

AGENDA 12 - 15

1. Work Session (no public testimony taken)

- ◆ For the purpose of reviewing State adopted legislation related to marijuana activities, and draft zoning ordinance amendments to regulate such activities in McMinnville.

2. Old/New Business

3. Adjournment



DATE: December 17, 2015
TO: McMinnville Planning Commission
FROM: McMinnville Planning Department
SUBJECT: WORK SESSION – MARIJUANA TIME, PLACE and MANNER REGULATIONS

Following several public meetings and work sessions on Oregon's recently passed laws regulating recreational and medical marijuana, the City Council has now directed staff to prepare amendments to the zoning ordinance that, if adopted, would put in place reasonable "time, place and manner" regulations to govern marijuana related activities within McMinnville. A joint Planning Commission and City Council public hearing has been scheduled for December 22, 2015, to review and take appropriate action on such a draft.

In advance of that meeting, staff has scheduled this work session for the purpose of providing the Commission important background information and context for the provisions found in the draft amendments. At this work session staff will also introduce the draft amendments that are the subject of the December 22nd hearing. This information and draft amendments are attached for your review and are described in summary form in the following pages.

BACKGROUND:

Legislative actions:

In December of 1998, Oregon voters passed Measure 67, known as the Oregon Medical Marijuana Act. Among other things that law provides legal protections for qualified patients and their caregivers to grow and possess specified amounts of marijuana for medical purposes. It also mandated an Oregon Health Authority (OHA) registration system.

In 2013, the Oregon Legislature adopted HB 3460, providing for the operation of medical marijuana dispensaries in the state. Under the provisions of this law, McMinnville currently has two such dispensaries in operation; plans for five additional dispensaries have been discussed with staff in recent months.

Measure 91 was approved by the Oregon voters on November 4, 2014, allowing the use and sale of cannabis for recreational rather than strictly medical use.

Page 2

In June, 2015, the Oregon legislature passed HB 3400 regulating the state's legal recreational and medical marijuana program and providing further clarification to the legal systems that control them. This bill includes allowance for local jurisdictions to ban, or "opt-out," of such marijuana activities or to adopt reasonable restrictions on time, place and manner for permitted marijuana activities. In addition, the legislature took steps to adopt the following marijuana related laws:

- HB 2041, which revises the state tax structure for recreational marijuana; and
- SB 460, which authorizes early sales of recreational marijuana by medical marijuana dispensaries until December 31, 2016 (both of McMinnville's current dispensaries sell recreational marijuana).

Local efforts:

At a public work session held on November 10, 2015, the McMinnville City Council agreed to not ban any of the six types of commercial marijuana activities allowed by State law to be banned (i.e., medical marijuana sales or processing; or commercial recreational marijuana sales, wholesaling, processing, or production) and directed the Planning Department to prepare draft materials relative to regulating time, place and manner of commercial marijuana operations. Materials providing background and recommended direction on this topic are attached to this memorandum as follows:

- Summary sheets for each of the seven types of marijuana activities
 - Each summary sheet provides State Requirements, Current McMinnville Requirements and Proposed McMinnville Requirements for each of the marijuana related activities the state allows to be regulated on the local level.
 - Medical Marijuana Dispensary
 - Medical Marijuana Processor
 - Medical Marijuana Producer
 - Commercial Marijuana Producer
 - Commercial Marijuana Processor
 - Commercial Recreational Marijuana Sales
 - Commercial Recreational Marijuana Wholesale
- Maps for each of the seven types of marijuana activities
 - Medical Marijuana Dispensary
 - Medical Marijuana Producer
 - Medical Marijuana Processor
 - Commercial Marijuana Producer
 - Commercial Marijuana Processor
 - Commercial Recreational Marijuana Sales
 - Commercial Recreational Marijuana Wholesale
- "Regulation of Marijuana in Oregon" presentation materials from the LOC (League of Oregon Cities)
- Draft City of McMinnville ordinance amending McMinnville zoning ordinance (ORD No. 3380) adopting Chapter 17.64 Marijuana Related Activities
 - This draft zoning ordinance chapter, if adopted, includes the following sections relative to marijuana related activities:

Page 3

- Purpose
- Applicability
- Locations [zones where allowed]
- Performance Standards [time, place and manner regulations]
- Non-conforming Use
- Enforcement
- Linfield buffer map
 - Exhibit "A" of the attached draft ordinance -- Provides illustration of a 1,000 foot buffer around the perimeter of the Linfield College campus. As proposed, medical marijuana dispensaries and commercial marijuana activities would be prohibited from locating within that buffer area.

Medical Marijuana Dispensaries

State Requirements:

- 1,000 feet from other licensed Medical Marijuana Dispensaries
- 1,000 feet from public or private elementary or secondary school
- Allowed in areas zoned for commercial, industrial, mixed use, or as agricultural land
- Not allowed on same site as a marijuana grow site
- Drive-through sales are prohibited

Current McMinnville Requirements:

In addition to the above State requirements –

- 1,000 feet from the Aquatic Center, Public Library, and Community Center
- 1,000 feet from preschools
- Hours of operation limited to 10:00am to 7:00pm

Proposed McMinnville Requirements:

From a land use perspective, staff finds that medical marijuana dispensaries are similar in operation and impact to other medical sales uses (i.e., pharmacies, drug stores) currently permitted in some of McMinnville's commercial zoned areas. Such uses, however, are not found in our industrial or residential zoned areas because of their retail aspect. In addition, barring adoption of a reasonable home rule restriction such as previously adopted for preschools, the Aquatic Center, Public Library, and the Community Center, we can find no language within the current State law that would mandate a buffer to be placed around Linfield College (or Chemeketa Community College), as had been requested during public testimony.

As such, staff offers the following recommendation:

- Amend the hours of operation consistent with those for commercial recreational marijuana retail sales locations (7:00am – 10:00pm).
- Limit their location to lands zoned C-3 (General Commercial), C-1 (Neighborhood Commercial), and within Planned Development Overlay zoned areas that permit or conditionally permit retail sales, medical sales, or pharmacy use.
- Landscaping, signage, and off-street parking are required consistent with applicable current standards for similar commercial development (e.g., off-street parking requirement for pharmacy would be applied to medical marijuana dispensary).
- The business shall be located in a permanent building and may not locate in a trailer, cargo container or motor vehicle.
- Apply all other State and McMinnville requirements noted above and applicable in State administrative rule and law.

Under its home rule authority, the Council may also wish to consider prohibiting medical marijuana dispensaries from locating within a certain distance of Linfield College, public parks, or alcohol and drug treatment facilities.

Medical Marijuana Producer (Grower)

State Requirements:

- Registered with the Oregon Health Authority (OHA)
- May not be located on public land
- Not allowed on same site as a medical marijuana dispensary
- On Residentially zoned land:
 - Limited to serving four authorized medical marijuana cardholders and growing a total of 12 plants
- On Non-Residentially zoned land:
 - Limited to growing a total of 48 plants
 - For an Indoor facility -- Up to 6 pounds of usable marijuana per mature plant (6 lbs. X 48 plants = 288 pounds of usable marijuana onsite)
 - For an Outdoor facility -- Up to 12 pounds of usable marijuana per mature plant (12 lbs. X 48 plants = 576 pounds of usable marijuana onsite)
- Plants and operations must not be visible from public spaces

Current McMinnville Requirements:

In addition to the above State requirements –

- Permitted outright on Residentially zoned land as long as the plants are not in public view.
- “Greenhouse and Wholesale Nursery” uses are currently permitted in the M-1 (Light Industrial) and M-2 (General Industrial) zones.
- Retail “greenhouse” and “nursery” uses are permitted in commercial zones (wholesaling not a permitted use).

Proposed McMinnville Requirements:

The scale of a medical marijuana production (grower) operation is limited by statute in terms of the maximum number of plants and pounds that can be onsite at any one time. Residential medical grows are not likely to be much larger than an average personal greenhouse or garage. However, non-residential medical grows may be much larger.

As such, staff offers the following recommendation:

- Continue to allow limited scale medical marijuana producers (growers) in residential zones.
- Require medical marijuana producers (growers) on non-residential zoned land to conduct such uses indoors and that they be allowed as a permitted use in the M-1 and M-2 zones only.
- Landscaping, signage, and off-street parking are required consistent with applicable current standards for similar industrial greenhouse or nursery use.
- Apply all other State requirements noted above, as well as all applicable State administrative rules and law.

Commercial Marijuana Producer (Grower)

State Requirements:

- Registered with the Oregon Liquor Control Commission (OLCC)
- May not be located on public land or residentially zoned land
- Allowed in areas zoned commercial, industrial, mixed use, or agricultural
- Not allowed on same site as a medical marijuana dispensary
- Must:
 - Fully enclose indoor production on all sides so that no aspect of the production area is visible from the exterior, or
 - Erect a solid wall or fence on all exposed sides of an outdoor production area that is at least 8-feet in height.
- May have no more than 100 plants in each batch but may have an unlimited number of cultivation batches at any one time.
- Plant Canopy Size Limits: Indoor production
 - Tier I: 5,000 square feet
 - Tier 2: 5,000 – 10,000 square feet
- Plant Canopy Size Limits: Outdoor production
 - Tier I: 20,000 square feet
 - Tier 2: 20,000 – 40,000 square feet

Current McMinnville Requirements:

In addition to the above State requirements –

- “Greenhouse and Wholesale Nursery” use currently permitted in the M-1 (Light Industrial) and M-2 (General Industrial) zones.
- Retail “greenhouse” and “nursery” uses are permitted in commercial zones (wholesaling not a permitted use).

Proposed McMinnville Requirements:

The scale allowed for a commercial marijuana producer (grower) is very large; up to a 40,000 square foot plant canopy plus additional operational space. This results in a potential site size of one-acre or more. Fence height in McMinnville is limited to no more than seven-feet making fencing a poor visual barrier for mature marijuana plants that can obtain heights of 10 feet or more. Additionally, large outdoor grow sites would allow greater potential for odor impacts on adjacent properties than indoor sites.

As such, staff offers the following recommendation:

- Limit commercial marijuana producers (growers) to Tier I and Tier II Indoor production only (maximum 10,000 square foot plant canopy size).
- Allow commercial marijuana producers to locate in the M-1 (Light Industrial) and M-2 (General Industrial) zones only.
- Landscaping, signage, and off-street parking are required consistent with applicable current standards for similar industrial greenhouse or nursery use.
- Apply all other State requirements noted above, as well as all applicable State administrative rules and law.

Commercial Marijuana Processor

State Requirements:

- A Processor can be endorsed by the OLCC to make extracts, concentrates, edibles and/or topicals.
- If a Processor makes extracts, the Processor cannot be located in a residential zone.
- Cannot locate on public land or the same site as another producer licensee under common ownership.
- Also cannot operate in a restaurant, bed and breakfast, or warehouse where food and related utensils are stored.
- Must operate in an enclosed, spark proof room.
- When a Processor applies to OLCC, they need to provide a description of the type of products to be processed, a description of equipment to be used, including any solvents, gasses, chemicals, or other compounds used to create extracts or concentrates.

Current McMinnville Requirements:

In addition to the above State requirements –

- Processing of edibles is a permitted use in all Industrial zones.
- Processing of extracts, concentrates, and/or topicals are permitted in the M-1 (Light Industrial) and M-2 (General Industrial) zones.

Proposed McMinnville Requirements:

Processors are clearly a type of manufacturing and one that will very often utilize regulated solvents, gasses, chemicals, or other compounds in the production of their products. From a land use perspective, staff finds that these types of uses are most appropriately located in industrial zones and this is borne out by the McMinnville zoning ordinance.

