transfer switch and upgrade a faulty repeater.

**Budget**

Interoperable Communications	\$ 10,127
Power Equipment	\$ 9,850
Other Authorized Equipment	\$ 3,500
<b>Total</b>	<b>\$23,477</b>



## EXHIBIT B

### Federal Requirements and Certifications

**I. General.** Subrecipient agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

### II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990).
- C. Compliance with Applicable Federal Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
    - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
    - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
  2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
  3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
  4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
  5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
  6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement

may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

### **D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.**

- 1. Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
  - b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
  - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.
  - d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.
  - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
  - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.
  - g. If, during the past three years, Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subrecipient must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subrecipient, or Subrecipient settles a case or matter alleging such discrimination, Subrecipient must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.
- 2. Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.



- F. Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.
- G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
- H. Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.
- I. Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.
- J. Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.

- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.
- R. Energy Policy and Conservation Act.** Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act.
- S. Lobbying Prohibitions.** Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.
- T. Terrorist Financing.** Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws



## EXHIBIT C

### Subagreement Insurance Requirements

#### GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, “TAIL” COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, “first tier” means a subagreement in which Subrecipient is a Party.

#### TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers’ compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

#### ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence, (for all claimants for claims arising out of a single accident or occurrence).

#### iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

## Return to Agenda

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and Subrecipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.



## **Exhibit D**

### **Information required by 2 CFR 200.331(a)**

1. Federal Award Identification:
  - (i) Sub-recipient name (which must match registered name in DUNS): Wasco County
  - (ii) Sub-recipient's DUNS number: 084415959
  - (iii) Federal Award Identification Number (FAIN): EMW-2015-SS-00044-S01
  - (iv) Federal Award Date: August 13, 2015
  - (v) Sub-award Period of Performance Start and End Date: From October 1, 2015 to September 30, 2016
  - (vi) Amount of Federal Funds Obligated by this Agreement: \$23,477
  - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement: \$46,127
  - (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$46,127
  - (ix) Federal award project description: State Homeland Security Program Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation.
  - (x)
    - (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
    - (b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
    - (c) Contact information for awarding official: Dave Stuckey, Deputy Director, PO Box 14370, Salem, OR 97309-5062
  - (xi) CFDA Number and Name: 97.067 Homeland Security Grant Program  
Amount: \$6,837,000
  - (xii) Is Award R&D? No
  - (xiii) Indirect cost rate for the Federal award: 0%
2. Subrecipient's indirect cost rate: 0%

**OREGON MILITARY DEPARTMENT  
OFFICE OF EMERGENCY MANAGEMENT  
HOMELAND SECURITY GRANT PROGRAM  
STATE HOMELAND SECURITY PROGRAM  
CFDA # 97.067  
WASCO COUNTY  
\$22,650  
Grant No: 15-256**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as “OEM,” and **Wasco County**, hereinafter referred to as “Subrecipient,” and collectively referred to as the “Parties.”

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **October 1, 2015** and ending, unless otherwise terminated or extended, on **September 30, 2016** (Expiration Date). No Grant Funds are available for expenditures after the Expiration Date. OEM’s obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**  
Exhibit B: **Federal Requirements and Certifications**  
Exhibit C: **Subcontractor Insurance**  
Exhibit D: **Information required by 2 CFR 200.331(a)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C.

3. **Grant Funds.** In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **\$22,650** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2015 State Homeland Security Program (SHSP) grant.
4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
5. **Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.



### **a. Performance Reports.**

- i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of the agreed upon milestones. The narrative reports will address specific information regarding the activities carried out under the FY 2015 State Homeland Security Program.
- ii. Reports are due to OEM on or before the 30th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

### **b. Financial Reimbursement Reports.**

- i. To receive reimbursement, Subrecipient must submit a signed Request for Reimbursement (RFR), using a form provided by OEM, that includes supporting documentation for all grant expenditures. RFRs may be submitted monthly but no less frequently than quarterly during the term of this Agreement. At a minimum, RFRs must be submitted on or before 30 days following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31), and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant may be used for expenses incurred before or after the Grant Award Period.

## **6. Disbursement and Recovery of Grant Funds.**

- a. Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the State Homeland Security Program guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at [http://www.oregon.gov/OMD/OEM/Pages/plans\\_train/grant\\_info.aspx](http://www.oregon.gov/OMD/OEM/Pages/plans_train/grant_info.aspx).
- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
  - i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.

## Return to Agenda

- ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
- iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

**c. Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand.

**7. Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:

- a. Organization and Authority.** Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.
- b. Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. NIMS Compliance.** By accepting FY 2015 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through the OEM at [http://www.oregon.gov/OMD/OEM/Pages/plans\\_train/NIMS.aspx#Oregon\\_NIMS\\_Requirements](http://www.oregon.gov/OMD/OEM/Pages/plans_train/NIMS.aspx#Oregon_NIMS_Requirements).

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

**8. Records Maintenance and Access; Audit.**

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement

and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, sub-recipients (collectively hereafter “contractors”), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

**b. Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.

**c. Audits.**

- i. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$ 750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
- ii. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

**9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance**

- a. Subagreements.** Subrecipient may enter into agreements (hereafter “subagreements”) for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for



contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

- i. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.
  - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
  - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
  - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
  - ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
  - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
  - iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.

## Return to Agenda

- v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
  - vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
  - vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
  - viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
  - ix. Subrecipient shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the State Homeland Security Program.
- c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

## 10. Termination

- a. Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
- i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
  - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
  - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
  - iv. The Project would not produce results commensurate with the further expenditure of funds; or
  - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
  - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
  - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the ten days, if the other Party fails to comply with any of the terms of this Agreement.
- d. Settlement upon Termination.** Immediately upon termination under Sections 10.a.i, v. or vi, no Grant Funds shall be disbursed by OEM and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

## 11. GENERAL PROVISIONS

- a. Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against OEM or Subrecipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party



Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which OEM is jointly liable with Subrecipient (or would be if joined in the Third Party Claim), OEM shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Subrecipient in such proportion as is appropriate to reflect the relative fault of OEM on the one hand and of Subrecipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OEM on the one hand and of Subrecipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OEM's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if OEM had sole liability in the proceeding.

With respect to a Third Party Claim for which Subrecipient is jointly liable with OEM (or would be if joined in the Third Party Claim), Subrecipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OEM in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of OEM on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Subrecipient on the one hand and of OEM on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. Responsibility for Grant Funds.** Any Subrecipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Subrecipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B.
- j. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must

## Return to Agenda

be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. Subrecipient acknowledges and agrees that Subrecipient is not an “officer”, “employee”, or “agent” of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW



**WASCO COUNTY**

By \_\_\_\_\_

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**  
(If required for Subrecipient)

By \_\_\_\_\_  
Subrecipient's Legal Counsel

Date \_\_\_\_\_

**Subrecipient Program Contact:**

Lane Magill  
Chief Deputy Sheriff  
Wasco County Sheriff's Office  
511 Washington St, Ste 102  
The Dalles, OR 97058  
541-506-2592  
lanem@co.wasco.or.us

**Subrecipient Fiscal Contact:**

Debbie Smith-Wagar  
Finance Manager  
Wasco County  
511 Washington St  
The Dalles, OR 97058  
541-506-2770  
debbies@co.wasco.or.us

**OEM**

By \_\_\_\_\_

Matthew T. Marheine  
Operations and Preparedness Section Manager, OEM

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By Cynthia Byrnes via email  
Senior Assistant Attorney General

Date October 8, 2015

**OEM Program Contact:**

Sidra Metzger-Hines  
Grants Coordinator  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-2911 extension 22251  
Sidra.metzgerhines@state.or.us

**OEM Fiscal Contact:**

Dan Gwin  
Grants Accountant  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-2911 extension 22290  
dan.gwin@state.or.us

**Exhibit A**  
**Grant No: 15-256**  
**Subrecipient: Wasco County**

**I. Project Description**

Project Title: WARS Link repeater replacement Project

This project replaces the privately owned amateur repeater with a publicly owned, updated repeater.

**Budget**

Interoperable Communications	\$22,650
<b>Total</b>	<b>\$22,650</b>

## EXHIBIT B

### Federal Requirements and Certifications

**I. General.** Subrecipient agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

### II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990).
- C. Compliance with Applicable Federal Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, the Federal Government in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
    - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
    - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
  2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
  3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
  4. False Claims Act & Program Fraud Civil Remedies, 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
  5. Whistleblower Protection Act, 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
  6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds. Any project cost allocable to this Agreement



may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons.

**D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.**

- 1. Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
  - b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
  - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.
  - d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.
  - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
  - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.
  - g. If, during the past three years, Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subrecipient must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subrecipient, or Subrecipient settles a case or matter alleging such discrimination, Subrecipient must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.
- 2. Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

- F. Procurement of Recovered Materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.
- G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
- H. Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.
- I. Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.
- J. Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.

- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.
- R. Energy Policy and Conservation Act.** Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act.
- S. Lobbying Prohibitions.** Subrecipient must comply with 31 USC §1352, which provides that none of the funds provided under an award may be expended by the subrecipient to pay any person to influence, or attempt to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.
- T. Terrorist Financing.** Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of Subrecipients to ensure compliance with the EO and laws



## EXHIBIT C

### Subagreement Insurance Requirements

#### GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, “TAIL” COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, “first tier” means a subagreement in which Subrecipient is a Party.

#### TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers’ compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

#### ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence, (for all claimants for claims arising out of a single accident or occurrence).

#### iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

## Return to Agenda

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and Subrecipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

## **Exhibit D**

### **Information required by 2 CFR 200.331(a)**

1. Federal Award Identification:
  - (i) Sub-recipient name (which must match registered name in DUNS): Wasco County
  - (ii) Sub-recipient's DUNS number: 084415959
  - (iii) Federal Award Identification Number (FAIN): EMW-2015-SS-00044-S01
  - (iv) Federal Award Date: August 13, 2015
  - (v) Sub-award Period of Performance Start and End Date: From October 1, 2015 to September 30, 2016
  - (vi) Amount of Federal Funds Obligated by this Agreement: \$22,650
  - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement: \$46,127
  - (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$46,127
  - (ix) Federal award project description: State Homeland Security Program Grant plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation.
  - (x)
    - (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
    - (b) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
    - (c) Contact information for awarding official: Dave Stuckey, Deputy Director, PO Box 14370, Salem, OR 97309-5062
  - (xi) CFDA Number and Name: 97.067 Homeland Security Grant Program  
Amount: \$6,837,000
  - (xii) Is Award R&D? No
  - (xiii) Indirect cost rate for the Federal award: 0%
2. Subrecipient's indirect cost rate: 0%



**Discussion Item**  
**Civic Auditorium Restoration**

- [Letter of Support](#)



# WASCO COUNTY

## *Board of County Commissioners*

511 Washington Street, Suite 302

The Dalles, Oregon 97058-2237

(541) 506-2520

Fax: (541) 506-2521

Scott Hege, *Chair of the Board*

Rod Runyon, *County Commissioner*

Steve Kramer, *County Commissioner*

October 21, 2015

Re: The Dalles Civic Auditorium Preservation

To Whom It May Concern:

Built in 1921 and dedicated to local veterans in 1922, The Dalles Civic Auditorium is a Wasco County treasure, not only for its rich historical value but for its potential to serve as a cultural hub for the community. Restored and revitalized, The Dalles Civic Auditorium would not only bring a wide variety of arts and entertainment to our County but would contribute to economic development by encouraging tourism and attracting business to Historic Downtown The Dalles.

Wasco County supports the efforts of the Civic Auditorium Historic Preservation Committee to restore The Dalles Civic Auditorium to raise funds in support of their efforts to preserve and restore this valuable community asset.

Please contact us if you have any questions or concerns.

Thank you,

Scott C. Hege, Chair  
Wasco County Board of Commissioners

**Discussion Item**  
**Soil & Water Conservation District**  
**Public Entity Declaration**

- [Introductory Email](#)
- [USC49 40102](#)
- [USC49-40127](#)
- [WCSWCD Founding Document](#)
- [Letter to FAA](#)



## Return to Agenda

The SWCD is applying to the FAA to use a small quadcopter for aerial photography and video. I also talked to Lane Magill about this being available for SAR, and possibly law enforcement use.

One of the administrative step is for us is to get a declaration letter from the City, County or State attorney stating that we are a public entity and our operation fits the US Code. I asked the FAA representative about us being Special district and not part of the County, City or State. He said if we can get a letter from the county or state attorney, it would meet their regulations...

I have a letter drafted, a copy of the relative USC, and details to support the conclusion in the draft letter. Do you think the County Attorney could help us out with such a letter?

Regards,

Josh Thompson  
Wasco County SWCD  
2325 River Rd. Ste. 3  
The Dalles, OR 97058  
Office (541) 296-6178 x116

ies of Defense, Commerce, and Homeland Security, and the Administrator of the National Aeronautics and Space Administration, with respect to the activities of their departments and agencies in the implementation of the policy set forth in section 1 of this order.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to a department or agency, or the head thereof; or
  - (ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

#### DEFINITIONS OF TERMS IN PUB. L. 107-71

For definitions of terms used in sections 127 and 145 of Pub. L. 107-71, set out above, see section 133 of Pub. L. 107-71, set out as a note under section 40102 of this title.

#### § 40102. Definitions

(a) GENERAL DEFINITIONS.—In this part—

(1) “aeronautics” means the science and art of flight.

(2) “air carrier” means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

(3) “air commerce” means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce.

(4) “air navigation facility” means a facility used, available for use, or designed for use, in aid of air navigation, including—

(A) a landing area;

(B) a light;

(C) apparatus or equipment for distributing weather information, signaling, radio-directional finding, or radio or other electromagnetic communication; and

(D) another structure or mechanism for guiding or controlling flight in the air or the landing and takeoff of aircraft.

(5) “air transportation” means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

(6) “aircraft” means any contrivance invented, used, or designed to navigate, or fly in, the air.

(7) “aircraft engine” means an engine used, or intended to be used, to propel an aircraft, including a part, appurtenance, and accessory of the engine, except a propeller.

(8) “airman” means an individual—

(A) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way;

(B) except to the extent the Administrator of the Federal Aviation Administration may provide otherwise for individuals employed

outside the United States, who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances; or

(C) who serves as an aircraft dispatcher or air traffic control-tower operator.

(9) “airport” means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) “all-cargo air transportation” means the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(11) “appliance” means an instrument, equipment, apparatus, a part, an appurtenance, or an accessory used, capable of being used, or intended to be used, in operating or controlling aircraft in flight, including a parachute, communication equipment, and another mechanism installed in or attached to aircraft during flight, and not a part of an aircraft, aircraft engine, or propeller.

(12) “cargo” means property, mail, or both.

(13) “charter air carrier” means an air carrier holding a certificate of public convenience and necessity that authorizes it to provide charter air transportation.

(14) “charter air transportation” means charter trips in air transportation authorized under this part.

(15) “citizen of the United States” means—

(A) an individual who is a citizen of the United States;

(B) a partnership each of whose partners is an individual who is a citizen of the United States; or

(C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(16) “civil aircraft” means an aircraft except a public aircraft.

(17) “civil aircraft of the United States” means an aircraft registered under chapter 441 of this title.

(18) “conditional sales contract” means a contract—

(A) for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part, under which the buyer takes possession of the property but title to the property vests in the buyer at a later time on—

(i) paying any part of the purchase price;

(ii) performing another condition; or

(iii) the happening of a contingency; or

(B) to bail or lease an aircraft, aircraft engine, propeller, appliance, or spare part, under which the bailee or lessee—

(i) agrees to pay an amount substantially equal to the value of the property; and

(ii) is to become, or has the option of becoming, the owner of the property on complying with the contract.

(19) “conveyance” means an instrument, including a conditional sales contract, affecting title to, or an interest in, property.

(20) “Federal airway” means a part of the navigable airspace that the Administrator designates as a Federal airway.

(21) “foreign air carrier” means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.

(22) “foreign air commerce” means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation, between a place in the United States and a place outside the United States when any part of the transportation or operation is by aircraft.

(23) “foreign air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

(24) “interstate air commerce” means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) a State and another place in the same State through the airspace over a place outside the State;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation or operation is by aircraft.

(25) “interstate air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation is by aircraft.

(26) “intrastate air carrier” means a citizen of the United States undertaking by any means to provide only intrastate air transportation.

(27) “intrastate air transportation” means the transportation by a common carrier of passengers or property for compensation, entirely in the same State, by turbojet-powered aircraft capable of carrying at least 30 passengers.

(28) “landing area” means a place on land or water, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo.

(29) “large hub airport” means a commercial service airport (as defined in section 47102) that has at least 1.0 percent of the passenger boardings.

(30) “mail” means United States mail and foreign transit mail.

(31) “medium hub airport” means a commercial service airport (as defined in section 47102) that has at least 0.25 percent but less than 1.0 percent of the passenger boardings.

(32) “navigable airspace” means airspace above the minimum altitudes of flight prescribed by regulations under this subpart and subpart III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft.

(33) “navigate aircraft” and “navigation of aircraft” include piloting aircraft.

(34) “nonhub airport” means a commercial service airport (as defined in section 47102) that has less than 0.05 percent of the passenger boardings.

(35) “operate aircraft” and “operation of aircraft” mean using aircraft for the purposes of air navigation, including—

(A) the navigation of aircraft; and

(B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.

(36) “passenger boardings”—

(A) means, unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes; and

(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.

(37) “person”, in addition to its meaning under section 1 of title 1, includes a governmental authority and a trustee, receiver, assignee, and other similar representative.

(38) “predatory” means a practice that violates the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).

(39) “price” means a rate, fare, or charge.

(40) “propeller” includes a part, appurtenance, and accessory of a propeller.

(41) “public aircraft” means any of the following:

(A) Except with respect to an aircraft described in subparagraph (E), an aircraft used only for the United States Government, except as provided in section 40125(b).

(B) An aircraft owned by the Government and operated by any person for purposes re-



lated to crew training, equipment development, or demonstration, except as provided in section 40125(b).

(C) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

(D) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

(E) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by section 40125(c). In the preceding sentence, the term “other commercial air service” means an aircraft operation that (i) is within the United States territorial airspace; (ii) the Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public, and (iii) must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

(42) “small hub airport” means a commercial service airport (as defined in section 47102) that has at least 0.05 percent but less than 0.25 percent of the passenger boardings.

(43) “spare part” means an accessory, appurtenance, or part of an aircraft (except an aircraft engine or propeller), aircraft engine (except a propeller), propeller, or appliance, that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance.

(44) “State authority” means an authority of a State designated under State law—

(A) to receive notice required to be given a State authority under subpart II of this part; or

(B) as the representative of the State before the Secretary of Transportation in any matter about which the Secretary is required to consult with or consider the views of a State authority under subpart II of this part.

(45) “ticket agent” means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.

(46) “United States” means the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

(47) “air traffic control system” means the combination of elements used to safely and efficiently monitor, direct, control, and guide aircraft in the United States and United States-assigned airspace, including—

(A) allocated electromagnetic spectrum and physical, real, personal, and intellectual

property assets making up facilities, equipment, and systems employed to detect, track, and guide aircraft movement;

(B) laws, regulations, orders, directives, agreements, and licenses;

(C) published procedures that explain required actions, activities, and techniques used to ensure adequate aircraft separation; and

(D) trained personnel with specific technical capabilities to satisfy the operational, engineering, management, and planning requirements for air traffic control.

(b) LIMITED DEFINITION.—In subpart II of this part, “control” means control by any means.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1097; Pub. L. 103–305, title VI, §601(b)(2)(B), Aug. 23, 1994, 108 Stat. 1606; Pub. L. 103–411, §3(a), Oct. 25, 1994, 108 Stat. 4236; Pub. L. 103–429, §6(46), Oct. 31, 1994, 108 Stat. 4384; Pub. L. 105–137, §6, Dec. 2, 1997, 111 Stat. 2641; Pub. L. 106–181, title III, §301, title VII, §702(a), Apr. 5, 2000, 114 Stat. 115, 155; Pub. L. 108–176, title II, §225(a), title VIII, §807, Dec. 12, 2003, 117 Stat. 2528, 2588; Pub. L. 110–181, div. A, title X, §1078(a), Jan. 28, 2008, 122 Stat. 334.)

#### HISTORICAL AND REVISION NOTES

##### PUB. L. 103–272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40102(a)(1) ..	49 App.:1301(2).	Aug. 23, 1958, Pub. L. 85–726, §§101(2), (3) (less proviso), (5)–(10), 413, 72 Stat. 737, 770.
40102(a)(2) ..	49 App.:1301(3) (less proviso).	
40102(a)(3) ..	49 App.:1301(4).	Aug. 23, 1958, Pub. L. 85–726, §101(4), 72 Stat. 737; Sept. 5, 1961, Pub. L. 87–197, §3, 75 Stat. 467.
40102(a)(4) ..	49 App.:1301(8).	
40102(a)(5) ..	49 App.:1301(10).	
40102(a)(6), (7).	49 App.:1301(5), (6).	
40102(a)(8) ..	49 App.:1301(7). 49 App.:1655(c)(1).	Oct. 15, 1966, Pub. L. 89–670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97–449, §7(b), 96 Stat. 2444.
40102(a)(9) ..	49 App.:1301(9).	
40102(a)(10)	49 App.:1301(11).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §101(11); added Nov. 9, 1977, Pub. L. 95–163, §17(b)(2), 91 Stat. 1286; restated Oct. 4, 1984, Pub. L. 98–443, §9(a)(1), 98 Stat. 1706.
40102(a)(11)	49 App.:1301(12).	Aug. 23, 1958, Pub. L. 85–726, §101(12), (16)–(34), (37), (40), (41), 72 Stat. 737, 739; July 10, 1962, Pub. L. 87–528, §1, 76 Stat. 143; Sept. 26, 1968, Pub. L. 90–514, §1, 82 Stat. 867; Oct. 14, 1970, Pub. L. 91–449, §1(2), 84 Stat. 921; Aug. 5, 1974, Pub. L. 93–366, §206, 88 Stat. 419; Nov. 9, 1977, Pub. L. 95–163, §17(b)(1), 91 Stat. 1286; Oct. 24, 1978, Pub. L. 95–504, §2(a)(4), (b), 92 Stat. 1705.
40102(a)(12)	(no source).	
40102(a)(13)	49 App.:1301(14) (less certificate).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §101(14) (less certificate), (15); added Oct. 24, 1978, Pub. L. 95–504, §2(a)(1), 92 Stat. 1705.
40102(a)(14)	49 App.:1301(15). 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98–443, §3(e), 98 Stat. 1704.
40102(a)(15)–(18).	49 App.:1301(16)–(19).	
40102(a)(19)	49 App.:1301(20).	
40102(a)(20)	49 App.:1301(21).	

HISTORICAL AND REVISION NOTES—CONTINUED  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40102(a)(21) 40102(a)(22)	49 App.:1655(c)(1). 49 App.:1301(22). 49 App.:1301(23) (re- lated to foreign air commerce).	
40102(a)(23)	49 App.:1301(24) (re- lated to foreign air transpor- tation).	
40102(a)(24)	49 App.:1301(23) (re- lated to inter- state and overseas air commerce).	
40102(a)(25)	49 App.:1301(24) (re- lated to inter- state and overseas air transpor- tation). 49 App.:1305(b)(2), (d) (related to (b)(2)).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §105(b)(2), (d) (related to (b)(2)); added Oct. 24, 1978, Pub. L. 95-504, §4(a), 92 Stat. 1708.
40102(a) (26)–(32).	49 App.:1301(25)–(31).	
40102(a)(33) 40102(a)(34)	49 App.:1301(32). 49 App.:1301(35).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §101(35), (39); added Oct. 24, 1978, Pub. L. 95-504, §2(a)(2), (3), (b), 92 Stat. 1705.
40102(a)(35) 40102(a)(36) 40102(a)(37)	(no source). 49 App.:1301(33), (34). 49 App.:1301(36).	Aug. 23, 1958, Pub. L. 85-726, §101(36), 72 Stat. 739; Aug. 5, 1974, Pub. L. 93-366, §206, 88 Stat. 419; Nov. 9, 1977, Pub. L. 95-163, §17(b)(1), 91 Stat. 1286; Oct. 24, 1978, Pub. L. 95-504, §2, 92 Stat. 1705; Dec. 30, 1987, Pub. L. 100-223, §207, 101 Stat. 1523.
40102(a)(38) 40102(a)(39) 40102(a)(40) 40102(a)(41) 40102(b) .....	49 App.:1301(37). 49 App.:1301(39). 49 App.:1301(40). 49 App.:1301(41). 49 App.:1383.	

In subsection (a)(2), the words “by any means” are substituted for “whether . . . or by a lease or any other arrangement” to eliminate unnecessary words. The word “provide” is substituted for “engage in” for consistency in the revised title.

In subsection (a)(3), the words “or navigation” are omitted as being included in the definition of “operation of aircraft” in this subsection.

In subsection (a)(4)(D), the words “having a similar purpose” are omitted as surplus.

In subsection (a)(6), the words “now known or hereafter” are omitted as surplus.

In subsection (a)(7), the words “of the engine” are substituted for “thereof” for clarity.

In subsection (a)(8)(A), the words “as the person” are omitted as surplus.

In subsection (a)(10), the word “transportation” is substituted for “carriage” for consistency in the revised title.

In subsection (a)(11), the words “of whatever description” are omitted as surplus. The word “navigation” is omitted as being included in the definition of “operate aircraft” in this subsection. The words “or mechanisms” are omitted because of 1:1.

Subsection (a)(12) is added for clarity to distinguish between cargo (which includes mail) and property (which does not include mail).

In subsection (a)(13), the word “provide” is substituted for “engage in” for consistency in the revised title.

In subsection (a)(14), the words “including inclusive tour charter trips” are omitted as obsolete. The words “authorized under this part” are substituted for “rendered pursuant to authority conferred under this chapter under regulations prescribed by the Board” to eliminate unnecessary words.

In subsection (a)(15)(A), the words “or of one of its possessions” are omitted as being included in the definition of “United States” in this subsection.

In subsection (a)(15)(C), the words “created or” are omitted as being included in “organized”.

In subsection (a)(17), the words “chapter 441 of this title” are substituted for “this chapter” for clarity because aircraft are registered only under chapter 441.

In subsection (a)(18), the text of 49 App.:1301(19) (last sentence) is omitted as surplus.

In subsection (a)(18)(A), before subclause (i), the words “title to” are added for clarity and consistency in this section.

In subsection (a)(18)(B)(i), the words “as compensation” are omitted as surplus.

In subsection (a)(18)(B)(ii), the words “it is agreed that”, “bound”, “full”, and “the terms of” are omitted as surplus.

In subsection (a)(19), the words “bill of sale . . . mortgage, assignment of mortgage, or other” are omitted as being included in “instrument”.

In subsection (a)(20), the words “of the United States” are omitted for consistency in the revised title and because of the definition of “navigable airspace” in this subsection.

In subsection (a)(21), the words “by any means” are substituted for “whether . . . or by lease or any other arrangement” to eliminate unnecessary words. The word “provide” is substituted for “engage in” for consistency in the revised title.

In subsection (a)(22)–(25) and (27), the words “transportation” and “passengers” are substituted for “carriage” and “persons”, respectively, for consistency in the revised title. The word “compensation” is substituted for, and is coextensive with, “compensation or hire”.

In subsection (a)(22) and (24), the words “or navigation” are omitted as being included in the definition of “operation of aircraft” in this subsection. The words “the conduct or” and “in commerce” are omitted as surplus. The words “when any part of the transportation or operation is by aircraft” are substituted for 49 App.:1301(23) (words after last semicolon) to eliminate unnecessary words.

In subsection (a)(23) and (25), the words “in commerce” are omitted as surplus. The words “when any part of the transportation is by aircraft” are substituted for 49 App.:1301(24) (words after last semicolon) to eliminate unnecessary words.

In subsection (a)(24), (25), and (27), the words “of the United States” are omitted as surplus.

In subsection (a)(24)(A)(i) and (25)(A)(i), the words “or the District of Columbia” the first time they appear are omitted as surplus.

In subsection (a)(25)(A)(ii), the text of 49 App.:1301(24)(a) (words between semicolons) is omitted because 49 App.:1305(b)(2) removes the subject matter of the text from the definition. See H. Rept. No. 95-1211, 95th Cong., 2d Sess., p.16 (1978).

In subsection (a)(26), the words “by any means” are substituted for “whether . . . or by a lease or any other arrangement” to eliminate unnecessary words. The word “provide” is substituted for “engage” for consistency in the revised title.

In subsection (a)(28), the word “place” is substituted for “locality” for consistency in the revised title.

In subsection (a)(32)(B), the words “(in the capacity of owner, lessee, or otherwise)” are omitted as surplus.

In subsection (a)(33), the words “in addition to its meaning under section 1 of title 1” are substituted for “any individual, firm, copartnership, corporation, company, association, joint stock association” for clarity because 1:1 is applicable to all laws unless otherwise provided. The words “governmental authority” are substituted for “body politic” for consistency in the revised title and with other titles of the United States Code.

Subsection (a)(35) is added to eliminate repetition of the words “rates, fares, or charges” throughout this part.

In subsection (a)(36), the text of 49 App.:1301(34) (1st sentence) is omitted as obsolete. Reference to the Canal Zone is omitted because of the Panama Canal Treaty of 1977. The text of 49 App.:1301(34) (last sentence) is omitted because of 48:734.

Subsection (a)(37)(A)(i) is substituted for “used exclusively in the service of any government” and “For purposes of this paragraph, ‘used exclusively in the service of’ means, for other than the Federal Government” for clarity and to eliminate unnecessary words.

Subsection (a)(37)(A)(ii) is substituted for “used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia” and “For purposes of this paragraph, ‘used exclusively in the service of’ means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days” for clarity and to eliminate unnecessary words.

In subsection (a)(37)(B), the words “transporting passengers or property” are substituted for “engaged in carrying persons or property” for consistency in the revised title.

In subsection (a)(38), the words “that is to be installed at a later time” are substituted for “maintained for installation or use . . . but which at the time are not installed therein or attached thereto” to eliminate unnecessary words.

In subsection (a)(39), the word “authority” is substituted for “agency” and “entity” for consistency in the revised title. Before subclause (A), the words “department, agency, officer, or other” are omitted as being included in “authority”.

In subsection (a)(40), the words “bona fide” and “by solicitation, advertisement, or otherwise” are omitted as surplus. The words “furnishes, contracts” are omitted as being included in “providing, or arranging”.

In subsection (a)(41), the words “States of the United States” are substituted for “several States”, and the word “sea” is substituted for “waters”, for consistency in the revised title and with other titles of the Code.

Subsection (b) is substituted for 49 App.:1383 to eliminate unnecessary words.

#### PUB. L. 103-429

This makes a conforming amendment for consistency with the style of title 49.

#### AMENDMENTS

2008—Subsec. (a)(41)(E). Pub. L. 110-181 inserted “or other commercial air service” after “transportation” and inserted at end “In the preceding sentence, the term ‘other commercial air service’ means an aircraft operation that (i) is within the United States territorial airspace; (ii) the Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public, and (iii) must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.”

2003—Subsec. (a)(15)(C). Pub. L. 108-176, § 807, inserted “which is under the actual control of citizens of the United States,” before “and in which”.

Subsec. (a)(29) to (47). Pub. L. 108-176, § 225(a), added pars. (29), (31), (34), (36), and (42) and redesignated former pars. (29), (30), (31), (32), (33), (34), (35), (36), (37), (38), (39), (40), (41), and (42) as (30), (32), (33), (35), (37), (38), (39), (40), (41), (43), (44), (45), (46), and (47), respectively.

2000—Subsec. (a)(37). Pub. L. 106-181, § 702(a), amended par. (37) generally, revising and restating provisions defining “public aircraft” to include references to qualifications found in section 40125(b) and (c).

Subsec. (a)(42). Pub. L. 106-181, § 301, added par. (42).

1997—Subsec. (a)(37)(A). Pub. L. 105-137 struck out “or” at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

1994—Subsec. (a)(30). Pub. L. 103-429 substituted “this subpart and subpart III” for “subparts I and III”.

Subsec. (a)(35). Pub. L. 103-305 struck out “for air transportation” after “charge”.

Subsec. (a)(37)(B). Pub. L. 103-411 added subpar. (B) and struck out former subpar. (B) which read as follows: “does not include a government-owned aircraft transporting passengers or property for commercial purposes.”

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

Amendment by Pub. L. 103-411 effective on the 180th day following Oct. 25, 1994, see section 3(d) of Pub. L. 103-411, set out as a note under section 1131 of this title.

Amendment by Pub. L. 103-305 effective Jan. 1, 1995, see section 601(d) of Pub. L. 103-305, set out as a note under section 10521 of this title.

#### TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

#### DEFINITIONS OF TERMS IN PUB. L. 107-71

Pub. L. 107-71, title I, § 133, Nov. 19, 2001, 115 Stat. 636, provided that: “Except as otherwise explicitly provided, any term used in this title [see Tables for classification] that is defined in section 40102 of title 49, United States Code, has the meaning given that term in that section.”

