



# CITY OF BROWNSVILLE

## Council Meeting

Tuesday – February 12<sup>th</sup>, 2014

**Special Session      7:00 p.m.**

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# CITY OF BROWNSVILLE

## Council Meeting

City Hall – Council Chambers  
Tuesday, February 12<sup>th</sup>, 2014

### AGENDA

#### Special Session

**7:00 p.m.**

- 1) CALL TO ORDER
- 2) ROLL CALL
- 3) PLEDGE OF ALLEGIANCE
- 4) PUBLIC HEARINGS OR PRESENTATIONS:
  - A. Medical Marijuana
- 5) COUNCIL QUESTIONS & COMMENTS
- 6) ADJOURN

This Agenda is a list of the subjects anticipated to be considered at the meeting, but the Council may consider additional subjects as well. The location of the meeting is accessible to physically challenged individuals. Should special accommodations be needed, please notify City Administrator S. Scott McDowell at (541) 466-5880 in advance. Thank You.



## City Administrator Report

February 12<sup>th</sup>, 2014

**From:** S. Scott McDowell  
**To:** Mayor & Council  
**Re:** Special Session

### Medical Marijuana

The City learned of the proposed dispensary to be located in the C.J. Howe Building on the Wednesday before the last Council meeting. I invited Randy Simpson and his wife Gayle to the office to visit with Administrative Assistant Elizabeth Coleman and myself about their plans. The City's position at the time was that as long as they provided an official certificate from the State of Oregon, the Brownsville Municipal Code does not expressly prevent a dispensary. The City was awaiting an interpretation about the proximity of the downtown area to the Learning Tree, a pre-school, which is operated out of the Central Linn Recreation Center by Sharing Hands. I invited them to Council to share their plans. I explained to them that many communities in Oregon are still deciding how to deal with the issue and that I could easily foresee that the City of Medford, against, and the City of Ashland, for, will be the trend across the State. Council has not had a chance to consider the information around the medical marijuana debate.

As you know, the meeting was fairly well attended. Randy discussed the State Law and the requirements. Gayle talked about clientele and the many positive outcomes that have happened for patients who have used medical marijuana. Mayor Ware did a great job making sure everyone had an opportunity to speak about the topic at hand. After the meeting, I asked Councilors to keep their 'ear to the ground' about public opinion surrounding this issue. I let the Councilors know that we were seeking advice from the League of Oregon Cities. The *Albany Democrat-Herald* ran an article about the Simpson's plans on Saturday, February 1<sup>st</sup>, 2014. Since then, City Hall has been ground zero for the medical marijuana debate.

The intention of the special session is for Council to hear public comment and to discuss the issues as they relate to the Brownsville Municipal Code and to better define Council's options. I am not sure if Council will feel like they have enough information to make a decision that night or not. The next regularly scheduled meeting is February 25<sup>th</sup>, 2014 which will have only five members.

### League of Oregon Cities

Assistant General Counsel Maja Haium clarified a few points. She said that the Bill that is currently on the floor of the State House regarding an expressed statement about local authority will either be approved or denied depending on which committee it gets assigned to. The League had supported the language for inclusion to prevent confusion regarding local control, but it obviously did not make the cut. The League's position is that the City already has charter authority to make a decision regarding this issue without the language being expressly stated in the current rules. Ms Haium did not think it would be wise to wait on the State Legislature due to the short session and the fact that it has been passed over once already, although she agreed with the local pre-emption debate we discussed at the last Council meeting.



Ms. Haium had a different take on the issue of proximity. She cited the Cole Memorandum of August 29<sup>th</sup>, 2013. She indicated that the United States Attorney's Office, District of Oregon, U.S. Attorney S. Amanda Marshall has cited the Cole Memo as their law enforcement priority. The number one priority is preventing the distribution of marijuana to minors. Ms. Haium felt that the intent of the law would certainly include not only the pre-school but consideration should also be given to the Library, the activities at the Central Linn Recreation Center as well as the Brownsville Art Association since all serve the youth of the community.

City Attorney Lauren Sommers did not feel that the Learning Tree fell within the definition.

### **The Information**

Council Van Sandt sent a few thoughts in a recent e-mail that really sums up all of the information surrounding this debate. It is very polarized. You are either for medical marijuana or you are not. For every success story, you hear an equal horror story. I have placed a few of the items that I feel are as unbiased as possible such as the Temporary Rules for the Medical Marijuana Dispensary Program, the above referenced Cole Memorandum and the *Albany Democrat-Herald Article*. I have also placed an article about Coos Bay's moratorium from the *Statesman Journal*. I placed a letter from Los Angeles District Attorney to Governor Kitzhaber and an ordinance from Hermosa Beach, California.