As such, staff offers the following recommendation:

- Limit their location to lands zoned M-1 and M-2.
- Landscaping, signage, and off-street parking are required consistent with applicable current standards for similar commercial development (e.g., off-street parking requirement for pharmacy would be applied to medical marijuana dispensary)
- Apply all other State requirements noted above, as well as all applicable State administrative rules and law.

Commercial Recreational Marijuana Sales

State Requirements:

- Prohibited from locating:
 - At same address or physical location of a licensed medical marijuana dispensary, medical marijuana grow site, medical marijuana processing site, or retail liquor store
 - Within 1,000 feet from public, private or parochial elementary or secondary school
 - In areas zoned “exclusively” for residential use
- Premises must be enclosed on all sides by permanent walls and doors
- Licensee may not sublet any portion of a licensed facility
- Drive-through sales are prohibited
- May only sell between the hours of 7:00am and 10:00pm
- May deliver marijuana items to a residence (from 8:00am to 9:00pm)
- Must provide security

Current McMinnville Requirements:

There are currently no requirements in McMinnville’s zoning ordinance that relate specifically to the commercial sale of recreational marijuana.

Proposed McMinnville Requirements:

Staff finds that commercial recreational marijuana sales are similar in operation and impact to medical marijuana sales and other retail businesses. Further, we find that the zoning ordinance allows outright the retail sale of a wide variety of items in the General Commercial zone, and drugstore or pharmacy uses in the Neighborhood Commercial zone. As such, staff offers the following recommendation:

- Limit their location to lands zoned C-3 (General Commercial), C-1 (Neighborhood Commercial), and within Planned Development Overlay zoned areas that permit or conditionally permit similar retail sales.
- Prohibit their use as a “home occupation.”
- Landscaping, signage, and off-street parking are required consistent with applicable current standards for similar retail commercial development.
- Apply all other State requirements noted above, as well as all applicable State administrative rules and law.

Under its home rule authority, the Council may also wish to consider requiring up to 1,000 foot separation between retail locations, similar to the separation requirement for medical marijuana dispensaries.

Commercial Recreational Marijuana Wholesale

State Requirements:

- Prohibited from locating in areas zoned “exclusively” for residential use
- Must meet public health and safety standards of OLCC
- Must provide security

Current McMinnville Requirements:

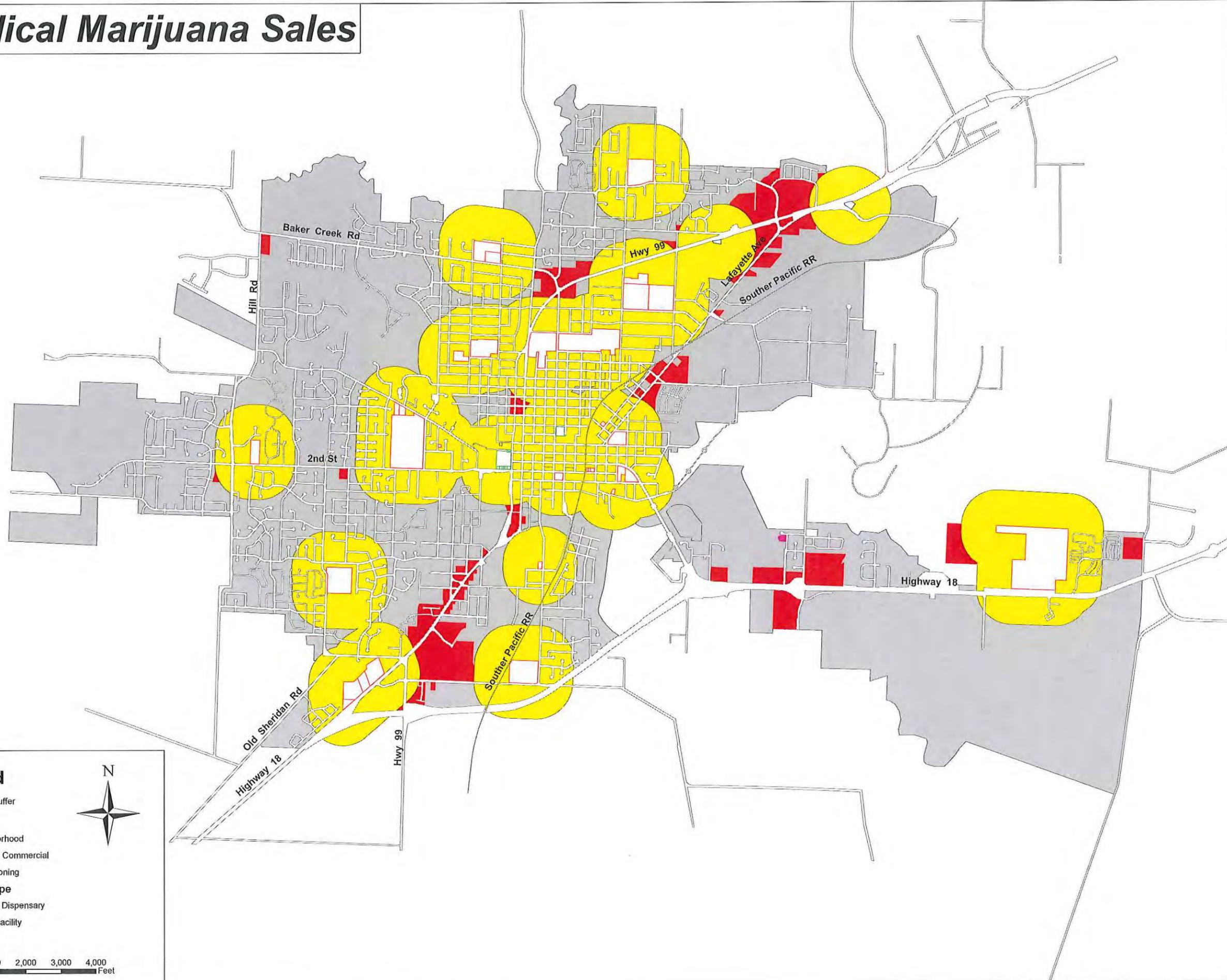
There are currently no requirements in McMinnville’s zoning ordinance related specifically to the wholesaling of commercial recreational marijuana.

Proposed McMinnville Requirements:

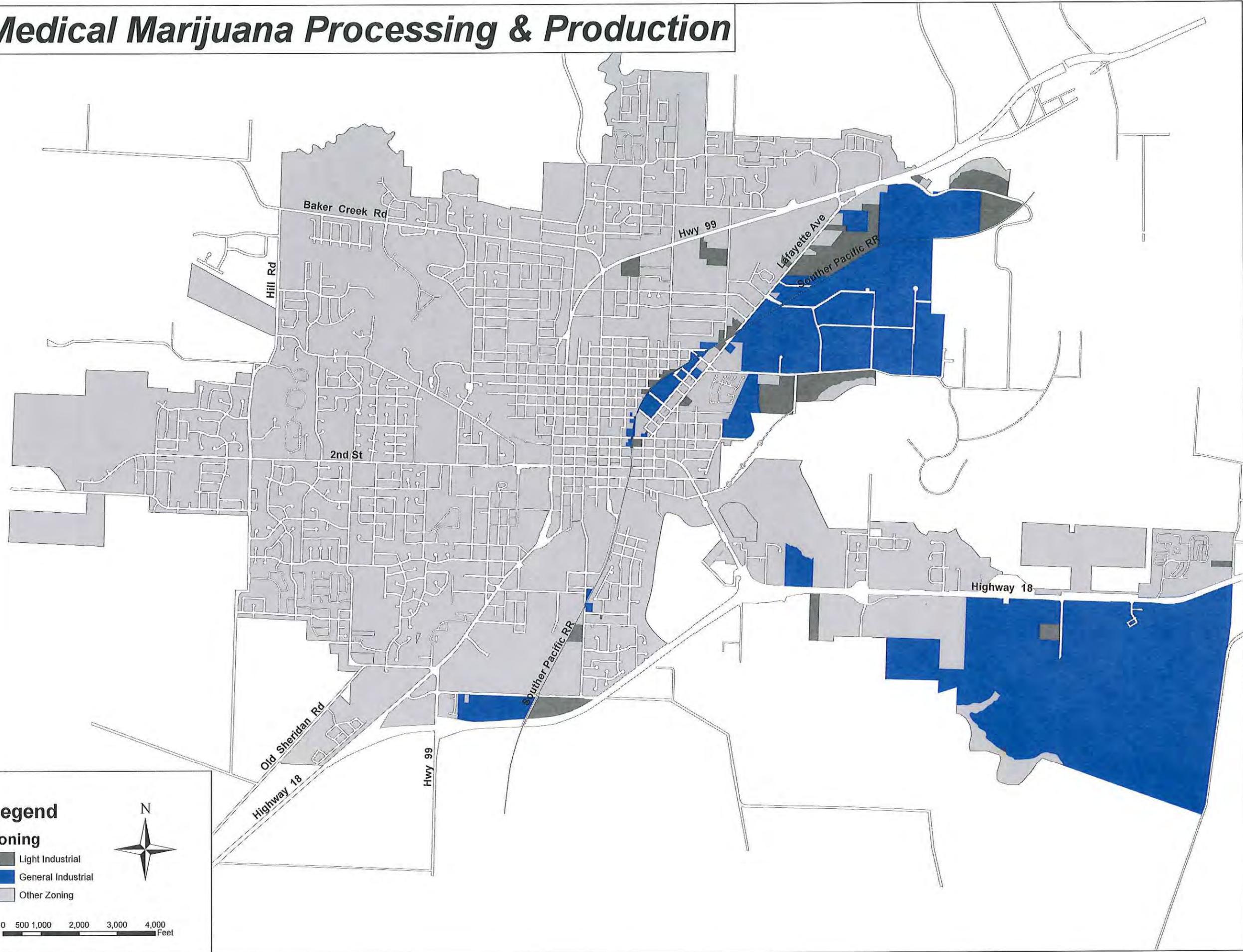
Staff finds that the warehousing of commercial recreational marijuana is similar in operation and impact to the warehousing of other items that are permitted to occur on lands in McMinnville that are zoned for industrial use. Such uses, however, are not generally permitted elsewhere in the city. As such, staff offers the following recommendation:

- Limit their location to lands zoned M-2 (General Industrial), M-1 (Light Industrial), L-M (Limited Light Industrial), and within Planned Development Overlay zoned areas that permit or conditionally permit the warehousing of similar items.
- Prohibit their use as a “home occupation.”
- Landscaping, signage, and off-street parking are required consistent with applicable current standards for similar retail commercial development.
- Apply all other State and McMinnville requirements noted above and those applicable in State administrative rule and law.