#### DEFINITIONS APPLICABLE TO PUB. L. 106-181

Pub. L. 106-181, § 4, Apr. 5, 2000, 114 Stat. 64, provided that: “Except as otherwise provided in this Act [see Tables for classification], the following definitions apply:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Federal Aviation Administration.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.”

#### DEFINITIONS APPLICABLE TO PUB. L. 103-305

Section 2 of Pub. L. 103-305 provided that: “In this Act [see Short Title of 1994 Amendment note set out under section 40101 of this title], the following definitions apply:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Federal Aviation Administration.

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.”

### § 40103. Sovereignty and use of airspace

(a) SOVEREIGNTY AND PUBLIC RIGHT OF TRANSIT.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural



Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

#### § 40125. Qualifications for public aircraft status

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) COMMERCIAL PURPOSES.—The term “commercial purposes” means the transportation of persons or property for compensation or hire, but does not include the operation of an aircraft by the armed forces for reimbursement when that reimbursement is required by any Federal statute, regulation, or directive, in effect on November 1, 1999, or by one government on behalf of another government under a cost reimbursement agreement if the government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator is reasonably available to meet the threat.

(2) GOVERNMENTAL FUNCTION.—The term “governmental function” means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, or biological or geological resource management.

(3) QUALIFIED NON-CREWMEMBER.—The term “qualified non-crewmember” means an individual, other than a member of the crew, aboard an aircraft—

(A) operated by the armed forces or an intelligence agency of the United States Government; or

(B) whose presence is required to perform, or is associated with the performance of, a governmental function.

(4) ARMED FORCES.—The term “armed forces” has the meaning given such term by section 101 of title 10.

(b) AIRCRAFT OWNED BY GOVERNMENTS.—An aircraft described in subparagraph (A), (B), (C), or (D) of section 40102(a)(41) does not qualify as a public aircraft under such section when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

(c) AIRCRAFT OWNED OR OPERATED BY THE ARMED FORCES.—

(1) IN GENERAL.—Subject to paragraph (2), an aircraft described in section 40102(a)(41)(E) qualifies as a public aircraft if—

(A) the aircraft is operated in accordance with title 10;

(B) the aircraft is operated in the performance of a governmental function under title 14, 31, 32, or 50 and the aircraft is not used for commercial purposes; or

(C) the aircraft is chartered to provide transportation or other commercial air service to the armed forces and the Secretary of Defense (or the Secretary of the department in which the Coast Guard is operating) des-

ignates the operation of the aircraft as being required in the national interest.

(2) LIMITATION.—An aircraft that meets the criteria set forth in paragraph (1) and that is owned or operated by the National Guard of a State, the District of Columbia, or any territory or possession of the United States, qualifies as a public aircraft only to the extent that it is operated under the direct control of the Department of Defense.

(Added Pub. L. 106–181, title VII, §702(b)(1), Apr. 5, 2000, 114 Stat. 155; amended Pub. L. 110–181, div. A, title X, §1078(b), (c), Jan. 28, 2008, 122 Stat. 334.)

#### AMENDMENTS

2008—Subsec. (b). Pub. L. 110–181, §1078(c)(1), substituted “section 40102(a)(41)” for “section 40102(a)(37)”.

Subsec. (c)(1). Pub. L. 110–181, §1078(c)(2), substituted “section 40102(a)(41)(E)” for “section 40102(a)(37)(E)” in introductory provisions.

Subsec. (c)(1)(C). Pub. L. 110–181, §1078(b), inserted “or other commercial air service” after “transportation”.

#### EFFECTIVE DATE

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### § 40126. Severable services contracts for periods crossing fiscal years

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration may enter into a contract for procurement of severable services for a period that begins in 1 fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed 1 year.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

(Added Pub. L. 106–181, title VII, §705(a), Apr. 5, 2000, 114 Stat. 157.)

#### EFFECTIVE DATE

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

#### § 40127. Prohibitions on discrimination

(a) PERSONS IN AIR TRANSPORTATION.—An air carrier or foreign air carrier may not subject a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry.

(b) USE OF PRIVATE AIRPORTS.—Notwithstanding any other provision of law, no State or local government may prohibit the use or full enjoy-

CERTIFICATE

# State of Oregon

OFFICE OF THE SECRETARY OF STATE



I, BARBARA ROBERTS, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify:

THAT, Larry Ashley, Robert Bailey, Joe Douthit, William D. Thomas, Lynn Bolton, Robert Brewer, Clarence Brown, John Clausen, Joe W. Dodd, Mike Deel, Bill Elton, Walter Francois, Lyle Gabel, Frank Hammel, Davis A. Harvey, Kenneth E. Johnson, Marvin Polehn, Ted Tidwell, Jim Underhill, Grant Wilson, and Scott Woodside, Supervisors for the consolidation of the Central Wasco, Northern Wasco, and Southern Wasco Soil and Water Conservation Districts into one district to be known as the Wasco Soil and Water Conservation District, have presented to this office an application in the form required by law, for a certificate of organization of the Wasco Soil and Water Conservation District; and

THAT, the application was accompanied by a statement for the State Soil Conservation Committee, in the form required by law; and

THAT, the name proposed for the said district is not identical with that of any soil conservation district of this State, or so nearly similar as to lead to confusion or uncertainty; and

THAT, the said application and statement have been made, filed and recorded in this office on June 6, 1973;

THEREFORE, it is hereby certified that the Wasco soil and Water Conservation District has been duly organized as a governmental subdivision of this State and a public body corporate and politic.

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this

31st day of October, A.D. 1990.

BARBARA ROBERTS, Secretary of State

By: *Charles F. Brown - Leal*  
Assistant to Secretary of State





# WASCO COUNTY

## *Board of County Commissioners*

511 Washington Street, Suite 302

The Dalles, Oregon 97058-2237

(541) 506-2520

Fax: (541) 506-2521

Scott Hege, *Chair of the Board*

Rod Runyon, *County Commissioner*

Steve Kramer, *County Commissioner*

Wednesday, October 21, 2015

Joseph Maibach  
Air Traffic Control Specialist  
UAS Tactical Operations Section, AJV-115  
FAA Headquarters, FOB 10A  
800 Independence Ave, Ste 422  
Washington, DC 20591

RE: Wasco County SWCD, COA Declaration Letter

Dear Mr. Maibach,

This letter is pertaining to Wasco County Soil and Water Conservation District's application for a Certificate of Authorization (COA) to operate a small quadcopter classified by FAA as a unmanned aircraft system (UAS) in Wasco County, Oregon.

Wasco County Soil and Water Conservation District is an Oregon Special District organized under Oregon Revised Statute, chapter 568. They are legally organized and recognized as a local unit of government, and a public entity. This organization conforms well to Title 49 USC 40102(a)(41)(C) that you have referenced for the COA application process.

Wasco County SWCD plans to use this small quadcopter for biological and geological resource management concurrent with Title 49 USC 40125 (a)(2). Wasco County Soil and Water Conservation District ownership of an aircraft would conform to Title 49 USC 40125(b).

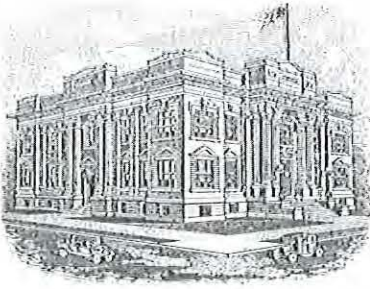
Thank you,

Scott C. Hege, Chair  
Wasco County Board of Commissioners

**Discussion Item**  
**Switch Gear Box & Courthouse Generator**  
**Funding**

- [Facilities Manager's Memo](#)





# WASCO COUNTY

## Facilities

**Fred Davis**

Facilities Operations Manager

511 Washington St.

Suite 101

The Dalles, OR 97058-1599

phone: 541-506-2553

fax: 541-506-2551

cel: 541-993-3280

e-mail-fredd@co.wasco.or.us

October 19, 2015

Attention: Wasco County Board of Commissioners

Re: Courthouse electrical changes

Working with my contact at the State ODJ, we have been pulling together the grant that will help us replace the electrical switch gear in the Courthouse. After most of the loose ends were taken care of for this project I mentioned to my contact that we were very interested in looking at an additional project in a year or two. The proposed project would allow us to replace our existing generator with one that would be able to power the entire needs of the building, adding the elevator, many additional office circuits and building heating and cooling. I was surprised to receive not only specific interest in the project, but an interest in combining it with the current project and executing it in this (County) fiscal year.

We had a very general idea of what it might take to power the building but after researching through the P.U.D. we found we were well under the amount of actual power needs for the building. With that discovery came an increased cost. I do not know if the State is still interested due to the increased cost. I have sent the information to them as well.

Because it is a matching grant the increase it is also a matter of concern for the County. Both parties would be required to provide approximately \$88,000 to complete the combined project, that being both switch gear and generator. We might see a savings in the engineering phase of the contractors price because the process will be simplified if all the circuits were able to go to the same supply location. Having some that are switched to back-up power and some that are not (as is now the case) is more complicated than all circuits routing to the same general area.

I will consult with our Interim Finance Director and seek funding options for your consideration; the Facilities Capital Savings line might be a solution. If the Commission is interested in pursuing the additional work, I will continue to talk with the State to determine if they are willing to expand the scope and cost to that level.

Thank you,

*Fred Davis*

Switch gear est.	\$100,000
Generator and transfer switch	\$53,300
Electrician for install	\$20,000
Site work	\$2,500
Total	\$175,800
County matching cost	\$87,900

**Discussion Item**  
**OSU Extension Service Fund Balance**

- [Letter from OSU Regional Administrator](#)



University Outreach and Engagement  
Extension Service Administration  
Vice Provost and Director's Office  
Oregon State University, 101 Ballard Extension Hall, Corvallis, Oregon 97331-3606  
T 541-737-2713 | F 541-737-4423 | <http://extension.oregonstate.edu/admin/>

October 1, 2015

TO: Wasco County Court  
511 Washington St.  
The Dalles, OR 97058

FROM: A. Scott Reed   
Vice Provost for Outreach and Engagement  
Director of Extension Service

Brian Tuck  
OSU Regional Administrator  
Mid-Columbia Region

SUBJECT: County Fund Balances

The OSU Extension Service strives to make its fiscal management and budget processes transparent to all faculty, staff and constituents. As a part of this transparency, we are providing you with the OSU Extension Service fund balance for Wasco County.

At the end of the 2015 Fiscal Year, June 30, 2015, the fund balance was \$221,314.09. This fund balance reflects the remaining county appropriated dollars at fiscal year-end.

If you have any questions, regarding the fund balance, please speak with your Regional Administrator, Brian Tuck. We hope this report will open the line of communications for more in-depth conversation about OSU's stewardship of the dollars county government provides Extension, either through the general fund or a service district, for community outreach and engagement.

Thank you for your continued support of the Extension Service as we work together to help Oregonians achieve positive impacts in their communities.

c: Dee Wendler, UABC Business Manager

**Discussion Item**  
**ODFW Wolf Delisting Proposal**

- [Explanatory Email](#)
- [Wasco County Feedback](#)



## Return to Agenda

----- Forwarded message -----

From: Gil Riddell <[griddell@oregoncounties.org](mailto:griddell@oregoncounties.org)>

Date: Wednesday, October 14, 2015

Subject: Fwd: Comments requested on Wolf Delisting

To: Commissioners and Judges <[commissionersjudges@oregoncounties.org](mailto:commissionersjudges@oregoncounties.org)>

Cc: [ronald.e.anglin@state.or.us](mailto:ronald.e.anglin@state.or.us)

Greetings to Oregon County Commissioners and Judges.

Please read the forwarded message below from the Oregon Department of Fish & Wildlife related to the potential delisting of wolves in Oregon.

ODFW is soliciting your comments, but has a short timeline to receive them.

If you are at all interested in the subject, now is your opportunity to help the Fish & Wildlife Commission make the correct decisions.

Gil

----- Forwarded message -----

From: Ronald Anglin <[ronald.e.anglin@state.or.us](mailto:ronald.e.anglin@state.or.us)>

Date: Wed, Oct 14, 2015 at 2:11 PM

Subject: Comments requested on Wolf Delisting

To: "griddell@oregoncounties.org" <[griddell@oregoncounties.org](mailto:griddell@oregoncounties.org)>

Cc: Kevin Blakely <[kevin.l.blakely@state.or.us](mailto:kevin.l.blakely@state.or.us)>, "Russ Morgan ([russ.l.morgan@state.or.us](mailto:russ.l.morgan@state.or.us))" <[russ.l.morgan@state.or.us](mailto:russ.l.morgan@state.or.us)>

Gil,

As mentioned on the phone this morning we are moving forward with a recommendation to our commission on delisting wolves here in Oregon. We know that many Counties have a keen interest in wolves and will be interested in this

## Return to Agenda

decision. We are asking that you forward this to the County Commissions/Courts for an opportunity for them to provide input back to us on a proposal to delist wolves in Oregon. I have included a link to the information that was provided to the Commission last Friday that will serve as a basis for the delisting decision. There are 3 options being considered

1. Delist wolves for all of Oregon
2. Delist wolves only east in eastern Oregon
3. No Action – do not delist

Any feedback we could get would be great. We are on a short timeline here as the next Fish and Wildlife Commission meeting is Monday November 9 here in Salem.

On November 9, 2015 the Oregon Fish and Wildlife Commission will meet in Salem to consider the status of gray wolves under the Oregon Endangered Species Act (OESA). Specifically, the Commission will determine if sufficient information exists to justify delisting the wolf from the Oregon List of Endangered Species and in making this determination the Commission will review the best available scientific information and other data to determine if the criteria set forth in the OESA have been met. In an effort to consult with agencies, organizations, local governments, tribes, other states, and interested persons, we invite you to review the October 9, 2015 updated biological status review document at the following link:

[http://www.dfw.state.or.us/agency/commission/minutes/15/10\\_october/Ex%20D\\_Attachment%202\\_Status%20Review%20for%20Gray%20Wolf.pdf](http://www.dfw.state.or.us/agency/commission/minutes/15/10_october/Ex%20D_Attachment%202_Status%20Review%20for%20Gray%20Wolf.pdf) .

We are interested in any information, materials, or input which is related to the biological status review document. Please submit any comments and materials by October 30, 2015 to the address or email below or by simply replying to this email.

Thank you,



# WASCO COUNTY

## *Board of County Commissioners*

511 Washington Street, Suite 302

The Dalles, Oregon 97058-2237

(541) 506-2520

Fax: (541) 506-2521

Scott Hege, *Chair of the Board*

Rod Runyon, *County Commissioner*

Steve Kramer, *County Commissioner*

October 21, 2015

RE: Delisting of Wolves in Oregon

Oregon meets the wolf population criteria for delisting and Wasco County supports the delisting of wolves throughout the State. Delisting will allow us to work with our local agencies to manage the wolf population; we currently fall under federal regulations. Local agencies are more familiar with our needs and concerns and therefore better able to help us manage the population to meet the habitat needs of the species and protect livestock.

WASCO COUNTY BOARD OF COMMISSIONERS

Scott C. Hege, Chair

Rod L. Runyon, County Commissioner

Steven D. Kramer, County Commissioner

## **Discussion Item**

### **EZ Support Letter**

- [Letter from MCMC](#)





A PLANETREE HOSPITAL

1700 E 19th St.  
The Dalles, OR 97058  
Tel. 541-296-1111  
Fax 541-296-7600  
www.mcmc.net

September 1, 2015

Honorable Mayor Steve Lawrence, and  
Mr. Scott Hege, Wasco County Commissioner

The Dalles City Hall  
313 Court Street  
The Dalles, OR 97058

Dear Sirs,

On behalf of Healthcare for the Mid-Columbia Region and Mid-Columbia Medical Center, we want to express our appreciation for the hard work and diligence devoted to the negotiation of the recently approved Google Phase III project. Regardless of one's opinion of the Enterprise Zone or tax rate aspects of the project, we can all agree that making decisions like this are never easy. We applaud you and the members of the City Council and County Commission for your service to our community.

We appreciate Google's presence in the Gorge. They have meant a great deal to the economy of our region and have also been consistent and welcome supporters of public entities and civic organizations. We look forward to their continued involvement in our community with the even greater presence that this Phase III project represents.

Sincerely,

A handwritten signature in blue ink that reads "Wally Wolf".

Wally Wolf, Chair  
Healthcare for the Mid-Columbia Region

A handwritten signature in blue ink that reads "Rob Carnahan".

Rob Carnahan, Chair  
Mid-Columbia Medical Center

A handwritten signature in blue ink that reads "Duane Francis".

Duane Francis, President/CEO  
Mid-Columbia Medical Center

**WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 21, 2015**

**CONSENT AGENDA**

1. [10.7.2015 Regular Session Minutes](#)



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015

PRESENT: Scott Hege, Commission Chair  
Rod Runyon, County Commissioner  
Steve Kramer, County Commissioner  
STAFF: Tyler Stone, Administrative Officer  
Kathy White, Executive Assistant

At 9:00 a.m. Chair Hege opened the Regular Session of the Board of Commissioners with the Pledge of Allegiance.

**Assessor's Award**

Commissioner Kramer announced that County Assessor Jill Amery had recently received a national award recognizing her work over the last year and a half to implement the tax and assessment software system that was left floundering with the passing of Assessor Tim Lynn and further complicated by issues in the County Treasurer's office. Mr. Stone noted that she was recognized by Thomson Reuter out of the 1600 government jurisdictions they serve.

Ms. Amery stated that this is not just about her leadership but about staff's willingness to go forward in the face of diversity; about sharing a vision and working toward common goals. She said she is very proud to be working on this team.

**Agenda Item – Oregon Department of Fish & Wildlife Payments**

Ms. Amery explained that this is an annual certification for payments made by Oregon Department of Fish and Wildlife in lieu of taxes. Consultant Tom Linhares

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 2

explained that normally state property is exempt from taxes but for land purchased by the Oregon Department of Fish and Wildlife prior to 1971, ODFW is required to make an in-lieu payment in the amount that would be paid were property subject to taxation. He went on to say that statute requires the approval of the local governing body. Ms. Amery added that the money goes straight to treasury and is distributed just like property taxes; in terms of how it is calculated and distributed – it is no different than taxable property.

Chair Hege stated that just recently the ODFW acquired significant acreage in Wasco County and assured the Board and stakeholders that they would be paying fees in lieu of taxes for that property; that is not what is being explained here today. He said that it would be very disappointing to learn that is not the case.

Ms. Amery said that they are trying to get an answer to that; there seems to be something different in place for farm use land. Chair Hege asked that she talk with Jeremy Thompson at ODFW to clarify.

**{{{Commissioner Kramer moved to approve the notice of determination of value of real property owned by Oregon Department of Fish and Wildlife, Pursuant to ORS 495.340 (4). Commissioner Runyon seconded the motion which passed unanimously.}}}**

Ms. Amery reported that they are waiting for tax statements to come back and hope to certify next week. She stated that the lockbox system is done and ready to go; they have created an insert that will explain the process. She said property owners can pay on the website as well.

Chair Hege asked Ms. Amery to explain the lockbox system. She replied that tax payments will be mailed to Portland and run through an automated system which uploads an electronic file that can be accessed by the County system. She said that she is very impressed with how well the setup has gone with such a short timeline. She reported that they have successfully completed test downloads.

<b>Discussion Item – Enterprise Zone Manager Designation</b>
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Mr. Stone explained that part of the process for enterprise zones is to designate a manager for the City and County jointly. He said that the manager acts as the primary



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 3

point of contact for all enterprise zones making sure that reporting is completed and benchmarks met. The previous manager was Dan Durow who will no longer be filling that role. He stated that the City of The Dalles has appointed Daniel Hunter and needs the concurrence of the County to finalize that appointment.

**{{{Commissioner Runyon moved to approve Resolution #15-011 designating City of The Dalles Project Coordinator Daniel Hunter as the Local Enterprise Zone Manager. Commissioner Kramer seconded the motion which passed unanimously.}}}**

**Discussion Item – NACo Dues**

A brief discussion regarding the benefits of NACo membership ensued.

**\*\*\*The Board was in consensus to renew the County's NACo membership.\*\*\***

**Discussion Item – Building Codes**

Chair Hege said that we have been hearing about Building Codes for a long time and he would like staff to explore Building Codes in Wasco County. He reported that he has talked to other counties and learned that many provide their own rather than leaving it to the State or contracting out to another entity. He stated that most were favorable as to why a county would run building codes. He said that an IGA from MCCOG is under consideration and this is a good time to look at the options – MCCOG, private contract, state run or in-house. He said other ways may be found as well; he wants to hear the pros and cons as a business case – what makes sense for Wasco County?

Mr. Stone said that he would like to put together a project team for this – it is big and can impact a number of departments.

Commissioner Runyon said he would think this emanated somewhat from Wayne Lease's information. Chair Hege said in part, it did – the Board has been hearing about this for over a year; he added that he has been involved with Building Codes both personally and as a Commissioner. MCCOG will need an IGA to continue the work; now is a good time to look at options.

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 4

Commissioner Runyon agreed, saying that there should have been an IGA in place years ago and there is not one; with a new director in place, the State is pressing for an IGA – we need to either do that or see what else is out there. He noted that Hood River has not been using a portion of codes for a while – perhaps we can look at our neighbors and see what we can do to serve the public and save some money. He said that he supports Chair Hege’s request for staff to explore options. Commissioner Kramer concurred.

**\*\*\*The Board was in consensus to direct the County Administrator to work with staff to explore the options for administering/implementing Building Codes in Wasco County.\*\*\***

**Discussion Item – Thank You Letter**

Commissioner Kramer said that the County recently concluded the contract with Lee Hazel for the maintenance of the facilities located at the Pine Hollow boat ramp. He stated that for several years Mr. Hazel has done a great job and he wants to send a letter of thanks to him.

**\*\*\*The Board was in consensus to send a letter of thanks to Lee and Debbie Hazel for the work they have done to maintain the facilities at the Pine Hollow boat ramp.\*\*\***

**Consent Agenda – Minutes, Oregon’s Kitchen Table Contract, Emmert International Contract**

Chair Hege explained that both the contracts on the Consent Agenda are for projects previously discussed and approved by the Board in public session.

**{{{Commissioner Kramer moved to approve the Consent Agenda.  
Commissioner Runyon seconded the motion which passed unanimously.}}}**

**Agenda Item - Surplus**

Facilities Manager Fred Davis explained that there is dental equipment in Annex C for which the County has no investment or use. The equipment was left behind by the last tenant – La Clinica. According to the terms of the lease, items left behind by the tenant become property of the County. In addition, Mr. Davis reported that he contacted LaClinica, now One community Health, and they confirmed that they did

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 5

not want the equipment. He said that they are common pieces of equipment but are specifically for use by dentists; he believes it worth advertising soon before they lose value.

Mr. Davis went on to say that he had been in touch with sales representatives and canvassed EBay to determine a current market value for the used equipment. He would like to advertise locally – there is already one dentist who has expressed an interest in the equipment. Chair Hege suggested that he advertise on Craig's List and Gorge Net to reach a broader audience.

**{{{Commissioner Runyon moved to approve Order 15-083 surplussing on Airstar 30 compressor and one Vacstar 80H vacuum system and to authorize the Facilities Manager to negotiate and complete the sale of the equipment. Commissioner Kramer seconded the motion which passed unanimously.}}}**

Mr. Davis reported that he contacted another company that moves houses and they were not interested in the County-owned house located at 1519 W. 10<sup>th</sup> Street. He was not able to find a third firm that does that kind of work. He said that the advantage to the County is to have the house off of the property rather than having it stand empty, deteriorating and vulnerable to vandalism.

**{{{Commissioner Kramer moved to approve Order 15-084 surplussing the house located at 1915 West 10<sup>th</sup> Street, The Dalles, Oregon. Commissioner Runyon seconded the motion which passed unanimously.}}}**

Mr. Davis reported that Oregon Department of Justice is satisfied with the detail of the switch gear change project and have suggested that the County revise the request from \$42,500 to \$50,000 to allow for the cost of permits and contingency. He noted that it will increase the County's match requirement but is a wise move.

Mr. Davis went on to say that the County needs a generator to run the Courthouse in the event of an emergency. If ODJ shows an interest in that project, he will return to the Board with more information. The current generator circuitry was based on the jail being in the building; at that time it was wired to support the Sheriff, Finance, Tax & Assessment, the Clerk and random circuits that tie into those offices. Facilities wants to do a lunch time shut down and kick in the generator to see exactly what it is

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 6

supporting. He stated that if ODJ does not show interest this year, he will try to put it in the grant cycle for next year.

Mr. Davis said that he is tying up loose ends for the change-office project for the Clerk and Assessor. He reported that he discovered that the building specs for the two offices were off as much as a foot in some places; he has re-measured both spaces to insure accuracy. The move should take from noon on a Friday to noon on the following Monday – he is working to confirm that with the participating vendors.

**Commission Call**

Commissioner Kramer stated that he had met with Waste Connections District Manager Erwin Swetnam to discuss the loss of southern Wasco County recycling services as a result of their recent purchase of Mel's Sanitation. He said that they are looking into DEQ grant funding and enlisting volunteers so that South County will have access to recycling.

Chair Hege observed that he gets curb-side recycling in his rural North County residence. Commissioner Kramer responded that he had asked about that and learned that the service is continuing there because of what the previous provider had done. The statute requires recycling be provided in communities of 4,000 or more; the communities in the southern portion of the County are small and too far apart to make it practical to offer curbside recycling. He reported that there is a recycling center in Maupin and he hopes to get one or two more in place for South County. He added that there is a center operated by the Dufur Lions on Saturdays.

Commissioner Runyon reported that the legislature cut funding for Regional Solutions by 18%. He had pressed for \$500,000 to go to South Wasco County for broad band; that amount has been adjusted to \$482,000 which should be available by spring 2017. He added that there may also be support for the project from QLife.

**Agenda Item – Home At Last Contracts**

Mr. Stone reminded the Board that they had previously directed staff to move forward to donate the animal shelter site property to Home At Last; the work has been ongoing for eight months.

County Counsel Kristen Campbell stated that this is basically a conveyance of the



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 7

property with a reverter clause. Home At Last will assume the ownership and responsibility of the property and facility maintenance. An additional factor is the cell tower which is located on the property – that tower and the lease income it generates will remain intact for the County’s benefit. She said that there is also a clause that allows the County additional leases for that; areas have been designated on the premises that would not impact shelter operations.

Mr. Stone said that originally the County did not want the land to be encumbered; that has been modified to allow an encumbrance to improve the site – it cannot be encumbered to purchase or improve another site. Ms. Campbell added that the County retains the right to review any encumbrance with a provision that any resulting secured interest is first priority for protection.

Mr. Stone stated that the County had originally asked HAL to pay the attorney fees but subsequently capped that at \$5,500. Ms. Campbell reported that \$5,500 should be very close to adequate.

Chair Hege asked Mr. Stone for his recommendation. Mr. Stone responded that since the Board has expressed a desire to move forward with this, he thinks it is a reasonable contract; most differences have been settled. He noted that his original recommendation was not to transfer the property.

Commissioner Runyon asked if anyone from Home At Last wanted to speak. Kathy Norton said that her only concern is for the cell towers – if the designated sites are not acceptable, where else would the County place a tower; would it be in the center of the parking lot? Chair Hege replied that should an opportunity arise, the County would want to work cooperatively with Home At Last to resolve that. The County wants Home At Last to continue – they do great work for a needed service and the County wants to support that. Commissioner Runyon observed that the County would not have considered this agreement if the intent was not to make it better.

**{{{Commissioner Kramer moved to approve the Donation Agreement between Wasco County and Home At Last Animal Friends. Commissioner Kramer seconded the motion which passed unanimously.}}}**

Ms. Campbell explained that the Management Agreement is essentially a statement of

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 8

a combination of State requirements and the existing relationship. Mr. Stone stated that it gives Home At Last the authority to issue dog licenses and collect the revenue associated with that, insures that animals brought in by the Sheriff's Department will be accepted and have a space, provides the County with an accounting for the number of animals housed and sets forth maintenance requirements to keep the building in good repair and condition. He went on to say that it allows the City of The Dalles animal control and the County to inspect the facility and lays out some of the agreement regarding the cell tower. He added that the agreement requires that the relationship will always be between Home At Last and the County – it cannot be subcontracted.

**{{{Commissioner Kramer moved to approve the Management Agreement between Home At Last Animal Friends and Wasco County. Commissioner Runyon seconded the motion which passed unanimously.}}}**

<b>Agenda Item – Road Vacation</b>
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Public Works Director Arthur Smith reported that he has received a properly prepared petition requesting the vacation of a County road. The petitioner owns four lots there; the platted road is in a very steep, weedy, scrub oak area that people often use as a recreational area. He said that the petitioner has paid the fee and gone through Tenneson engineering for the legal description.

Commissioner Kramer observed that it appears that only half of the right of way is being vacated. Mr. Smith confirmed saying that he cannot make a recommendation until he has completed his report, noting that this will be complicated.

Chair Hege asked how people who use it will find out that it is no longer available should the vacation be approved. Mr. Smith said that when all adjacent land-owners sign off, vacations are a “slam-dunk.” However, when that is not the case public hearings are held prior to a vacation being granted.

**{{{Commissioner Runyon moved to approve Order 15-085 directing the Public Works Director to prepare his report on the proposed vacation of Public Road “H,” within Fruitland Park Addition adjoining Lots 46,47,59 and 60, located in Section 5, Township 1 North, Range 13 East and Section 32, Township 1 North, Range 13 East, Willamette Meridian. Commissioner Kramer seconded**

**the motion which passed unanimously.}}**

**Agenda Item – Procurement Contract**

Mr. Smith explained that this contract allows public entities to leverage the purchasing power of the Oregon Cooperative Procurement Program. This amendment reinstates that agreement which lapsed several years ago, although the County has continued to pay the annual fee and use the program. He stated that Public Works and IT uses it – it is not only a cost-savings program, it assists them in gauging costs when going out for bid on projects as they use the program pricing as a base.

Chair Hege noted that the fee schedule on page 4 of the original contract would indicate that our annual fee would be more than we appear to be paying. Mr. Stone noted that the County fee is probably based on the Public Works budget rather than the County budget. Chair Hege said that he would like that confirmed.

Chair Hege noted that the original contract was signed by the County Surveyor and wondered if it would be appropriate for Public Works to sign if they are the department using it. Commissioner Kramer pointed out that the contract designates several departments able to access the program. Mr. Stone added that currently all the contracts come through the Board.

**{{{Commissioner Kramer moved to approve the Oregon Cooperative Procurement Program Cooperative Procurement Participation Agreement Reinstatement and Amendment. Commissioner Runyon seconded the motion which passed unanimously.}}}**

**Agenda Item – Public Works Building Assessment**

Mr. Smith said that he and Planning Director Angie Brewer have been negotiating a scope of work and pricing with Peter Meijer Architects for an assessment of the Public Works Building. Mr. Smith reported that the latest bid is still over the original budget and has actually increased from the previous pricing. Ms. Brewer noted that when the original RFP went out, it did not include budget information.

Mr. Smith said that he is not satisfied with the scope of work or the increase in pricing – the original bid was \$58,000, the first revised bid was \$32,000 and the

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 10

current bid is \$40,000. He stated that the rules allow that if a contract cannot be satisfactorily negotiated, the agency can terminate negotiations and open negotiations with another candidate, terminate the process altogether, or modify the RFP and go out for further bids. He said that his recommendation would be to terminate and reassess. Mr. Stone said that he would like to go out to a broader group with the RFP – the original RFP went only the group of eight pre-approved by the State. He stated that he does not want to give up on the project and recommends terminating negotiations and putting the project out for bid again.

Chair Hege said that he would definitely concur with Mr. Stone's recommendation to move forward.

**{{{Commissioner Kramer moved to direct staff to terminate negotiations with Peter Meijer Architects for an assessment of the Public Works building and move forward with a new RFP for the project. Commissioner Runyon seconded the motion which passed unanimously.}}}**

Chair Hege called a recess at 10:30 a.m.

The session reconvened at 10:33 a.m.

<b>Agenda Item – Lot Line Vacation</b>
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Associate Planner Dawn Baird stated that she received a request to consolidate two lots into one in Murray's Addition; she reviewed her staff report (attached). She explained that many of the lots are undersized for the placement of a house, garage and septic field; because there are some issues around septic fields in that vicinity, homeowners often have to have a second field.

She said that the findings are simple and standard; the Board can approve, approve with amended findings or disapprove if they feel it does not meet the burden of state law. She said that she recommends approval.

**{{{Commissioner Runyon moved to approve Order 15-082 accepting the vacation of an interior lot line between the East ½ and West ½ of Lot 4, Block C, West Hi-Land Addition, and adopting findings of fact contained in PLALLV-15-07-0002. Commissioner Kramer seconded the motion which**



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 11

**passed unanimously.}}**

Chair Hege asked what PLALLV stands for. Ms. Baird replied:

PLA – Planning

LLV – Lot Line Vacation

15 – the year in which the application is received

07 – the month in which the application is received

0002 – the order in which the application is received

<b>Public Comment</b>
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South Wasco Alliance member Mike Davis announced that there is a SWA meeting tomorrow where they will discuss the Pine Hollow Project. Mr. Stone said that a group of stakeholders are looking at recreation in South Wasco County – Pine Hollow is part of that larger discussion.

