

Marijwhatnow?

Regulation of Marijuana in Oregon



AOC | Association of Oregon Counties

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Cheech and Chong's Road Map

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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 section 6)

- ▶ 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 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 solid homemade marijuana products, and not more than 72 oz liquid homemade marijuana products at a given time by a person 21 or over to another person 21 or over for noncommercial purposes.

Prohibitions on Personal Use (M91 sections 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

- ▶ 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 section 82)

- ▶ Redefined marijuana 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 section 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 section 86)

- ▶ May not be located in a residential zone.
- ▶ 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.



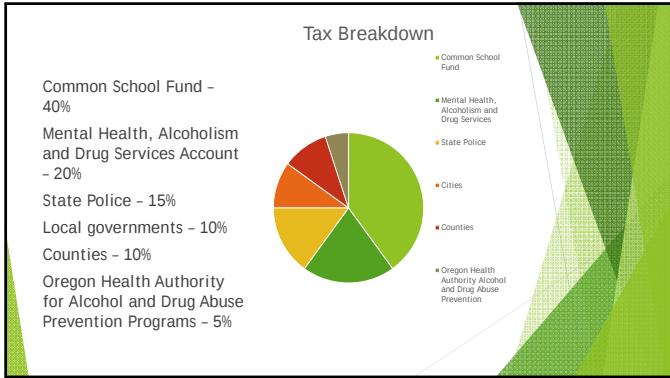
State Tax System

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



Tax - HB 3460 and 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%.
 - ▶ Does preemption include medical marijuana? More on that in a moment



Local Government Revenue Sharing

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

Local governments that prohibit recreational or medical marijuana facilities from locating within their Local Government limits 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.

Local Taxes (HB 3400 section 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 of the Local Government at the next statewide general election (November 2016).
- ▶ Local governments may not adopt or impose any other type of tax or fee on the production, processing, or sale of recreational marijuana. (More to come on tax of medical)

Local Government Regulations (HB 3400 section 33)

- ▶ Local governments may adopt reasonable regulations related to the operation of licensed recreational producers, processors, wholesalers, and retailers.
- ▶ Local governments may adopt reasonable restrictions on the public's access to premises where a licensed recreational marijuana facility is located.
- ▶ Local governments may adopt reasonable regulations related to the location of licensed recreational marijuana facilities in the Local Government.
- ▶ Local governments may not establish buffers that exceed more than 1000 feet from each other.



Local Government Regulations (HB 3400 section 34)

- ▶ Before issuing a license to recreational retail 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 sections 133-136)

Local governments may adopt ordinances prohibiting any medical and recreational marijuana facilities.

(Statute silent on Medical Grows)

Ordinances can be by Council or Commission if 55% or more voted no on Measure 91 and adopted before December 2015

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 Local Government.

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 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 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 even 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 Government councils may adopt ordinances prohibiting sales of recreational marijuana by medical marijuana dispensaries.
- ▶ Beginning January 4, 2016, a state sales tax of 25% will be imposed on recreational marijuana sales by medical marijuana dispensaries.



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 v.s. Impairment
 - ▶ Safety Sensitive Positions
- ▶ Employee refusal