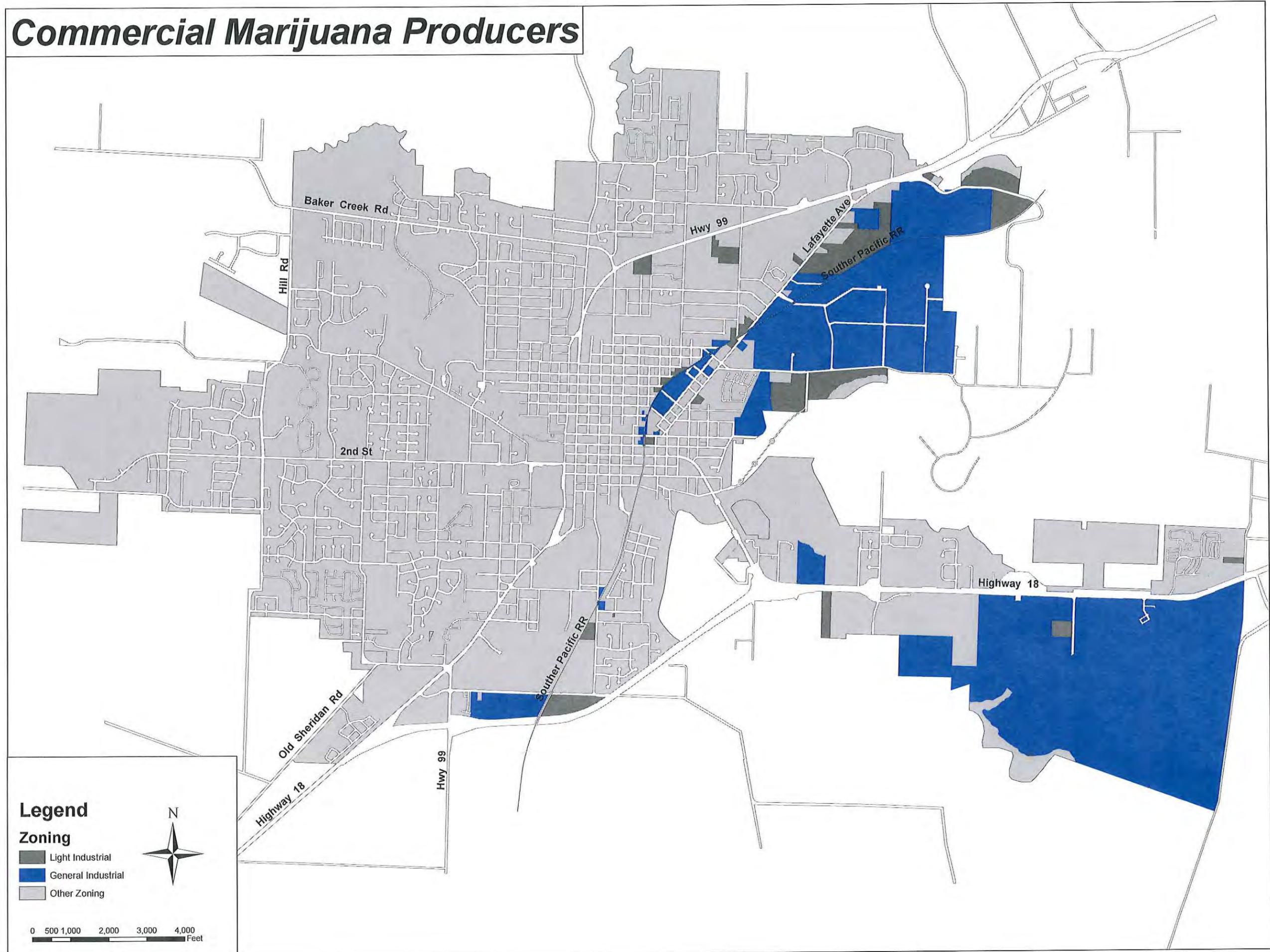
Medical Marijuana Sales



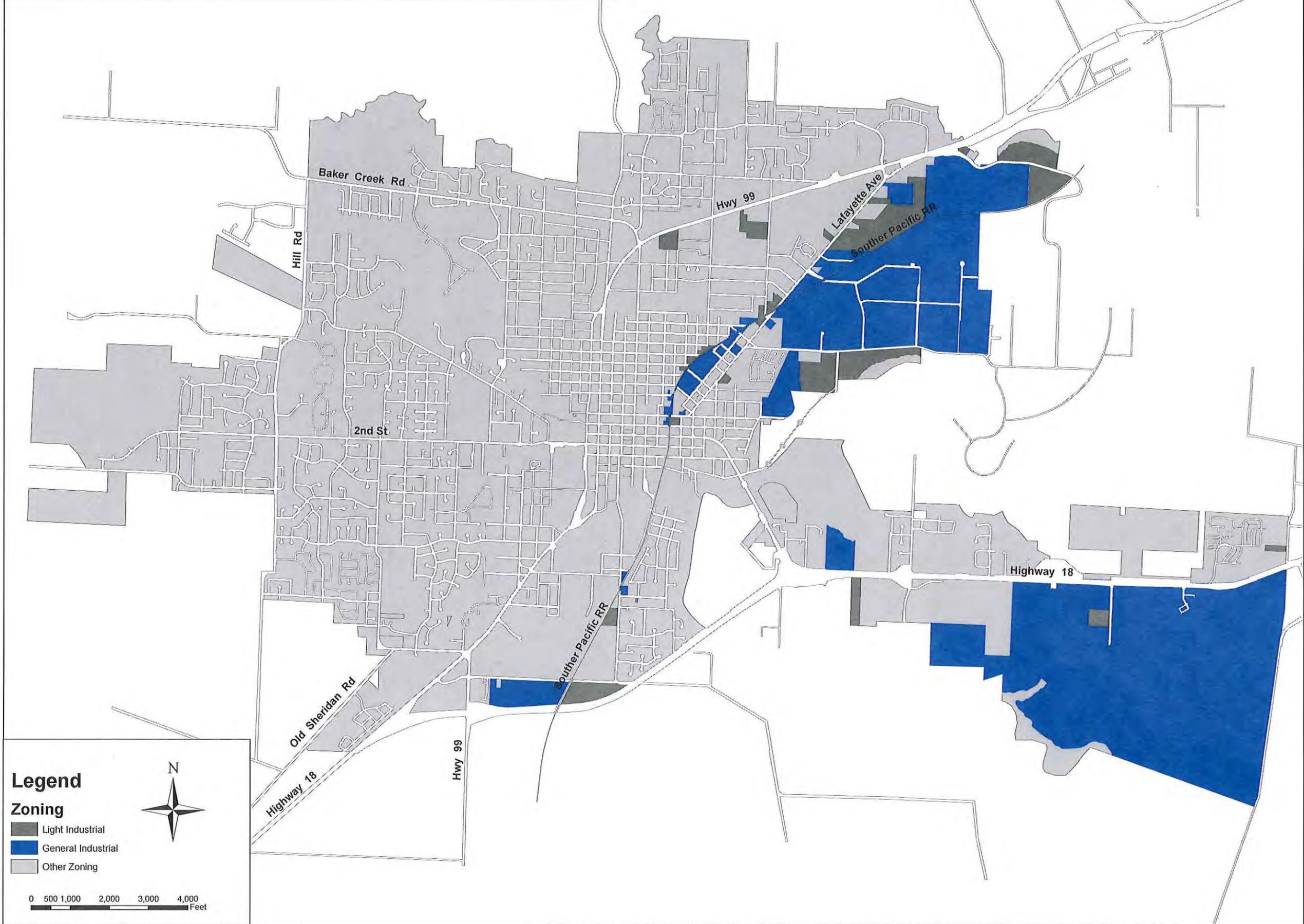
Medical Marijuana Processing & Production