Mr. Davis reported that they are looking at how to interact with citizen's to discover what they want. They are also looking at buildings that need repair at Hunt Park, what to do with White River Falls and the possibility of a parks and recreation district. He said that as they have engaged citizens, the scope of the work has broadened and has set the stage for Oregon's Kitchen Table's work.

Mr. Stone pointed out that Commissioner Kramer has been leading the charge to talk about recreation in southern Wasco County – how and where people recreate. He said that it has been an interesting project and the group is learning a lot from Oregon's Kitchen Table about how to get the information and what questions are important to ask. At Commissioner Kramer's direction, a stakeholder group has been developed starting with the issues at Pine Hollow and expanding from there. He reported that there have been a lot of high level discussions to determine a focus for moving forward – there have been several meetings over the last 6-8 weeks.

Mr. Davis complimented Mr. Stone for his leadership; he has engaged a group that has historically not come together – everyone in South County appreciates that.

Mr. Stone said that one of the positive outcomes of the meetings is that the group is trying to move away from what has happened in the past and look to the future. He

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 12

said that previously, the focus was on what had happened 46 years ago; now we care about where we are going and how to get there – no more looking at fault; we are looking at fixes. He stated that it is a positive momentum that he wants to maintain. He noted that as they move forward they will need the support of the Board and the media to get the message out – the more public participation, the better the information will be.

Mr. Stone went on to say that there will be a survey on line October 26<sup>th</sup>; it has already been announced in the Wam Pin Rock along with information about the work being done by the group. Once the survey is done, there will be a strong effort to reach out to the community to motivate participation.

Mr. Davis added that once the public is engaged it will be important that the group is committed to follow through; they need to act on the information to insure that something is accomplished.

<b>Agenda Item – State Marijuana Laws</b>
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Ms. Brewer said that she had come before the Board in August with a high level overview of the State laws regarding marijuana; in September the Board held two Town Halls. The Dufur Town Hall had approximately 50 people in attendance; the Mosier Town Hall had approximately 70 people in attendance. Each town hall revealed different perspectives on the issue.

Commissioner Runyon stated that he is not prepared to make any decision today. He wants people to know that the town halls are not the only input received by the Board – Commissioners are getting phone calls and emails and hear from people on the street. He said the Board wants to keep taking that input.

Ms. Brewer continued by saying that she has not received significant follow-up questions. She reported that early-start sales began in October. She said that she has taken some inquiries from growers but not much has changed.

Chair Hege asked about the questions that were posed at the town halls. Ms. Brewer replied that most were answered in the OLCC FAQ sheet. She said that she learned that for land use compatibility, applications must go through local planning and the County can add a requirement for Water Master approval.

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 13

Chair Hege asked about the 3% option tax. Ms. Brewer replied that it would have to go to a vote and would be applied at the retail, consumer level and not to growers selling to dispensaries. Chair Hege observed that since there is little commercial zoning in the unincorporated areas of the County, there would be very little revenue for the County were such a tax enacted. He said that he wants to make sure that is clear since many people have pointed out that the County stands to benefit from local tax revenues – in fact, the County would have little opportunity to apply such a tax.

Chair Hege said that as he understands it, the State tax will initially be distributed based on population and after a period of time, it will be based on the number of dispensaries located in the County. He asked that Ms. Brewer seek clarification for that.

Chair Hege asked if Maupin has opted out. Commissioner Kramer replied that it is not official, although they have drafted the necessary documents – there will be more discussion on the 12<sup>th</sup> with a final decision on the 20<sup>th</sup>. Chair Hege asked if a Maupin opt-out would push the issue onto the ballot in 2016. Ms. Brewer replied that it would.

Chair Hege stated that the reality is that if the County opts out, it will go to a vote. If the County does not opt out, the people can collect petitions and put it to the ballot. He said some people have already expressed intent to begin that process. Either scenario leaves an uncertainty for growers. He noted that even though there is a decision before the Board, it is ultimately up to the electorate.

Chair Hege pointed out that medical marijuana dispensaries and grows are legal but there are no licenses available for recreational grows; he noted that if the County is going to opt out, it should do so prior to the issuance of licenses in order to prevent any grandfathered businesses before it could go to a vote of the people.

Cole Griffith said that the medical dispensary in town has no product on the shelf and will not likely be able to sustain their business without recreational marijuana. Chair Hege stated that ultimately it will not be decided until the end of 2016. Ms. Brewer said that the approval of use may run with the land but the license may run with the person. She said that she will follow up on that.

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 14

Mr. Davis pointed out that there is also the question of the amount of time it will take to issue licenses; it may be the later part of 2016 before that happens. Michelle Halle stated that retail establishments will not have doors open until fall, but licenses will be issued prior to that.

Chair Hege said there have been comments about regulating specific crops. Ms. Brewer stated that marijuana is a commercial farm use under current regulations and plans – the only zone that must do that is the exclusive farm use zone. There are other areas that would allow the crop and could be further regulated for that specific crop. She went on to say that it is good practice to not single out a particular crop but some counties are looking into that. She said that time, manner and place regulations could address a lot of the issues being discussed. She pointed out that most of what the County will see in the unincorporated areas is growers. She said that we need to understand the concerns associated with that – a grower could apply for a greenhouse now and change the use later; marijuana requires an OLCC license whereas other crops do not. She said that the only way to keep it out of the EFU is to opt out.

Chair Hege asked if she could bring back more information regarding the regulatory possibilities for zones outside the EFU Zone. He noted that there are strong smells associated with the crop; water and lighting are also issues. He said that he would like to know what other counties are looking at. He added that proponents at the Mosier Town Hall expressed a desire to be good neighbors.

Ms. Brewer stated that the nuisance ordinance can regulate smell, lighting, etc. outside of the EFU. She explained that if someone builds a residence within the EFU, they sign off on farm nuisances. She said she would research to confirm and would also look at what is possible in the scenic area. Chair Hege said that could be a problem if the homeowner is there first and then marijuana grow goes in next door.

Mr. Griffith said that in Mosier there is 1,300 acres zoned forest. He said that he has just invested \$100,000 into a well-engineered greenhouse; it is a structure than can be blacked out even when lit. He said that although there are filters that can be installed for the smell, a greenhouse would require quite a few; an air conditioning system would be a better solution. He said it is expensive to do it right – indoor lighting is good for marijuana as well as some other crops.



WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 15

Ms. Brewer pointed out that the County does not have the ability to regulate the four plants allowed for each home.

Kurt Wagner said that almost all medical and recreational growing will go indoors due to the legalization of industrial hemp grows. He explained that the pollen from the hemp will migrate and pollinate marijuana plants. He stated that hemp.33% THC while marijuana is approximately 30% THC. He went on to say that anything made from petroleum can be made from hemp.

Ms. Brewer added that hemp is not a psycho-active crop and therefore does not have the same restrictions. Mr. Griffith added that it is not nearly as irrigated as orchards. He said that hemp plants are male while marijuana plants are female; when the marijuana plant is pollinated with hemp, it becomes a male plant.

Mr. Davis pointed out that a large portion of south Wasco County is in the EFU zone; the concern is growing in more confined areas – for instance in the middle of a rural residential area where agriculture is still allowed. He asked how long it would take to enact new regulations to address those issues.

Ms. Brewer replied that changes require a public process that is specified in ordinance – it would take a few months. Chair Hege said that he would like to know more specifics.

John Pearson if hemp is an outright use crop. Ms. Brewer replied that the County does not have the option of opting out of hemp. She added that the County can regulate marijuana outside the EFU and said that she would look into it further. She said hemp is an agricultural product and would fall under the current farm use regulations. Commissioner Kramer stated that hemp would be regulated by the department of agriculture; the Farm Bureau is being heard on that.

Dr. David Werhly asked what the timeline is for a decision. Commissioner Runyon replied that the Board will keep this topic on the agenda and continue to receive input; he said he would think it will be before the end of December – we want to keep talking and listening. Commissioner Kramer said that he is visiting with people on this issue daily.

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 16

Chair Hege said that a previous estimate for tax distribution to Wasco County was \$20,000 but if the initial distribution is based on population – that will be a much smaller number. He pointed out that part of the discussion has been to use that revenue for prevention, but if there may not be revenue to support that.

Commissioner Runyon stated that the Board has not discussed this among their members but it is his intent to wait until the end of the year. He observed that the County deputies answer almost as many of the calls in the City as the City Police; The Dalles is not taking action to opt out – if there are problems, County deputies will be involved and we are paying for that. He said that The Dalles is the center for education and sales and the County will bear some of the cost of law enforcement. He went on to say that this is very complicated and he believes the State is basically blackmailing two counties by saying that if they opt out they will not get any of the revenue even though the counties will bear some of the cost.

Discussion ensued as to the timeline for citizens to get this on the ballot. County Clerk Lisa Gambie said she would bring the details of that process to the Board at an upcoming session.

Mr. Wagner said that Measure 91 failed in Wasco County by only 193 votes.

Commissioner Hege said that he doesn't know what the timeline is for a decision but at this point it is uncertain. Commissioner Kramer said he has plans to tour some medical grows this week. Mr. Pearson stated that he would like to see another Town Hall.

Ms. Brewer asked for confirmation that she would be on the agenda for the next Board session. The Board was in concurrence that she should return with more information at the next session.

At 11:55 a.m. Chair Hege called an executive session.

At 12:16 p.m. Chair Hege reconvened the regular session and adjourned the meeting.

<b>Summary of Actions</b>
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**Motions Passed**

- to approve the notice of determination of value of real property owned by Oregon Department of Fish and Wildlife, Pursuant to ORS 495.340 (4).
- to approve Resolution #15-011 designating City of The Dalles Project Coordinator Daniel Hunter as the Local Enterprise Zone Manager.
- to approve the Consent Agenda: 9.16.2015 Regular Session Minutes, 9.17.2015 Town Hall, 9.21.2015 Town Hall, Contract between Portland State University and Wasco County for Oregon's Kitchen Table Services, and option agreement with Emmert International.
- to approve Order 15-083 surplussing on Airstar 30 compressor and one Vacstar 80H vacuum system and to authorize the Facilities Manager to negotiate and complete the sale of the equipment.
- to approve Order 15-084 surplussing the house located at 1915 West 10<sup>th</sup> Street, The Dalles, Oregon.
- to approve the Donation Agreement between Wasco County and Home At Last Animal Friends.
- To approve the Management Agreement between Home At Last Animal Friends and Wasco County.
- to approve Order 15-085 directing the Public Works Director to prepare his report on the proposed vacation of Public Road "H," within Fruitland Park Addition adjoining Lots 46,47,59 and 60, located in Section 5, Township 1 North, Range 13 East and Section 32, Township 1 North, Range 13 East, Willamette Meridian.
- To approve the Oregon Cooperative Procurement Program Cooperative Procurement Participation Agreement Reinstatement and Amendment.
- To direct staff to terminate negotiations with Peter Meijer Architects for an assessment of the Public Works building and move forward with

WASCO COUNTY BOARD OF COMMISSIONERS  
REGULAR SESSION  
OCTOBER 7, 2015  
PAGE 18

a new RFP for the project.

- To approve Order 15-082 accepting the vacation of an interior lot line between the East ½ and West ½ of Lot 4, Block C, West Hi-Land Addition, and adopting findings of fact contained in PLALLV-15-07-0002.

Consensus

- To renew the County's NACo membership.
- To direct the County Administrator to work with staff to explore the options for administering/implementing Building Codes in Wasco County.
- To send a letter of thanks to Lee and Debbie Hazel for the work they have done to maintain the facilities at the Pine Hollow boat ramp.

WASCO COUNTY BOARD  
OF COMMISSIONERS

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Scott Hege, Commission Chair

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Rod Runyon, County Commissioner

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Steve Kramer, County Commissioner



## **Agenda Item**

### **Supplemental Budget Hearing**

- [Finance Memo](#)
- [Resolution 15-012 Supplemental Budget](#)
- [Exhibit A](#)

# WASCO COUNTY

## FINANCE OFFICE

Suite 207  
511 Washington Street  
The Dalles, OR 97058  
(541) 506-2770  
Fax (541) 506-2771

**INTERIM FINANCE DIRECTOR**  
**Debbie Smith-Wagar**  
(541) 506-2770

**HUMAN RESOURCES/ PAYROLL**  
(541) 506-2775

**ACCOUNTS PAYABLE**  
(541) 506-2777

## MEMO

To: Board of County Commissioners  
From: Debbie Smith-Wagar, Interim Finance Director  
Date: October 14, 2015  
Re: Supplemental Budget

Under ORS 294.471, adjustments to the County's adopted budget are allowed during the year due to unforeseen circumstances. After the first quarter of fiscal year 2015-16, the following items have been identified as changes needed for the budget:

General Fund:			
	Assessment & Taxation		
	Additional Training from Thomson Reuters	2,500	[1]
	Administrative Services		
	Facilities: Switch Gear Grant from State of Oregon	15,000	[2]
	IT: Public Health Computers	15,000	[3]
	Admin Svcs: Additional Legal Costs	75,000	[4]
	Admin Svcs: Salary Matrix Update	8,000	[5]
	Admin Svcs: General Liability Insurance	15,000	[6]
		128,000	
	Total General Fund	130,500	
County School Fund:			
	Materials & Services		
	Carryover from last fiscal year	60,000	[7]

[1] County Assessor Jill Amery has requested an additional \$2,500 for more training from Thomson Reuters on the County's tax assessment software.

[2] Fred Davis is working with the State of Oregon to increase the grant for installing switch gear in the County Courthouse. He has been notified that an additional \$7,500 in grant money is available, which the County has to match. Therefore the expenditures are increasing by \$15,000 of which \$7,500 is covered by the grant.

[3] Paul Ferguson is purchasing computers for Public Health. He can get a better deal because the County can buy computers in volume. This additional appropriation is offset by repayment from Public Health.

[4] Legal costs are higher than initially forecast.

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## ACCOUNTS PAYABLE

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[5] Every two years the County has to update its salary matrix. That work is due to be done this fiscal year.

[6] General liability insurance for the County came in \$15,000 higher than budget.

[7] A portion of the County School Fund receipts were carried over from last year and were recently distributed. This carryover needs to be added to the current year appropriations.

The Beginning Fund Balances (carryover) in both the General Fund and the County School Fund is more than enough to cover these additional items. As noted in item 2, half of this additional appropriation will be funded by a grant, and item 3 is being reimbursed in full.

These are the items that are known at this time. Assessment and Taxation recently entered into a contract with US Bank to provide lockbox services for property tax collections. That cost was not anticipated when the budget was prepared. We are still analyzing the department's ability to absorb the cost. It may be added as an item in the next supplemental request.

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF APPROPRIATING     )  
UNANTICIPATED RESOURCES IN A        )     RESOLUTION  
SUPPLEMENTAL BUDGET REQUEST        )     #15-012

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Board of Commissioners being present; and

IT APPEARING TO THE BOARD: That there are requests for additional appropriations in the General Fund and the County School Fund; and

IT FURTHER APPEARING TO THE BOARD: That the funding was unknown when the Wasco County Budget for Fiscal Year 2015-2016 was adopted.

NOW, THEREFORE, IT IS HEREBY RESOLVED: That \$190,500 in unanticipated requirements in operations are offset by additional resources



including a grant of \$7,500, reimbursements of \$15,000, and beginning fund balance increases of \$168,000. The fiscal year 2015-16 budget is hereby amended as detailed in Exhibit A.

DATED this 21st day of October, 2015.

WASCO COUNTY  
BOARD OF  
COMMISSIONERS

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Scott C. Hege, Commission Chair

APPROVED AS TO FORM:

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Rod L. Runyon, County Commissioner

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Kristen Campbell  
Wasco County Counsel

---

Steven D. Kramer, County Commissioner

Exhibit A

FUND	DEPARTMENT	ADOPTED BUDGET	THIS CHANGE	REVISED BUDGET
101	<b>RESOURCES</b>			
	<b>NON-DEPARTMENTAL</b>			
	BEGINNING FUND BALANCE	5,018,000	108,000	5,126,000
	PROPERTY TAXES	8,245,287		8,245,287
	LICENSES, FEES & PERMITS	597,000		597,000
	INTERGOVERNMENTAL	509,600	7,500	517,100
	FEDERAL GRANTS	3,200		3,200
	INVESTMENT EARNINGS	28,200		28,200
	RENTS	1,335		1,335
	MISCELLANEOUS	153,943		153,943
	TRANSFERS IN	780,628		780,628
	<b>TOTAL NON-DEPARTMENTAL RESOURCES</b>	<b>15,337,193</b>	<b>115,500</b>	<b>15,452,693</b>
	<b>ASSESSMENT &amp; TAXATION</b>			
	LICENSES, FEES & PERMITS	19,300		19,300
	MISCELLANEOUS	2,000		2,000
	<b>TOTAL ASSESSMENT &amp; TAXATION RESOURCES</b>	<b>21,300</b>	<b>-</b>	<b>21,300</b>
	<b>COUNTY CLERK</b>			
	GENERAL COUNTY CLERK	114,800		114,800
	ELECTIONS	10,250		10,250
	<b>TOTAL COUNTY CLERK RESOURCES</b>	<b>125,050</b>	<b>-</b>	<b>125,050</b>
	<b>SHERIFF</b>			
	EMERGENCY MANAGEMENT	97,627		97,627
	MARINE PATROL	52,145		52,145
	LAW ENFORCEMENT	290,460		290,460
	<b>TOTAL LAW ENFORCEMENT RESOURCES</b>	<b>440,232</b>	<b>-</b>	<b>440,232</b>
	<b>ADMINISTRATIVE SERVICES</b>			
	INFORMATION TECHNOLOGY	89,000	15,000	104,000
	EMPLOYEE & ADMIN SVCS	2,600		2,600
	FACILITIES	191,976		191,976
	<b>TOTAL ADMIN SERVICES RESOURCES</b>	<b>283,576</b>	<b>15,000</b>	<b>298,576</b>
	<b>ADMINISTRATION</b>			
	ADMINISTRATION	55,000		55,000
	PASS-THROUGH GRANTS	191,742		191,742
	NORCOR	26,100		26,100
	VETERANS	32,020		32,020
	<b>TOTAL ADMINISTRATION RESOURCES</b>	<b>304,862</b>	<b>-</b>	<b>304,862</b>
	<b>DISTRICT ATTORNEY</b>	<b>163,326</b>	<b>-</b>	<b>163,326</b>

	PLANNING	144,150	-	144,150
	PUBLIC WORKS	13,065	-	13,065
	YOUTH SERVICES	30,410	-	30,410
	GRAND TOTAL GENERAL FUND RESOURCES	16,863,164	130,500	16,993,664
101	<b>REQUIREMENTS</b>			
	ASSESSMENT & TAXATION	855,265	2,500	857,765
	COUNTY CLERK	314,598		314,598
	SHERIFF	2,182,798		2,182,798
	ADMINISTRATIVE SERVICES	2,367,560	128,000	2,495,560
	ADMINISTRATION	3,513,215		3,513,215
	DISTRICT ATTORNEY	529,782		529,782
	PLANNING	680,247		680,247
	PUBLIC WORKS	66,217		66,217
	YOUTH SERVICES	494,154		494,154
	NON-DEPARTMENTAL	2,264,961		2,264,961
	CONTINGENCY	468,367		468,367
	EFB	3,126,000		3,126,000
	<b>TOTAL GENERAL FUND</b>	<b>16,863,164</b>	<b>130,500</b>	<b>16,993,664</b>
204	<b>RESOURCES</b>			
	BEGINNING FUND BALANCE	25,000	60,000	85,000
204	MATERIALS & SERVICES	314,690	60,000	374,690
	<b>TOTAL COUNTY SCHOOL FUND</b>	<b>314,690</b>	<b>60,000</b>	<b>374,690</b>

## **Agenda Item**

### **Finance Report**

- [Finance Director's Report](#)



# Cash and Revenue Wasco County

Analysis and Implementation of Internal Control  
Recommendations

October 21, 2015

Smith-Wagar Consulting

# Cash and Revenue Wasco County

## Analysis and Implementation of Internal Control Recommendations

This document is the result of an on-going process that started with the financial statement audit of the June 30, 2014 financial statements. The auditor communication as a result of that audit listed three material weaknesses in internal controls at Wasco County. Wasco County management contracted with Tara Kamp, a partner at Pauly Rogers, PC, to delve deeper into the material weaknesses and issue recommendations. Debbie Smith-Wagar of Smith-Wagar Consulting, LLC, was then hired to implement the recommendations.

The first material weakness was over bank reconciliations. The financial statement auditor determined that bank reconciliations were not completed in a timely manner.

The second material weakness was over tax revenue reconciliations. The financial statement auditor determined that cash and revenue reconciliations were not completed prior to payments being made to taxing districts.

The third material weakness was over month-end closings. Because of the first two material weaknesses, the financial statement auditor determined that months were not closed on a timely basis. This means departments and the Board of County Commissioners did not have timely information with which to make management decisions.

Ms. Kamp from Pauly Rogers performed agreed-upon procedures to isolate the reasons for the material weaknesses and provide some solutions. In the following narrative, her findings are expanded and the status of her recommendations is described.

Subsequent to the initial project that Ms. Smith-Wagar was engaged to undertake, the County Finance Director, Monica Morris, resigned her position. Ms. Smith-Wagar was retained to provide interim finance director duties. As part of that engagement, Ms. Smith-Wagar has determined there are additional issues that should be documented in this report.

### *Auditor Findings*



Auditors have three types of findings they make regarding financial procedures. The least serious is a management letter recommendation. This type of recommendation usually has more to do with efficiencies than with concern over the accuracy of the financial statements.

The second finding is a significant deficiency. This indicates an area of concern that could lead to the financial statements being misstated, especially if there are more than one significant deficiency in a single area.

A material weakness is the most serious of findings. A material weakness means the financial statements could be misstated and controls that would catch the error are not present.

## Material Weakness in Internal Control – Bank Reconciliations

*Bank reconciliations were not performed in a timely manner*

In order to get the fiscal year 2014 financial statement audit completed, the Finance Director, Monica Morris, completed the bank reconciliations for that year. Ms. Morris and the County Treasurer, Chad Krause, agreed that Mr. Krause was responsible for the bank reconciliations.

The agreed-upon procedures from Pauly Rogers also noted that the County Treasurer was responsible for preparing the monthly bank reconciliations. At the time of the Pauly Rogers procedures during fiscal year 2015, Ms. Kamp noted that the bank reconciliations were still not being performed timely. The agreed-upon procedures report was dated March 11, 2015, and was presented to the Board of County Commissioners (BOCC) on that same date.

Debbie Smith-Wagar began working on this issue on April 16, 2015. On April 17, 2015 she met with Mr. Krause and it appeared that the reconciliations for fiscal year 2015 were up-to-date with the exception of November 2014. However Ms. Smith-Wagar did not trace all of the reconciliations to the bank statements and the financial accounting software at that time. She did note that there were small amounts of over and/or short each month, which is not uncommon in an entity the size of Wasco County. There was a disconnect in communication between the Finance Director and the Treasurer. No one was reviewing the Treasurer's work and the months were not getting wrapped up and closed.

Mr. Krause also said it was not his job to open or close months in the financial accounting software. He did agree that he was responsible for recording the majority of the revenue in the financial accounting software, but said it was all being done timely. See discussion of the next material weakness for more information regarding the timeliness of revenue recording.

Mr. Krause has asserted, and the consultants have agreed, that the reconciliation process for property taxes was hampered by the troubled implementation of new property tax software in fiscal year 2014. However software is merely a tool. It remains the County Treasurer's job to accurately account for the money that is collected. Accurately accounting for the money generally means counting it, depositing it in the County's bank, and recording it accurately in the County's financial accounting software. If the County's property tax software does not facilitate that process then it must be done manually. A working interface was subsequently put in place – see the "Recommendations and Status", Recommendation 3 later in this report for more information.

## Material Weakness in Internal Control – Reconciliation of Tax Deposits

*Bank deposits of tax receipts were not reconciled to the tax assessment software record of collections before deposits were made*

The agreed-upon procedures from Pauly Rogers noted that Mr. Krause was responsible for preparing monthly tax reconciliations during all of fiscal year 2014. At the time of the Pauly Rogers procedures, Ms. Kamp noted that the tax revenue reconciliations were still not being performed timely. The agreed-upon procedures report was dated March 11, 2015, and was presented to the BOCC on that same date.

Ms. Smith-Wagar began working on this issue on April 16, 2015. On April 17, 2015 she met with Mr. Krause, and it appeared the reconciliations were up-to-date. However Mr. Krause was only reconciling the property tax software reports to the bank deposits. He was not reconciling the receipts to the County's financial accounting software, which is the official financial reporting system for the County. When Ms. Smith-Wagar pointed this out to him he said he would add that part of the reconciliation.

Mr. Krause also said the posting of revenue in the County's financial accounting system was up-to-date when Ms. Smith-Wagar met with him. He said he always had information from the property tax software before he made the distributions to the taxing districts. Mr. Krause did not seem to be aware that if the information was not in the financial accounting system and yet funds were recorded as going out of that system, it would appear that the County was significantly over-drawn on its accounts. In subsequent review it appears that the revenue in the financial accounting system had not been reconciled to the bank accounts nor the property tax software.

The property tax software issue noted above would, indeed, make reconciling property tax revenue very difficult. However as has already been noted, software is a tool, and it remained the Treasurer's responsibility to reconcile the revenue in order to maintain the integrity of the financial accounting system.

The new software interface between the tax accounting software and the financial accounting system has been implemented and all tax deposits are now reconciled weekly. See the "Recommendations and Status", Recommendation 3 later in this report for more information on the software interface.



## Material Weakness in Internal Control – Period Closings

*Period or month-end closings are not performed in a timely manner, because all information has not been entered into the accounting system*

Because accurate information was not reported in the areas of cash and revenue, the months could not be closed and financial statements could not be issued. In the financial accounting system cash appeared to be negative for most of the year. The Finance Director told Ms. Smith-Wagar that she ceased sending out reports because she knew they were inaccurate.

Revenue was not being reported in the financial accounting system in a timely manner. In reviewing the accounting records, deposits were made to bank accounts, as shown on bank statements, but were not recorded in the financial accounting software. This led to both cash and revenue being under-reported throughout the fiscal year. At times there would be several journal entries entered into the financial accounting software to bring the cash and revenue up-to-date, but the timing of the entries did not coincide with the activity. For example, bank deposits that were made in November were entered into the financial accounting system the following January, and were entered in lump sum amounts that do not match the amounts of the deposits.

Despite the lack of reporting and the inaccurate information in the financial accounting software, Ms. Smith-Wagar has confirmed that the County had sufficient cash flow for the fiscal year. However there has been little ability to plan or prepare for the future due to a lack of information on where the County stands in the present.

All reconciliations are now up-to-date. Adjustments have been identified and entered into the financial accounting system so that balances in the financial accounting system match bank records and the property tax software balances.

## *Additional Findings*

Subsequent to the initial project Ms. Smith-Wagar was engaged to undertake, Mr. Krause did not return to work and Ms. Morris resigned as Finance Director. Ms. Smith-Wagar was retained to provide interim finance director duties for the County. As part of that engagement, Ms. Smith-Wagar has documented additional findings regarding financial activities at the County.

## *The Treasurer's Office*

On April 29, 2015 the BOCC separated the employee duties of the Treasurer's office from the elected duties of the Treasurer. Mr. Krause's last known activity at the County was on April 30, 2015. The last email Ms. Smith-Wagar received from Mr. Krause was on May 19, 2015 when he said he had "no idea" the BOCC was going to discuss the Treasurer employee duties at its April 29<sup>th</sup> meeting. He did indicate that he would be putting together items that the Finance Department had requested from the Treasurer. Despite that promise, the items were not forthcoming, and in order to continue to perform the financial activities of the County it was necessary to go into the Treasurer's office on May 26, 2015 to retrieve cash and revenue information, including bank statements, cash receipts and property tax reports.

The Treasurer's office was not organized. Cash receipt binders with date ranges labeled on them contained cash receipts from outside of the date range. Binders labeled as property tax revenue contained cash receipts for revenue other than property taxes. Desk drawers contained personal receipts mixed in with receipts for County purchases.

Ms. Smith-Wagar also found checks made out to Wasco County that were dated in early April that had not been deposited into the County's bank account, along with \$25 in cash. That money was deposited the next day into the County's bank account.

## *Bank Accounts*

Prior to Ms. Morris' departure from the County, she began working to get the appropriate signatures on the bank accounts. It is common for governmental entities to change authorized signers as employees and elected officials change. Ms. Morris determined that Mr. Krause was the only authorized signer on the MINT bank account. After Ms. Morris left, Ms. Smith-Wagar determined that Ms. Morris and Mr. Krause were the only signers authorized on the County's main bank account. This is troublesome, as best practice is to have at least three signers on all bank accounts, including at least one elected official. The BOCC chair, County Treasurer, and County Administrative Officer are now signers on the County's bank accounts.

## Lock Box for Property Tax Receipts

In reviewing cash handling policies at Wasco County, Ms. Smith-Wagar proposed a lockbox as a solution to the overwhelming volume of cash receipts Assessment and Taxation receives primarily in the month of November. In discussing the suggestion with Mr. Krause he said that he had looked at it and getting a lockbox was not worth the cost. He could not provide specifics beyond saying it was thousands of dollars. He could not provide a cost-benefit analysis. He did not seem to be familiar with the lockbox process.

After discussing the issue with Mr. Krause, Ms. Smith-Wagar approached the County Assessor, Jill Amery, and suggested this issue needed more analysis. Ms. Amery went to the County's primary bank, US Bank, and got information on the lockbox. In reviewing the cost versus the amount of staff time that will be saved, it was determined that the lockbox is a good option and it will be utilized beginning in November 2015.

## County School Fund

In April Ms. Morris asked Ms. Smith-Wagar if Mr. Krause had said anything about distributing the money sitting in the County School Fund. When Ms. Smith-Wagar asked Mr. Krause about that money, he told Ms. Smith-Wagar that the schools would request the money. He made it clear that the schools initiate the request.

In late September, the North Wasco County School District contacted Ms. Smith-Wagar regarding the County School Fund distribution for fiscal year 2015. They indicated that Mr. Krause usually initiated the distribution. Mary Bowen from the ESD confirmed that Mr. Krause initiated the distribution. She also said that she had discussed a \$25,000 carryover from fiscal year 2014 that Mr. Krause was going to distribute in August 2014. Accounting records show that distribution was never made. The school districts receiving these distributions had to wait significantly longer than they should have. ORS 328.015 makes it clear that distributions are the responsibility of the County, and that they should be done by the first Monday in December of each year, or more often if the County wishes.

## Additional Information on Bank Reconciliations and Property Tax Turnovers

In order to get ready for the fiscal year 2015 audit, Ms. Smith-Wagar reviewed the bank reconciliations. Two additional items of concern came to her attention.

### *Deposits Made to the Wrong Bank Account*

The first unusual item was a reconciling item that first appeared on the County's main bank account reconciliation in October of 2014. When the County first began accepting credit cards for property tax payments, it appears the initial receipts were deposited into the County's main bank account instead of the property tax bank account. The receipts were recorded in the general ledger as if they were deposited into the property tax bank account.

Mr. Krause recognized that the deposits were made to the wrong bank account and transferred the money appropriately. However he made an additional entry in the general ledger to show the money as deposited into the property tax account. That caused the property tax account to show as overstated on the general ledger and the main bank account to be understated. Because Mr. Krause was not reconciling the property tax account to the general ledger, he did not catch the error. Instead he showed the amount as a reconciling item on the main bank account from October on. Ms. Smith-Wagar subsequently corrected the error by reversing Mr. Krause's general ledger entry.

This error not only is concerning because it shows a lack of understanding of when adjustments need to be made to the general ledger, but also that it remained a "reconciling" item for months. Reconciling items on bank reconciliations are timing differences...that is, usually checks that have been issued but that have not yet cleared the bank, or deposits that were recorded on the general ledger at the end of one month but the bank doesn't post them until the first day of the following month. Unidentified reconciling items that don't reverse themselves the following month are errors that need to be researched and corrected.

### *Transfers*

As noted above, property tax collections are deposited into a bank account designated for that purpose only. When money is distributed to the taxing districts the total amount of the distribution is transferred from the property tax bank account to the County's main operating account at US Bank.

During November 2014, when distributions were made weekly, the transfers from the property tax account to the main account do not match the distribution amounts. It is not clear how Mr. Krause calculated the transfer amounts. It appears that he missed one or more transfers, and then he made a large transfer in January 2015 in order to catch up. The amount was too much, and this caused the property tax account to appear to be missing money. There was no money actually missing – it had simply been transferred to the main account in error – but it took some research to determine what had happened.

## Recommendations and Status

The agreed-upon procedures report from Pauly Rogers provided additional information regarding the status of the issues contributing to the material weaknesses and contained some recommendations. The recommendations were numbered one through seven, but they were not in a specific order. Therefore, recommendations were implemented in a different order than they were presented in the agreed-upon procedures report.