Below is an excerpt I received from a public interest group who is against Medical Marijuana:

### **OREGON CITIES/COUNTIES THAT HAVE BANNED HB3460**

#### **BANNED**

#### **Counties**

Linn County

Linn County

- **Linn County** In Linn County by code; Linn County cannot accept a development permit the violates "state and federal laws". That means that no discussion can take place until the federal government changes federal statute. This language is regulated under state statute as part of the comprehensive land use plan. It requires the DLCD board to find Linn County in violation and start enforcement action. I don't see that happening. The application language has not been uniform across our cities. They are now discussing that. So for Linn County to be approached by a "dispensary" for a development application, we cannot accept it because it is illegal under federal statute to produce and distribute classified drugs.

DLCD BOARD: **Oregon Department of Land Conservation and Development.**

#### **Cities**

Medford banned

Jackson County



**8.015 Business License Required**

(1) No person, for himself or as agent or employee of another, shall do business within the city unless:

- (a) Such business has been duly licensed as provided in Sections 8.005 to 8.070; and,
- (b) The license is valid at the time of the transaction.

(2) In addition to the penalties provided by Section 8.900, this section may be enforced by means of a civil action in the Circuit Court for Jackson County wherein the city may seek an injunction and other appropriate relief.

(3) No business license shall be issued to any person to engage in a business that does not comply with local, state or federal law.

[Amd. Sec. 5, Ord. No. 1998-233, Oct. 15, 1998; Amd. Sec. 3, Ord. No. 2013-128, Sept. 5, 2013.]

Sandy banned	Clackamas County
Dallas banned	Polk County

"The official policy going forward that anyone applying for a zoning change or tenant improvement will (have to) follow all city, state and federal regulations," City Manager Ron Foggin said. "Currently, federal law prohibits medical marijuana."

Gresham banned	Multnomah County	In their business license language
Wood Village banned	Multnomah County	In their business license language
Hillsboro-temp 1 yr ban	Washington County	
Sherwood-temp 1 yr ban	Washington County	

**IN PROCESS OF BANNING**

**Cities**

Albany in process of banning	Benton County
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The proposed amendment is language to clarify existing language in the Development Code. It is not a proposed ban on medical marijuana facilities but rather addresses controlled substances: **"No parcel of land or structure may be used for, or in conjunction with, an activity that violates any state or federal law prohibiting the manufacture, distribution, dispensation, or possession of any controlled substance"** as that term is defined by the **United States Code.**

Happy Valley	Clackamas county
Seaside	Clatsop County
Bandon	Coos County
Coos Bay	Coos County
Myrtle Creek	Douglas County
Hoodriver	Hoodriver County
Rogue River	Jackson County
Phoenix	Jackson County
Madras	Jefferson County
Metolius	Jefferson County



Grants Pass	Josephine County
Lakeview	Lake County
Woodburn	Marion County
Tualatin	Washington County
Troutdale	Multnomah County

**COUNTY**

Umatilla County	Umatilla County
Yamhill County	Yamhill County

**IN PROCESS OF GOING GREEN**

**Cities**

Portland	Multnomah County
Ashland	Jackson*

*(Actually had a business license law that didn't allow them and they voted to remove the word unlawful.)*

Bend	Deschutes
Corvallis	Benton

The bottom line is that there is a wealth of information. Sorting through all of it and being able to get Councilors a balanced amount is practically impossible. I tried to give you a sampling. I know some of you have done your own research as well.

**City Information**

Below is the applicable section of Brownsville Municipal Code:

**15.80.080 Old Town commercial zone – OTC.**

- A. Intent and Purpose. The OTC zone is a special commercial area with an historic motif. The purpose of the zone is to preserve and enhance the historic character, encourage business vitality and allow for moderate expansion of the small town core. The City shall review and regulate development with respect to compliance with the historic motif.
  
- B. Description. The small town core is a compact, approximately five-block area adjacent to City Hall, the recreation center and park. It contains the City library, senior center, post office and Linn County Museum in addition to the commercial activity. It is the functional, historic and geographic town center. The town core contains commercial and residential buildings built between 1860 and the present. Approximately a dozen of these structures have intrinsic historic significance; while others have been altered to blend with Brownsville's historic period: 1860 to 1920.

I have also included Resolution 554 which was passed in 2005.



## **Conclusion**

Council should listen to public input, comments and perspectives. Mayor Ware and Councilor Gerber will make sure that time limits are followed. I would propose a two minute time limit. Mayor Ware will make sure that everyone has had a chance to speak on the issue. Council will close the public comment piece and enter into Council discussion. Council should consider that the Chamber of Commerce, Linn County Pioneer Picnic Association and many other community partners have built a local economy around tourism with many events that draw people to town. Does this proposal fit the image and mold of Brownsville? How does this affect public perception of the City?

The other issue that cannot be ignored is that most feel the State is likely to legalize marijuana in the November election following the lead of Washington & Colorado. Where does the City of Brownsville stand on this issue?