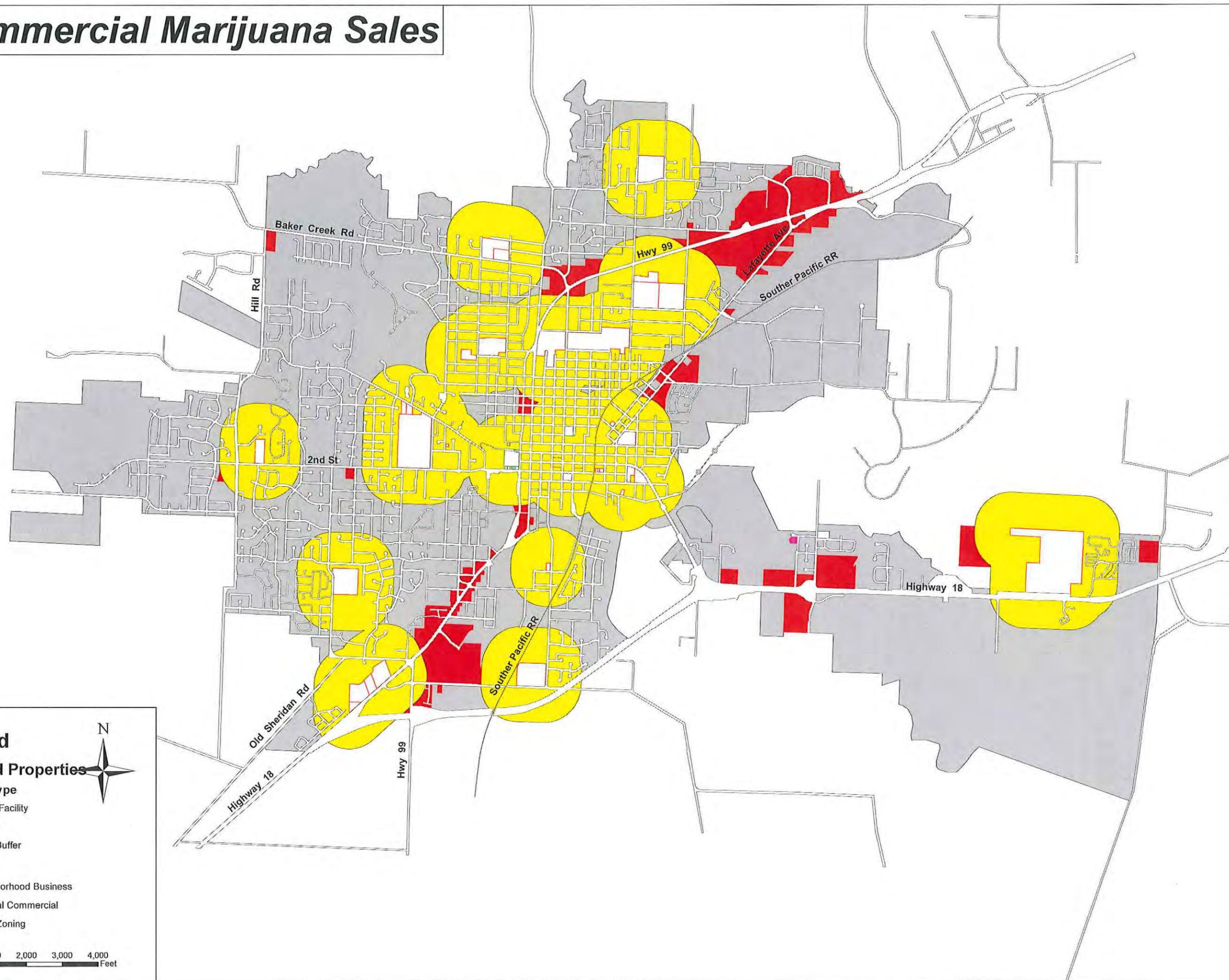
Commercial Marijuana Producers



Commercial Marijuana Processing



Commercial Marijuana Sales



Legend

Buffered Properties

- Property Type
- Public Facility
 - School
 - 1000' Buffer

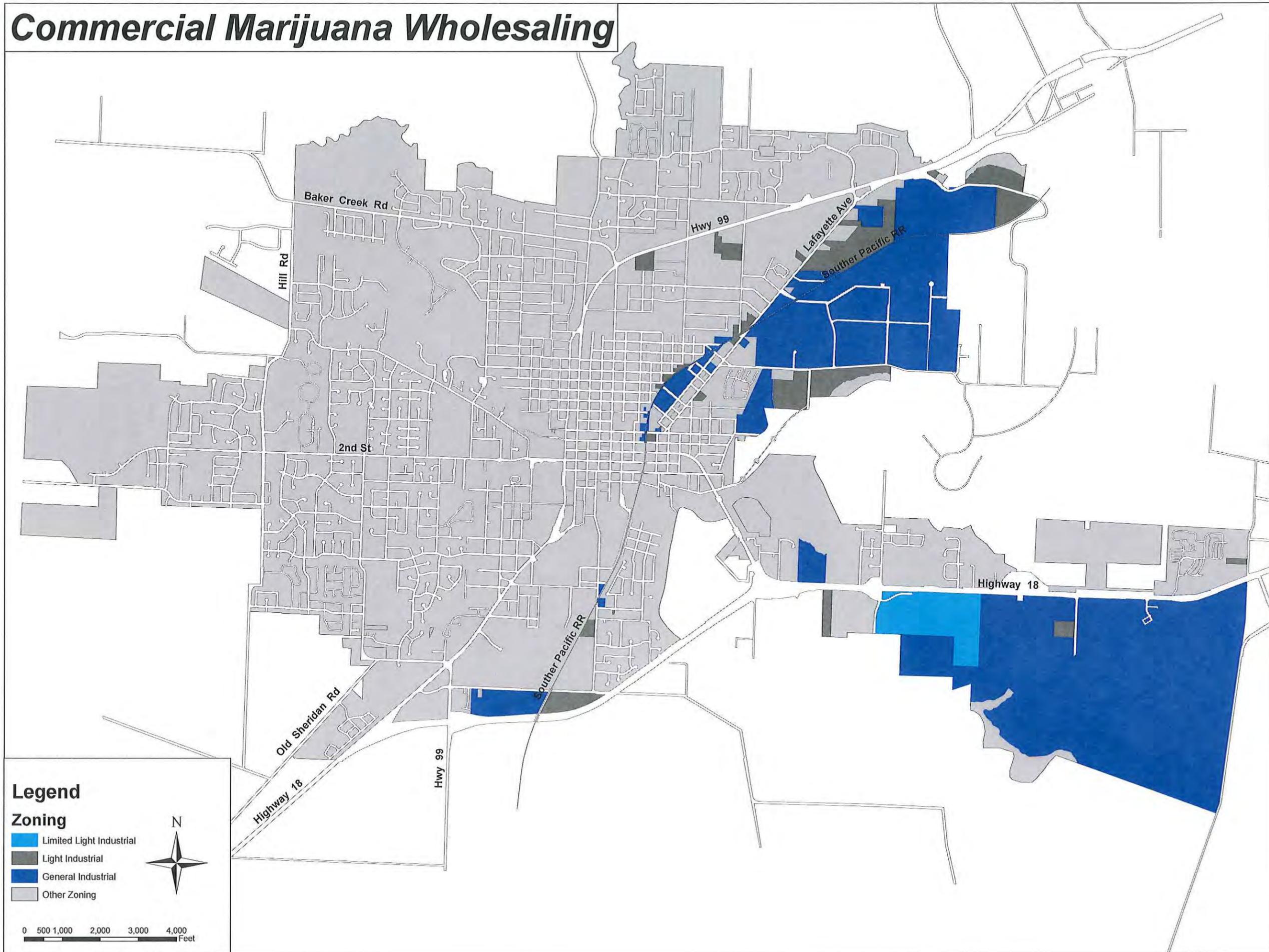
Zoning

- Neighborhood Business
- General Commercial
- Other Zoning

0 500 1,000 2,000 3,000 4,000 Feet



Commercial Marijuana Wholesaling



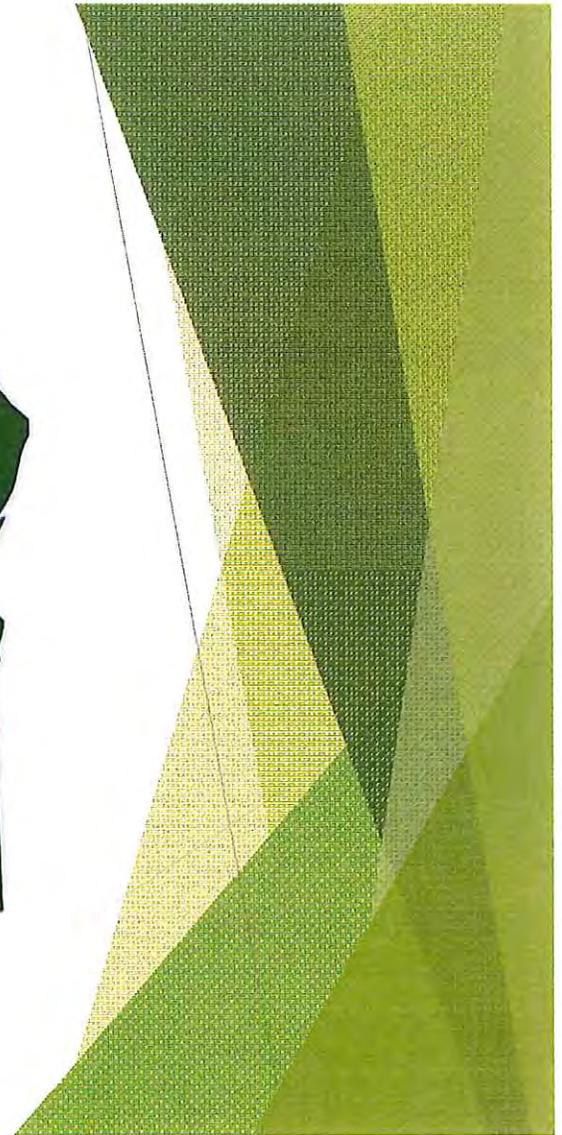
Regulation of Marijuana in Oregon



Sean O'Day, General Counsel
League of Oregon Cities

Overview

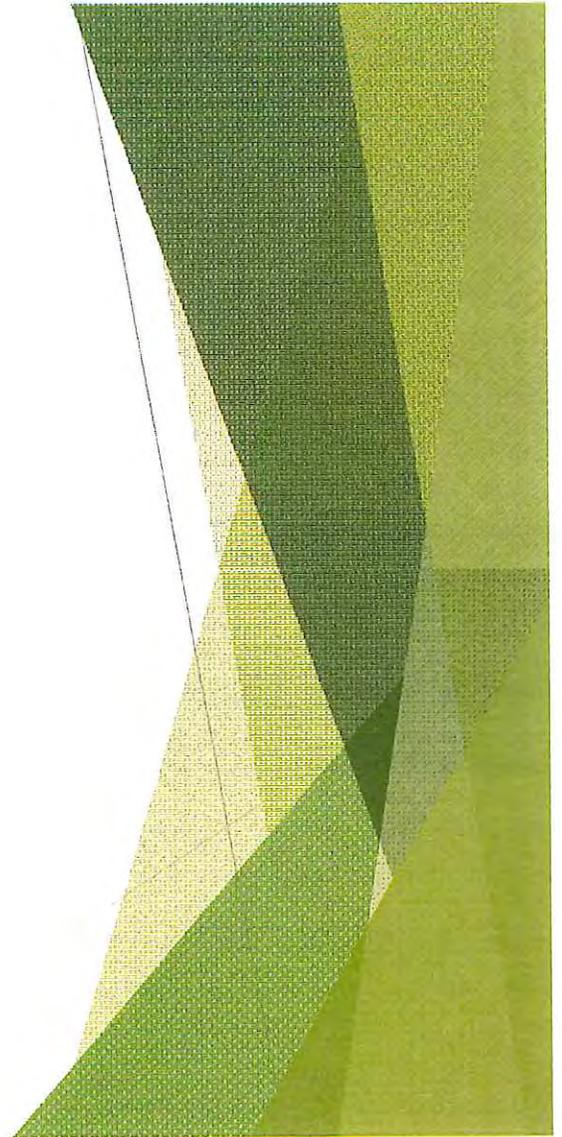
- ▶ History and Legislation
- ▶ Recreational Marijuana
 - ▶ Personal Possession
 - ▶ Retail - License Types
- ▶ Medical Marijuana
- ▶ State Tax System
- ▶ Local Options
 - ▶ Tax
 - ▶ Time, Place, and Manner
 - ▶ Opt Out
 - ▶ Business Licenses
 - ▶ Early Sales
- ▶ Current Issues





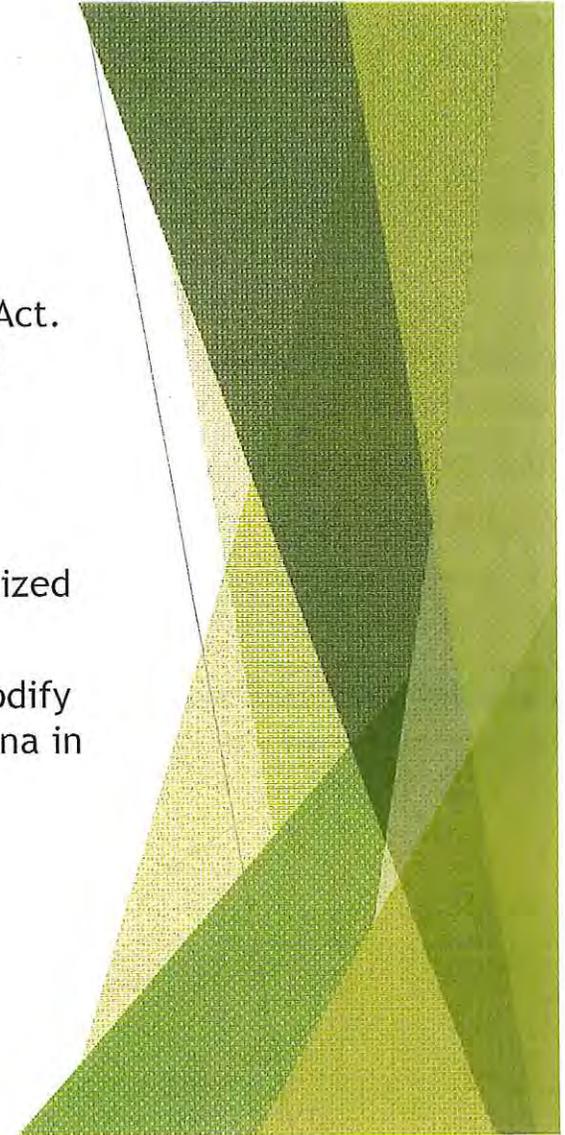
History

An overview of marijuana legislation in Oregon.



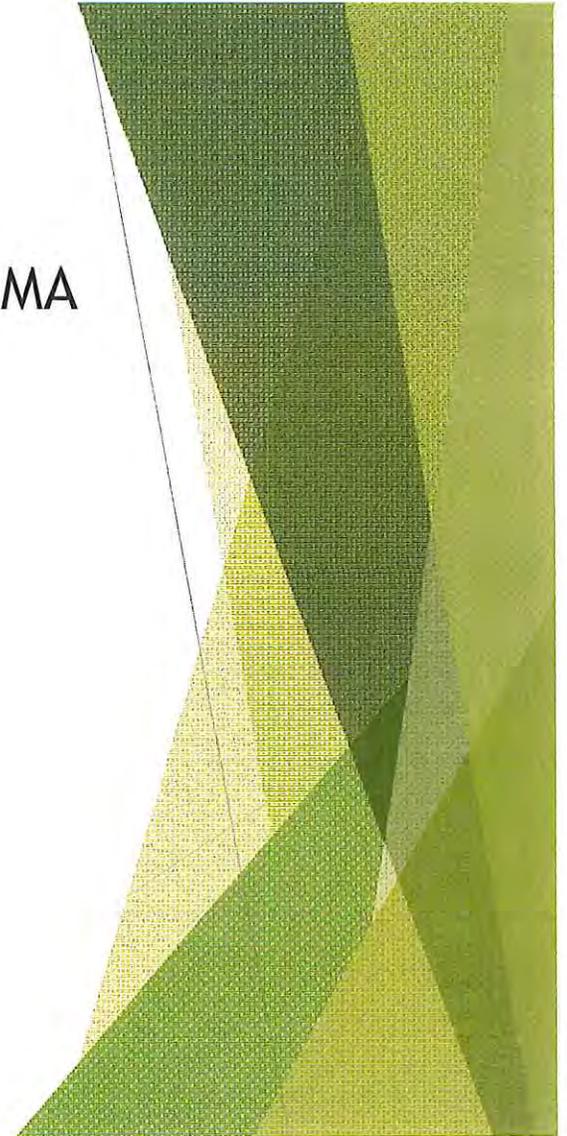
A Little History

- ▶ In December of 1998, Oregonians adopted the Oregon Medical Marijuana Act. The OMMA allowed qualifying individuals and their caregivers to grow and possess specified amounts of marijuana for medical purposes.
- ▶ In 2013, the Oregon Legislature adopted HB 3460, which provided for the operation of medical marijuana dispensaries in Oregon.
- ▶ In November of 2014, the Oregon voters adopted Measure 91, which legalized recreational marijuana in Oregon.
- ▶ In 2015, the Oregon Legislature adopted a number of bills intended to modify and clarify the legal systems regulating medical and recreational marijuana in Oregon: HB 3400, HB 2041, and SB 460.