### *Recommendation 6 – Allocation of Duties Between the Treasurer and Finance Department*

Recommendation number six was to take the non-statutory duties from the Treasurer's Office and move them to the Finance Department. As Ms. Smith-Wagar worked through the status of the recommendations in April 2015, it became clear this recommendation had to be implemented in order to create an environment in which the other recommendations could be implemented.

On April 29, 2015 the BOCC voted unanimously to move the County Treasurer's non-statutory duties to the Finance Department. Ms. Smith-Wagar concurred with this decision. As Ms. Kamp had noted in the Pauly Rogers agreed-upon procedures report, it appeared Mr. Krause did not have the accounting background to do the work with which he was tasked. He did not devise work-arounds when the initial problems were identified with the property tax software, but instead quit doing the parts of his job that previously relied on the reports from the old software. Instead of creating a journal entry from reports to get the property tax data into the County's financial accounting software, he tried to make a cumbersome and time-consuming spreadsheet import into the financial accounting software. Instead of providing information to get an automated interface between the two software programs, he led current employees to believe that the vendor for the financial accounting software would not create a custom import.

Mr. Krause worked with the property tax software vendor to try to make the new system work like the old system. In reviewing the flow of information in the new system and comparing it to the way the old system worked, Ms. Smith-Wagar determined that the process used for the old system was not the most efficient process, and the process used for the old system was, in fact, a work-around itself. Despite the obvious efficiency of streamlining the process with the new system, Mr. Krause spent a great deal of time (and created a great deal of angst for the software vendor) trying to make the new system work less efficiently. It appears that Mr. Krause did not have sufficient understanding of governmental accounting to see the efficiency of the new system.

This recommendation is also tied to recommendation 3, and the interface between the property tax software and the financial accounting software has been successfully implemented.



### *Recommendations 1, 2 and 4 – Reconciliations, Cash Receipts, and Monthly Closing*

With many of the accounting duties transferred from the County Treasurer's Office to the Finance Department, three of the recommendations were immediately implemented.

The Finance Department began monthly bank reconciliations and daily revenue reconciliations (recommendations 1 and 2) with the goal of getting to daily bank reconciliations. The Finance Department has one new employee, an interim finance director, and has made an offer of employment to another potential employee. Until new employees are fully trained and workload redistributed, bank reconciliations will only be performed monthly. All cash and revenue is being entered into the financial accounting system on a daily basis, and, as noted above, revenue is being reconciled daily. Bank balances are being monitored on a daily basis. The new accounting clerk is performing most of these duties with his working being reviewed by the interim finance director. This ensures that errors are caught on a timely basis.

Now that information is being posted in the financial accounting system in a timely manner, the months can be closed timely (recommendation 4) and reports can be provided in a reasonable amount of time.

### *Recommendation 3 – Automated Interface Between Property Tax Software and Financial Accounting Software*

As noted in this report, an inefficient and potentially error-prone process was being used to transfer information from the property tax software into the financial accounting software. The County Assessor, the vendors for the property tax software and the financial accounting software, and Ms. Smith-Wagar worked to get an efficient interface in place. The interface has been in place since July. The transfer of data is quick, efficient, and accurate.

### *Recommendation 5 – Control Environment*

The environment in the County Finance Department has changed significantly in the last six months. Mr. Krause has not been observed in the Courthouse since April 30, 2015. As noted above, Ms. Morris resigned her position in July.

County Administrative Officer Tyler Stone is working to hire a new Finance Director with an emphasis on someone who will continue to foster a positive environment for the Finance Department. It is currently a difficult labor market, with many Finance Directors retiring and fewer people prepared to fill those positions. Ms. Smith-Wagar has agreed to fill the interim position until the County can hire a permanent Finance Director.

The control environment is sometimes referred to as “the tone at the top”. Ms. Smith-Wagar emphasizes the importance of following internal control procedures, such as reviewing bank balances daily, making sure all expenditures are signed off by someone other than the person entering them into the financial accounting software, and encouraging Finance Department employees to ask questions about transactions that seem unusual.

### *Recommendation 7 – Cash Handling*

With all of the attention being paid to the handling of cash in the County Treasurer’s Office, a review of the entire County’s cash handling practices is being conducted. All departments have been interviewed, and overall the County has good practices in place. The one area where Ms. Smith-Wagar highly recommended an improvements was to get a lockbox to receive County property tax payments, and that recommendation is being implemented with the current tax assessment.

One primary change that was made as soon as the non-statutory treasurer duties were transferred to the Finance Department was to count deposits in front of the department representative that brings the cash and checks to the Finance Department to be deposited into the bank. In the past the money would be left in the Treasurer’s office, sometimes when the Treasurer was not present.

The current process is that the department will bring the cash and checks to the Finance Department. The accounting clerk, or the accounts payable clerk in the accounting clerk’s absence, will count the money in front of the person bringing the deposit. The accounting clerk or the accounts payable clerk will then issue a receipt to the department acknowledging the amount of money to be deposited into the bank. This receipt is also reconciled to the financial accounting software and the bank deposit. The involvement of two people in the process (the person bringing the money in and the Finance Department employee), along with three-way matching (the receipt reconciled to the financial accounting system and the bank deposit) is an example of a very good internal control.

## Summary

The County has accomplished a significant number of achievements in the last six months, although there is much left to be done. Internal controls have been reviewed and improved. As Finance Department staff are hired and trained, duties will be reassigned to gain even more improvements in this area.

The biggest issues facing the County today are more in line with the issues facing most counties and local government in general, with hiring and retaining skilled staff at the top of the list.

It should be noted that although recommendations are largely implemented at this time, the majority of fiscal year 2015, which ended June 30, 2015, operated under the internal control deficiencies that were identified in the fiscal year 2014 audit. Because of the timing of the implementation of corrections, the financial statement auditor will likely reiterate the deficiencies in internal controls for the fiscal year 2015 audit.

**Agenda Item**  
**Tobacco in Wasco County**

- [NCPHD 2014 Tobacco Fact Sheet](#)
- [State Retail Fact Book](#)
- [OYA Tobacco Prevention and Education Report](#)
- [E-Cigarette Fact Sheet](#)

# North Central Health District

# Tobacco Fact Sheet, 2014

## Tobacco's toll in one year



**4,200** Adults who regularly smoke cigarettes

**1,485** People with a serious illness caused by tobacco



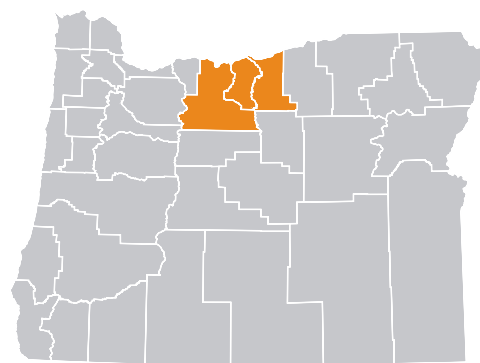
**76**

Tobacco-related deaths



**\$15.2 Million**

spent on tobacco-related medical care



## Population

Youths	<b>6,648</b>
Adults	<b>22,887</b>
Total residents	<b>29,535</b>

**\$12.1 Million**

in productivity losses due to premature tobacco-related deaths

## Among tobacco retailers assessed in North Central Health District



Nearly **1 in 2** advertised tobacco outside



**100%** sold flavored tobacco



Nearly **8 in 10** sold tobacco at discounted prices



**\$1.05** was the average price of a single, flavored little cigar



The Tobacco Industry spent **\$112 million a year promoting tobacco products in Oregon stores in 2012.**

## Components of a comprehensive tobacco prevention program

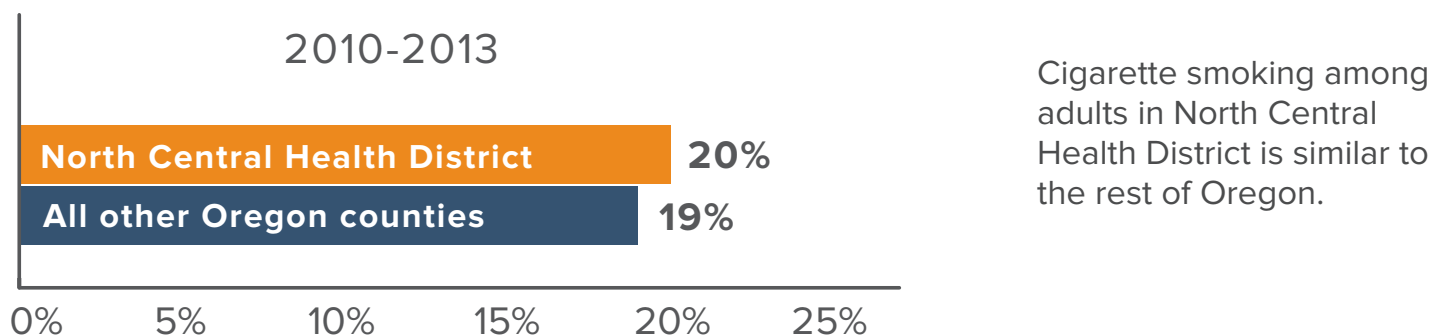


Oregon's Tobacco Prevention and Education Program (TPEP) supports local public health authorities to serve all 36 counties and nine federally-recognized tribes. TPEP works to:

- Engage communities in reducing the tobacco industry influence in retail stores
- Increase the price of tobacco
- Promote smokefree environments
- Provide support and resources to Oregon smokers who want to quit
- Engage diverse populations of Oregonians

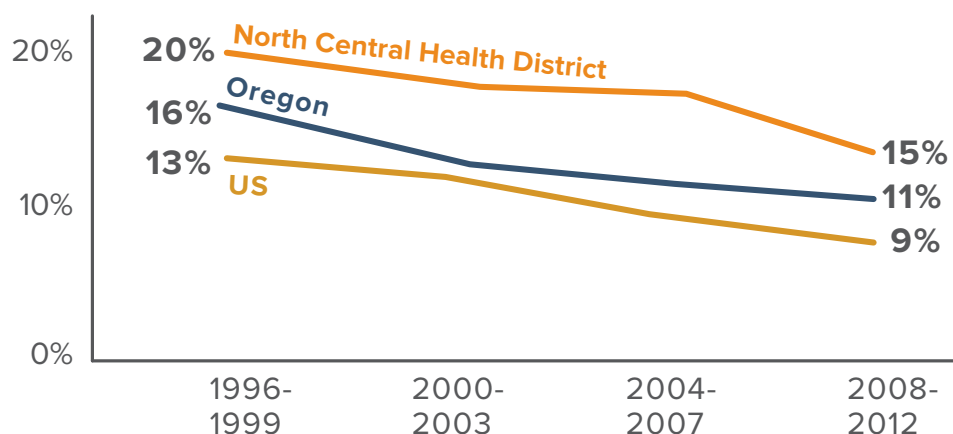


## Adult cigarette smoking

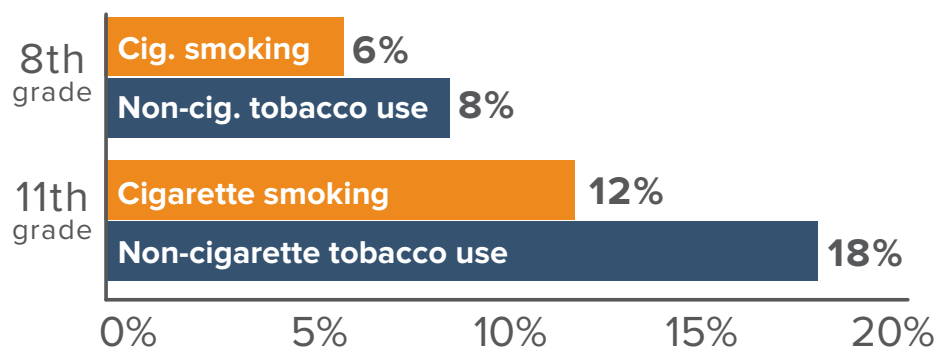


## Cigarette smoking during pregnancy

Cigarette smoking among pregnant women in North Central Health District is **higher** than Oregon overall and the rest of the United States.



## Youth cigarette and non-cigarette tobacco use



Among 11th graders in North Central Health District, non-cigarette tobacco product use is **about 50% higher** than cigarette smoking.

*Note: non-cigarette tobacco products include: cigars, pipe tobacco, hookah tobacco, chewing tobacco, dissolvable tobacco, and electronic cigarettes.*



**Want to know more or have questions about the burden of tobacco in your community?**

Visit Smokefree Oregon to find out what you can do:  
<http://smokefreeoregon.com/what-you-can-do/>

# WHAT'S FOR SALE IN YOUR NEIGHBORHOOD?

## HOW BIG TOBACCO IS TARGETING OREGON KIDS

Big Tobacco spends millions<sup>1</sup> annually to attract kids and teens to the addictive products that kill 7,000<sup>2</sup> Oregonians each year. While the industry can no longer advertise on billboards and TV, it simply shifted its youth-targeted marketing into the retail stores where tobacco is sold.





**3 in 5** stores that sell tobacco display exterior advertisements.

More than **3 in 5** Oregon 8th-graders and nearly **7 in 10** 11th-graders said they had seen a *tobacco advertisement* on a storefront or inside a store.<sup>3</sup>

The tobacco industry spends **\$112 million every year in Oregon** on ads and promotions in convenience stores and other places where tobacco is sold.<sup>1</sup>

# APPROACHING THE STORE

## A TRIP TO THE CONVENIENCE STORE IS A DIFFERENT EXPERIENCE FOR OREGON KIDS AND TEENS

*than it is for their parents, or for any adults.*

*Data collected by all 34 local health departments in Oregon show the prevalence of youth-targeted tobacco marketing across the state.*

*The tobacco industry knows that **70 percent of teens shop in convenience stores**<sup>4</sup> at least once a week. The industry starts targeting them, and their younger siblings, before they even get inside.*



## BIG TOBACCO CAN'T ADVERTISE CIGARETTES ON BILLBOARDS AND TV ANYMORE. BUT TOBACCO MARKETING STILL OCCURS ALL AROUND US, EVERY DAY, IN STORES.

**In fact, the industry spent 91% of their \$9.2 billion marketing budget in 2012 on targeted ads and promotions in stores.<sup>5</sup>**

The onslaught of youth-targeted promotions begins on the exterior walls and windows of these stores, with big, colorful ads that often are at the eye level of a young child. In some cases, attractive images of tobacco products can be found alongside ads for snacks and treats that kids know and love, such as sodas, hot dogs and chips.

*Kids who regularly see tobacco ads are more likely to experiment with or start using tobacco.<sup>6</sup>*

**Adults aren't immune either:** Exposure to tobacco ads has been linked to impulse purchases in adults who are trying to quit, and to relapse in former smokers.<sup>7</sup>



# WHAT'S INSIDE THE STORE

**FOR A YOUNG PERSON,** *stepping inside a convenience store or gas station mini-mart where most cigarettes are sold can be an overwhelming experience.<sup>8</sup> The aisles are lined with brightly-colored products—soda, snacks, small toys—in shiny, eye-grabbing packages.*

Tucked in with the candy and toys are a **wide variety of tobacco and nicotine products**. These include conventional cigarettes; smokeless products such as chew, snus, tiny orbs and dissolvable sticks and strips; electronic cigarettes; and inexpensive little cigars and cigarillos, which often are sweetened and packaged in kid-friendly flavors and colors.

All of these products contain nicotine, the addictive drug found in conventional cigarettes. But many of them look like candy—in small, bright and colorful foil wrappers—and sometimes are displayed within arm's reach of the real candy, gum and other products kids like.



**NEARLY 9 IN 10**  
stores that sell tobacco  
sold little cigars or cigarillos.



**NEARLY 8 IN 10**  
stores that sell tobacco  
sold electronic cigarettes.

The tobacco industry pays store owners to strategically place these products **in places where young people can't help but see them,**<sup>9</sup> and studies have shown that this exposure increases the likelihood that a child will experiment with tobacco or start using it.<sup>10</sup>





**Return to Agenda**

# CARMEL CRUSH

DUNMILL

**9 in 10** stores sell  
*smokeless tobacco.*

Nearly **9 in 10** stores sell  
*little cigars or cigarillos.*

**2 in 5** stores that sell tobacco display the products or ads *at a child's eye-level or near kid-friendly items* like toys, candy, gum, slushy machines or ice cream.




**BUY 1  
GET 1  
FREE**

**dissolvable**  
TOBACCO

**CARMEL  
CRUSH  
FREE HAT**  
WITH ANY CARMEL PURCHASE  
WHILE SUPPLIES LAST





Nearly **8 in 10** stores that sell tobacco had a *price discount* for at least one type of tobacco.

Nearly **3 in 4** stores that sell tobacco accept food stamps and **1 in 5** accept WIC. When Oregonians who rely on government assistance enter to buy food, they are *subjected to tobacco ads and promotions*.

The average price for a single, flavored little cigar or cigarillo is **\$1.04**.



# AT THE REGISTER

## **BIG TOBACCO KNOWS THAT NEARLY 90 PERCENT<sup>4</sup> OF SMOKERS START USING TOBACCO BEFORE AGE 18.**

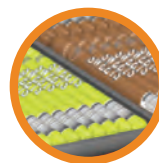
*So the industry uses a “sweet and cheap” strategy that appeals to kids to attract them to these addictive products.*

It used to be that flavored tobacco was limited to menthol cigarettes. But the industry has expanded its flavored offerings far beyond that. Big Tobacco now sweetens little cigars and cigarillos, especially, with **kid-friendly flavors like grape, chocolate and tropical fusion**. Like menthol, the candy and fruit flavors mask tobacco’s natural bitter taste and make it easier for young people to start using tobacco.

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*The industry packages these products—which contain nicotine and are just as addictive as conventional cigarettes—as “single servings” that sell for \$1 or \$2 each, well within the budgets of even cash-strapped young people.*

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**NEARLY 9 IN 10**  
stores that sell little cigars and  
cigarillos sell them as singles,  
which makes them cheap and  
accessible to young people.



Among stores that sold  
electronic cigarettes, about  
**8 IN 10**  
sold flavored  
electronic cigarettes.

The industry’s tactics are working: Even as youth smoking rates decline in Oregon, more teens are using flavored tobacco products. In 2013, nearly twice as many 11th graders used non-cigarette tobacco products as smoked cigarettes.<sup>6</sup> These products include little cigars, snus, chew and electronic cigarettes.

# JUST THE FACTS

AN OVERVIEW OF OREGON DATA PRESENTED IN THIS REPORT



## FLAVORED TOBACCO

- Excluding menthol cigarettes, about 9 in 10 (93%) stores that sell tobacco sold at least one type of flavored tobacco product.
- Including menthol cigarettes, nearly all (98%) stores sold at least one type of flavored tobacco product.
- Nearly all (95%) stores sold menthol cigarettes.
- Among stores that sold cigarillos or little cigars, about 9 in 10 (93%) sold flavored little cigars or cigarillos.
- Among stores that sold electronic cigarettes, about 8 in 10 (84%) sold flavored electronic cigarettes.
- Among stores that sold smokeless tobacco products, about 9 in 10 (93%) sold flavored, smokeless tobacco products, such as chew, snus, orbs and dissolvable sticks and strips.
- Among stores that sold large cigars, nearly 4 in 10 (36%) sold flavored large cigars.



## PRODUCT AVAILABILITY

- Stores that sell tobacco offer a wide variety of tobacco products, in addition to conventional cigarettes.
- Nearly all (97%) stores sold non-menthol cigarettes.
  - Nearly all (95%) stores sold menthol cigarettes.
  - 9 in 10 (90%) stores sold smokeless tobacco products.
  - Nearly 9 in 10 (89%) stores sold little cigars or cigarillos.
  - Nearly 8 in 10 (78%) stores sold electronic cigarettes.
  - About 4 in 10 (41%) stores sold large cigars.



## OUTSIDE ADVERTISING

- 3 in 5 (60%) stores that sell tobacco had outside advertisements promoting tobacco products.



## SINGLE LITTLE CIGARS OR CIGARILLOS

- Among stores that sell little cigars or cigarillos, nearly 9 in 10 (86%) sold them as singles.



## PRODUCT AND ADVERTISING PLACEMENT

- 1 in 4 (25%) stores that sell tobacco displayed tobacco products within 12 inches of products sold to youth like toys, candy, gum, slushy or soda machines, or ice cream.
- Nearly 1 in 4 (24%) stores displayed tobacco advertising within 3 feet of the floor at the eye level of a child.
- Taken together, about 1 in 3 (38%) stores displayed tobacco products or advertising in a manner that appeals to children (near youth products or at a child's eye level).



## PRICE PROMOTIONS

- Nearly 8 in 10 (76%) stores that sell tobacco had a price discount for at least one type of tobacco product.



## PRICE

- The average cheapest price of tobacco products in stores that sell tobacco ranged from \$1.04 for a single, flavored little cigar or cigarillo to \$10.11 for one brand of disposable electronic cigarette.



## STORE CHARACTERISTICS

- Nearly 3 in 4 (73%) stores that sell tobacco in Oregon accepted SNAP (food stamps, EBT) and about 1 in 5 (20%) accepted WIC.

1 Estimate derived from Federal Trade Commission reports. March 2015. <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-releases-reports-2012-cigarette-smokeless-tobacco-sales>

2 Oregon Health Authority. 2013. [https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/Documents/tobacco\\_facts/costs\\_of\\_tobacco.pdf](https://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/Documents/tobacco_facts/costs_of_tobacco.pdf)

3 Oregon Health Authority. 2013. [http://public.health.oregon.gov/DiseasesConditions/ChronicDisease/DataReports/Documents/datatables/ORAnnualOHT\\_Tobacco.pdf](http://public.health.oregon.gov/DiseasesConditions/ChronicDisease/DataReports/Documents/datatables/ORAnnualOHT_Tobacco.pdf)

4 Centers for Disease Control and Prevention. 2012. [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/consumer\\_booklet/pdfs/consumer.pdf](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/consumer_booklet/pdfs/consumer.pdf)

5 Federal Trade Commission reports. March 2015. <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-releases-reports-2012-cigarette-smokeless-tobacco-sales>

6 Oregon Health Authority. April 2014. <http://public.health.oregon.gov/DiseasesConditions/CommunicableDisease/CDSummaryNewsletter/Documents/2014/ohd6308.pdf>

7 Countertobacco.org. <http://countertobacco.org/why-retail-tobacco-control-important>

8 Campaign for Tobacco-Free Kids. March 2012. [www.tobaccofreekids.org/content/what\\_we\\_do/industry\\_watch/store\\_report/deadlyalliance\\_full\\_report.pdf](http://www.tobaccofreekids.org/content/what_we_do/industry_watch/store_report/deadlyalliance_full_report.pdf)

9 Center for Public Health Systems Science. 2014. [http://cphss.wustl.edu/Products/Documents/CPHSS\\_TCLC\\_2014\\_PointofSaleStrategies1.pdf](http://cphss.wustl.edu/Products/Documents/CPHSS_TCLC_2014_PointofSaleStrategies1.pdf)

10 Centers for Disease Control and Prevention. 2012. [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/](http://www.cdc.gov/tobacco/data_statistics/sgr/2012/)

Other estimates calculated from Oregon-county level data collected March 2014 through January 2015.

# TOBACCO PREVENTION & EDUCATION

Expanding Our Reach  
for a Healthier Oregon

PROGRAM REPORT 2013-2015





# GOALS

TPEP’S FOUR GOALS  
FOR MAKING OREGON  
COMMUNITIES SAFER  
AND HEALTHIER

1. ELIMINATE EXPOSURE  
TO SECONDHAND SMOKE

2. PREVENT YOUTH FROM  
INITIATING TOBACCO USE

3. IDENTIFY AND ELIMINATE  
TOBACCO-RELATED  
DISPARITIES IN  
ALL POPULATIONS

4. HELP SMOKERS QUIT



# OREGON’S TPEP

## REVEALING AND REDUCING THE REAL COST OF TOBACCO IN OREGON

More than 85 percent of funding for Oregon’s Tobacco Education and Prevention Program (TPEP) flows directly into communities working to reduce tobacco-related illness and death across the state. Since TPEP launched in 1997, these locally-driven efforts have helped reduce tobacco consumption and youth smoking in Oregon by more than 50 percent — saving lives and saving money.

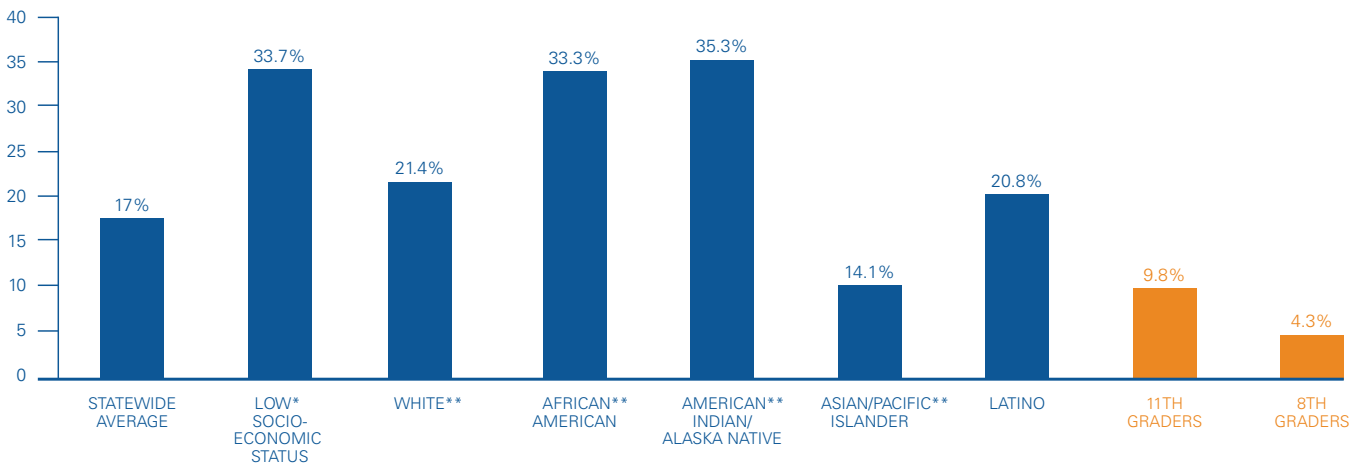
TPEP supports local public health authorities that serve all 36 counties and nine federally recognized tribes. TPEP works with public, private and non-profit partners to engage communities in promoting smokefree environments and reducing the influence of tobacco marketing, especially on kids and teens. TPEP also provides support and resources to the three-quarters of Oregon smokers who want to quit.

Despite declines in tobacco use, it remains the No. 1 preventable cause of death and disease in Oregon, killing 7,000 people each year. Tobacco use is a major risk factor for developing asthma, arthritis, diabetes, cardiovascular disease, stroke, tuberculosis, erectile dysfunction, and ectopic pregnancy—as well as lung, liver, colorectal and other forms of cancer. It also worsens symptoms for people already battling chronic diseases. This burden falls hardest on lower-income Oregonians and certain racial and ethnic communities, who use tobacco at higher rates and suffer the harshest consequences.

Yet whether or not we use tobacco, all Oregonians pay its price. Medical expenses and lost wages that result from tobacco-related disease and premature death cost Oregon \$2.5 billion each year, or \$1,600 for every household in our state.

The majority of TPEP funding comes from state taxes on tobacco products. However, in 2013, the Legislature for the first time set aside a portion of funds from the Tobacco Master Settlement Agreement to support tobacco prevention efforts. This report provides a current snapshot of TPEP accomplishments, and also looks ahead to show how this additional state support will further reduce the burden of tobacco-related disease in Oregon and make our communities healthier and safer.

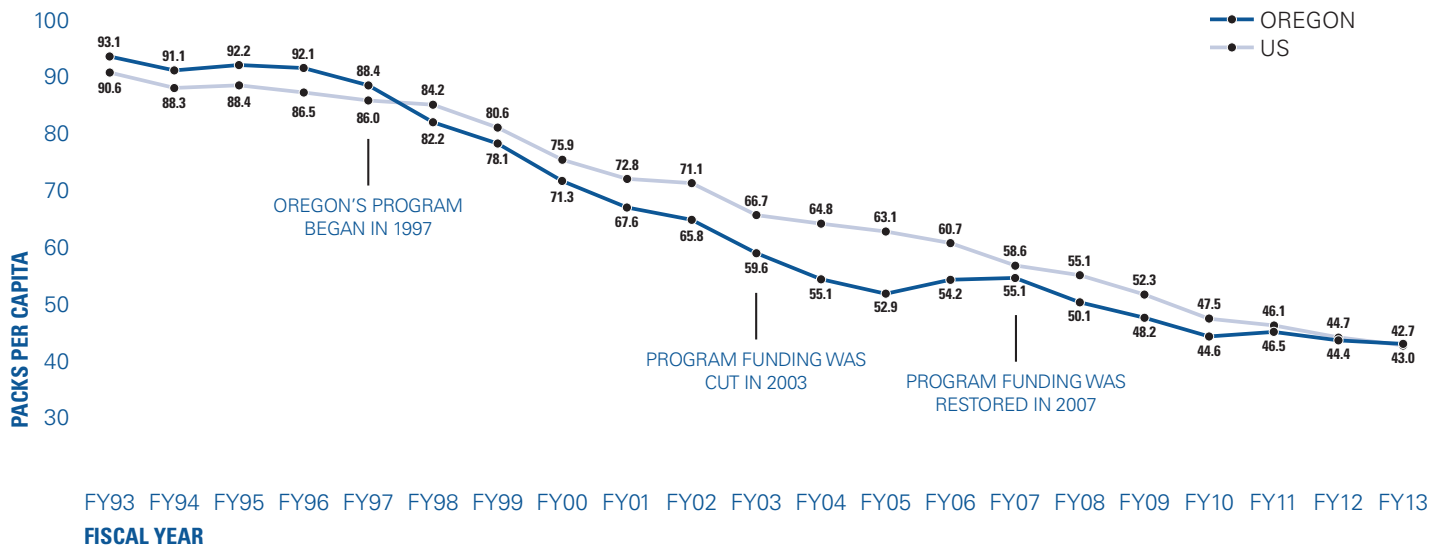
## PERCENTAGE OF ADULT OREGONIANS WHO SMOKE, AMONG SELECTED GROUPS; AND TEEN SMOKING RATES



\*Household income less than \$15,000/year. \*\*Non-Latino  
Oregon Behavioral Risk Factor Surveillance System (BRFSS)  
Oregon Healthy Teens Survey

# TPEP REDUCES TOBACCO'S EFFECT ON OREGONIANS

## ANNUAL PER CAPITA CIGARETTE CONSUMPTION, OREGON VS. U.S., FISCAL YEARS 1993-2013



## A COMMUNITY CREATES SMOKEFREE CHANGE

### BAKER CITY

Baker City, a historic community on the Oregon Trail, rightly promotes itself as a beautiful “base camp” for exploring Eastern Oregon’s pristine mountains, rivers and hiking trails. Unfortunately, tobacco has undermined this healthy image.

The county health department’s TPEP has worked for years to reduce tobacco use by increasing community awareness of the dangers of tobacco. Yet Baker County has one of the state’s highest rates of tobacco use: About 1 in 4 adults and 1 in 10 young people report currently using tobacco.

Wanting to create a more vital future for their town, several Baker City residents asked their leaders to make all city parks smokefree. Local TPEP staff supported and amplified their efforts, and in January 2014 the City Council passed a smokefree parks ordinance that already is making an impact.

Baker County’s TPEP increased the knowledge and engagement of the community, providing residents with the tools to create healthier, cleaner public spaces for themselves and their children.

New funding from the Tobacco Master Settlement Agreement is helping TPEP empower more communities and create similar success stories across Oregon, from Forest Grove in Washington County to the Warm Springs reservation in north central Oregon. Counties receiving new funds include Benton, Linn, Lincoln, Douglas, Coos, Klamath, Yamhill, Multnomah and Lane.

Six months after Baker City’s policy took effect, TPEP staff documented only four people smoking out of hundreds who attended the annual Miner’s Festival at the city’s busiest park.

**“It’s very powerful when citizens come up with their own initiatives,” said Kim Moiser, a Baker City Councilor. “This is our community. If we can get a majority to agree, then we get to decide what our public spaces look like.”**



## FUNDING

TPEP delivers comprehensive, evidence-based tobacco prevention and education programs to all Oregonians. More than two-thirds of TPEP's \$15 million biennial budget supports public and private organizations' programs and services. Funds support local public health authorities, tribes, community-based and not-for-profit organizations. More than \$8 million goes to communities across the state through TPEP.

## COMMUNITY PROGRAMS

TPEP provides funding to all 34 of Oregon's local public health authorities; all nine federally

recognized tribes; and five coalitions of community-based organizations that represent people who are traditionally underserved and experience health disparities. Communities use these funds to reduce tobacco use where people live, work, play and learn.

## PUBLIC AWARENESS AND EDUCATION

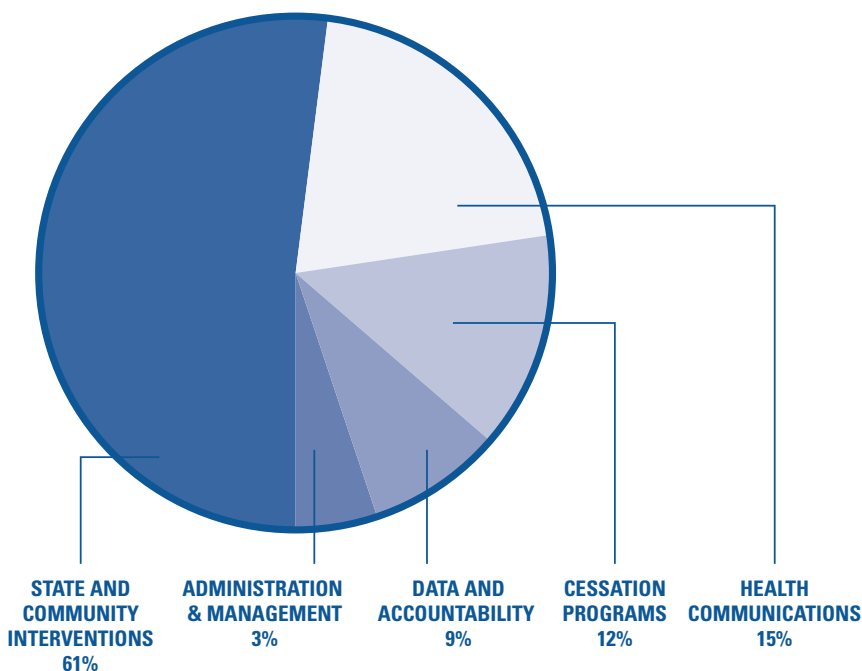
TPEP's statewide education campaigns include advertising on television, radio and in newspapers across Oregon. TPEP also promotes news stories and editorials to raise Oregonians' awareness of the dangers of secondhand smoke and the benefits of quitting tobacco.

## OREGON TOBACCO QUIT LINE

The Oregon Tobacco Quit Line gives free assistance and coaching to all Oregonians who want to quit using tobacco, and is available to their friends, family and health care providers.

## DATA AND ACCOUNTABILITY

TPEP tracks, measures and analyzes tobacco-related data on adults, youth and traditionally underserved populations in Oregon to ensure programs are appropriate and effective. Effectiveness is measured by comparing national data and trends to Oregon data and trends during the same period.



## PUBLIC HEALTH DIVISION TOBACCO PREVENTION AND EDUCATION PROGRAM (TPEP)

800 NE Oregon St., Suite 730  
Portland, Oregon 97232  
Telephone: 971-673-0984  
Fax: 971-673-0994  
[public.health.oregon.gov/PreventionWellness/TobaccoPrevention](http://public.health.oregon.gov/PreventionWellness/TobaccoPrevention)

## E-cigarette Primer

### What e-cigarettes are

E-cigarettes, or electronic cigarettes, allow users to mimic the act of smoking conventional cigarettes. They contain the same addictive ingredient, nicotine. But instead of smoke from burning tobacco, users inhale vapor consisting of nicotine, flavor additives and other chemicals. When users inhale from an e-cigarette, a battery-operated device heats a liquid solution (e-liquid or e-juice) into a vapor.<sup>1</sup>



### The law in Oregon

In May 2015, Oregon Governor Kate Brown signed a law regulating e-cigarettes that:

- Expands the Oregon Indoor Clean Air Act (ICAA) to make it illegal to use e-cigarettes and other inhalant delivery systems in workplaces, restaurants, bars and other indoor public spaces in Oregon, as of Jan. 1, 2016.
- Prevents the sale of inhalant delivery systems to people under 18, effective May 27, 2015.

The law requires the Oregon Health Authority to write rules addressing the marketing of these products to minors and to set packaging standards consistent with Food and Drug Administration (FDA) regulations.

### E-cigarette use is on the rise

An increase in e-cigarette use is potentially creating new addictions to nicotine among Oregon youth, deepening addiction for current smokers, and renewing addiction for former smokers.

- In Oregon, e-cigarette use among high school-age kids increased 150 percent from 2011 to 2013 from 1.8% to 5.2%.<sup>2</sup>
- Nationally, e-cigarette use among high school students tripled from 2013 to 2014—from 4.5% to 13.4%, according to the U.S. Centers for Disease Control and Prevention.<sup>3</sup>
- In Oregon, 1 in 5 high school students who are current e-cigarette users are not conventional cigarette smokers and therefore are being introduced to nicotine through e-cigarettes.<sup>4</sup> According to the Legacy Foundation, 7.2% of smokers who had quit returned to nicotine addiction via e-cigarettes in 2012.

### Smokeless does not mean harmless

Preliminary testing of e-cigarettes has identified chemicals known to cause cancer and birth defects in first and secondhand e-cigarette vapor.<sup>5</sup> However, e-cigarettes remain under-studied and unregulated, which means manufacturers can make, market and sell them without transparency or consistency. Most e-cigarettes are made overseas where manufacturing and safety standards may differ, making it more difficult to know what is in e-cigarettes without regulation.

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<sup>1</sup> U.S. Food and Drug Administration (FDA). FDA Warns of Health Risks Posed by E-Cigarettes.

<http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM173430.pdf>. Created July 2009. Accessed May 27, 2015.

<sup>2</sup> Oregon Healthy Teens Survey. [Unpublished analysis]

<sup>3</sup> Centers for Disease Control and Prevention (CDC). E-cigarette use triples among middle and high school students in just one year. <http://www.cdc.gov/media/releases/2015/p0416-e-cigarette-use.html>. Created April 16, 2015. Accessed May 27, 2015.

<sup>4</sup> Oregon Healthy Teens Survey data. [Unpublished analysis]

<sup>5</sup> Center for Tobacco Control Research & Education. 9 chemicals identified so far in e-cig vapor that are on the California Prop 65 list of carcinogens and reproductive toxins. <http://www.tobacco.ucsf.edu/9-chemicals-identified-so-far-e-cig-vapor-are-california-prop-65-list-carcinogens-and-reproductive-t>. Created July 20, 2013. Accessed May 27, 2015.



Many public health professionals are concerned that e-cigarettes may:

- Have an adverse impact on users' health;
- Encourage smoking initiation;
- Perpetuate the use of nicotine and tobacco products among tobacco users who might otherwise quit, and even those who have quit; and
- Counter the effectiveness of smoke-free policies

### Nicotine

Different brands of e-cigarettes contain varying amounts of nicotine, which impacts the cardiovascular system and is the primary addictive drug in all tobacco products. Adolescents and young adults may be more receptive to nicotine because their brains are still developing.<sup>6</sup>

E-cigarette advocates have promoted these products as smoking cessation tools. Yet a recent longitudinal analysis of U.S. cigarette smokers showed that e-cigarettes did not help people stop smoking conventional cigarettes or reduce consumption of cigarettes.<sup>7</sup> In contrast, there are seven FDA-approved medications that are tested and regulated, and a toll-free Quit Line (800-QUIT-NOW) that tobacco users can use to improve their chances of successfully quitting.

### Nicotine poisonings

Children may consume e-cigarette solutions, which are not manufactured in child-safe protection containers and can contain fatal doses of nicotine. E-cigarettes are advertised in kid-friendly flavors, such as strawberry, chocolate and mint, and in packaging and smaller sizes that appeal to young people.

From January to March 2014, the Oregon Poison Control Center responded to 19 calls related to nicotine poisoning from e-cigarette solutions. Seven (37%) of these calls were for children younger than six years old. During the same three-month period in 2015, there were 25 e-cigarette poisonings; 14 (56%) were for children younger than six years old. This represents a 32% increase in the total number of e-cigarette poisonings between similar time periods in 2014 and 2015.

### Carcinogens and Toxins

The FDA has analyzed samples of e-cigarettes and has found carcinogens and detectable levels of other toxic chemicals.<sup>8</sup> The Center for Tobacco Control Research and Education at University of California San Francisco analyzed recent studies and concluded Benzene, Cadmium, Isoprene, Lead, Nickel, Formaldehyde, Acetaldehyde and Toluene are present in the aerosol emitted from e-cigarettes.<sup>9</sup>

### Marketing

The marketing of e-cigarettes in magazines and on television—where cigarette ads have been banned since 1971—could undermine decades of efforts to deglamorize smoking. The unlimited promotion of e-cigarettes as nicotine maintenance products has the potential to foster the norm that addiction to nicotine is acceptable and is of little health consequence to the user or the population as a whole.

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<sup>6</sup> U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012.

<sup>7</sup> Grana Ra, Popova L, Ling PM. A longitudinal analysis of electronic cigarette use and smoking cessation. JAMA Intern Med. 2014;174(5):812-3. doi: 10.1001/jamainternmed.2014.187.

<sup>8</sup> U.S. Food and Drug Administration (FDA). Summary of results: laboratory analysis of electronic cigarettes conducted by FDA. <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>. Updated April 22, 2014. Accessed May 27, 2015.

<sup>9</sup> Center for Tobacco Control Research & Education. 9 chemicals identified so far in e-cig vapor that are on the California Prop 65 list of carcinogens and reproductive toxins. <http://www.tobacco.ucsf.edu/9-chemicals-identified-so-far-e-cig-vapor-are-california-prop-65-list-carcinogens-and-reproductive-t>. Created July 20, 2013. Accessed May 27, 2015.

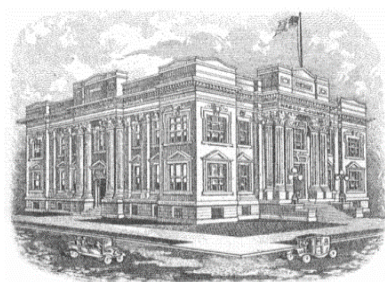
## **Agenda Item**

### **VSAC**

- [No documents have been submitted for this item](#)  
[– Return to Agenda](#)

**Agenda Item**  
**Large Value Assessment Appeals/  
Transfer Request**

- [Assessor's Memo](#)
- [Charter Value History](#)
- [ORS 311.814](#)



## WASCO COUNTY

Dept. of Assessment & Tax

511 WASHINGTON ST ROOM 208  
THE DALLES, OREGON 97058-2265

Assessment (541) 506-2510

Tax (541) 506-2540

Fax (541) 506-2511

JILL AMERY  
ASSESSOR / TAX COLLECTOR

MARCI BEEBE  
OFFICE MANAGER

DARLENE LUFKIN  
CHIEF APPRAISER

LINDA PERKINS  
TAX DEPUTY

TO: BOARD OF COUNTY COMMISSIONERS

FROM: JILL AMERY AND TOM LINHARES, DEPARTMENT OF A&T

RE: UPDATE ON LARGE VALUE APPEALS

As you know, appeals of large valued properties can wreak havoc on property tax collections and distributions. We currently have two companies that have long standing appeals. Both are centrally assessed (utility) companies and as such are assessed by the Oregon Department of Revenue. We thought it would be a good idea to update you on the status of those appeals.

There is good news, more good news and bad news.

The first good news is that Seattle City Light has lost its appeal that it should not be assessed at all. The Washington public utility "owns" a certain portion of Bonneville Power Administration's (BPA) transmission lines but the company argued that its agreement with BPA did not constitute an ownership subject to assessment for property tax purposes. The Oregon Supreme Court disagreed, opining that the utility had enough "possessory interest" to warrant taxation. (Because Seattle City Light is not an Oregon public entity it is not entitled to exemption granted Oregon public entities.)

While we have not received any paper work from the Department of Revenue, we assume the appeal is now settled. This avoids having to refund property taxes to Seattle City light to the tune of tens of thousands of dollars per year, with interest going back to 2010-11.

The other good news, previously reported, is that the Oregon Supreme Court ruled on October 2, 2014 against Comcast in its appeal that it should not be centrally assessed as a communications company. This same ruling should apply to the appeal of Charter Communications and other smaller cable companies that have been held in abeyance pending the Comcast decision. Charter's appeal goes back to 2009-10 and the 2015-16 value is \$9.4 million with total taxes imposed of \$183,314.37.

The original appeal put in jeopardy all of the company's value. In 2009-10 that value was \$4,660,500. Since that amount was more than one quarter of one percent (0.0025), a reserve account was established to help offset any potential refund that the county would have to make if the company was successful in its appeal.



## Return to Agenda

The entire amount of the company's tax liability had been placed in a reserve fund every year until last year. Fresh off the Supreme Court's decision, we recommended not putting the 2014-15 property taxes into the reserve fund. This board agreed with that recommendation.

The bad news is that the Supreme Court remanded the Comcast case back to the Oregon Tax Court to rule on what the (centrally assessed) value should be. The Tax Court has not yet ruled on this new issue and any decision is likely to be appealed to the Supreme Court by the losing party. So we could still be several years away from a decision on Charter's appeal.

Any reduction in the assessed value would result in a refund to Charter of the taxes previously paid on the reduced value, plus interest at one percent per month (12% per year).

Therefore, we are recommending that \$75,000 be transferred from the unsegregated property tax account into the Charter Communication's Reserve Account.

This is less than the total tax liability of the company for 2015-16. The reason for that is that given the fact that the Supreme Court has ruled that cable companies should be centrally assessed, it is very unlikely that the cable companies' value will be reduced to zero. At the most the 2015-16 value could be reduced from \$9.4 million to \$5.9 million, a reduction of \$3.5 million. Property taxes on \$3.5 million amount to approximately \$69,000.

In addition, as you can see by the spreadsheet presented, a full reduction of the value in dispute would result in a refund of \$583,323.61, if the case were settled immediately and the refund issued prior to November 15, 2015. You can also see that there is currently \$464,007.77 in the reserve account. So the reserve account would be short by \$19,315.84.

If the case was to go on for another year (and we expect it to take much longer than that) there would be an additional \$52,243 in interest that would have to be paid. So the reserve account would be short \$71,558.84.

If a value reduction is ordered that reduces the value by one-half of the disputed value then the refund, with interest, would be \$217,679.94. There would be more than enough money in the reserve account to pay for this refund.

Any money left in the reserve account after paying any refund gets put back into the unsegregated tax account for distribution to all of the taxing districts in the county.

Essentially the question comes down to "pay me now, or pay me later". We either distribute a little less to taxing districts now or we take away a huge amount of taxes when the refund is due. If we had not set up the reserve account in the first place and we had to issue a refund check in the amount of \$583,323.61 this year, that would represent 1.67 percent of all property taxes imposed for 2015-16.

While we are recommending that \$75,000 be transferred into the reserve account, we appreciate that property taxes have not increased much between 2014-15 and 2015-16. Wasco County's taxes imposed increased by only 1.19 percent and imposed taxes for the City of The Dalles actually decreased by 1.51 percent. Removing \$75,000 from the distributions will lower these already anemic numbers.

So we leave it to you to make the right decision.

**Charter Communications Holding Co. LLC**  
**Oregon Tax Court Magistrate Division #101221D;**  
**Tax years 2009-10 Thru 2015-16**

REF	2009-10 TAV	2010-11 TAV	2011-12 TAV	2012-13 TAV	2013-14 TAV	2014-15 TAV	2015-16 TAV
82045	3,365,800	3,497,805	4,534,500	5,392,000	6,312,000	7,311,800	7,681,600
82046	162,800	184,095	204,500	14,000	92,300	82,900	69,500
82047	608,660	558,300	624,400	556,000	627,700	697,800	866,200
82048	523,240	475,600	531,900	473,000	534,700	594,400	737,900
<b>TOTAL</b>	<b>4,660,500</b>	<b>4,715,800</b>	<b>5,895,300</b>	<b>6,435,000</b>	<b>7,566,700</b>	<b>8,686,900</b>	<b>9,355,200</b>
Disputed AMT per DOR	2,945,754	3,034,127	3,125,150	3,218,905	3,315,472	3,414,936	3,517,384
TOTAL TAV ON ROLL	1,731,553,122	1,808,224,356	1,865,738,781	1,856,201,507	1,981,987,494	2,053,785,839	2,122,687,786
ROLL PERCENT	0.170%	0.168%	0.168%	0.173%	0.167%	0.166%	0.166%
REF	2009-10 TAXES	2010-11 TAXES	2011-12 TAXES	2012-13 TAXES	2013-14 TAXES	2014-15 TAXES	2015-16 TAXES
82045	61,066.71	68,357.11	93,724.48	111,428.90	125,611.32	146,004.74	154,821.11
82046	2,622.54	3,032.92	3,471.16	237.58	1,495.72	1,332.77	1,123.40
82047	10,050.75	9,972.44	11,767.05	10,483.50	11,376.37	12,810.77	15,981.04
82048	7,851.41	7,285.73	8,419.91	7,492.16	8,078.46	9,106.77	11,388.82
<b>TOTAL</b>	<b>81,591.41</b>	<b>88,648.20</b>	<b>117,382.60</b>	<b>129,642.14</b>	<b>146,561.87</b>	<b>169,255.05</b>	<b>183,314.37</b>

**311.814 Appeal of large amounts of value; reserve account for refunds.**

(1) Whenever any property value or claim for exemption or cancellation of a property tax assessment is appealed to the Oregon Tax Court after taxes on the property have been imposed, the Department of Revenue shall notify the county treasurer of the appeal not later than the following October 15, if the appeal is not finally resolved before the end of the tax year to which the appeal relates and the dollar difference between the total value asserted by the taxpayer and the total value asserted by the opposing party exceeds one-fourth of one percent (0.0025) of the total assessed value in the county, or if the appeal relates to property assessed under ORS 308.505 to 308.665, and the value of such property asserted by the opposing party and attributable to the county exceeds one-fourth of one percent (0.0025) of the total assessed value in the county. After notification, the county treasurer shall set aside, if so ordered by the county governing body, from taxes collected in the current tax year, an interest bearing reserve account as provided in this section.

(2) The reserve shall consist of an amount representing that portion of taxes paid by the petitioner attributable to the amount of value in dispute for each tax year that the appeal remains unresolved. Upon termination of the controversy, the principal amount in the account necessary to pay any refund, and any interest provided for under ORS 311.812, shall be paid to the petitioner. Any excess remaining in the reserve after termination of the controversy and payment of a refund, if any, shall be deposited in the unsegregated tax collections account in full satisfaction of the tax due on the property.

(3) If the final resolution of the controversy results in additional taxes due on the property, the amount in the reserve account shall be deposited into the unsegregated tax collections account and shall be distributed according to the distribution percentage schedule for the current tax year prepared in accordance with ORS 311.390. The additional taxes shall be collected as provided in ORS 311.513. [1991 c.459 §265; 1993 c.270 §63; 1995 c.256 §8; 1995 c.650 §72; 1997 c.541 §§299,300; 2003 c.274 §4; 2007 c.126 §1]

**Agenda Item**  
**Foreclosed Property Repurchase Request**

- [Assessor's Memo](#)
- [Property Detail](#)
- [ORS 275.180](#)
- [Arial Photo](#)
- [Foreclosure Deed](#)





# WASCO COUNTY

Dept. of Assessment & Tax

511 WASHINGTON ST ROOM 208  
THE DALLES, OREGON 97058-2265

Assessment (541) 506-2510

Tax (541) 506-2540

Fax (541) 506-2511

JILL AMERY  
ASSESSOR / TAX COLLECTOR

MARCI BEEBE  
OFFICE MANAGER

DARLENE LUFKIN  
CHIEF APPRAISER

LINDA PERKINS  
TAX DEPUTY

## MEMO

TO: Board of County Commissioners

FROM: Jill Amery, Assessor

DATE: October 12, 2015

RE: Foreclosed property 1N 13E 2CA 100

Wasco County foreclosed on the above referenced property September 18, 2015.

On September 25, 2015, Rocky Webb of Columbia River Properties contacted our office regarding a pending sale on this property. Columbia River Properties was not aware that Wasco County had taken ownership to this parcel. Mr. Webb inquired regarding possible sale of the property.

Oregon Revised Statute 275.180, sale to record owner or contract purchaser of property does, allow for the governing body to sell and convey this property back to the record owner. See ORS 275.180 attached.

Request for such action has been made by Mr. Jarrett Rose, J Rose Development, according to my telephone conversation with him.

The amount outstanding including interest as of today, 10/15/2015 totals \$10,920.06



## Search Criteria

Property No. 8062

As of Date 10/12/2015

Tax Year

☒ Use Start Dates☐ Use End Dates

Effective

Tax Year Date

Assessment Date

Clear

Search

3 Documents

4 Exemptions

5 Value Changes

6 Property Transfer

Seg Merges

7 Levies

## Search Results

Summary

Parties

Values

Taxes

Events

1 Receipts

2 Other

Charge Group

☐ Include Zero Balance Charges

Interest Date

10/21/2015

Search

Year	Category	TCA/District	Charged	Minimum	Bal. Due	Due Date
2009	Property Tax Principal	121	1,721.52	832.01	832.01	09/18/2013
2009	Property Tax Interest	121	454.07	454.07	454.07	09/18/2013
2009	Additional Interest Foreclosur	121	241.29	241.29	241.29	10/21/2015
2009	Foreclosure Penalty	121	291.59	291.59	291.59	08/13/2013
2010	Property Tax Principal	121	1,201.82	1,201.82	1,201.82	09/18/2013
2010	Property Tax Interest	121	496.76	496.76	496.76	09/18/2013
2010	Additional Interest Foreclosur	121	318.69	318.69	318.69	10/21/2015
2011	Property Tax Principal	121	1,247.75	1,247.75	1,247.75	09/18/2013
2011	Property Tax Interest	121	316.10	316.10	316.10	09/18/2013
2011	Additional Interest Foreclosur	121	293.42	293.42	293.42	10/21/2015

Details...

Print Bill...

From Year

To Year

Levy Cycle

Total

11,771.24

10,266.79

10,854.06

Close

Help...

thru 10/21

+ 66.00 renewal fee

Total \$ 10,920.06

## 3.67 Property Inquiry Detail: 8062

File Edit View Tools Topics Work Areas My Favorites Help



## Search Criteria

Property No. 8062

Tax Year

Effective

Tax Year Date

Clear

As of Date 10/05/2015

Use Start Dates

Use End Dates

Assessment Date

Search

3 Documents

4 Exemptions

5 Value Changes

6 Property Transfer

Seg Merges

7 Levies

## Search Results

Summary

Parties

Values

Taxes

Events

1 Receipts

2 Other

Property No. 8062

Account Type Real Property

Alternate No. 01N13 E02CA00100 00

Category Land &amp;/or Buildings

Situs Address 2365 E 2ND, THE DALLES, OR 97058

Legal Desc. SECTION 2 TOWNSHIP 1N RANGE 13E QUARTER CA PRCL 100 MapTax Lot: 01N13 E02CA00100 00

Remarks

Related Properties

TCA 121

Account Status

Active 01/01/1970

In Delinquency

Taxable

Has Note(s)

Locally Assessed

Last Tax Year 2015

License No.

Serial No.

Print Summary

## Characteristics - 2015

## Value

Property Class Category	300: IND IND VAC
Neighborhood	404: EAST OF DOWNTOWN
Change property ratio	200 Commercial & Co. Resp Industria
Zoning	INDUSTRIAL

Active Exemptions - 2015

Close

Help...



## 3.67 Property Inquiry Detail: 8062

File Edit View Tools Topics Work Areas My Favorites Help



## Search Criteria

Property No. 8062

Tax Year

Effective

Tax Year Date

Clear

As of Date 10/05/2015

Use Start Dates

Use End Dates

Assessment Date

Search

3 Documents

4 Exemptions

5 Value Changes

6 Property Transfer

Seg Merges

7 Levies

## Search Results

Summary

Parties

Values

Taxes

Events

1 Receipts

2 Other

Value Type	2015 Value	2014 Value	2013 Value	2012 Value
Assessed Value Regular (AVR)	52,480	61,740	61,740	64,9
Total Exemption Amount Regular (EAR)				
Taxable Value Regular (TVR)	52,480	61,740	61,740	64,9
MKLND + SAMKL (MKLTL)	52,480	61,740	61,740	64,9
MKIMP + SAMKI (MKITL)	0	0	0	
Real MKT Total (MKTTL)	52,480	61,740	61,740	64,9
M5 Real Market Value (M5RMV)	52,480	61,740	61,740	64,9
Market Land (MKLND)	52,480	61,740	61,740	64,9
Market Improvement (MKIMP)	0	0	0	
Market Portion BMAV + EAV (MAVMK)	70,528	70,528	70,528	70,5
Exception Base Value NEWCN+DEV (EBV)	0	0	0	
Exception Assessed Value (EAV)	0	0	0	
Calculated Rate on Taxable Value	2.8063	2.8271	2.5523	
Fixed Rate on Taxable Value	17.3485	17.3495	17.3481	

All Values...

Show  
Certified  
ValuesCompare  
Values

Close

Help...



## 2013 ORS § 275.180<sup>1</sup>

### Sale to record owner or contract purchaser of property

#### • conditions

- (1) The governing body of a county may at any time, without the publication of any notice, sell and convey by deed to the record owner or the contract purchaser of record, any property acquired by the county for delinquent taxes for not less than the amount of taxes and interest accrued and charged against such property at the time of purchase by the county with interest thereon at the rate of six percent per annum from the date of such purchase.
- (2) All such sales of any such property to the record owner or the contract purchaser of record shall be subject to all liens or claims arising out of any assessment for a local improvement levied against such property, or any part thereof, by any municipal corporation and remaining unsatisfied, and also shall be subject to any title or equity of the municipal corporation predicated upon or growing out of any such lien or assessment. [Amended by 1973 c.843 §1; 1975 c.657 §1; 2005 c.243 §17]

...

#### Atty. Gen. Opinions

Prior owners purchasing right in exchange of foreclosed land, (1974) Vol 36, p 1142

§§ 275.110 (Order to sell certain county lands) to 275.250 (Notice to county assessor of sale or resale)

#### Atty. Gen. Opinions

Prior owners purchasing right in exchange of foreclosed land, (1974) Vol 36, p 1142; exchange of land purchased with money from County Road Fund, (1982) Vol 42, p 271







00071880201500037260090091

I, Lisa Gambee, County Clerk for Wasco County,  
Oregon, certify that the instrument identified  
herein was recorded in the Clerk records.



**RECORDING COVER SHEET (Please Print or Type)**

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, ORS 205.234, and does NOT affect the instrument.

**AFTER RECORDING RETURN TO:**

Wasco County Tax Collector

Jill Amery

511 Washington St Rm 208

The Dalles, OR 97058

1) **TITLE(S) OF THE TRANSACTION(S)** ORS 205.234(a)  
DEED

2) **DIRECT PARTY / GRANTOR(S)** ORS 205.125(1)(b) and 205.160  
Jill Amery, Wasco County Assessor and Tax Collector

3) **INDIRECT PARTY / GRANTEE(S)** ORS 205.125(1)(a) and 205.160  
Wasco County, Oregon

4) **TRUE AND ACTUAL CONSIDERATION**  
ORS 93.030(5) – Amount in dollars or other

\$ \_\_\_\_\_ ☒ Other

5) **SEND TAX STATEMENTS TO:**  
Wasco County

511 Washington St

The Dalles, OR 97058

6) **SATISFACTION of ORDER or WARRANT**  
ORS 205.125(1)(e)

CHECK ONE: ☐ FULL  
(If applicable) ☐ PARTIAL

7) **The amount of the monetary  
obligation imposed by the order  
or warrant.** ORS 205.125(1)(c)

\$ \_\_\_\_\_

8) **If this instrument is being Re-Recorded, complete the following statement, in  
accordance with ORS 205.244: "RERECORDED AT THE REQUEST OF \_\_\_\_\_  
TO CORRECT \_\_\_\_\_"**

PREVIOUSLY RECORDED IN BOOK \_\_\_\_\_ AND PAGE \_\_\_\_\_, OR AS FEE  
NUMBER \_\_\_\_\_."

CERTIFIED TO BE A TRUE AND CORRECT  
COPY OF THE ORIGINAL DOCUMENT  
TRIAL COURT ADMINISTRATOR  
WASCO COUNTY, OREGON

BY JEB  
DATED 9-18-15

FILED  
WASCO COUNTY

2015 SEP 18 A 8:27

TRIAL COURT ADMIN

DEED

THIS CONVEYANCE, made on September 18, 2015, by me,  
Jill Amery, Tax Collector of Wasco County, Oregon,

WITNESSETH

WHEREAS, the Circuit Court of the State of Oregon, in and for Wasco County, did make and enter its General Judgment, being filed as Case Number CC13-306, foreclosing tax liens against each of the properties therein described and Ordering the said properties be sold to Wasco County, Oregon, for the respective amounts of tax and interest for which said properties are severally liable; and

WHEREAS, the said sale was made subject to the right of redemption for a period of two years, by any person having an interest therein at the date of General Judgment foreclosing tax liens thereon or by any heir or devisee of such person, or by any person holding a lien of record on any of said real properties, or by any municipal corporation having a lien on any of said real properties; and

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WHEREAS, the two year redemption period has expired and due notice of said redemption period was given by publication of such notice in the form and manner required by law in The Dalles Chronicle and by mailing notice by certified mail to each owner; and

WHEREAS, the several real properties hereinafter described have not been redeemed from said General Judgment of tax foreclosure, and such sale to the County and the right of redemption of such parties has, for each, terminated and expired.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the several amounts of taxes and interest for which the respective properties are liable, and by virtue of the authority vested in me as Tax Collector of Wasco County, Oregon, I hereby GRANT, BARGAIN, SELL AND CONVEY unto Wasco County, Oregon, each of the several properties hereinafter described, as the same appear on the tax foreclosure list of the year 2013 and foreclosure proceedings therein, and being followed by the name of the respective owner or owners, as the same appear upon said tax roll and foreclosure list and the deed records of Wasco County, Oregon, where said respective tracts are more completely described, the said descriptions in said foreclosure proceedings, and herein, being as follows:

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NAME	REF#	CODE TAX LOT	MAP
MEINBERG, CARL OWNER	6844	12.11 500	2N 13 33DC
GUSTAFSON, CHERYL CONTRACT BUYER			

LEGAL DESCRIPTION

T2N R13E WM

SEC 33;

BAAP 1331.6 FT W AND 828.7 FT N

OF SE COR SEC 33 2N 13E AND LOCATED

IN WESTERN CITY LIMITS OF THE

DALLES, OREGON;

SD PT BEING MARKED BY AN IRON PIPE

SET IN MOUND OF STONE WITH CONCRETE;

TH S 88°04'W A DIST OF 194 FT FOR

THE STARTING PT OF THE TRACT OF LAND

HEREIN DES;

TH S 88°04'W A DIST OF 69 FT;

TH SWLY 100 FT TO THE N R/W LINE OF

CO RIVER HY TO PT;

TH S 58°45'E ALG SD N R/W

OF THE COLUMBIA RIVER HY A

DIST OF 60 FT;

TH NELY AT R/A A DIST OF 138 FT  
TO POB

ALSO: (FMLY PARCEL 2301)

COM AT SE COR OF SD SEC 33;

TH N 828.7 FT & W 1331.6 FT;

TH S 88°04'W 194 FT TO NE COR OF

THAT PAR OF LAND DESC IN VOL 93,

PG 135 OF WASCO CO DD RECORDS,

SD COR BEING TPOB OF THIS DESC;

TH GOING SWLY ALG E LINE OF

SD PAR 130 FT M/L TO INTER OF

NLY RW INTERSTATE HWY #84;

TH SELY ALG SD RW 25.6 FT;

TH LEAVING SD RW AND GOING NELY

ALG A LINE WHICH LIES 25.5 FT ELY

OF AND PARA WITH E LINE OF

THAT PAR DESC IN VOL 93, PG 135

OF WASCO CO DD RECORDS 145 FT

M/L, TAP WHICH LIES N 88°04'

////

////

E 30.1 FT OF TPOB;

TH S 88°04'W 30.1 FT TO SD TPOB

NAME	REF#	CODE	TAX LOT	MAP
J ROSE DEVELOPMENT LLC	8062	12.1	100	1N 13 2CA

LEGAL DESCRIPTION

Parcel 1 of Partition 2009-0005, recorded on 02-25-2009 as 2009-000712 Wasco County Records, located in the NE1/4 of the SW1/4 and the NW1/4 of the SE1/4 of Section 2, Township 1 North, Range 13 East of the Willamette Meridian, City of The Dalles, County of Wasco and State of Oregon.

NAME	RE#	CODE	TAX LOT	MAP
STEPHENS, ROY E & MABEL	1770	9.7	1300	2N 13 29CD

LEGAL DESCRIPTION

T2N R13E WM

SEC 29;

BG AT AN IP 357 FT N & 362 3/10 FT

E OF MORE WLY COR OF SHAUG DLC LOC

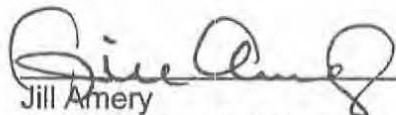
IN SW1/4 OF SEC 29 T2N R13E WM;



TH S89\*54'E A DIST OF 100 FT TO AN IP;  
TH N22\*06'W A DIST OF 50 FT TO AN IP;  
TH N89\*54'W A DIST OF 100 FT TO AN IP;  
TH S22\*06'E A DIST OF 50 FT TO POB.  
DELIVERED IN CORRECTION OF DEED BY  
KENNETH I SAUTER & VIOLET M SAUTER  
H & W TO MANVIL B TROXEL UNDER DATE  
OF 3-23-33 REC 5-22-53 VOL 126 PG  
94 OF DEEDS.