HB 3400

- ▶ HB 3400 does not replace Measure 91 or the OMMA and subsequent legislation - it changes certain portions of those acts, but leaves the majority intact.
- ▶ Different pieces of HB 3400 take effect at different times.



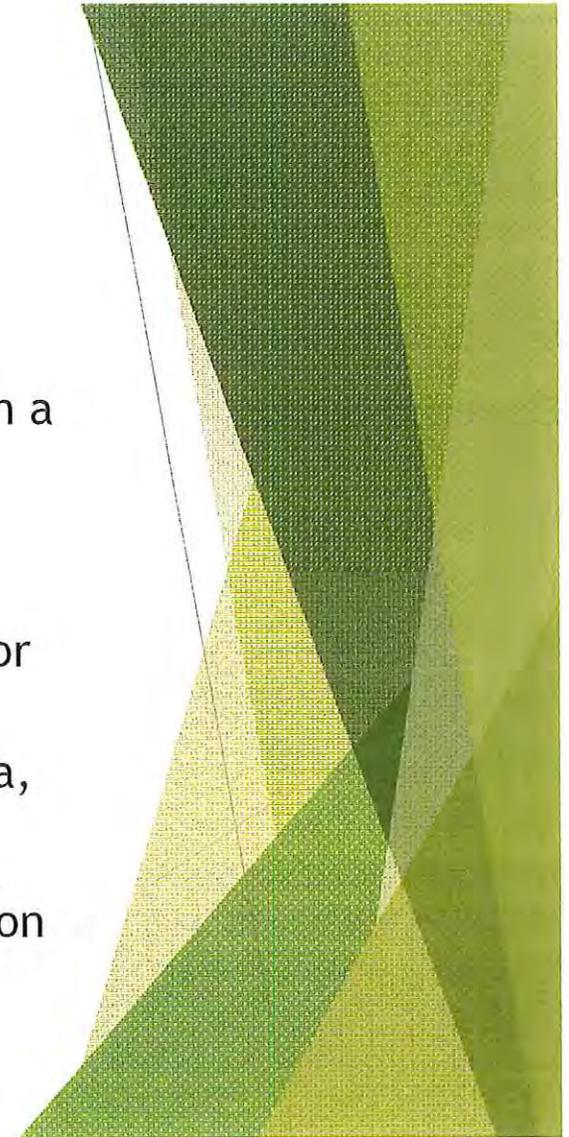


Recreational System

A discussion of personal possession rules and the retail license system.

Personal Possession (M91 § 6, HB 3400 § 39)

- ▶ Must be 21
- ▶ No possession of more than one ounce of useable marijuana in a public place
- ▶ Homegrown marijuana: not to exceed 4 plants and 8 oz of useable marijuana at any given time.
- ▶ Homemade marijuana products: not to exceed 16 oz in solid or concentrate form and 72 oz in liquid form at a given time.
- ▶ Delivery of not more than one ounce of homegrown marijuana, not more than 16 oz of homemade marijuana solids or concentrates, and not more than 72 oz homemade marijuana liquids at a given time by a person 21 or over to another person 21 or over for noncommercial purposes.



Prohibitions on Personal Use (M91 § § 54,56,57)

- ▶ No use of marijuana in a public place
- ▶ No homegrown marijuana in public view
- ▶ No homemade marijuana extracts



Recreational restrictions do not apply to medical card holders. The Oregon Health Authority retains jurisdiction over medical dispensaries.



Recreational License Types (M91 § §19-22, HB 3400 § § 12-16)

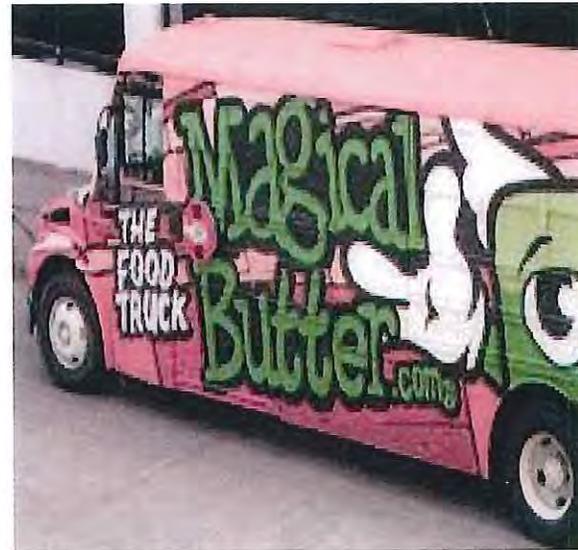
- ▶ Recreational Producer License (Growers)
- ▶ Recreational Processor License
- ▶ Recreational Wholesale License
- ▶ Recreational Retail License

An individual or entity can hold one or more of these licenses. Licenses are issued for one year.



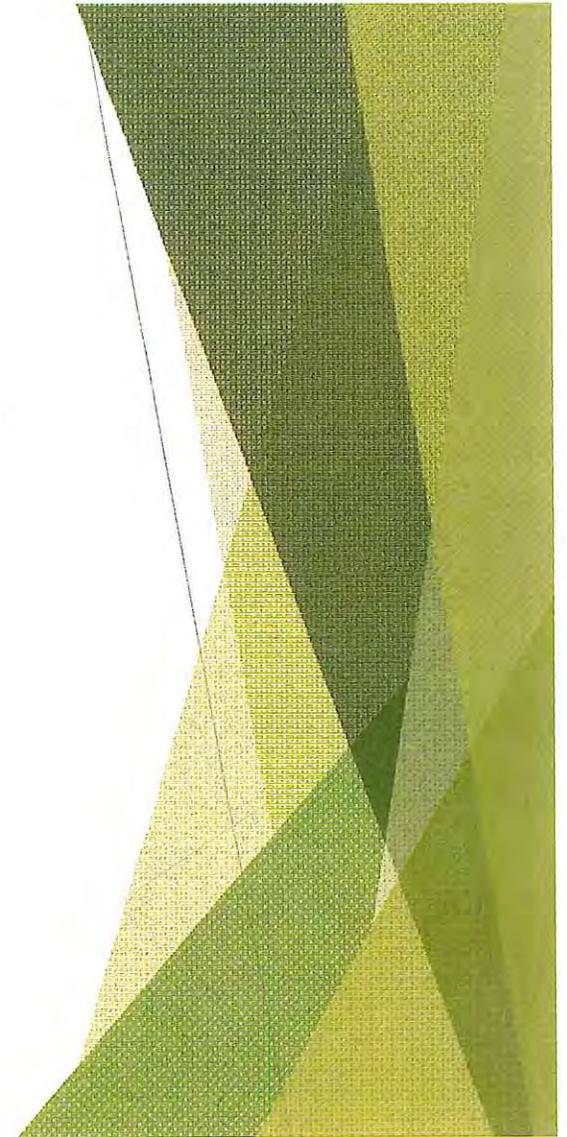
OLCC to Regulate Recreational Licensees

- ▶ OLCC rules due on or before January 1, 2016.
- ▶ OLCC to accept license applications on or before January 4, 2016.
- ▶ OLCC is saying that licenses will likely not be issued until late summer/early fall of 2016.



Medical Marijuana

License types and state law restrictions.



Medical Marijuana: Three License Types

- ▶ Medical Marijuana Producer (Grower)
 - ▶ Medical Marijuana Processor (New!)
 - ▶ Medical Marijuana Dispensary
- ▶ Regulated by Oregon Health Authority
Not OLCC.



Medical Marijuana Grow Sites (HB 3400 § § 34, 82, 88f)

- ▶ Redefined marijuana seeds as agricultural seed.
- ▶ State law does not restrict medical marijuana grows to any particular zone, but local governments can, except EFU zone.
- ▶ If located in a residential zone: up to 12 plants.
 - ▶ Except, if the residential grow was registered with OHA prior to January 1, 2015: up to 24 plants.
- ▶ If located in a zone other than a residential zone: up to 48 plants.
 - ▶ Except, if the non-residential grow was registered with OHA prior to January 1, 2015: up to 96 plants.



Medical Marijuana Processors (HB 3400 § 85)

- ▶ New category of medical marijuana facility.
- ▶ Must register with the Oregon Health Authority.
- ▶ If a Medical Marijuana Processor produces extracts, the Processor may not be located in a residential zone.



Medical Marijuana Dispensaries (HB 3400 § 86)

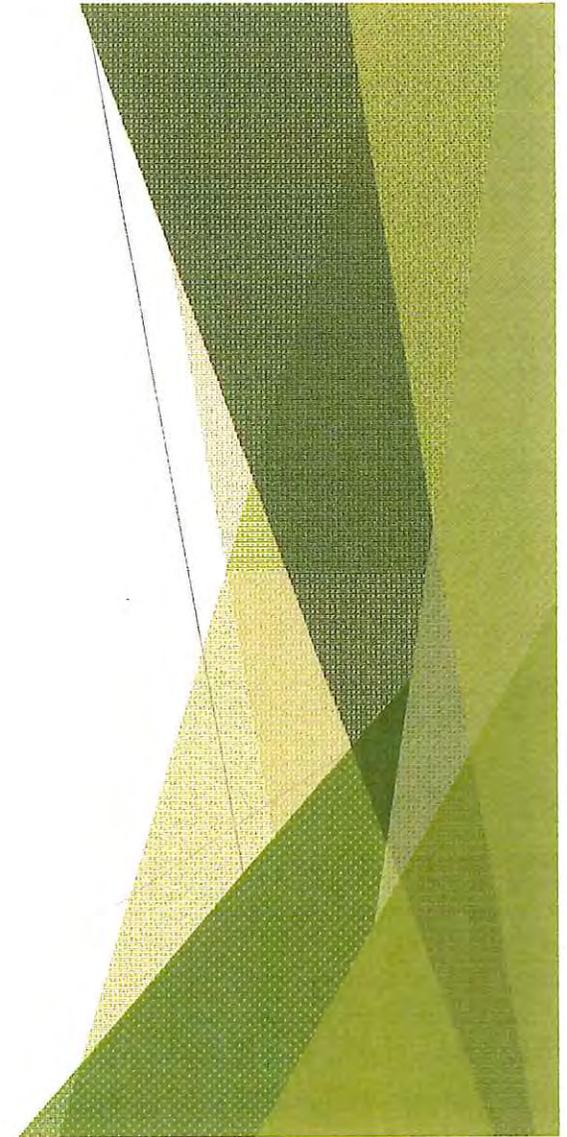
- ▶ May not be located in a residential zone.
- ▶ May not co-locate with a grow site
- ▶ Must be located at least 1000 feet from another medical marijuana dispensary.
- ▶ Must be located at least 1000 feet from public, private, and parochial elementary and secondary schools.
 - ▶ If a school locates within 1000 feet of a pre-existing medical dispensary, the dispensary is not required to move.