To have and to hold unto the said Wasco County, Oregon, its successors and assigns forever.

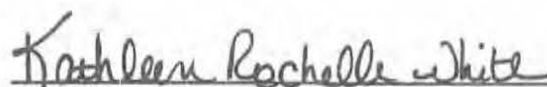
IN WITNESS WHEREOF, these presents are executed by me in my official capacity, the date above written.

  
Jill Amery  
Tax Collector for Wasco County, Oregon

STATE OF OREGON       )  
                                  : Ss.  
County of Wasco        )

On the day above written, personally appeared before me, Jill Amery, who executed the above instrument and being first duly sworn acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein set forth.



  
Kathleen Rochelle White  
Notary Public for Oregon  
My Commission Expires: 5.21.2017

2013 Foreclosure List Issued by Wasco County, State of Oregon

Name/Address of Owner/Agent, if any, as shown on latest Tax Roll	Property Description	Tax Year	Tax Amount	Interest 9/18/2015	Total
MEINBERG CARL 1121 W 2ND ST THE DALLES OR 97058	Map: 02N13 E33DC Lot/Sp: 0500 00 Code: 1211 Acres: 0.260	2009-10 2010-11 2011-12 2012-13	1,678.14 1,718.27 1,770.62 1,823.41	1,436.09 1,146.15 846.92 528.06	3114.23 2864.42 2617.54 2351.47
Property Account: 6844				Fees: Total:	614.08 11,561.74
J ROSE DEVELOPMENT LLC 15755 SW BEEF BEND RD TIGARD OR 97224	Map: 01N13 E02CA Lot/Sp: 0100 00 Code: 121 Acres: 1.200	2009-10 2010-11 2011-12 2012-13	832.01 1,201.82 1,247.75 1,173.73	684.93 801.67 596.82 339.92	1516.94 2003.49 1844.57 1513.65
Property Account: 8062				Fees: Total:	441.59 7,320.24
STEPHENS ROY E & MABEL 3316 W 10TH ST THE DALLES OR 97058	Map: 02N13 E29CD Lot/Sp: 1300 00 Code: 97 Acres: 0.110	2009-10 2010-11 2011-12 2012-13	660.83 509.38 525.24 1,311.50	549.04 339.78 251.22 379.79	1209.87 849.16 776.46 1691.29
Property Account: 1770				Fees: Total:	341.89 4,868.67

## **Agenda Item**

### **Code Compliance Violation**

- [Compliance Officer's Memo](#)
- [9.3.2015 Notice of Failure to Comply](#)
- [Section 3.3130 – Civil Penalties](#)





## Wasco County Planning Department

*"Service, Sustainability & Solutions"*

2705 East Second St. • The Dalles, OR 97058  
(541) 506-2560 • [wcplanning@co.wasco.or.us](mailto:wcplanning@co.wasco.or.us)  
[www.co.wasco.or.us/planning](http://www.co.wasco.or.us/planning)

To: Board of County Commissioners

From: Joseph Ramirez, Code Compliance Officer  
Angie Brewer, Planning Director

Date: October 14, 2015

Subject: Code Compliance Case: CODENF-10-07-0059  
Hearing Officer Review for application of administrative penalties

---

### County Authorities:

Wasco County Nuisance and Abatement Ordinance Section 3.130 *Establishment of Administrative Civil Penalties* provides procedural guidance for compliance cases that are not easily resolved at the administrative level. Code Compliance Case CODENF-10-07-0059 has been active since 2010 and has been issued a Notice of Failure to Comply/Administrative Civil Penalty.

Section 3.130 (I) of the Ordinance states:

*"Hearings Officer Order: If the owner of record or person in charge of the property does not file a written appeal within 15 days of the date when the Notice of Failure to Comply/Administrative Civil Penalty is served or mailed, the Compliance Officer shall forward the Notice of Failure to Comply/Administrative Civil Penalty along with a statement of the assessed penalty plus fees, and County charges to the Hearings Officer for review and issuance of a written order...."*

### Property Information:

The subject case is relevant to property identified as Tax Lots 2N 12E DB 1100 and 1200 (Assessor accounts 1117 and 1119) located at 5656 Highway 30 West, in the community of Rowena. The property is zoned Residential in the General Management Area of the Columbia River Gorge National Scenic Area. According to County records, the 1.7 acre property contains five dwellings constructed prior to Wasco County zoning regulations.

### Property Ownership Information:

Floyd Barber, Jr. entered a purchasing contract for the property in January 1995 and completed purchase in February 2007. As directed by Mr. Barber, Staff has been working with Mr. Barber's son, David Barber, to resolve the current compliance case.

### Case History & Timeline:

- July 20, 2010: A complaint form was received by the Wasco County Code Compliance Program describing excessive junk accumulation
- July 28, 2010: Initial contact letter sent to Floyd Barber, Jr.
- August 2, 2010: Floyd Barber, Jr. responded to staff by phone.

- August 3, 2010 Abatement Agreement 1
- January 31, 2011 Abatement Agreement 2
- February 28, 2011 Abatement Agreement 3
- March 8, 2011 Abatement Agreement 4
- May 31, 2011 Abatement Agreement 5
- December 27, 2012 Order to Correct
- January 17, 2013 Abatement Agreement 6
- March 7, 2013 Notice of Failure to Comply/Administrative Civil Penalties 1
- May 9, 2013 Abatement Agreement 7
- August 28, 2014 Abatement Agreement 8
- October 16, 2014 Notice of Failure to Comply/Administrative Civil Penalties 2
- January 1, 2015 Notice of Failure to Comply/Administrative Civil Penalties 3
- September 3, 2015 Notice of Failure to Comply/Administrative Civil Penalties 4
- September 29, 2015 Floyd Barber, Jr. left a voicemail stating he had received the Notice of Failure to Comply. Mr. Barber's voice message provided only a partial phone number to reach him at, stating he would call back with the rest of it, but he never did. Staff has not been able to reach Mr. Barber by telephone.

### Staff Time Invested:

- Staff time spent with the applicant for site visits: 10 hours 45 minutes
- Staff time spend on associated agreements and file documentation: approximately 20 hours
- Total phone calls made to the owner by staff: 32
- Total site visits made by staff (not including those to view progress from the road): 29
- Total Abatement Agreements: 8
- Total Notice of Order to Correct: 1
- Total Notice of Failure to Comply: 4

### Need for Action:

This case has been active since 2010 and although some progress has been made, substantial work remains to be completed. The last scheduled site visit was August 21, 2015. Staff visited the site, but the landowner failed to attend and did not reschedule. Staff has viewed the property since then and no significant progress was visible from the road. The last Notice of Failure to Comply/Administrative Civil Penalties required a response by September 18, 2015. A partial voicemail was left by Mr. Barber for staff on September 29, 2015, but did not provide a working telephone number. Staff has not been able to reach Floyd Jr. or Dave Barber since.

The September 3, 2015 Notice of Failure to Comply /Administrative Civil Penalties stated that if action was not take, then the following would occur, pending review and approval by the Hearings Officer (the County Board of Commissioners):

- 1) A notice of violation to be recorded with the deed of the property at the Clerk's Office;
- 2) Penalties of \$280.00 per day of violation (up to \$10,000 per violation);
- 3) A lien can be placed against the property for penalties, abatement costs and other county charges; and
- 4) County can complete abatement activities at the landowner's expense.

### Board of County Commission Options:

- (1) Approve Actions (1) and (2) to affirm the Notice of Violation/Administrative Civil Penalties
- (2) Approve Actions (1), (2) and (3) to affirm the Notice of Violation/Administrative Civil Penalties and potentially faster progress or long-term progress towards abatement
- (3) Approve Actions (1), (2) and (4) to affirm the Notice of Violation/Administrative Civil Penalties and ensure abatement is completed in a timely fashion.

Other fees that could be collected from the land owner that are not capture by the violation fees:

Per the Wasco County Planning Department Fee Schedule:

- Hourly Rate of Code Compliance Officer: \$50 per hour
  - 10.75 hours field work: \$537.50
  - 20 hours administrative overhead for agreements, file documentation, etc.: \$1,000.00
- Continued non-compliance fee of \$50 per month
  - 4 years 8 months = total \$2,800 (date from Abatement Agreement 2)
- Recording of compliance documents: \$61.00

### Staff Recommendation:

To ensure the case makes forward moving progress, staff recommends Actions (1), (2) and (3).



Wasco County Code Compliance

*"Working For Our Community"*

2705 East Second Street The Dalles, OR 97058

Phone: (541) 506-2564; Fax (541) 506-2561

Website: [www.co.wasco.or.us/planning/codepg.html](http://www.co.wasco.or.us/planning/codepg.html)

September 3, 2015

FLOYD JR AND ANABELLE BARBER

5656 HWY 30W

THE DALLES, OR 97058

SUBJECT: NOTICE OF FAILURE TO COMPLY/ADMINISTRATIVE CIVIL PENTALTIES  
CODENF 10-07-0059

Mr. and Mrs. Barber and Dave Barber,

Since our early April, 2015 on-site discussion, I have made multiple attempts to contact you, including phone calls, visiting the property and providing written requests for abatement agreement updates. You have not responded to these requests, preventing my ability to establish an abatement agreement that works for both parties. This compliance case has been open for five years with no significant progress. Wasco County is therefore moving forward with the code compliance process.

As the person(s) responsible for the uses or conditions of the property located at 5656 HWY 30W (otherwise identified as Tax Account Number 1117), you are hereby warned that the following use(s) or condition(s) exist on the described premises which are in violation of the Wasco County Code Compliance and Nuisance Abatement Ordinance (WCCNAO) Sections 2.060 (A) Accumulation, Collection, or Storage of Solid Waste or Junk and Section 2.060 (C) Storage of Non-trash Items.

The WCCNAO is online at: [http://co.wasco.or.us/planning/Code\\_ord.html](http://co.wasco.or.us/planning/Code_ord.html) or you may request a copy from the Code Compliance Officer.

You have 15 days, or until September 18, 2015 to:

1. Appeal this notice in writing and submit payment for the \$100 appeal fee payable to Wasco County; or
2. Correct the violations; or
3. Call the Code Compliance Officer to work out an abatement plan.

If this notice is not appealed, it will be submitted to the Hearings Officers (Wasco County Board of Commissioners) for review. The date and location of the review will be made available upon request; however, no testimony or comment is allowed since it is not a hearing.

Failure to respond to this notice within 15 days will result in the following:

1. A Notice of Violation will be recorded with the deed for this property at the County Clerk's office.
2. Penalties of \$280 per day will be assessed daily beginning on a date set by the Hearings Officers. (See table at the end of this letter for more penalty information.)<sup>1</sup>
3. A lien can be placed against the property for penalties, abatement costs, and other County charges.



4. The County can enforce abatement at the owner's expense.

Please contact me by September 18, 2015 as specified above or penalties will not begin to accrue. Please contact me directly with any questions at (541) 506-2564 or [Josephr@co.wasco.or.us](mailto:Josephr@co.wasco.or.us).

Thank you,

Joseph Ramirez  
Code Compliance Officer

<sup>1</sup> Accumulations of solid waste and junk and non-trash items are considered new violations each day that the violations continue. The maximum penalties for these types of violations are \$10,000 each. The following table shows how your penalties will accrue if the Code Compliance Officer is not contacted to work out an abatement plan or if the violation is not remedied.

	First Violation: Accumulation and Storage of Solid Waste and Junk	Second Violation: Storage of Non- trash Items	Total Cumulative Penalties
Day 1 Penalties	\$280	\$280	\$560
Day 2 Penalties	\$280	\$280	\$1,120
Day 3 Penalties	\$280	\$280	\$1,680
Day 4 Penalties	\$280	\$280	\$2,240
Day 5 Penalties	\$280	\$280	\$2,800
Day 10 Penalties	\$280	\$280	\$5,600
Day 15 Penalties	\$280	\$280	\$8,400
Day 20 Penalties	\$280	\$280	\$11,200
Day 25 Penalties	\$280	\$280	\$14,000
Day 30 Penalties	\$280	\$280	\$16,800
Day 35 Penalties	\$280	\$280	\$19,600
Day 36 Penalties	\$200	\$200	<u>\$20,000</u>
\$10,000 Maximum Total Penalty		\$10,000 Maximum Total Penalty	Maximum Total Penalty

SECTION 3.130 Establishment of Administrative Civil Penalties (Step 3)

- A. Administrative Penalty Site Visit: If following the site visit described in Section 3.120(D), the owner of record or the person in charge of the property has failed to voluntarily abate the violation, a Notice of Failure to Comply/Administrative Civil Penalty shall be sent via First Class Mail and certified mail, return receipt requested to the owner of record or person in charge of the property or served by personal service. Notice to the owner of record or person in charge of the property shall also be accomplished by posting the Notice of Failure to Comply/Administrative Civil Penalty on the property or personal property.
- B. The Notice of Failure to Comply/Administrative Civil Penalties Shall Include:
1. The street address or a description sufficient for identification of the property on which the nuisance exists;
  2. A statement that one or more violations of this Ordinance exist at the property with a general description of the violation(s) and the section(s) violated;
  3. A request that the owner of record or person in charge of the property contact the Compliance Officer to resolve the violation(s);
  4. Specification of a 15 day response period during which the property may be brought into compliance with this Ordinance before penalties, County charges, or liens will be assessed;
  5. An outline of the compliance process including but not limited to County charges, penalties, liens, abatement and recorded notice of violation in the deed records of the property if voluntary compliance is not achieved;
  6. A statement of the amount of the penalties and County charges imposed;
  7. A statement that abatement is required and that failure to abate the act or condition may result in continued County charges and penalties accruing on a daily basis at the stated amount until proof of completion of abatement is received;
  8. If the penalty is to be imposed pursuant to Subsection E below, a short and plain statement of the basis for concluding that said subsection applies; and
  9. Disclose the right to appeal the findings of the Notice of Failure to Comply/Administrative Penalty and a description of the time limits for requesting an appeal, as described in Section 3.210, Right to Appeal, to the owner of record or person in charge of the property.
- C. Voluntary Compliance: If the owner of record or person in charge of the property responds to the Notice of Failure to Comply/Administrative Penalties and achieves voluntary compliance within 15 days of the notice, a compliance letter will be sent and the file will be closed.
- D. Failure to Comply: If the owner of record or person in charge of the property does not contact the Compliance Officer, or if following an additional site visit no sooner than 15 days after the Notice of Failure

to the Comply/Administrative Civil Penalty the violation has not been not satisfactorily abated, administrative civil penalties may be assessed and abatement may occur subject to Sections 3.140 through Section 3.190 and Subsection I below.

- E. Notwithstanding the Notice of Violation or Order to Correct, the Compliance Officer may issue a Notice of Failure to Comply/Administrative Civil Penalty without having issued a Notice of Violation, Order to Correct or making attempts to secure voluntary correction, where the Compliance Officer determines that the failure to comply reasonably appears to:
  - 1. Pose an immediate threat to public health, safety or welfare, or
  - 2. Be immediately remediable by a person in charge of the property, or
  - 3. Be the same act or condition that served as the basis for a previous order to comply, or
  - 4. Be done deliberately by a responsible person who had knowledge that the actions in question would constitute a failure to comply.
- F. Utilizing the procedure set forth in Section 3.140, Determination of Amount of Penalty, the Compliance Officer shall determine the penalty amount that may be imposed for a particular violation. No monetary penalty imposed under this section shall exceed \$2,000, per violation, per day. Except for illegal structures and illegal dwellings, the maximum accrued penalty plus all County charges shall not exceed \$10,000. Unless they are recorded as a lien, reach the penalty cap, or are otherwise addressed in an agreement written into the abatement plan, unpaid penalties will double after 6 months and again after 1 year from the date they are originally assessed at which time the County may record the penalty as a lien.
- G. Any person who pays the monetary penalty within 15 days of when it was ordered shall only be required to pay 90 percent thereof. Unless an agreement or payment schedule is written into the abatement plan, failure to pay a penalty imposed hereunder within 15 days after the penalty becomes final as provided in Subsection D above shall constitute a failure to comply with this section. Each day after the initial 15 day period for payment that the penalty is not paid and the violation or nuisance remains active on the property, shall constitute a separate failure to comply. The Compliance Officer is also authorized to collect the penalty by any administrative or judicial action or proceeding authorized by Subsection K below, other provisions of this Ordinance or state statutes, and may enforce delinquent liens or assessments pursuant to ORS 223.510.

NOTE: If the violation is still active on the property, penalties and County charges resulting from an illegal dwelling or structure will be paid to the County at the time the property is sold by collection of the lien amount. If the illegal dwelling or structure remains in violation on the property the fine will be assessed daily up to \$20,000 or the assessed value of the dwelling or structure; whichever is higher, then be recorded as a lien against the property.

- H. The administrative civil penalty authorized by this section shall be in addition to:
  - 1. County charges incurred by the County in processing, remediation, cleanup or abatement, and

2. Any other assessments, fees or actions authorized by law.
- I. Hearings Officer Order: If the owner of record or person in charge of the property does not file a written appeal within 15 days of the date when the Notice of Failure to Comply/Administrative Civil Penalty is served or mailed, the Compliance Officer shall forward the Notice of Failure to Comply/Administrative Civil Penalty along with a statement of the assessed penalty plus fees, and County charges to the Hearings Officer for review and issuance of a written order. However, the Compliance Officer does have the discretion to allow for additional time if they feel the owner of record or person in charge of the property will abate the violation.

If the Hearings Officer determine(s) the findings, penalties, fees, County charges, or other information were lawful, the Hearings Officer shall issue a written order affirming the findings, penalties, fees, County charges or other information in the Notice of Failure to Comply/Administrative Civil Penalty and the owner of record or person in charge of the property shall be responsible for meeting the requirements of the Notice of Failure to Comply/Administrative Civil Penalty and paying all penalties, fees, and County charges on or before a date set by the Hearings Officer.

If the Hearings Officer determine(s) any part of the findings, penalties, fees, County charges or other information were not lawful, the owner of record or person in charge of the property shall be responsible for meeting the requirements of the Notice of Failure to Comply/Administrative Civil Penalty and paying all penalties, fees, and County charges that were found to be lawful on or before a date set by the Hearings Officer.

A copy of the Hearings Officer Order shall be sent to the owner of record or person in charge of the property by certified mail

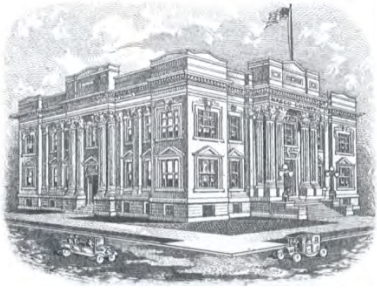
- J. In addition to enforcement mechanisms authorized elsewhere in this Ordinance, failure to pay an administrative civil penalty imposed pursuant to this Section shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or licenses.



## **Agenda Item**

### **Ballot Initiative Process**

- [Clerk's Memo](#)



# WASCO COUNTY

## County Clerk

Suite 201  
511 Washington Street  
The Dalles, Oregon 97058  
(541) 506-2530  
Fax (541) 506-2531

Lisa Gambee  
*County Clerk*  
David McGaughey  
*Chief Deputy County Clerk*  
Chrissy Zaugg  
*Elections Deputy*  
Paul Bowers  
*Recording Deputy*

DATE: October 15, 2015  
MEMO TO: Wasco County Board of Commissioners  
Scott Hege, *Commission Chair*  
Rod Runyon, *County Commissioner*  
Steve Kramer, *County Commissioner*  
FROM: Lisa Gambee, *County Clerk*  
RE: Oregon Ballot Measure 91, Citizen Initiative Process

During the Board of Commissioners regular session on October 7, 2015, a citizen raised the question about what they can do if the commissioners choose to "do nothing" in regard to the marijuana opt-out provisions. They also wanted to know whether they would have time to pursue any process if the Commissioners wait until their last board meeting in December before making a decision. The BOCC requested that I research the answer to both of these questions and report back to you by the October 21 meeting. This memo is in response to that request.

I contacted Rob Bovett with the Association of Oregon Counties who was integral to the writing of Ballot Measure 91, who responded with this note:

"Oregon Ballot Measure 91 was modeled on the Oregon Liquor Control Act of 1933, as amended. **As such, it has an initiative petition process to call a local election on opting out (or in) of any one or more of the four classes of state licensed retail marijuana businesses.** 2015 Oregon Laws, Chapter 1 (Ballot Measure 91), Section 60, as amended by 2015 Oregon Laws, Chapter 614 (Enrolled House Bill 3400), Section 58. See pages 24-25 of the attached Enrolled House Bill 3400."

Therefore, citizens have the option to pursue the initiative process to put a measure on the ballot. Page 24 of House Bill 3400, Sec. 60 (1) states that when a petition is filed, "The governing body of a city or a county, when a petition is filed as provided in this section, shall order an election on the question whether the operation of licensed premises *[shall]* **should** be prohibited in the city or county." And additionally, it states "the requirements for preparing, circulating and filing a petition under this section, (b) in the case of a county, *[shall]* **must** be as provided for an initiative petition under ORS 250.165 to 250.235."

If a citizen wants to pursue the initiative process, the Oregon Secretary of State's web site offers an Initiative Manual which can be found here: <http://sos.oregon.gov/elections/Pages/manuals-tutorials.aspx>. The manual outlines the steps of the process and when each step is due, working back from the election date (which will be November 8, 2016). Our office was recently forwarded the 2016 Elections Calendar, but it does not include the date when Chief Petitioners must submit signatures for verification. However, in the 2015 calendar it was August 5, 2015 for the November 3, 2015 election date, so hopefully that provides some context as to the ability to meet the initiative process deadlines.

Citizens should keep in mind that this information does not constitute legal advice, and anyone pursuing the initiative process should seek their own legal counsel before doing so. But I hope it provides the additional information and context as requested. If a citizen would like to receive a copy of House Bill 3400 (via email), please have them contact me at <mailto:lisag@co.wasco.or.us>.

## **Agenda Item**

### **State Marijuana Laws**

- [Planning Director's Memo](#)
- [Marijuana Uses Under Current Wasco County Zoning](#)
- [League of Oregon Cities FAQs](#)
- [City of Ashland Staff Report](#)
- [City of Ashland Ordinance](#)
- [City of Ashland Marijuana Tax](#)
- [City of Pendleton Odor Ordinance](#)
- [State of Oregon – Understanding Water Use Regulations: Medical and Recreational Marijuana](#)



## Wasco County Planning Department

*"Service, Sustainability & Solutions"*

2705 East Second St. • The Dalles, OR 97058  
(541) 506-2560 • [wcplanning@co.wasco.or.us](mailto:wcplanning@co.wasco.or.us)  
[www.co.wasco.or.us/planning](http://www.co.wasco.or.us/planning)

### Memorandum

To: Wasco County Board of Commissioners

From: Angie Brewer, Planning Director

Date: October 14, 2015

Subject: Follow up from October 7, 2014 marijuana discussion

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The following questions were raised at the October 7, 2015 Board meeting. Questions are in bold text; Staff research is shown in non-bold text.

*Please see attached documents for further information and assistance.*

**1. Is January 4, 2016 the OLCC license date?**

Yes. Please see the attached *Oregon League of Cities Frequently Asked Questions about Marijuana* document for a helpful list of relevant timelines.

**2. Is "Fall 2016" the date that retail sales would like begin to occur?**

Staff is still researching this question and will provide an update on October 21, 2015.

**3. Please bring a zoning matrix to illustrate our current regulations.**

Please see attached matrix for a preliminary assessment of current zoning.

**4. How can the County address smells associated with marijuana?**

This depends on the zoning. Smells in residential zones could be addressed through the Wasco County Code Compliance Nuisance and Abatement Ordinance. Smells in the exclusive farm use zone may be allowed to continue to occur as a part of an agricultural use. Smells outside of agriculture zones could be addressed through the nuisance ordinance or more directly through a time, manner, and place ordinance amendment. Please see the attached odor ordinance from the City of Pendleton, Oregon.

**5. How can the County address lighting associated with marijuana farms?**

This could be addressed in the same way as smells (above).

**6. Seek opinion from the Gorge Commission about lands in the National Scenic Area.**

Staff is preparing a formal request for a policy interpretation.



**7. Please provide examples of time, manner, and place ordinances that could be adopted.**

Please see the attached example from Ashland, Oregon. Other examples can be viewed online at:

<http://www.orcities.org/MemberServices/AZIndex/tabid/810/itemid/4557/language/en-US/Default.aspx>

**8. What would the likely economic gain be to Wasco County, given that retail shops may be limited outside of incorporated communities?**

Staff is still researching this question and will provide an update on October 21, 2015.

**9. Is the non-retail tax money based on population?**

Staff is still researching this question and will provide an update on October 21, 2015.

**10. How does growing hemp impact this discussion? And, can we ask the USDA for technical assistance?**

Yes, we can request technical assistance from the USDA and other partner agencies with expertise in agriculture crops and best management practices. Staff will provide an update on this research at the October 21, 2015 meeting.

## Marijuana uses under current zoning in Wasco County\*

**\*Outside incorporated communities and outside the Columbia River Gorge National Scenic Area**

The following information is based on a preliminary review of the Wasco County Land Use and Development Ordinance and the information currently available to staff regarding Measure 91 and House Bill 3400. Marijuana regulations and permitting procedures is a dynamic conversation that is still evolving. **This document is intended to be used for discussion purposes ONLY, does not constitute official guidance for future applicants or applications and is NOT a land use decision or official interpretation to be relied upon in any way.**

### **Possible marijuana business uses as a result of Measure 91 and House Bill 3400:**

1. Medical Marijuana processing sites;
2. Medical Marijuana dispensaries;
3. Recreational Marijuana producers (growers);
4. Recreational Marijuana processors;
5. Recreational Marijuana wholesalers; or
6. Recreational Marijuana retailers;

### **Potential translations for existing uses identified in the Wasco County Land Use and Development Ordinance:**

Medical or Recreational Marijuana processing =	Depends on scale, could be home occupation (e.g. small batch baked goods), could be industrial (e.g. processing to extract oils for use by other manufacturers).
Medical Marijuana dispensaries =	Similar use to pharmacy unless recreation retail is included
Recreational Marijuana production =	Farm use (if grown for commercial gain)
Recreational Marijuana wholesaling =	Warehouse that stores packaged products and resells to retail
Recreational Marijuana retailer =	Commercial use such as a store or major home occupation that sells commodities.

*Please see table below for zones and the possible review process currently available.*

### **Important notes:**

1. All licensed producers, processors, wholesalers, and retailers will be required to obtain a license from the OLCC and in some cases the OMMP. *The rules and regulations of these entities are still being developed.*
2. The OLCC will require setbacks from specific uses such as schools.
3. The OLCC will require sign off (a land use compatibility statement) from the Planning Department for all commercial growing and other marijuana businesses (and *Planning will coordinate with Watermaster*).
4. The law allows personal growing for personal use – County zoning cannot regulate this
5. HB 3400 prohibits new agriculture dwellings to support the commercial growing of marijuana
6. HB 3400 does not allow farm stands to sell marijuana products
7. Remember that all new buildings require a land use application or confirmation of exemption prior to construction.

### **Please Note:**

The table shown below does not provide anyone, under any circumstance, with an approval for new development or the growing of marijuana in any zone. The table was created to provide a general illustration of how current zoning of unincorporated lands and land outside of the National Scenic Area, might respond to new proposed marijuana uses in the future.

**The County still needs to make policy level decisions about process and opt out options, as well as next steps.**

**Key to Table: PLEASE READ THIS FIRST**

	Process Required by Current Zoning and the Wasco County Land Use and Development Ordinance
(A)	Personal grows of up to 4 plants per household allowed by the State; County zoning cannot regulate this.
(B)	No permit required; <b>Use permitted without review</b> but OLCC LUCS is required to confirm zoning/permits. <i>(Note: the use of existing buildings for farming would not necessarily require review however all <u>new</u> farm buildings require land use review from planning; Planning will coordinate with Watermaster where possible).</i>
(C)	Permit required: <b>Type 1, Ministerial</b> review with application. Type 1 includes coordination with the Building Department and Environmental Health. No public notice or appeal period.
(D)	Permit required: <b>Type 2, Subject to Standards</b> review with application. Type 2 includes coordination with the Building Department, Environmental Health, Watermaster and several other partner agencies. Public notice is issued with the decision document within the appeal period.
(E)	Permit required: <b>Type 2 or 3, Conditional Use</b> review with application. Type 3 includes coordination with the Building Department, Environmental Health, Watermaster and several other partner agencies. Public Notice is issued prior to the decision being issued and the decision contains an appeal period.

Based on a preliminary review, the uses listed above could potentially be applied for in the following zones:

Zone	Personal Grows	Producing + Primary Processing	Processing Secondary Processing	Wholesaling (Selling in bulk )	Retail (Individual sales)	Comments:
Forest (F-1)	Yes (A)	Yes (B)	No	No	Maybe (C)	Retail as Home Occ
Forest (F-2)	Yes (A)	Yes (B)	No	No	Maybe (C)	Retail as Home Occ
Exclusive Farm Use (EFU) (A-1)	Yes (A)	Yes (B)	Maybe (D)(C)	Maybe (E)	Maybe (C)	Retail as Home Occ
Forest-Farm (F-F)	Yes (A)	Yes (B)	Maybe (E)	Maybe (E)	Maybe (E)	Retail as Home Occ
Agriculture-Recreation (A-R)	Yes (A)	Yes (B)	No	No	Maybe (E)	Retail as Home Occ
Rural Residential (R-R (10))	Yes (A)	Yes (B)	Maybe (E)	Maybe (E)	Maybe (E)	Retail as Home Occ
Rural Residential (R-R (5))	Yes (A)	Yes (B)	No	No	Maybe (E)	Retail as Home Occ
Rural Residential (R-R (2))	Yes (A)	Yes (B)	No	No	Maybe (E)	Retail as Home Occ
Rural Commercial (R-C)	Yes (A)	No	No	No	Maybe (D)(E)	Retail or Medical
Rural Industrial (R-I)	Yes (A)	No	Maybe (D)(C)	No	Maybe (E)	Retail or Medical
<b>Tygh Valley Rural Center Zones</b>						
Residential (RC-TV-R)	Yes (A)	No	No	No	Maybe (E)	Retail as Home Occ
Commercial (RC-TV-C)	Yes (A)	No	No	No	Maybe (C)(E)	Retail or Medical
Light Industrial/Commercial (RC-TV-M1)	Yes (A)	No	Maybe (C)	Maybe (C)	Maybe (E)	Retail or Medical
Medium Industrial (RC-TV-M2)	Yes (A)	No	Maybe (C)	Maybe (C)	No	
Rural Reserve (RC-TV-RR)	Yes (A)	No	No	No	No	
Agriculture (RC-TV-AG)	Yes (A)	Yes (B)	Maybe (E)	Maybe (E)	Maybe (E)	Retail as Home Occ

<b>Wamic Rural Center Zones</b>						
Residential (RC-Wam-R2)	Yes (A)	No	No	No	Maybe (E)	Retail as Home Occ
Residential (RC-Wam-R5)	Yes (A)	No	No	No	Maybe (E)	Retail as Home Occ
Commercial (RC-Wam-C2)	Yes (A)	No	No	No	Maybe (C)(D)(E)	Retail or Medical
Medium Industrial (RC-Wam-M2)	Yes (A)	No	Maybe (D)	Maybe (D)		
<b>Overlay Zones</b>						
Big Muddy Limited Use	Yes (A)	No	No	No	No	
Badger Creek Limited Use	Yes (A)	No	No	No	Maybe (E)	Retail as Home Occ
Pine Hollow Airport	Yes (A)	No	No	No	No	
Camp Morrow Limited Use	Yes (A)	No	No	No	No	





## Frequently Asked Questions About Local Regulation of Marijuana

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July 31, 2015

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

- **HB 3400**, the omnibus bill that amends the Oregon Medical Marijuana Act (OMMA) and Measure 91, which the voters passed in November 2014 legalizing recreational marijuana use in Oregon;
- **HB 2041**, which revises the state tax structure for recreational marijuana;
- **SB 460**, which authorizes early sales of recreational marijuana by medical marijuana dispensaries; and
- **SB 844**, which contains miscellaneous provisions.

Below are answers to some of the most commonly asked questions about the new legislation and its impact on local governments.

### HOME RULE AND FEDERAL LAW

#### **I've heard that cities did not need this legislation to regulate marijuana because Oregon is a home rule state. What is home rule?**

Home rule is the power of a local government to set up its own system of governance and gives that local government the authority to adopt ordinances without having to obtain permission from the state. City governments in Oregon derive home rule authority through the voters' adoption of a home rule charter as provided for in the Oregon Constitution. All 242 cities in Oregon have adopted a home rule charter. A charter operates like a state constitution in that it vests all government power in the governing body of a municipality, except as expressly stated in that charter or preempted by state or federal law.

#### **So how does home rule relate to a city's authority to regulate marijuana?**

Home rule authority allows local governments to enact ordinances regulating marijuana unless preempted by state law. The state Legislature can limit local government authority if it passes legislation that clearly and unambiguously preempts that authority. Because the Legislature recently passed four bills relating to marijuana, it is important to understand how state and local authority interact because that relationship will impact what cities can and cannot do when it comes to regulating marijuana. Specifically, unless clearly preempted, cities can impose regulations in addition to those authorized under HB 3400 under their home rule authority.