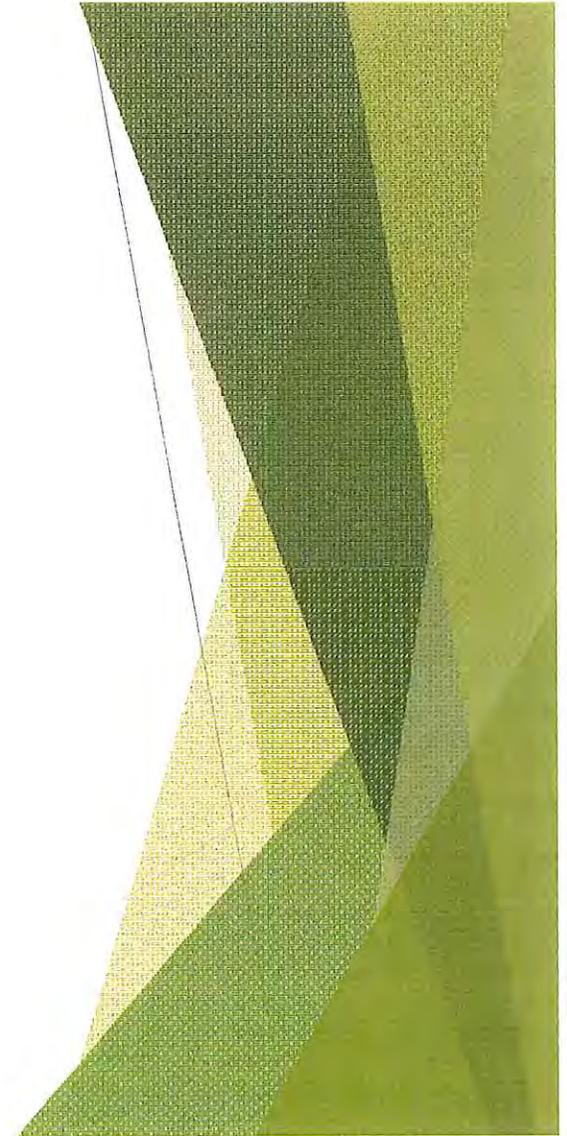
State Tax System

An overview of the state tax system, local preemption, and distribution of revenues.



Tax - HB 3400 and HB 2041

- ▶ The state will impose a 17% sales tax on retail recreational marijuana sales.
- ▶ Preempts local governments from taxing recreational, except for up to 3% through a voter referral.
 - ▶ Does preemption include medical marijuana? More on that in a moment . . .



Tax Breakdown

Common School Fund -
40%

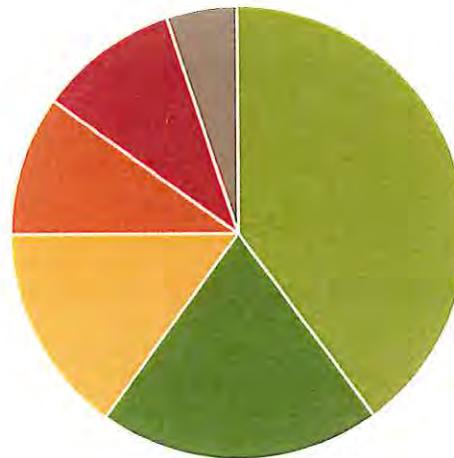
Mental Health, Alcoholism
and Drug Services Account
- 20%

State Police - 15%

Cities - 10%

Counties - 10%

Oregon Health Authority
for Alcohol and Drug Abuse
Prevention Programs - 5%



■ Common School Fund

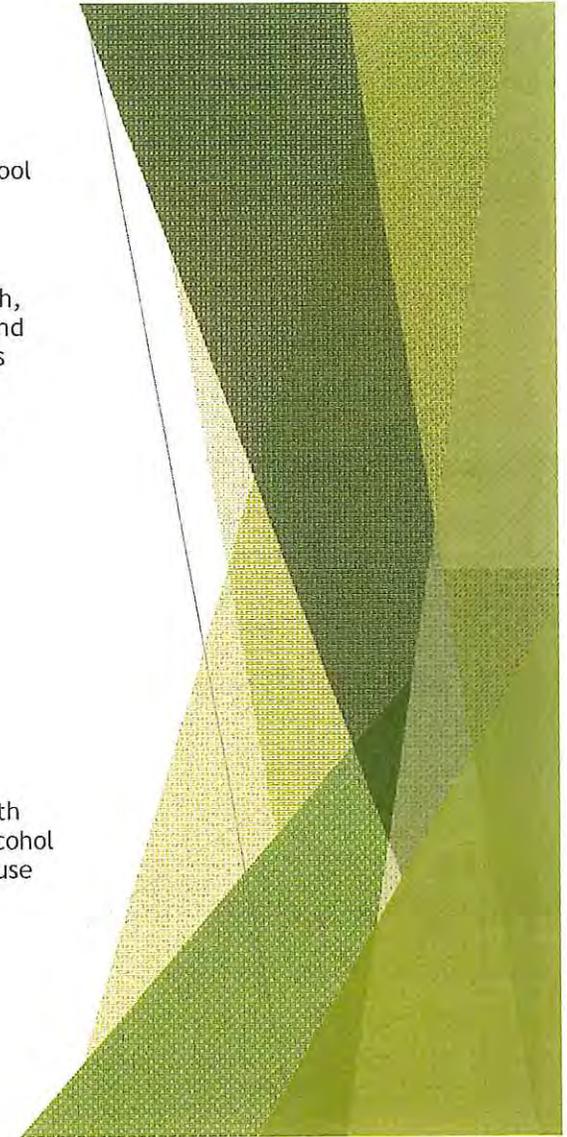
■ Mental Health, Alcoholism and Drug Services

■ State Police

■ Cities

■ Counties

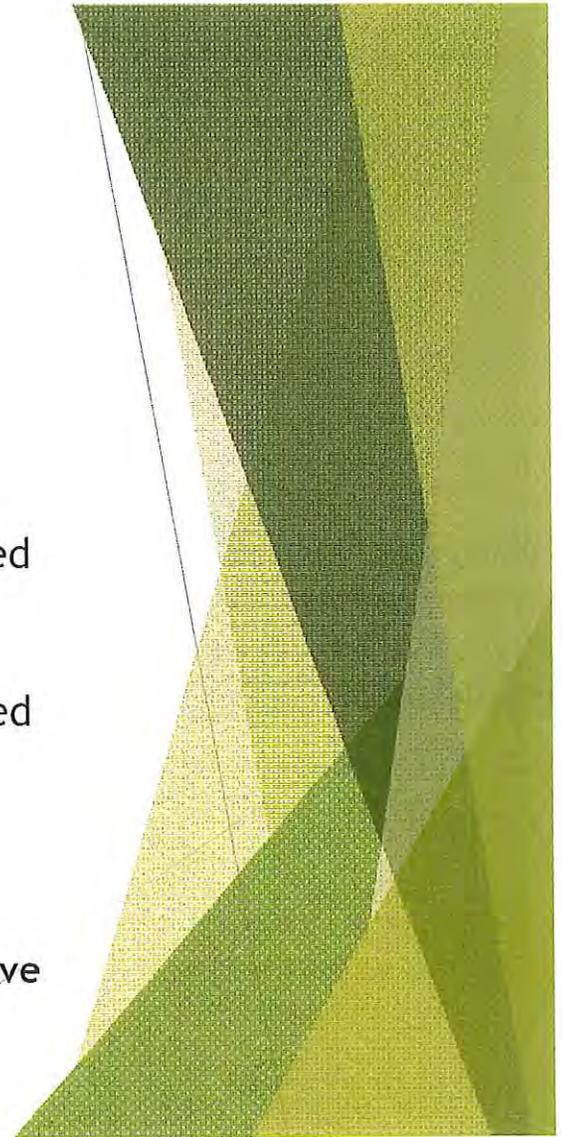
■ Oregon Health Authority Alcohol and Drug Abuse Prevention



Local Government Revenue Sharing

- ▶ Before July 1, 2017
 - ▶ Revenue dedicated to local governments will be distributed proportionally by population
- ▶ After July 1, 2017
 - ▶ 50% of revenue dedicated to local governments will be distributed proportionally based on the number of producer, processor and wholesaler licenses in the jurisdiction
 - ▶ 50% of revenue dedicated to local governments will be distributed proportionally based on the number of retail licenses in the jurisdiction

Local governments that prohibit recreational or medical marijuana facilities from locating within their jurisdiction are not eligible to receive any state marijuana tax revenues.



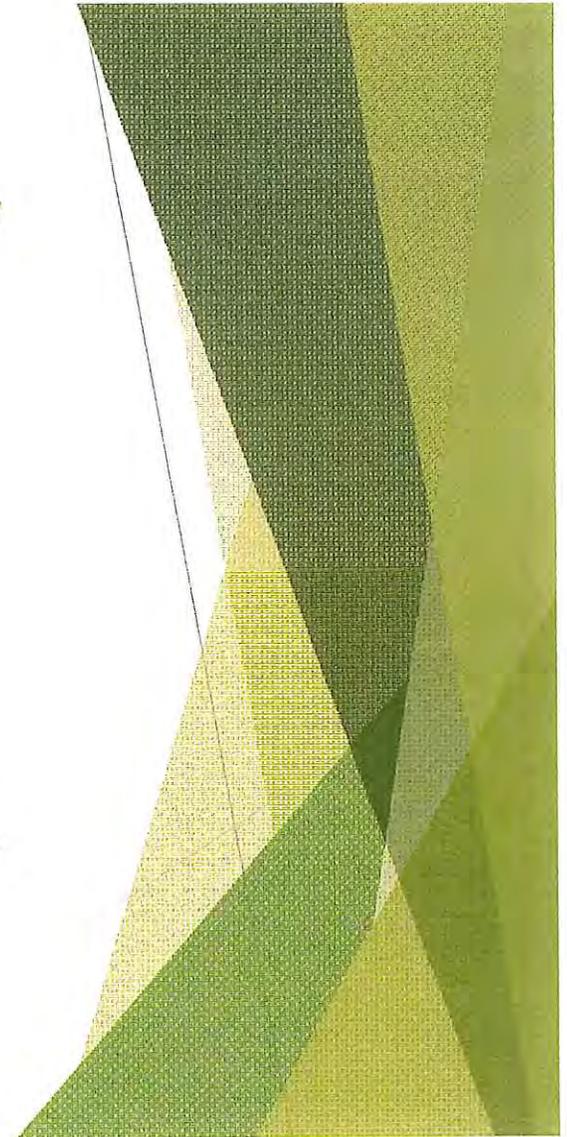


Local Options

An overview of local regulatory options, including taxation, regulations, opt outs and early sales.