#### **Isn't marijuana illegal under federal law? If so, how can Oregon legalize it?**

Marijuana is classified under the federal Controlled Substances Act as a Schedule I drug, which means it is unlawful under federal law to grow, distribute, possess or use marijuana for any purpose. Individuals who engage in such conduct could be subject to federal prosecution.

However, the courts thus far have upheld a state's authority to decriminalize marijuana for state law purposes. Oregon did so for medical marijuana in 1998 and for recreational marijuana in 2014. What that means is someone who grows, distributes, possesses or uses marijuana within the limits of those state acts is immune from state prosecution, but might still be subject to federal prosecution if federal authorities desired to do so.

### **Can we as a city council use our home rule authority and vote to re-criminalize marijuana within our city?**

No. A city's home rule authority is subject to the criminal laws of the state of Oregon. As noted above, the OMMA and Measure 91 provide immunity from criminal prosecution for individuals who are acting within the parameters of those laws. Consequently, a council cannot remove the immunity provided by state law.

The immunity provided by state law does not extend to all crimes committed while engaging in marijuana-related activities. For example, the immunity provided by state law does not apply to the crime of driving under the influence. Likewise a city should be able to impose criminal penalties against a person engaging in a marijuana-related activity that violates another law, such as a business license ordinance, zoning or anti-smoking regulations. However, before doing so, a city should work with its city attorney to confirm that the state law immunities do not apply.

## **BANS**

### **Can my city ban the growing, processing, and sale or transfer of marijuana?**

HB 3400 provides a process, explained below, for cities to ban six of the seven types of marijuana activities registered or licensed by the state. Specifically, the six types of marijuana activities that cities can ban under HB 3400 are:

- Medical marijuana processors (preparing edibles, skin and hair products, concentrates and extracts);
- Medical marijuana dispensaries;
- Recreational marijuana producers (growers);
- Recreational marijuana processors (preparing edibles, skin and hair products, concentrates and extracts);
- Recreational marijuana wholesalers; and
- Recreational marijuana retailers.

The seventh marijuana activity registered by the state is the growing of medical marijuana. The bills the Legislature enacted in 2015 are silent on whether a city can ban medical marijuana growers from operating. (State law does expressly place limits on the number of plants and the amount of marijuana that can be located at any particular grow site.) As noted below, the statutes do not indicate that the process in HB 3400 for banning marijuana activities is the exclusive means to do so. Cities considering banning medical marijuana grow sites should talk to their city attorney about whether they can do so under either home rule, federal preemption, or both legal theories.

**What process does the city need to go through under HB 3400 to impose a ban on the growing, processing, or sale or transfer of marijuana?**

The process that the city needs to go through under HB 3400 will depend on when the city imposes the ban, and whether the city is located in a county that voted against Measure 91 by 55 percent or more.

Before December 24, 2015, cities located in counties that voted against Measure 91 by 55 percent or more (Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler Counties) can enact a ban through council adoption of an ordinance prohibiting any of the six activities listed above. After that time, and for cities not located in those counties, the city council may adopt an ordinance banning any of the six activities listed above, but that ordinance must be referred to the voters at a statewide general election, meaning an election in November of an even-numbered year.

Under either procedure, as soon as the council adopts the ordinance, it must submit it to the Oregon Health Authority (OHA) for medical bans and the Oregon Liquor Control Commission (OLCC) for recreational bans, and those agencies will stop registering and licensing the banned facilities. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election occurs.

**Can my city ban the personal use and growing of marijuana?**

HB 3400 does not provide an avenue for cities to ban the personal use and growing of marijuana. As a result, cities interested in enacting such a ban should consult with the city attorney to discuss whether the city can do so under either home rule, federal preemption, or both legal theories.

**If the city adopts a ban under HB 3400, are existing marijuana activities grandfathered (allowed to remain open)?**

The answer depends upon the type of activity. Medical marijuana dispensaries and medical marijuana processors that have registered with the state by the time their city adopts a prohibition ordinance are not subject to the ban if they have successfully completed a city or county land use application process.

However, HB 3400 does not provide similar protection to any of the other marijuana activities that a city can ban under that legislation. Consequently, recreational marijuana growers, processors, wholesalers and retailers are subject to a ban under HB 3400, even if those businesses are already operating at the time the ban was enacted.

Although some businesses may argue that they have a due process right to continue operating, the status of marijuana as an illegal drug under federal law makes it unlikely that a court would recognize a due process right for a marijuana business owner. However, cities will want to work closely with their city attorney on enforcement of a ban against existing businesses.

**If my city adopts a ban under HB 3400, will it still get a share of state marijuana tax revenues?**

No. A city that adopts an ordinance prohibiting the establishment of medical or recreational marijuana businesses is not eligible to receive a distribution of state marijuana tax revenues.

**My city requires businesses to obtain a license to operate, and city ordinance provides that the city will not issue a business license if a business operates in violation of local, state or federal law, creating an effective ban on marijuana businesses. Can we continue to enforce that ordinance instead of adopting a ban using the procedure described in HB 3400?**

Yes. The League has taken the position that cities may still adopt and enforce their business license ordinances. However, a city should be prepared to defend its authority to do so.

HB 3400 does not contain a broad express preemption on local government authority.<sup>1</sup> Nothing in HB 3400 makes the ban procedures in the law the exclusive means for prohibiting marijuana businesses. Consequently, the League has taken the position that HB 3400 does not prevent a city from banning marijuana activities through other means, such as adopting or enforcing a business license ordinance that prohibits issuance of a business license to a business operating in violation of local, state or federal law.

However, cities that decide to enforce a business license ordinance instead of adopting a ban under HB 3400 should consult their city attorney about the case of *City of Cave Junction v. State of Oregon*, Josephine County Circuit Court Case #14CV0588, which is currently on appeal before the Oregon Court of Appeals. At issue in that case is whether the city of Cave Junction may enforce its business license ordinance, which prohibits issuance of a business license to a business operating in violation of local, state or federal law.

## LOCAL TAX

### **Can my city tax recreational marijuana?**

Yes, as long as the city has not adopted an ordinance under HB 3400 prohibiting marijuana activities in the city.

Under HB 3400, cities may impose up to a 3 percent tax on sales of marijuana items made by those with recreational retail licenses by referring an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year.

### **Can my city tax medical marijuana?**

It is unclear whether a city can tax medical marijuana. HB 3400 provides that authority to “impose a tax or fee on the production, processing or sale of marijuana items in this state is vested solely in the Legislative Assembly,” and a city may not adopt or enact ordinances imposing a tax or fee on those activities except for the 3 percent tax on recreational activities discussed above. The legal question is whether that section applies to medical marijuana. Cities interested in taxing medical marijuana should work closely with their city attorney.

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<sup>1</sup> Section 57 of HB 3400 does provide that Measure 91 supersedes any “inconsistent” local enactments. Although some people have suggested that Section 57 is a broad preemption of local authority, the League disagrees. The liquor control act contains similar wording and the Oregon appellate courts have not interpreted that section to be a broad preemption. For more information and analysis of the inconsistency provision in Measure 91, as amended by HB 3400, see the memorandum on the League’s A-Z Marijuana Resources webpage entitled, “Measure 91 and Local Control.”



**My city enacted a tax on medical and recreational marijuana before HB 3400 was enacted. Can we continue to impose that tax now?**

The status of taxes enacted prior to HB 3400 is an open question. HB 3400 provides that, except as provided by law, the authority to “impose” a tax or fee on the production, processing or sale of marijuana items is vested solely in the Legislative Assembly, and a city may not “adopt or enact” ordinances imposing a tax or a fee on those activities. Arguably, cities that have already adopted or enacted a tax prior to the effective date of HB 3400 are grandfathered in. However, the issue is not free from doubt, and cities that decide to collect on pre-HB 3400 taxes should be prepared to defend their ability to do so against legal challenge. Consequently, cities that plan to continue to collect taxes imposed prior to the passage of HB 3400 should work closely with their city attorney to discuss the implications and risks of that approach.

**My city requires all businesses to obtain a license and pay a fee. Does that fee count as part of the 3 percent tax or fee that the city can impose under HB 3400?**

HB 3400 limits a local tax on “the sale of marijuana items” to 3 percent and provides that a city may not otherwise adopt or enact an ordinance imposing a tax or fee on “the production, processing or sale of marijuana items.” Although HB 3400 preempts certain local taxes and fees, a city may be able to continue to impose taxes and fees of general applicability, which are not specific and limited to marijuana businesses, without being subject to the 3 percent limit. Cities considering imposing such a tax or fee should obtain their city attorney’s advice before doing so.

**If my city adopts a ban for some—but not all—marijuana activities, can it still impose a local tax on those activities not banned?**

Probably not. HB 3400 broadly provides that a city that adopts a ban under HB 3400 prohibiting one or more marijuana activities within its jurisdiction “may not impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated.”

## **STATE TAX**

**What is the state going to tax and in what amount?**

Under HB 2041, the state will impose a 17 percent tax on the retail sale of marijuana items, including marijuana leaves and flowers; immature marijuana plants; marijuana concentrates and extracts; marijuana skin and hair products; and other marijuana products.

Early sales of recreational marijuana from medical marijuana dispensaries, however, will be taxed at a higher rate. Starting January 4, 2016, early sales of recreational marijuana from a medical marijuana dispensary will be taxed at a rate of 25 percent.

**How much of the state tax revenues will go to cities?**

Ten percent of the state marijuana tax revenues will be distributed to cities that do not adopt ordinances prohibiting the establishment of marijuana facilities registered and licensed by the state.<sup>2</sup> The revenue will be distributed to cities “[t]o assist local law enforcement in performing its duties” under Measure 91.

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<sup>2</sup> The remaining revenues will be distributed as follows: 40 percent to the Common School Fund; 20 percent to the Mental Health Alcoholism and Drug Services Account; 15 percent to the State Police Account; 10 percent to counties; and 5 percent to the Oregon Health Authority.

The state's Legislative Revenue Office has estimated that the total distribution for cities in the 2015-2017 biennium will be \$440,000, jumping to \$5.92 million in the 2017-2019 biennium.

### **How will the state tax revenues be distributed to cities?**

Until July 1, 2017, the state tax revenue dedicated to cities will be distributed proportionately based on population to those cities that do not adopt prohibiting ordinances. After July 1, 2017, those revenues will be distributed proportionately based on the number of recreational licenses issued for premises located in each city. Fifty percent of the revenue for cities will be distributed based on the number of recreational grower, processor and wholesale licenses issued for a premises in the city. The other 50 percent will be distributed based on the number of recreational retail licenses issued for premises in the city.

## **TIME, PLACE AND MANNER RESTRICTIONS**

### **Does state law place any restrictions on where marijuana businesses can locate?**

Yes. Medical marijuana dispensaries, recreational marijuana retail stores, and medical and recreational marijuana processors that process marijuana extracts cannot locate in a residential zone.

In addition, medical marijuana dispensaries and recreational marijuana retail stores are subject to the following restrictions:

- Neither can locate within 1,000 feet of certain public and private schools, unless the school is established after the marijuana facility.
- Medical marijuana dispensaries cannot locate within 1,000 feet of another dispensary.
- Medical marijuana dispensaries cannot locate at a grow site.

Finally, before issuing any recreational marijuana license, the OLCC must request a statement from the city that the requested license is for a location where the proposed use of the land is a permitted or conditional use. If the proposed use is prohibited in the zone, the OLCC may not issue a license. A city has 21 days to act on the OLCC's request, but when that 21 days starts to run varies:

- If the use is an outright permitted use, 21 days from receipt of the request; or
- If the use is a conditional use, 21 days from the final local permit approval.

### **I have heard that the new legislation ends "card stacking" and puts limits on the amount of marijuana at a medical marijuana grow site. What are those limits?**

Generally, a medical marijuana grow site may have up to 12 mature plants if it is located in a residential zone, and up to 48 mature plants if it is located in any other zone. However, there are exceptions for certain existing grow sites. If all growers at a site had registered with the state by January 1, 2015, the grow site is limited to the number of plants that were at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in a residential zone and 96 mature plants per grow site in all other zones. A grower loses the right to claim those exceptions, however, if the grower's registration is suspended or revoked.

In addition to possessing mature marijuana plants, a medical marijuana grower may possess the amount of usable marijuana that the person harvests from the mature plants, not to exceed 12

pounds of usable marijuana per mature plant for outdoor grow sites and 6 pounds of usable marijuana per mature plant for indoor grow sites.

### **I have heard that cities can impose “reasonable restrictions” on medical and recreational marijuana businesses. What does that mean?**

Although the League takes the position that the Legislature has not foreclosed other regulatory options, HB 3400 expressly provides that cities may impose reasonable regulations on the following:

- The hours of operation of retail licensees and medical marijuana grow sites, processing sites and dispensaries;
- The location of all four types of recreational licensees, as well as medical marijuana grow sites, processing sites and dispensaries, except that a city may not impose more than a 1,000-foot buffer between retail licensees;
- The manner of operation of all four types of recreational licensees, as well as medical marijuana processors and dispensaries; and
- The public’s access to the premises of all four types of recreational licenses, as well as medical marijuana grow sites, processing sites and dispensaries.

The law also provides that time, place and manner regulations imposed on recreational licensees must be consistent with city and county comprehensive plans, zoning ordinances, and public health and safety laws, which would be true of any ordinance imposed by a city.

## **EARLY SALES OF RECREATIONAL MARIJUANA**

### **What are “early sales” of recreational marijuana?**

As of July 1, 2015, people 21 years of age and older can possess limited amounts of recreational marijuana under state law. However, the OLCC has not yet issued licenses for the retail sale of recreational marijuana, and does not expect to do so until sometime in 2016. To allow the OLCC time to implement its licensing system, while also providing an avenue for people to purchase recreational marijuana, the Legislature authorized medical marijuana dispensaries to sell limited quantities of recreational marijuana.

In particular, medical marijuana dispensaries will be able to sell the following to a person who is 21 or older and presents proof of age:

- One quarter of one ounce of dried marijuana leaves and flowers per person per day;
- Four marijuana plants that are not flowering; and
- Marijuana seeds.

### **When will early sales start?**

Medical marijuana dispensaries may begin selling limited quantities of recreational marijuana on October 1, 2015. Sales of recreational marijuana from medical dispensaries currently are set to end on December 31, 2016. At that time, recreational retail facilities likely will be operating and selling recreational marijuana.

### **Can my city opt out of early sales?**

Yes. Under SB 460, a city may adopt an ordinance prohibiting the early sales described above. The city council may adopt the ordinance without referring it to the voters.

### **If my city opts out of early sales, is the city still eligible to receive state marijuana tax revenues?**

Probably. HB 2041 provides that a city that adopts an ordinance “prohibiting the establishment” of marijuana businesses registered or licensed by the state is not eligible to receive state marijuana tax revenues. An ordinance prohibiting early sales under SB 460, however, would not prohibit the establishment of a state-registered or licensed facility. Rather, such an ordinance would merely limit the activities at an existing medical marijuana dispensary. As a result, a city prohibiting early sales should remain eligible to receive state marijuana tax revenues.

### **Can my city impose a local tax on early sales?**

Probably not. Under HB 3400, cities may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items, except as provided in that legislation. HB 3400 further stipulates that cities may refer an ordinance to the voters imposing a tax of up to 3 percent on sales by a person that holds a retail license issued by the OLCC. Because early sales of recreational marijuana will be made by medical marijuana dispensaries, and not by a retail licensee, a city likely is preempted from imposing a tax on early sales of recreational marijuana. However, cities interested in imposing a local tax on early sales should consult their city attorney.

## **TIMELINE**

The following is a summary of key dates that local government officials need to be aware of regarding the effective date and implementation of Oregon’s new marijuana laws:

- **June 30, 2015** – HB 3400 becomes effective. However, many provisions of the law do not go into effect immediately.
- **July 1, 2015** – Personal possession of limited amounts of recreational marijuana is allowed for those 21 or older.
- **October 1, 2015** – Sales of recreational marijuana from medical marijuana dispensaries begin, unless a city has enacted an ordinance prohibiting early sales pursuant to SB 460 § 2(3).
- **December 24, 2015** – City councils that are eligible to adopt a prohibition on marijuana activities without a voter referral must have adopted the prohibition by this date.
- **January 1, 2016** – Most amendments to Measure 91 go into effect. In addition, after this date, medical marijuana growers may apply for an OLCC license to grow recreational marijuana at the same site.
- **January 4, 2016** – The OLCC must approve or deny recreational license applications as soon as practicable after this date (HB 3400 § 171). In addition, medical marijuana dispensaries engaging in early sales of recreational marijuana must begin collecting a 25 percent state tax on those sales.
- **March 1, 2016** – Most amendments to the OMMA go into effect.

- **November 8, 2016** – Next statewide general election. Cities may refer measures on prohibition of marijuana activities and measures on local taxes at this election.
- **December 31, 2016** – Early sales of recreational marijuana from medical marijuana dispensaries end.



# Council Communication

## August 5, 2014, Business Meeting

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### **An Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-infused Products in the City of Ashland**

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**FROM:**

Dave Kanner, city administrator, [dave.kanner@ashland.or.us](mailto:dave.kanner@ashland.or.us)

**SUMMARY**

This is second reading of an ordinance imposing a tax on the retail sale of marijuana in Ashland. The ordinance imposes a gross receipts tax on the sale of medical marijuana, recreational marijuana (should it be legalized by Oregon voters in November) and marijuana-infused products. As presented at first reading, the ordinance imposed a lower tax rate on medical marijuana (5%) than that imposed on recreational marijuana (10%). The Council requested that the ordinance be amended to state that the tax rate would be adopted by Council resolution and could be “up to” those amounts. The ordinance applies to all state-licensed retailers of marijuana and medical marijuana, as well as all those who are required to be licensed by the state. The ordinance allows the seller to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

**BACKGROUND AND POLICY IMPLICATIONS**

Oregon voters legalized medical marijuana via initiative petition in 1999. Shortly thereafter, medical marijuana dispensaries began opening around the state. These dispensaries essentially served as a middle-man for marijuana growers and medical marijuana patients. While these dispensaries were at least arguably legal, they were unregulated and the source of controversy in many communities.

The 2013 Oregon Legislature passed HB 3460, which created a regulatory and licensing regimen for medical marijuana dispensaries. To date, there are 198 approved and 115 provisionally approved dispensaries in Oregon. There are two provisionally approved dispensaries in Ashland, although neither has yet opened for business. (“Provisionally approved” means the applicant has met all of the licensure requirements, but the Oregon Medical Marijuana Program has not yet approved the dispensary’s security system.)

In addition, an initiative petition has been submitted to the Secretary of State for a ballot measure that would legalize the sale of recreational marijuana in Oregon. This measure is likely to appear on the November ballot and is similar to a measure approved by Washington voters in 2012.

There is nothing in current Oregon law that prohibits a local government from taxing marijuana and, at its May 19, 2014, study session, the Council directed staff to create an ordinance for doing so. Council asked that the ordinance look at taxing both ends of the supply chain and also asked for an economic analysis of a tax on medical and/or recreational marijuana. That analysis is discussed in an attached memo.

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The ordinance presented for Council consideration is a gross receipts tax on the sale of marijuana, medical marijuana and marijuana-infused products. A gross receipts tax is applied to the total gross taxable revenues of a business. It is similar to a sales tax except that it is levied on the seller rather than the purchaser. The seller is responsible for maintaining accurate records of its gross revenues from taxable goods and services and then remitting a percentage to the taxing entity. Many businesses that are subject to a gross receipts tax will show the tax on the bill of sale they present to the customer, but it is nonetheless the business that is responsible for paying it. Ashland's food & beverage tax is a gross receipts tax. A gross receipts tax has the administrative advantages of ease of collection and ease of auditing.

Staff declined to present a taxation scenario in which growers and processors are also taxed for a number of reasons. First, under Oregon law, growers and grow sites must register with the state, but their locations and identities are confidential. We would have no way of identifying them in order to apply a tax. Next, staff has no experience with administering a value added tax, which is essentially what this would be, and is reluctant to even attempt to create the administrative structure for such a tax. Third, we have no models that we could adapt in order to create a value added tax. The State of Washington's new marijuana law provides for a 25% excise tax at each transaction point (producer to processor, processor to retailer and retailer to consumer; thus a value added tax), but at the time this ordinance was written, Washington had not adopted and published rules and procedures for administering the tax<sup>1</sup>. Finally, all taxes – regardless of where they are assessed in the supply chain – are ultimately passed on to the consumer. Therefore, the gross receipts of a business would reflect all of the costs incurred along the supply chain and a gross receipts tax would capture tax revenue from each of those elements. How to disperse that tax liability within the supply chain would be left to the growers, processors and retailers, rather than to the City.

As stated above, there is nothing in current Oregon law that prohibits the City from taxing marijuana, but it should be noted that [the marijuana initiative likely to be considered](#) by the voters in November contains the following language:

**SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.**

Because this language does not specifically repeal a local marijuana tax in effect at the time of the measure's passage, and because this language can be interpreted to read "No county or city of this state shall [after the effective date of this measure] impose any fee or tax..." it can be argued that this language would not pre-empt this taxation ordinance if it is adopted by the Council. Alternatively, the language can be read as "No county or city of this state shall [be allowed at any time to] impose any fee or tax..." As such, absent adjudication in a state court, there is no guarantee that a local tax imposed prior to passage of this initiative would survive beyond the effective date of the initiative, unless this language is modified by the Legislature.

This ordinance contains the following elements:

- Section 4.38.010 – Purpose. This states the purpose of the ordinance

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<sup>1</sup> The City of Boulder, Colorado, licenses growers within its city limits and imposes an excise tax based on the weight of material sold. The licensure requirement gives Boulder the enforcement mechanism necessary to apply the tax, since those growers who do not comply lose their license. Ashland has no legal means by which to license growers.

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- Section 4.38.020 – Definitions. Definitions are added to the municipal code for “Marijuana,” and “Seller.” Other definitions in this section already exist elsewhere in the code.
- Section 4.38.030 – Levy of Tax. This section imposes a 5% gross receipts tax on the sale of medical marijuana and a 10% gross receipts tax on the sale of recreational marijuana. The tax also applies to marijuana-infused products.
- Section 4.38.040 – Deductions. Allows sellers to deduct certain expenses from their gross receipts for purposes of calculating taxable revenues.
- Section 4.38.050 – Seller Responsible for Payment of Tax. Establishes seller responsibility and deadlines for remitting the tax to the City. Allows the seller to retain 5% of total tax to cover the cost of administration and remittance.
- Section 4.38.060 – Penalties and Interest. Establishes late payment penalties and penalties for fraud.
- Section 4.38.070 – Failure to Report and Remit Tax. Gives the Finance Director the authority to determine that a seller is delinquent and to give notice.
- Section 4.38.080 – Appeal. Gives a seller the right to appeal the determination of the Finance Director.
- Section 4.38.090 – Refunds. Allows a seller to submit evidence of overpayment and to request a refund.
- Section 4.38.100 – Action to Collect. Makes anyone who owes the City money under this ordinance liable to an action brought by the City for recovery of amounts owed.
- Section 4.38.110 – Violation Infractions. This section makes violations of this ordinance punishable as set forth in other existing AMC provisions.
- Section 4.38.120 – Confidentiality. City agrees to treat information provided to it by sellers as confidential to the extent permitted by law.
- Section 4.38.130 – Audit of Books, Records or Persons. Gives the City the right to audit a seller’s records and requires a seller to make all books, invoices, accounts and other records available to the City.
- Section 4.38.140 – Forms and Regulations. Allows the Finance Director to prescribe the forms on which returns are made and other reports are supplied.

#### **STAFF RECOMMENDATION AND REQUESTED ACTION**

Staff recommends approval of second reading by title only of an Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-infused Products in the City of Ashland.

#### **SUGGESTED MOTION**

I move approval of an ordinance titled, “An Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-infused Products in the City of Ashland”

#### **ATTACHMENTS**

Ordinance establishing tax

Memo to Council: Economic Analysis

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ESTABLISHING A TAX ON THE  
SALE OF MARIJUANA AND MARIJUANA-INFUSED  
PRODUCTS IN THE CITY OF ASHLAND**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

**WHEREAS**, Article 2, Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes and common law of the United States and this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Title 4 Revenue and Finance of the Ashland Municipal Code hereby adds a new Chapter 4.38, establishing a tax on the sale of marijuana and marijuana-infused products, as follows:

**SECTION 4.38.010 Purpose.**

For the purposes of this Chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Ashland is exercising a taxable privilege. The purpose of this Chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

**SECTION 4.38.020 Definitions.**

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter shall have the following meanings:

- A. "Director" means the Director of Finance for the City of Ashland or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
- C. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be

amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- D. "Oregon Medical Marijuana Program" means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
- E. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- F. "Purchase or Sale" means the **retail** acquisition or furnishing for consideration by any person of marijuana within the City **and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.**
- G. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
- H. "Retail sale" means the transfer of goods or services in exchange for any valuable consideration **and does not include the transfer or exchange of goods or services between a grower or processor and a seller.**
- I. "Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
- J. "Tax" means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.
- K. "Taxpayer" means any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

#### **SECTION 4.38.030 Levy of Tax.**

- A. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter.
- B. The amount of tax levied ~~is~~ **shall be established by a City Council resolution** as follows:
  - 1) ~~Up to five~~ **Up to f**ive percent (5%) of the gross sale amount paid to the seller by a registry identification cardholder.
  - 2) ~~Up to ten~~ **Up to t**en percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not purchasing marijuana under the Oregon Medical Marijuana Program.

#### **SECTION 4.38.040 Deductions.**



The following deductions shall be allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser;
- B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

**SECTION 4.38.050 Seller Responsible For Payment Of Tax.**

- A. Every seller shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to insure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
- C. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to insure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
- E. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

**SECTION 4.38.060 Penalties And Interest.**

- A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.
- D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.
- F. Notwithstanding subsection 4.34.020.C, all sums collected pursuant to the penalty provisions in paragraphs A and C of this section shall be distributed to the City of Ashland Central Service Fund to offset the costs of auditing and enforcement of this tax.
- G. Waiver of Penalties. Penalties and interest for certain late tax payments may be waived pursuant to AMC 2.28.045D.

**SECTION 4.38.070 Failure To Report and Remit Tax –Determination of Tax by Director.**

If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in section 4.34.080. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

**SECTION 4.38.080 Appeal.**

Any seller aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the Administrative Appeals Process in AMC 2.30.020, except that the appeal shall be filed within 30 days of the serving or mailing of the determination of tax due. The hearings officer shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the hearings officer shall be final and conclusive, and shall be served upon the appellant in the manner

prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

**SECTION 4.38.090. Refunds.**

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify Director of claimant's choice no later than 15 days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the 15 day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.
- C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

**SECTION 4.38.100 Actions to Collect.**

Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Ashland for the recovery of such amount. In lieu of filing an action for the recovery, the City of Ashland, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Ashland has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

**SECTION 4.38.110 Violation Infractions.**

- A. All violations of this chapter are punishable as set forth in AMC 1.08.020. It is a violation of this chapter for any seller or other person to:
  - 1) Fail or refuse to comply as required herein;
  - 2) Fail or refuse to furnish any return required to be made;
  - 3) Fail or refuse to permit inspection of records;

- 4) Fail or refuse to furnish a supplemental return or other data required by the Director;
  - 5) Render a false or fraudulent return or claim; or
  - 6) Fail, refuse or neglect to remit the tax to the city by the due date.
- B. Violation of subsections 1, 2, 3, 4 and 6 shall be considered a Class I violation. Filing a false or fraudulent return shall be considered a Class C misdemeanor, subject to AMC 1.08. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

**SECTION 4.38.120 Confidentiality.**

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

**SECTION 4.38.130 Audit of Books, Records or Persons.**

The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Ashland Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

**SECTION 4.38.140 Forms And Regulations.**

- A. The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of

said medical marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- 1) A form of report on sales and purchases to be supplied to all vendors;
- 2) The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.

**SECTION 2.** Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 3.** Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 4.** Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2014, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Barbara M. Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
John Stromberg, Mayor

Reviewed as to form:

\_\_\_\_\_  
David H. Lohman, City Attorney



# Memo

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DATE: June 25, 2014  
TO: Mayor and City Council  
FROM: Dave Kanner, city administrator  
RE: Economic analysis of a marijuana tax

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At its May 19, 2014, study session, the Council requested an economic analysis of a tax on marijuana in Ashland. As I and other staff began researching this, we almost immediately ran into an insurmountable hurdle. That is, there is virtually no reliable or verifiable baseline data upon which to base assumptions and projections. The state of Washington has not yet begun retail sales of marijuana and Colorado's experience with retail sales of recreational marijuana is too new to have compiled the kind of data that could be useful in this exercise. Staff did contact a number of Colorado cities that began taxing medical marijuana in 2010 and has incorporated some of that information in this analysis. However, nearly all of what's presented here is guesswork. The amount of revenue that could be generated and the number of people who might be impacted is unknowable.

To do an economic analysis such as this, we must begin with an understanding of the price of the commodity in question, the potential market demand, the different forms in which the commodity is sold and government or market pressures that can influence each of these. A discussion of each follows:

## 1. Price.

Medical marijuana is unregulated in terms of price. Under Oregon law, dispensaries (or a grower selling directly to a medical marijuana cardholder) are allowed only to recover the cost of the marijuana being sold. However, those costs are unregulated and as a result the price of marijuana can vary widely. According to one former dispensary owner in Ashland, the price of an ounce of medical marijuana can range from \$130 to \$420. Variations in price relate to the quality of the marijuana being sold (whether it contains leaves and stems or is more finely processed marijuana "buds"), whether it is grown indoors or outdoors, the overhead of the dispensary and the time of year during which it is sold. According to the web site "priceofweed.com," the average retail price of high quality medical marijuana in Oregon is currently \$209.65 an ounce.

However, medical marijuana users will usually purchase quantities smaller than an ounce. An OMMMP cardholder will typically purchase four grams of marijuana (one-seventh of an ounce) for roughly \$45. How long this quantity will last depends on the medical condition for which it is being purchased. For instance, a patient with stage 4 Parkinson's Disease will, according to the



former dispensary owner interviewed for this analysis, use that much marijuana in just a couple of days. Another patient with a less serious condition might use that much in two weeks. According to the Oregon Health Authority's Office of Medical Marijuana Programs (OMMP), the most common condition for which medical marijuana is prescribed is "severe pain." The second most common condition is "Persistent muscle spasms, including but not limited to those caused by multiple sclerosis." Patients may be suffering from more than one diagnosed qualifying medical condition. We could not find and are not aware of any medical marijuana user demographic profiles or data on how much money is spent by medical marijuana patients with different kinds of conditions.

What's more, many medical marijuana cardholders do not purchase marijuana per se but instead purchase oils, tinctures or marijuana-infused edibles. The variation in price for these items is even greater than the variation in price for marijuana. Again, we could not find and are not aware of any medical marijuana user demographic profiles or data on who uses which products or in what quantity or how much money is spent by different kinds of medical marijuana patients.

For purposes of this analysis, we assume that, on average, a medical marijuana patient spends \$45 per week (\$2,340 per year) for marijuana or some other marijuana derivative or marijuana-infused product. It is further assumed that these prices and purchasing patterns will carry through to a recreational marijuana market, should it be legalized. Therefore, it is assumed that a typical recreational marijuana user would also spend an average of \$2,340 per year on marijuana.

## 2. Market Demand

There is no way of reliably determining what the potential number of customers for either medical marijuana or recreational marijuana might be in Ashland.

According to the OMMP, there are 6,882 OMMP cardholders in Jackson County. There is no way of knowing how many of them are growing their own marijuana, how many are paying a grower directly and how many are purchasing marijuana from a dispensary. There is also no way of accurately predicting how many of them who are not currently doing so would purchase from a dispensary if one was readily available to them.

Given the efforts of other cities in the Rogue Valley to prohibit dispensaries, it can reasonably be assumed that a dispensary or dispensaries in Ashland would attract a relatively large portion of the available market. Again, however, there's no way of accurately predicting what that number would actually be. For purposes of this analysis, we assume that dispensaries in Ashland would serve a client base numbering 1,000.

As regards recreational marijuana, according to a Pew Research Center Study published in 2013, 48% of all American adults have tried marijuana and 12% had used it in the prior year. If 12% of all Jackson County residents age 21 or older are marijuana users, that would be 18,120 people. Subtracting from that number the 6,882 OMMP card holders, we can guess that there would be 11,238 potential recreational marijuana customers in Jackson County alone. Given the measures that many of our neighboring cities have gone to in order to prevent marijuana sales in their communities, it may be fair to assume that a retail recreational marijuana outlet in Ashland



would attract a significant portion of that market. Again, it's impossible to know how many of those recreational users would grow their own marijuana or continue to purchase on the black market. We also have no way of knowing if Ashland would attract "marijuana tourists" from California and Nevada. ([Marijuana tourism has boomed in Colorado](#) since that state began legal retail sales of recreational marijuana.) For purposes of this analysis, we disregard the tourism aspect and assume (perhaps too generously) that one-third of the potential customer base in Jackson County would purchase its marijuana at Ashland retail outlets, thus creating a customer base of 3,709.

### 3. Colorado's local government taxation experience

Little on-the-ground experience is available to inform the discussion of the economics of marijuana taxation. In Oregon, [Gold Hill began taxing medical marijuana earlier this year](#), imposing a 5% gross receipts tax on medical marijuana. That tax became effective June 2, 2014, and the city has not yet collected any revenue from the tax.

Eleven Colorado cities have ordinances in place that tax sales of medical marijuana, however, few of the eleven actually have medical marijuana dispensaries. As such, there is very little experience to be drawn upon from Colorado. Fifteen Colorado cities have adopted ordinances that tax the retail sale of recreational marijuana. Again, the majority of those cities do not have any retail marijuana outlets. There is a statewide tax on medical marijuana sales that is shared with counties. Through the second quarter of FY '14, that sales tax had generated about \$6 million or \$1.00 per capita. ([Click here](#) to link to the Colorado Department Revenue's Marijuana Tax Data page. Note that this page does not provide information about local taxes or individual cities' tax collections. [Inc. Magazine](#) and [Forbes Magazine](#) have also run recent articles on marijuana-related tax collections in Colorado, although neither magazine offers any statistics related to local sales taxes.)

The City of Boulder, CO (pop. 101,808), has collected \$335,697 in FY '14 medical marijuana sales taxes through April. Boulder began collecting taxes on the retail sale of recreational marijuana in February 2014 and through April had collected just under \$254,000. Boulder imposes a sales tax of 3.56% on medical marijuana and 7.06% on recreational marijuana.

The City of Denver, CO (pop. 634,265), collected \$1,222,405 from its 7.12% sales tax on recreational marijuana in January and February of 2014 (the only months for which statistics are available). The City collected \$1,042,099 from its 3.62% sales tax on medical marijuana during that same time period. There are 216 medical marijuana dispensary licensees and 89 recreational marijuana retail licensees, with considerable overlap between the two groups. It is unknown how many of these licensees are actually operating.

### 4. Potential revenues and impacts

As explained above, it is virtually impossible to reliably predict price, demand, customer counts, market elasticity, competitive pressures, governmental actions or any of the other factors that could influence this kind of analysis. However, using the assumptions described above and



further assuming a gross receipts tax of 5% on medical marijuana and 10% on recreational marijuana as proposed, we can derive the following:

	Customers	Avg. Ann'l Expense	Individual cost: Tax @ 5%	Gross Receipts	Tax due @ 5%*
Medical marijuana	1,000	\$2,340	\$117	\$2,340,000	\$111,150
			Individual cost: Tax @ 10%		Tax due @ 10%
Recreational marijuana	3,709	\$2,340	\$234	\$8,679,060	\$824,511
<b>TOTAL NET TAX REVENUE:</b>					<b>\$935,661</b>

\*Tax due figures are net of seller retainage.

Again, because of the many, many variables that we cannot reliably predict, actual amounts could differ significantly from those shown in this table.



ORDINANCE NO. 3097

**AN ORDINANCE AMENDING 18.08, 18.32.025, 18.32.030, 18.40.030, 18.40.040, 18.52.020 AND 18.94.120 OF THE ASHLAND MUNICIPAL CODE ALLOWING MEDICAL MARIJUANA DISPENSARIES IN SPECIFIED PORTIONS OF THE COMMERCIAL (C-1), EMPLOYMENT (E-1), AND INDUSTRIAL (M-1) ZONING DISTRICTS**

Annotated to show <del>deletions</del> and <b>additions</b> to the code sections being modified. Deletions are <b><del>bold lined through</del></b> and additions are in <b><u>bold underline</u></b> .
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**WHEREAS**, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293; 531 P 2d 730, 734 (1975); and

**WHEREAS**, the Oregon Legislature enacted House Bill 3460 in 2013 (ORS 475.314) which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities; and

**WHEREAS**, under Oregon law, local governments may regulate the operation and location of certain types of businesses within their jurisdiction limits except when such action has been specifically preempted by state statute; and

**WHEREAS**, the City Council determined it is necessary to establish rules and regulations permitting medical marijuana dispensaries as a new land use within the City and minimizing the potential impacts to nearby residential neighborhoods; and

**WHEREAS**, the Planning Commission of the City of Ashland conducted a duly advertised public hearing on the amendments to Title 18 Land Use of the Ashland Municipal Code on May 13, 2014, , and following deliberations, recommended approval of the amendments by a unanimous vote; and

**WHEREAS**, the City Council of the City of Ashland conducted a duly advertised public hearing on the above-referenced amendments on June 17, 2014 and, following the close of the public



hearing and record, deliberated and conducted first and second readings approving adoption of the ordinance in accordance with Article 10 of the Ashland City Charter; and

**WHEREAS**, the City Council of the City of Ashland has determined that in order to protect and benefit the public health, safety and welfare of existing and future residents of the City, it is necessary to amend the Ashland Land Use Ordinance in the manner proposed, that an adequate factual base exists for the amendments, that the amendments are consistent with the comprehensive plan and that such amendments are fully supported by the record of this proceeding.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** The above recitations are true and correct and are incorporated herein by this reference.

**SECTION 2.** Chapter 18.08 [Definitions] is hereby amended to include the following new definition:

**SECTION 18.08.486 Medical Marijuana Dispensaries.**

**Any facility registered by the Oregon Health Authority under ORS 475.300 to 475.346 that dispenses marijuana pursuant to ORS 475.314.**

**SECTION 3.** Section 18.32.025 [C-1 Retail Commercial District – Special Permitted Uses] is hereby amended to read as follows:

**SECTION 18.32.025 Special Permitted Uses.**

The following uses and their accessory uses are permitted outright subject to the requirements of this section and the requirements of Chapter 18.72, Site Design and Use Standards.

**A. Commercial laundry, cleaning and dyeing establishments.**

1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located, to the greatest extent feasible. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
2. The use shall comply with all requirements of the Oregon Department of Environmental Quality.

**B. Bowling alleys, auditoriums, skating rinks, and miniature golf courses.** If parking areas are located within 200' of a residential district, they shall be shielded from residences by a fence or solid vegetative screen a minimum of 4' in height.

**C. Automobile fuel sales, and automobile and truck repair facilities.** These uses may only be located in the Freeway Overlay District as shown on the official zoning map.

**D. Residential uses.**

1. At least 65% of the total gross floor area of the ground floor, or at least 50% of the total lot area if there are multiple buildings shall be designated for permitted or special permitted uses, excluding residential.
2. Residential densities shall not exceed 30 dwelling units per acre in the C-1 District, and 60 dwelling units per acre in the C-1-D District. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor area shall count as 0.75 of a unit.
3. Residential uses shall be subject to the same setback, landscaping, and design standards as for permitted uses in the underlying C-1 or C-1-D District.
4. Off-street parking shall not be required for residential uses in the C-1-D District.
5. If the number of residential units exceeds 10, then at least 10% of the residential units shall be affordable for moderate income persons in accord with the standards established by resolution of the Ashland City Council through procedures contained in the resolution. The number of units required to be affordable shall be rounded down to the nearest whole unit.

**E. Drive-up uses as defined and regulated as follows:**

1. Drive-up uses are defined as any establishment which by design, physical facilities, service or by packaging procedures encourages or permits customers to receive services, obtain goods other than automobile fuel, or be entertained while remaining in their motor vehicles. The components of a drive-up use include kiosks, canopies or other structures; windows; stalls; queuing lanes and associated driveways. Drive-up uses may be approved in the C-1 District only, and only in the area east of a line drawn perpendicular to Ashland Street at the intersection of Ashland Street and Siskiyou Boulevard.
2. Drive-up uses are prohibited in Ashland's Historic Interest Area as defined in the Comprehensive Plan. The four existing non-conforming financial institution drive-up use in operation in the Historic Interest Area as of August 7, 2012 may redevelop or relocate within the C-1 and C-1-D zoned portions of Ashland Historic Interest Area subject to the following requirements:
  - a. Relocation or redevelopment of a drive-up use within the C-1 or C-1-D zoned portions of the Historic Interest Area shall be subject to a Type II Site Review procedure as a Special Permitted Use.
  - b. Relocated or redeveloped drive-up uses may only be placed on a secondary building elevation, and only accessed from an alley or driveway. A secondary building elevation is defined as a building's side or rear elevation which does not face a street, other than an alley.
  - c. Driveways serving relocated or redeveloped drive-up uses shall not enter from or exit to a higher order street frontage or through a primary elevation of the building, and driveways or queuing lanes shall be not placed between a building and the right-of-way other than an alley.
  - d. No demolition of or exterior change to a building considered to be a historic resource shall be permitted to accommodate the relocation or redevelopment of a drive-up use.
  - e. Regardless of the number of drive-up windows/lanes in use in the current location, with a relocation or remodel the number of windows/lanes shall be reduced to one (1).

3. Drive-up uses are subject to the following criteria:
  - a. The average waiting time in line for each vehicle shall not exceed five minutes. Failure to maintain this average waiting time may be grounds for revocation of the approval.
  - b. All facilities providing drive-up service shall provide at least two designated parking spaces immediately beyond the service window or provide other satisfactory methods to allow customers requiring excessive waiting time to receive service while parked.
  - c. A means of egress for vehicular customers who wish to leave the waiting line shall be provided.
  - d. The grade of the stacking area to the drive-up shall either be flat or downhill to eliminate excessive fuel consumption and exhaust during the wait in line.
  - e. The drive-up shall be designed to provide as much natural ventilation as possible to eliminate the buildup of exhaust gases.
  - f. Sufficient stacking area shall be provided to ensure that public rights-of-way are not obstructed.
  - g. The sound level of communications systems shall not exceed 55 decibels at the property line and shall otherwise comply with the Ashland Municipal Code regarding sound levels.
  - h. The number of drive-up uses shall not exceed the 12 in existence on July 1, 1984. Drive-up uses may be transferred to another location in accord with all requirements of this section. The number of drive-up window stalls shall not exceed 1 per location, even if the transferred use had greater than one stall.
  - i. A separate ministerial "Drive-Up Transfer" permit shall be obtained for the transfer of any drive-up use when such transfer is not associated with a Site Review or Conditional Use permit application in order to formally document transfer of the use.
  - j. Drive-up uses which are discontinued without a properly permitted transfer shall be deemed to have expired after unused for six (6) months. Discontinuation of a drive-up use is considered to have occurred when the drive-up use is documented as having ceased on site through a ministerial, Site Review or Conditional Use permit review, or upon on-site verification by the Staff Advisor.
  - k. All components of a drive-up use shall be removed within sixty (60) days of discontinuation of the use through abandonment, transfer, relocation or redevelopment.

**F. Kennel and veterinary clinics** where animals are housed outside, provided the use is not located within 200' of a residential district.

**G. Medical marijuana dispensaries meeting all of the following requirements:**

- 1. The dispensary must be located on a property with a boundary line adjacent to a boulevard, except that dispensaries are not permitted in the Downtown Design Standards zone.**
- 2. The dispensary 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 dispensary is prohibited.**
- 3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain**

Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.

4. The dispensary must not have a drive-up use.

5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.

6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.

**SECTION 4.** Section 18.32.030 [C-1 Retail Commercial District – Conditional Uses] is hereby amended to read as follows:

**SECTION 18.32.030 Conditional Uses.**

The following uses and their accessory uses are permitted when authorized in accordance with the chapter on Conditional Use Permits:

- A. Electrical substations.
- B. Automobile fuel sales, and automobile and truck repair facilities, except as allowed as a special permitted use in 18.32.025.
- C. New and used car sales, boat, trailer, and recreational vehicles sales and storage areas, except within the Historic Interest Area as defined in the Comprehensive Plan.
- D. Hotels and motels.
- E. Temporary uses.
- F. Outdoor storage of commodities associated with a permitted, special permitted or conditional use.
- G. Hostels, provided that the facility be subject to an annual Type I review for at least the first three years, after which time the Planning Commission may approve, under a Type II procedure, a permanent permit for the facility.
- H. Building material sales yards, but not including concrete or asphalt batch or mixing plants.
- I. Churches or similar religious institutions.
- J. Wireless Communication Facilities not permitted outright and authorized pursuant to Section 18.72.180.
- K. Structures which are greater than forty (40) feet in height, but less than fifty-five (55) feet, in the "D" Downtown Overlay District.

**L. Medical marijuana dispensaries, except as allowed as a special permitted use in 18.32.025, and meeting all of the following requirements:**

- 1. The dispensary must be located 200 feet or more from a residential zone, except that dispensaries are not permitted in the Downtown Design Standards zone.**
- 2. The dispensary 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 dispensary is prohibited.**
- 3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain**

**Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.**

**4. The dispensary must not have a drive-up use.**

**5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.**

**6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**

**SECTION 5.** Section 18.40.030 [E-1 Employment District – Special Permitted Uses] is hereby amended to read as follows:

**SECTION 18.40.030 Special Permitted Uses.**

The following uses and their accessory uses are permitted outright subject to the requirements of this section, including all requirements of 18.72, Site Design and Use Standards.

- A. Bottling plants, cleaning and dyeing establishments, laundries and creameries.
  - 1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located to the greatest extent feasible. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
  - 2. The use shall comply with all requirements of the Oregon Department of Environmental Quality.
- B. Wholesale storage and distribution establishments. Provided, however, that for the uses specified in subsection A and B above, no deliveries or shipments shall be made from 9pm to 7am where the property on which the use is located is within 200 feet of any residential district.
- C. Recycling depots, provided the use is not located within 200' of a residential district.
- D. Kennels and veterinary clinics where animals are housed outside, provided the use is not located within 200' of a residential district.
- E. Residential uses. As indicated as R-Overlay on the official zoning map, and in conformance with the Overlay Zones chapter 18.56.
- F. Cabinet, carpentry, machine, and heating shops, if such uses are located greater than 200' from the nearest residential district.
- G. Manufacture of food products, but not including the rendering of fats or oils. For any manufacture of food products with 200' of a residential district:
  - 1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located, to the greatest extent feasible. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected. Odors which are in violation of this section include but are not limited to the following:



- a. Odors from solvents, chemicals or toxic substances.
- b. Odors from fermenting food products.
- c. Odors from decaying organic substances or human or animal waste.
2. Mechanical equipment shall be located on the roof or the side of a building with the least exposure to residential districts. Provided, however, that it may be located at any other location on or within the structure or lot where the noise emanating from the equipment is no louder, as measured from the nearest residential district, than if located on the side of the building with least exposure to residential districts. Mechanical equipment shall be fully screened and buffered.
- H. Cold Storage Plants, if such uses are located greater than 200' from the nearest residential district.
- I. Automobile and truck repair facilities, excluding auto body repair and paint shops. All cars and trucks associated with the use must be screened from view from the public right-of-way by a total sight obscuring fence. Facilities of 3 bays or larger shall not be located within 200' of a residential district.
- J. Medical marijuana dispensaries meeting all of the following requirements:**
  - 1. The dispensary must be located on a property with a boundary line adjacent to a boulevard.**
  - 2. The dispensary 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 dispensary is prohibited.**
  - 3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.**
  - 4. The dispensary must not have a drive-up use.**
  - 5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products must not be placed within the dispensary's exterior refuse containers.**
  - 6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**

**SECTION 6.** Section 18.40.040 [E-1 Employment District – Conditional Uses] is hereby amended to read as follows:

**SECTION 18.40.040      Conditional Uses.**

The following uses and their accessory uses are permitted when authorized in accordance with the chapter on Conditional Use Permits:

- A. Electrical substations.
- B. Mini-warehouses and similar storage areas.
- C. Contractor equipment storage yards or storage and rental of equipment commonly used by a contractor.
- D. Automobile fuel sales.

- E. New and used car sales, boat, trailer and recreational vehicles sales and storage areas, provided that the use is not located within the Historic Interest Area as defined in the Comprehensive Plan.
- F. Hotels and motels.
- G. Any use which involves outside storage of merchandise, raw materials, or other material associated with the primary use on the site.
- H. Private college, trade school, technical school, or similar school.
- I. Cabinet, carpentry, machine, and heating shops, if such uses are located less than or equal to 200' from the nearest residential district.
- J. Cold storage plants, if such uses are located less than or equal to 200' from the nearest residential district.
- K. Automotive body repair and painting, including paint booths.
  - 1. The use shall not be located within 200' of the nearest residentially zoned property.
  - 2. All objectionable odors associated with the use shall be confined to the lot, to the greatest extent feasible. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
  - 3. The use shall comply with all requirements of the Oregon Department of Environmental Quality.
- L. Churches and similar religious institutions.
- M. Nightclubs and Bars.
- N. Theaters (excluding drive-in) and similar entertainment uses.
- O. Temporary uses.
- P. Wireless Communication Facilities not permitted outright and authorized pursuant to Section 18.72.180.
- Q. Medical marijuana dispensaries, except as allowed as a special permitted use in 18.40.030, and meeting all of the following requirements:**
  - 1. The dispensary must be located 200 feet or more from a residential zone.**
  - 2. The dispensary 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 dispensary is prohibited.**
  - 3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.**
  - 4. The dispensary must not have a drive-up use.**
  - 5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.**
  - 6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**

**SECTION 7.** Section 18.52.020 [M-1 Industrial District –Permitted Uses] is hereby amended to read as follows:

**SECTION 18.52.020 Permitted Uses.**

The following uses and their accessory uses are permitted outright:

- A. Any manufacturing, processing, assembling, research, wholesale or storage use.
- B. Railroad yards and freight stations, trucking and motor freight stations and facilities.
- C. Public and public utility service buildings, structures and uses.
- D. **Permitted, special permitted and Conditional** uses in the Employment District listed in Section **18.40.020**, 18.40.030 and 18.40.040 of this Chapter, except residential uses. **Medical marijuana dispensaries must meet the special use requirements of 18.40.030.J.**
- E. Building materials sales yards.
- F. ~~Permitted uses in the Employment District listed in Section 18.40.020 of this Chapter.~~

**SECTION 8.** Section 18.94.120 [Home Occupations – Prohibited Uses] is hereby amended to read as follows:

**SECTION 18.94.120 Prohibited Uses.**

The following uses are prohibited as home occupations:

- A. Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor beyond allowable levels as determined by local, state or federal standards.
- B. Any activity involving on-site retail sales, except as allowed in the Historic Railroad District or items that are incidental to the occupational use, such as the sale of beauty products from salons, lesson books or sheet music for music teachers, or computer software for computer consultants.
- C. Any uses described in this section or uses with similar objectionable impacts because of automobile traffic, noise, glare, odor, dust, smoke or vibration:
  - 1. Ambulance service;
  - 2. Ammunition or firearm sales;
  - 3. Ammunition reloading business;
  - 4. Animal hospital, veterinary services, kennels or animal boarding;
  - 5. Auto and other vehicle repair, including auto painting;
  - 6. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles or large equipment on-site; **and**
  - 7. **Medical marijuana dispensaries.**

**SECTION 9. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 10. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, or another word,

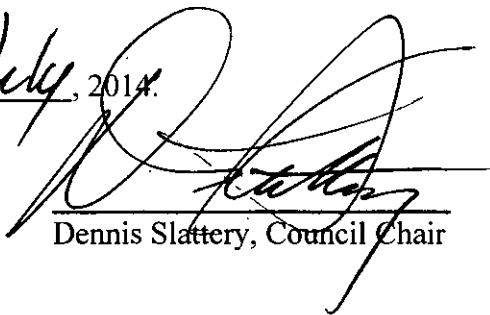
and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions, and text descriptions of amendments (i.e. Sections 1-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the 17 day of June, 2014, and duly PASSED and ADOPTED this 7 day of July, 2014.



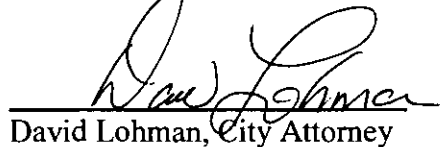
Barbara M. Christensen, City Recorder

SIGNED and APPROVED this 7 day of July, 2014.



Dennis Slattery, Council Chair

Reviewed as to form:



David Lohman, City Attorney

ORDINANCE NO. 3103

**AN ORDINANCE ESTABLISHING A TAX ON THE  
SALE OF MARIJUANA AND MARIJUANA-INFUSED  
PRODUCTS IN THE CITY OF ASHLAND**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

**WHEREAS**, Article 2, Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes and common law of the United States and this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Title 4 Revenue and Finance of the Ashland Municipal Code hereby adds a new Chapter 4.38, establishing a tax on the sale of marijuana and marijuana-infused products, as follows:

**SECTION 4.38.010 Purpose.**

For the purposes of this Chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Ashland is exercising a taxable privilege. The purpose of this Chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

**SECTION 4.38.020 Definitions.**

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter shall have the following meanings:

- A. "Director" means the Director of Finance for the City of Ashland or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
- C. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be



amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- D. "Oregon Medical Marijuana Program" means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
- E. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- F. "Purchase or Sale" means the **retail** acquisition or furnishing for consideration by any person of marijuana within the City **and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.**
- G. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
- H. "Retail sale" means the transfer of goods or services in exchange for any valuable consideration **and does not include the transfer or exchange of goods or services between a grower or processor and a seller.**
- I. "Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
- J. "Tax" means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.
- K. "Taxpayer" means any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

#### **SECTION 4.38.030 Levy of Tax.**

- A. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter.
- B. The amount of tax levied is **shall be established by a City Council resolution.**

#### **SECTION 4.38.040 Deductions.**

The following deductions shall be allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser;
- B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

**SECTION 4.38.050 Seller Responsible For Payment Of Tax.**

- A. Every seller shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to insure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
- C. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to insure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
- E. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

**SECTION 4.38.060 Penalties And Interest.**

- A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

- C. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.
- D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.
- F. Notwithstanding subsection 4.34.020.C, all sums collected pursuant to the penalty provisions in paragraphs A and C of this section shall be distributed to the City of Ashland Central Service Fund to offset the costs of auditing and enforcement of this tax.
- G. Waiver of Penalties. Penalties and interest for certain late tax payments may be waived pursuant to AMC 2.28.045D.

**SECTION 4.38.070 Failure To Report and Remit Tax –Determination of Tax by Director.**

If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in section 4.34.080. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

**SECTION 4.38.080 Appeal.**

Any seller aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the Administrative Appeals Process in AMC 2.30.020, except that the appeal shall be filed within 30 days of the serving or mailing of the determination of tax due. The hearings officer shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the hearings officer shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

**SECTION 4.38.090. Refunds.**

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is

- filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify Director of claimant's choice no later than 15 days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the 15 day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.
- C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

**SECTION 4.38.100 Actions to Collect.**

Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Ashland for the recovery of such amount. In lieu of filing an action for the recovery, the City of Ashland, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Ashland has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

**SECTION 4.38.110 Violation Infractions.**

- A. All violations of this chapter are punishable as set forth in AMC 1.08.020. It is a violation of this chapter for any seller or other person to:
- 1) Fail or refuse to comply as required herein;
  - 2) Fail or refuse to furnish any return required to be made;
  - 3) Fail or refuse to permit inspection of records;
  - 4) Fail or refuse to furnish a supplemental return or other data required by the Director;
  - 5) Render a false or fraudulent return or claim; or
  - 6) Fail, refuse or neglect to remit the tax to the city by the due date.
- B. Violation of subsections 1, 2, 3, 4 and 6 shall be considered a Class I violation. Filing a false or fraudulent return shall be considered a Class C misdemeanor, subject to AMC 1.08. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions

of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

**SECTION 4.38.120 Confidentiality.**

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

**SECTION 4.38.130 Audit of Books, Records or Persons.**

The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Ashland Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

**SECTION 4.38.140 Forms And Regulations.**

A. The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said medical marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- 1) A form of report on sales and purchases to be supplied to all vendors;
- 2) The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.



**SECTION 2.** Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 3.** Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

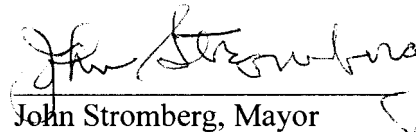
**SECTION 4.** Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the 1 day of July, 2014, and duly PASSED and ADOPTED this 5 day of August, 2014.



Barbara M. Christensen, City Recorder

SIGNED and APPROVED this 7 day of August, 2014.

  
John Stromberg, Mayor

Reviewed as to form:

  
David H. Lohman, City Attorney

**ORDINANCE No. 3868**

**AN ORDINANCE AMENDING ORDINANCE NO. 3848, AN ORDINANCE RELATED TO  
NUISANCES; AND DECLARING AN EFFECTIVE DATE**

**Whereas**, the City Council recognizes that drying, production, processing, keeping or storage of marijuana, without appropriate safeguards in place, can have a detrimental effect upon public safety and neighboring citizens; and

**Whereas**, the City Council finds and declares that the health, safety and welfare of its citizens are promoted by requiring that persons engaged in drying, cultivation, production, processing, keeping, or storage of marijuana to ensure that it is not accessible to unauthorized persons and that its odor does not travel to other properties;

**NOW THEREFORE, THE CITY OF PENDLETON ORDAINS AS FOLLOWS:**

Section 9 shall be amended in the following manner:

**SECTION 9. Odors and Perceptible Effects of Presence of Marijuana.**

A. No person may permit or cause unreasonable quantities of soot, cinders, noxious acids, fumes or gases to escape, causing harm to another person or to the public, or endangering the health, comfort and safety of any person or the public, or permit or cause such materials to injure or damage property or business.

B. For purposes of this Section, the following definitions apply:

(a) Marijuana. All parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, whether kept for medicinal use or otherwise.

(b) Odor of marijuana. The characteristic of marijuana that may be perceived by the sense of smell.

C. For purposes of this Section, every law enforcement officer that is certified by the Oregon Board of Police Standards and Training, is sufficiently trained to identify the sight and odor of marijuana and whose opinion as to the presence of the odor of marijuana shall be presumed affirmative proof thereof.

D. Unlawful Release of Marijuana Odor. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.

E. Screening requirements. No owner of real property or person in charge thereof shall permit the possession, cultivation or production of marijuana in a place that may be seen by normal unaided vision from a public place or neighboring property.

F. Violation of Subsections D. and E. herein are declared to be a public nuisance, punishable pursuant to Section 29. Violations of this section may be abated in the manner provided in this ordinance.

**PASSED** by the City Council and approved by the Mayor June 2, 2015.

APPROVED: \_\_\_\_\_  
Phillip W. Houk, Mayor

ATTEST: \_\_\_\_\_  
Andrea Denton, City Recorder

Approved as to Form:  
  
\_\_\_\_\_  
Nancy Kerns, City Attorney

## Understanding Water-Use Regulations: Medical and Recreational Marijuana



Marijuana-related water use is subject to the same water-use regulations as any other irrigated crop. Under the Oregon Water Code of 1909, all water belongs to the public. With a few exceptions, cities, irrigators, businesses, and other water users must obtain a water right from the Water Resources Department to use water from any source – whether it is underground, or from lakes or streams. Generally speaking, landowners with water flowing past, through, or under their property do not automatically have the right to use that water without authorization from the Department.

New water permits are not available in many areas of Oregon, so individuals are strongly encouraged to investigate their water-resources options before investing in a project that requires a water supply. Violations of Oregon Water laws can result in civil penalties or prosecution for a class B misdemeanor.

The best way to identify your legal water resources options is to speak with your local watermaster (see next page). For more information, you can contact the Department at 503-986-0900, or visit our website at <http://www.oregon.gov/owrd>.

### What are the water-use authorization options?

1. A water right may already be associated with your property; however, you will need to confirm that the right is still valid, and that it can be used for your purposes. Similarly, water may be obtained from a water purveyor such as a city or a water district that delivers water under an existing water right.
2. If available, water may be acquired by obtaining a new water-right permit for surface water or groundwater.
3. Certain water uses are authorized through Oregon law as “exempt” from the need for a water right. More information about exempt uses is provided below. Check with your watermaster to make sure your use qualifies.
4. There can be other options to obtain water aside from obtaining a new right to surface water or groundwater. In some cases, with Department approval, a water right from another property can be transferred to a new parcel, or stored water that is captured during the winter and spring can help provide a supply. Talk to your watermaster about options.

### What else should you know about the use of your water right?

Once you have a water right, make sure that you comply with the conditions on the right. It is always a good idea to check with your watermaster to understand the conditions. Water rights are issued for a particular place of use, type of use, and point of diversion. Water rights also have limits on the amount of water that can be used, and may include limitations on the season of use. Your watermaster can help you to understand the terms of use on your water right.

If you want to change how the water is being used (for example, from field irrigation to a greenhouse), check with your watermaster to make sure that the change fits within your existing water right. In some instances you may need to obtain approval from the Department through a process called a transfer. In addition, there may be limits on the months that the water can be used. Water rights may be subject to forfeiture if not used for five consecutive years.

In addition, there may be times where there is not enough water for every water user who holds a water right. In times of shortage, the senior user is entitled to receive all of his or her water, before a junior user. For example, a senior user with a priority date of 1910 can make a call for water, and users with a junior date (after 1910 for this example) may be regulated off in order to satisfy that senior right. You should talk with your local watermaster to understand how frequently regulation is likely to occur, so that you can plan your operations accordingly. *Note: Although exempt groundwater uses do not require a permit, the well may be subject to regulation like any other water right in times of water shortage.*

### How do I obtain a water right permit in the State of Oregon?

Most water rights are obtained in a three-step process. The applicant first must apply to the Department for a permit to use water. Once a permit is granted, the applicant must construct a water system and begin using water. After water is applied, the permit holder must hire a certified water-right examiner to complete a survey of water use (a map and a report detailing how and where water has been applied). If water has been used according to the provisions of the permit, the Department will issue a water-right certificate.

### What sources of water are exempt from the permitting process and how can the water be used?

- **Natural springs:** Use of a spring that, under natural conditions, does not form a natural channel and flow off the property where it originates at any time of the year is considered exempt from the need to obtain a water right. Check with your watermaster to determine if your spring qualifies for the exemption.
- **Rainwater:** Collection and use of rainwater from an artificial impervious surface, such as a roof, is considered exempt from needing a water-right. For more information, refer to ORS 537.141. Check with your watermaster to make sure that your rainwater system is properly set up to meet this exemption. You may also need to check on local regulations with your county and/or city.
- **Exempt use of groundwater for non-irrigation-related commercial/industrial purposes:** Under the exemption, up to 5,000 gallons per day could be used for commercial or industrial use without a water right. This would include processing marijuana; however, this exemption does not include water to promote plant growth/cultivation.
- **Exempt use of groundwater for one-half acre of non-commercial lawn and garden:** Water for cultivation/growth of marijuana, whether in a greenhouse or not, does not require a water right permit provided that the irrigation is no more than one-half acre in area **AND** the cultivation is **non-commercial**. *Use of groundwater to grow marijuana plants where there is intent to profit does not qualify for a groundwater exemption.* Non-commercial includes homegrown recreational marijuana and medical marijuana for personal use, or where there is no intent to profit. Medical growers that seek to make a profit from medical or recreational marijuana are not eligible for this exemption. For example, an individual that grows marijuana and donates it to patients and dispensaries could qualify for the exemption. Conversely, an individual that grows marijuana and is reimbursed for the costs of the production and labor – intending to make money – *would not* qualify.

*NOTE: This is not a complete list of exemptions, but rather lists those most pertinent to the growth and production of marijuana. Like any crop, the **growth of marijuana for commercial purposes, whether medical or recreational, is not eligible for groundwater exemptions.***

### Can water be obtained from a federal water project?

The federal government is responsible for determining whether water from their projects can be used to grow marijuana. Previous statements by the federal government indicate that use of Bureau of Reclamation water for the purpose of growing marijuana is prohibited. Contact the Bureau of Reclamation or your irrigation district for more information.

### Who is my watermaster?

District 1	<a href="#">Nikki Hendricks</a>	503-815-1967
District 2	<a href="#">Michael Mattick</a>	541-682-3620
District 3	<a href="#">Robert Wood</a>	541-506-2652
District 4	<a href="#">Eric Julsrud</a>	541-575-0119
District 5	<a href="#">Greg Silbernagel</a>	541-278-5456
District 6	<a href="#">Shad Hattan</a>	541-963-1031
District 7	<a href="#">David Bates</a>	541-426-4464
District 8	<a href="#">Rick Lusk</a>	541-523-8224
District 9	<a href="#">Ron Jacobs</a>	541-473-5130
District 10	<a href="#">JR Johnson</a>	541-573-2591
District 11	<a href="#">Jeremy Giffin</a>	541-306-6885
District 12	<a href="#">Brian Mayer</a>	541-947-6038
District 13	<a href="#">Travis Kelly</a>	541-774-6880
District 14	<a href="#">Kathy Smith</a>	541-479-2401
District 15	<a href="#">David Williams</a>	541-440-4255
District 16	<a href="#">Joel Plahn</a>	503-986-0889
District 17	<a href="#">Scott White</a>	541-883-4182
District 18	<a href="#">Jake Constans</a>	503-846-7780
District 19	<a href="#">Greg Wacker</a>	541-396-1905
District 20	<a href="#">Amy Kim</a>	503-722-1410
District 21	<a href="#">Ken Thiemann</a>	541-384-4207