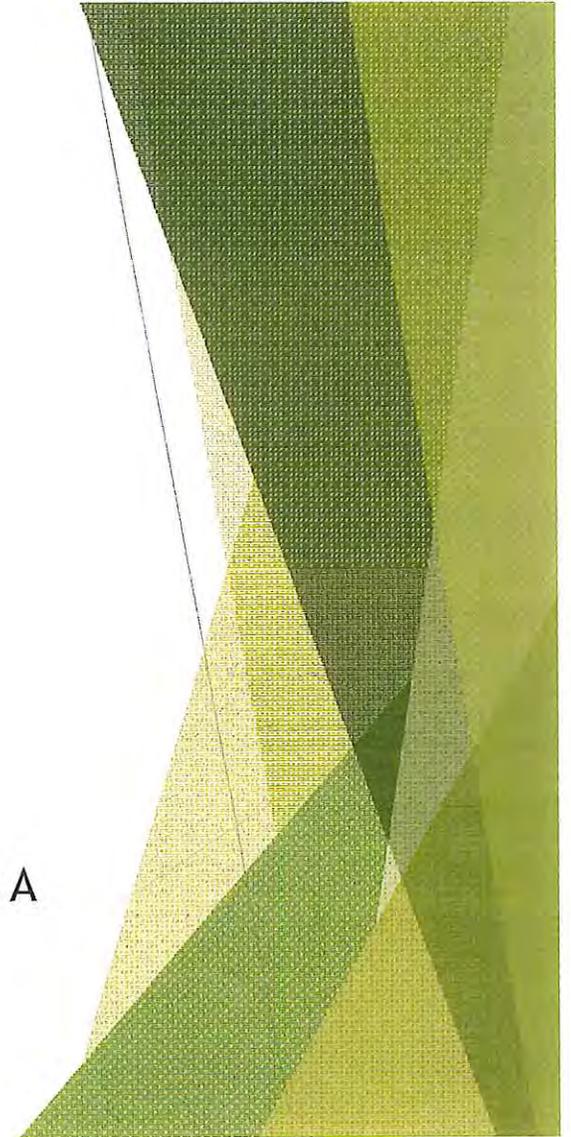
Home Rule - Source of Local Authority

- ▶ Home rule is the right to local self government without express or implied legislative authorization
- ▶ Authority derives from:
 - ▶ Article XI, section 2, of the Oregon Constitution
 - ▶ City charter
- ▶ Because authority derives from the state, the state can limit the power of cities to enact criminal and civil laws



Home Rule - Preemption

- ▶ Criminal laws: cities cannot allow what state law prohibits, or prohibit what state law allows
- ▶ Civil laws:
 - ▶ Express preemption - state expressly prohibits or directs local action
 - ▶ Implied preemption - state and local law cannot operate concurrently
 - ▶ No preemption by negative implication - providing options A and B does not foreclose C

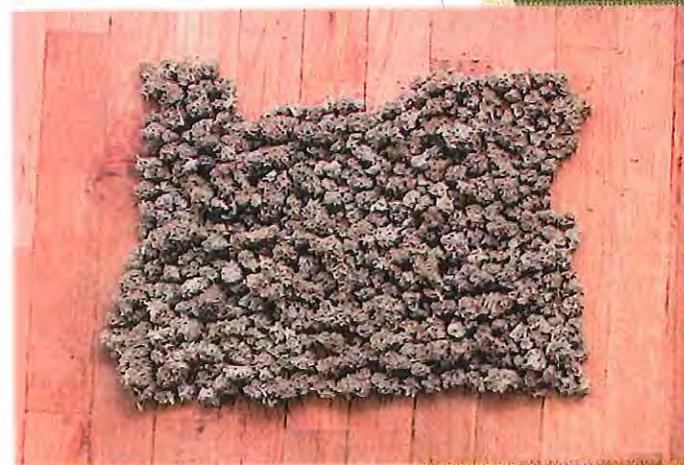


Local Taxes (HB 3400 § 34a)

- ▶ Local governments can adopt up to a 3% local sales tax on retail recreational marijuana sales.
- ▶ Local taxes must be approved by the voters in the jurisdiction (city or county) at the next statewide general election (November 2016).
- ▶ Local governments may not adopt or enact any other type of tax or fee on the production, processing, or sale of recreational marijuana. (More to come on tax of medical marijuana)

Local Regulations - Time, Place and Manner (HB 3400 § § 33, 89)

- ▶ Local governments may adopt reasonable regulations related to the operation of licensed recreational producers, processors, wholesalers, and retailers.
 - ▶ Local governments may not require recreational retailers to locate more than 1000 feet from other recreational retailers
→ maximum buffer of 1000 feet between retailers
- ▶ Local governments may adopt reasonable regulations related to the operation of medical marijuana grow sites, processing sites, and dispensaries
- ▶ Reasonable regulations include restrictions on the manner of operation, hours, location, and the public's access



Local Regulations - LUCS (HB 3400 § 34)

- ▶ Before issuing a license to any recreational marijuana facility, OLCC will ask the local government for a Land Use Compatibility Statement (LUCS), demonstrating that the facility is allowed as a permitted or conditionally permitted use in the applicable zone. OLCC will not issue the requested license if the LUCS shows that the facility is a prohibited use in the zone.
- ▶ A local government must respond to a request for a LUCS within 21 days of receipt of the request (if the use is permitted) or final local government approval (if the use is conditionally permitted).
- ▶ OLCC will begin accepting applications on January 4, 2016. LUCS requests could follow shortly thereafter.

Local Opt Out

(HB 3400 § § 133-136)

- Local governments may adopt ordinances prohibiting medical marijuana processing sites and dispensaries and any recreational marijuana facilities.
 - Silent on medical grows
- Ordinances can be by council or commission if
 - 55% or more in the county voted no on Measure 91, and
 - Ordinance adopted before December 2015
- Otherwise, the ordinances must be approved by the voters at the next statewide general election (November 2016).
- A yes vote would not prohibit the possession of marijuana for personal use in the jurisdiction

VOTE



Local Opt Out

- ▶ A local government that prohibits any type of marijuana facility may not impose a local tax and is not eligible to collect state shared marijuana revenues.
- ▶ Once the council or commission adopts an ordinance prohibiting any or all marijuana facilities, the local government must provide the ordinance to the OHA and OLCC.
- ▶ OHA and OLCC will stop issuing licenses and registrations for marijuana facilities in the local government's jurisdiction until the date of the next statewide general election.

Local Opt Out - Grandfathering

- ▶ Only two types of marijuana facilities may continue to operate in the local government's jurisdiction if the voters approve a prohibition.
- ▶ **Medical Marijuana Dispensaries:**
 - ▶ A dispensary is grandfathered if:
 - ▶ The dispensary is registered with OHA on or before the date the local government ordinance is adopted and the dispensary has successfully completed a local government land use application process; OR
 - ▶ The dispensary was registered or had applied to be registered with OHA on or before July 1, 2015, and the dispensary has successfully completed a local government land use application process.
- ▶ **Medical Marijuana Processors**
 - ▶ A medical processor is grandfathered if:
 - ▶ The processor is registered with OHA on or before the date the local government ordinance is adopted and the processor has successfully completed a local government land use application process; OR
 - ▶ The processor was registered with OHA on or before July 1, 2015, the processor was processing marijuana on or before July 1, 2015, and the processor has successfully completed a local government land use application process



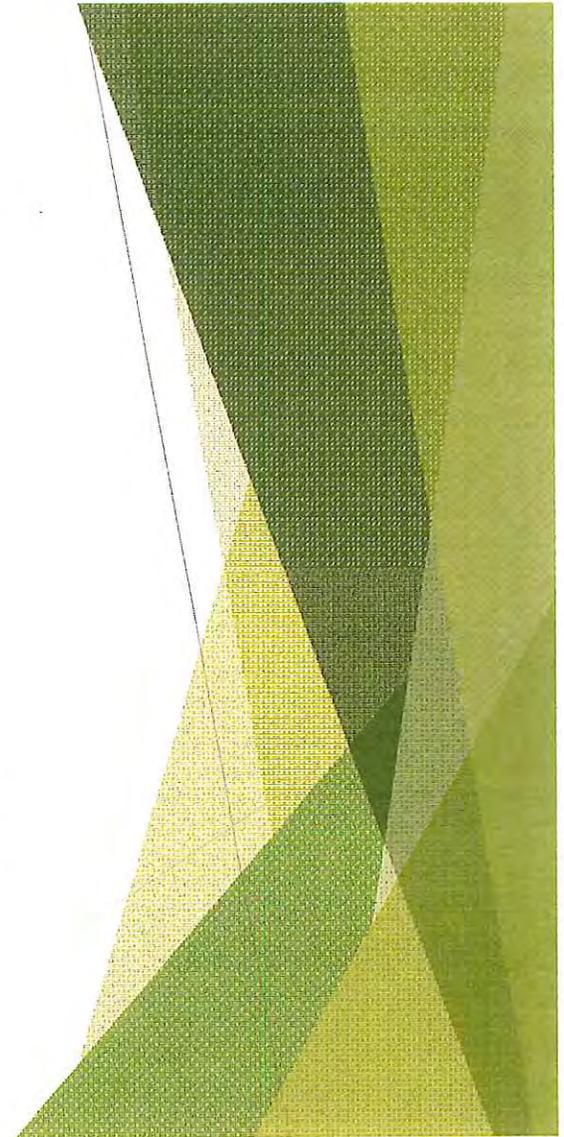
Early Sales - SB 460

- ▶ From October 1, 2015, through December 31, 2016, medical marijuana dispensaries can sell limited amounts of recreational marijuana to individuals who are 21 and over.
- ▶ Sales are limited to leaves, buds, and non-flowering plants.
- ▶ Sales are limited to one-quarter ounce of leaves and/or bud per person per day.
- ▶ Local governments may adopt ordinances prohibiting sales of recreational marijuana by medical marijuana dispensaries - no voter referral required.
- ▶ Beginning January 4, 2016, a state sales tax of 25% will be imposed on recreational marijuana sales by medical marijuana dispensaries.
 - ▶ Local tax? More on that in a minute...



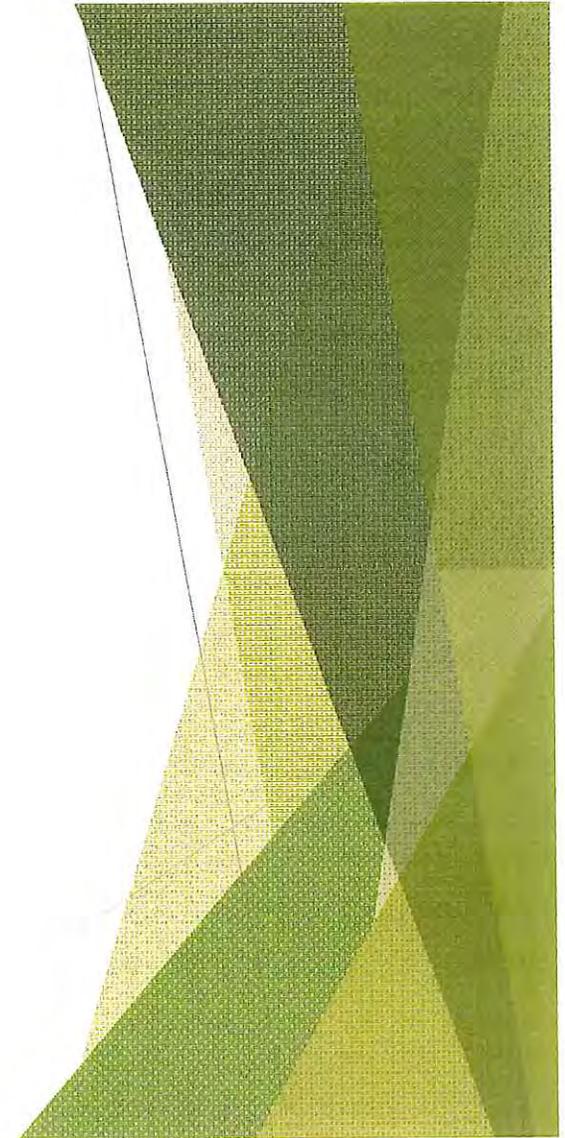
Current Issues

An overview of unresolved, emerging issues.
Areas of potential litigation and risk.



There is still a lot of uncertainty...

- ▶ OLCC Rulemaking
- ▶ OHA Rulemaking
- ▶ Pending Litigation -
Cave Junction I and II
- ▶ Future Litigation
- ▶ 2016 Legislative Session
- ▶ Federal Law



Common Issues to Consider: Tax

- ▶ Can my local government put a ban and a tax on the November 2016 ballot?
- ▶ Can my local government collect the 3% tax before the November 2016 election?
- ▶ Can my local government tax medical marijuana?
- ▶ Can my local government continue to impose a tax that it adopted prior to passage of HB 3400?



Common Issues to Consider: Opt Out

- ▶ Can my local government recriminalize marijuana?
- ▶ Can my local government ban medical marijuana grow sites?
- ▶ What is the difference between the grandfathering provisions in sections 133 and 134 of HB 3400 and sections 135 and 136 of HB 3400?
- ▶ If my local government opts out, what is the process for opting back in?
- ▶ If my local government opts back in, is it eligible for state shared tax revenues? Local tax?
- ▶ Can my local government impose an effective ban using its business license ordinance?
 - ▶ If it does, is it eligible for state tax revenue?



Common Issues to Consider: Early Sales

- ▶ Is there a time limit on when my local government can ban early sales?
- ▶ If my local government waits to ban early sales, do dispensaries already engaging in those sales get grandfathered in?
- ▶ Can my local government tax early sales?
- ▶ If my local government opts out of early sales, are we still eligible for state tax revenues?



Common Issues to Consider: Time, Place & Manner

Existing State Restrictions

Local Registration

Location & Buffers

Buffers

Odor and Noise

Background Checks

Security

Signs

Transportation

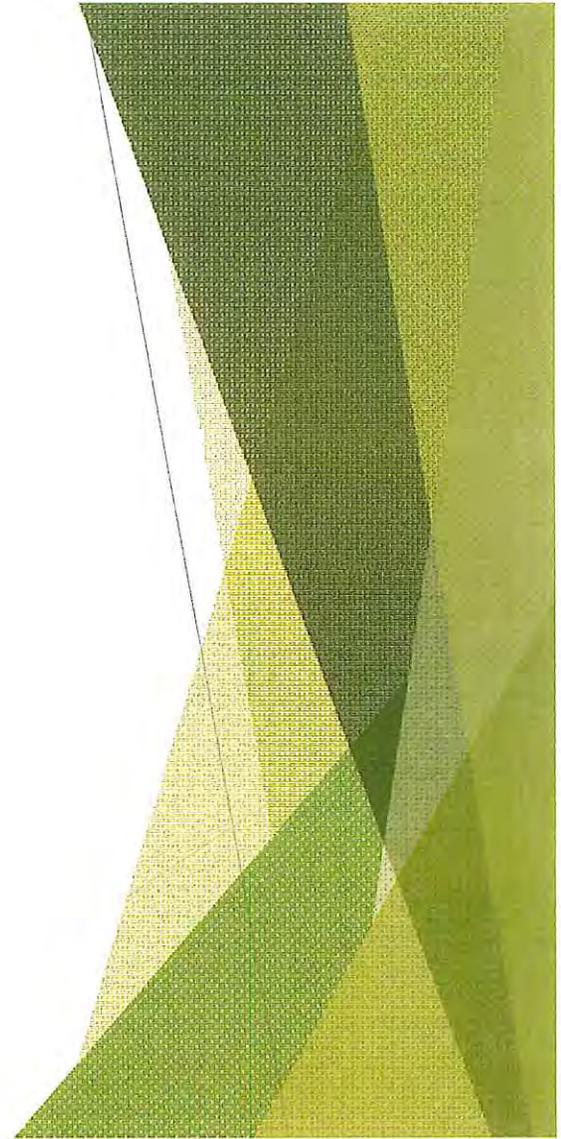
Inspection/Enforcement

More. . .



Employment Issues

- ▶ Drug Free Workplace Policies
- ▶ Personnel Policies -
 - ▶ Use vs. Impairment
 - ▶ Safety Sensitive Positions
- ▶ Employee refusal





DATE: December 17, 2015
TO: Mayor and City Council
McMinnville Planning Commission
FROM: McMinnville Planning Department
SUBJECT: DRAFT ZONING ORDINANCE AMENDMENTS
Marijuana Related Activities

The McMinnville Planning Department proposes the following amendments to the McMinnville Zoning Ordinance in order to implement the provisions of Measure 91 and legislation related to that state-wide measure.

1. Amend Chapter 17.06 by adding the following definitions related to "Marijuana Activities:"

Cannabinoid – Any of the chemical compounds that are the active constituents of marijuana.

Cannabinoid Product – A cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair that contains cannabinoids or dried marijuana leaves or flowers.

Canopy – The surface area utilized to produce mature marijuana plants calculated in square feet and measured using the outside boundaries of any area that includes mature marijuana plants including all of the space within the boundaries.

Cultivation – All phases of growth of marijuana from seed to harvest, or preparing, packaging or repackaging, labeling, or relabeling of marijuana prior to consumption, or incorporation into a recreational marijuana-infused product.

Immature Marijuana Plant - A marijuana plant that is not flowering.

Marijuana – The plant Cannabis family Cannabaceae, any part of the plant of the Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

Marijuana Business – Any person or entity appropriately licensed by the Oregon Health Authority (OHA) or Oregon Liquor Control Commission (OLCC) that sells, produces, cultivates, grows, wholesales, processes or tests medical marijuana or recreational adult use marijuana within the City of McMinnville.

Marijuana Grow Site – A specific location registered by the Oregon Health Authority and used by the grower to produce marijuana for medical use by a specific patient. Medical grow sites are regulated by state law as follows: 12 mature plants are allowed per grow site in residential zones; 48 mature plants per grow site in all other zones. If all grows at the site had registered with the State of Oregon by January 2, 2015, the grow site is limited to the number of plants 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 other zones.

Marijuana Processing – Preparing, compounding or conversion of marijuana into edibles, skin and hair products, cannabinoid concentrates, and cannabinoid extracts for medical or recreational purposes. “Processing” does not include packaging or labeling.

Marijuana Production – The planting, cultivation, growing, trimming, drying or harvesting of retail recreational marijuana.

Medical Marijuana Dispensary – A medical marijuana dispensary registered under ORS 475.314 or a site for which an applicant has submitted an application for registration under ORS 475.314.

Production, Indoor – Producing marijuana within an enclosed building in any manner utilizing artificial lighting on mature marijuana plants, and that does not meet the definition as an outdoor production facility.

Production, Outdoor – Producing marijuana in an expanse of open or cleared ground, or in a greenhouse, hoop house or similar non-rigid structure that does not utilize artificial lighting on mature plants, including but not limited to electrical lighting sources.

2. Amend Section 17.67.040 (Prohibited Uses) by adding the following:

“G. Marijuana businesses.”

3. Add a new chapter (17.64), entitled “Marijuana Related Activities,” to read as follows:

Chapter 17.64

MARIJUANA RELATED ACTIVITIES

Sections:

17.64.010	Purpose
17.64.020	Applicability
17.64.030	Locations
17.64.040	Performance Standards
17.64.050	Non-conforming Use
17.64.060	Enforcement

17.64.010 Purpose. The purpose of this Chapter is to establish zoning regulations that provide for state licensed medical marijuana and commercial recreational marijuana activities allowed under voter-approved statewide initiatives and subject to other statewide administrative rules. The requirements of this Chapter are intended to be consistent with those regulations and, in some cases, augment them as necessary to provide adequate safeguards to address potential public health, safety and welfare considerations, particularly those associated with the cultivation, processing, and production of marijuana and the detrimental effects such activities may have upon McMinnville citizens and neighborhoods.

17.64.020 Applicability.

- A. The requirements of this Chapter shall apply to the following state licensed uses or activities:
1. Medical marijuana dispensaries;
 2. Medical marijuana processing activities;
 3. Medical marijuana production activities;
 4. Commercial marijuana retail activities;
 5. Commercial marijuana wholesale activities;
 6. Commercial marijuana processing activities; and
 7. Commercial marijuana production activities.
- B. Where existing planned development provisions differ from the standards of this Chapter, the standards of the planned development ordinance shall take precedence.

Page 4

17.64.030 Locations.

- A. Marijuana activities may locate in the following zones, as described below and as may be required by Section 17.64.040.
1. State licensed medical marijuana dispensary or commercial recreational marijuana retail business shall be located only on lands zoned C-1 or C-3.
 2. State licensed medical marijuana processing or production, or commercial recreational marijuana processing or production shall be located only on lands zoned M-1 or M-2.
 3. State licensed commercial marijuana wholesale use shall be located only on lands zoned L-M, M-1, or M-2.

17.64.040 Performance Standards.

- A. In addition to other requirements noted in this Chapter, medical marijuana and commercial recreational marijuana activities shall be subject to the following:
1. Medical marijuana dispensaries and commercial recreational marijuana retail businesses may operate between the hours of 9:00am and 9:00pm only.
 2. Any state licensed marijuana activity operating within the city shall be located indoors within a permanent building and may not locate in a trailer, cargo container or motor vehicle. Outdoor storage of any merchandise, plants, or other marijuana activity related materials is not allowed. Further, no drive-through facilities or temporary facilities shall be permitted.
 3. There shall be no marijuana, marijuana product, or marijuana paraphernalia visible from the exterior of the building.
 4. Medical marijuana dispensaries may not be located within 1,000 feet of another state licensed dispensary.
 5. Medical marijuana dispensaries and/or commercial recreational facilities may not be located within 1,000 feet of the following:
 - a. Public, private or parochial elementary or secondary school.
 - b. McMinnville public library, community center, or aquatic center.
 - c. State licensed preschool.
 - d. Linfield College campus, as depicted in Exhibit "A" to this Chapter.
 6. Commercial marijuana production shall be limited to indoor production and up to Tier II size limits (10,000 square foot maximum canopy).
 7. All sites on which a state licensed marijuana facility is located shall provide landscaping and off-street parking consistent with the requirements of Chapter 17.57 (Landscaping) and Chapter 17.60 (Off-Street Parking) of the zoning ordinance.
 8. Signs for locations on which a state licensed marijuana facility is located shall comply with the applicable provisions of Chapter 17.62 (Signs) of the zoning ordinance.
 9. All other development requirements (e.g., fencing, property setbacks and buffers, solid waste disposal, lighting) shall be as required by the zone in which the marijuana activity is located or otherwise required by the zoning ordinance or applicable planned development ordinance.

10. The City Building Division will require a proof of license from the State (either OHA or OLCC, as applicable) showing the security plan, waste disposal plan, and all other required improvements prior to release of a final occupancy permit.
11. All other applicable requirements of state law regarding the operation of a state licensed marijuana activity shall apply as they now exist or may be amended.
12. The private growing or cultivation of marijuana for non-commercial personal use, as defined by state law, is not regulated by this chapter.

17.64.050 Non-conforming Use. A marijuana activity lawfully established prior to the adoption of this ordinance but that is not in compliance with the allowed uses or the standards for those uses as described in this Chapter shall be considered a lawful nonconforming use. The continuation of a lawful nonconforming use is subject to the applicable provisions of Chapter 17.63 (Nonconforming Uses). In addition, any dispensary that offered for sale commercial recreational marijuana as provided by SB 460 (early sales legislation) prior to the adoption of this ordinance but that is not in compliance with the allowed uses or the performance standards for such use as described in this Chapter shall not be permitted to continue such commercial recreational retail sales after December 31, 2016.

17.64.060 Enforcement. Nothing contained herein shall preclude the issuance of citations for violations of this ordinance, either prior to, concurrently with, or after action is commenced to declare a marijuana activity to be unlawful. Marijuana activities found to be in violation of the provisions of this Chapter, or other applicable provisions of this zoning ordinance, are subject to the provisions of Chapter 17.03 (General Provisions).

Linfield Properties

Exhibit "A"