Council is being asked a policy question. Since there has been a lot of discussion about medical marijuana over the last week, it is Council's duty to make a decision that best serves the community. Council has the legal authority and responsibility to make a determination either way.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Sm".

S. Scott McDowell

## Temporary Rules for the Medical Marijuana Dispensary Program

*Jan. 15, 2014*

These are the temporary rules governing medical marijuana dispensaries in Oregon. They will be in effect through the initial application process in March of 2014. The process to make these rules permanent will begin in February, and will allow for continued public input on the content of the rules. Individuals intending to file an application to register a dispensary should use these rules as a guide. Visit [mmj.oregon.gov](http://mmj.oregon.gov) for more information.

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**OREGON ADMINISTRATIVE RULES  
OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION  
CHAPTER 333**

**DIVISION 8**

**MEDICAL MARIJUANA**

**Medical Marijuana Facilities**

**333-008-1000**

**Applicability**

(1) A person may not establish, conduct, maintain, manage or operate a facility on or after March 1, 2014, unless the facility has been registered by the Authority under these rules.

(2) Nothing in these rules exempts a PRF, an employee of a registered facility, or a registered facility from complying with any other applicable state or local laws.

(3) Registration of a facility does not protect a PRF or employees from possible criminal prosecution under federal law.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

**333-008-1010**

**Definitions**

For the purposes of OAR 333-008-1000 through 333-008-1290 the following definitions apply:

(1) "Agricultural land" means land that is located within an exclusive farm use zone as that term is described in ORS 215.203.

(2) "Attended primarily by minors" means that a majority of the students are minors.

(3) "Authority" means the Oregon Health Authority.

(4) "Batch" means a quantity of usable marijuana or a number of immature plants transferred at one time to a facility by a person authorized by a patient to transfer usable marijuana to a registered facility.

(5) "Career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

(6) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(7)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority.

(b) "Designated primary caregiver" does not include the person's attending physician.

(8) "Domicile" means the place of abode of an individual where the person intends to remain and to which, if absent, the individual intends to return.

(9) "Edible" means a product made with marijuana that is intended for ingestion.

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- (10)(a) "Employee" means any person, including aliens, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer.
- (b) "Employee" does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.
- (11) "Facility" means a medical marijuana facility.
- (12) "Farm use" has the meaning given that term in ORS 215.203.
- (13) "Finished product" means a product infused with usable marijuana that is intended for use, ingestion or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.
- (14) "Grower" has the same meaning as "person responsible for a marijuana grow site."
- (15) "Grow site" means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient.
- (16)(a) "Immature marijuana plant or immature plant" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.
- (b) A seedling or start that does not meet all three criteria in subsection (16)(a) is a mature plant.
- (17) "Macroscopic screening" means visual observation without the aid of magnifying lens(es).
- (18) "Microscopic screening" means visual observation with a minimum magnification of 40x.
- (19) "Minor" means an individual under the age of 18.
- (20) "Oregon Medical Marijuana Program or OMMP" means the program operated and administered by the Authority that registers patients, designated primary caregivers, and growers.
- (21) "Patient" has the same meaning as "registry identification cardholder."
- (22) "Person" means an individual.
- (23) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose and has the same meaning as "grower".
- (24) "Person responsible for a medical marijuana facility or PRF" means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in these rules and has been approved by the Authority.
- (25) "Pesticide" means any substance or mixture of substances, intended to prevent, destroy, repel, or mitigate any pest.
- (26) "Premises" means a location registered by the Authority under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.
- (27) "Primary school" means a learning institution containing any combination of grades Kindergarten through 8 or age level equivalent.
- (28) "Random sample" means an amount of usable marijuana taken from a batch in which different fractions of the usable marijuana have an equal probability of being represented.
- (29) "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 Authority.

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(30) "Remuneration" means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.

(31) "Resident" means an individual who has a domicile within this state.

(32) "Safe" means a metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered facility that is rendered immobile by being securely anchored to a permanent structure of the building, or a "vault".

(33) "Secondary school" means a learning institution containing any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(34) "These rules" means OAR 333-008-1000 through 333-008-1290.

(35) "Usable marijuana" has the meaning given that term is ORS 475.302 and includes "finished product".

(36) "Valid testing methodology" means a scientifically valid testing methodology described in a published national or international reference and validated by the testing laboratory.

(37) "Vault" means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

### **333-008-1020**

#### **Application for Medical Marijuana Facility Registration**

(1) Beginning on March 3, 2014, at 8:30 a.m. Pacific Standard Time (PST), the Authority shall begin accepting applications for the registration of a facility. An application may be submitted at any time on or after March 3, 2014, at 8:30 a.m., PST.

(2) A PRF wishing to apply to register a facility must provide to the Authority:

- (a) An application on a form prescribed by the Authority;
- (b) Any additional documentation required by the Authority in accordance with these rules;
- (c) The applicable fee as specified in OAR 333-008-1030; and
- (d) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-1130.

(3) An application for the registration of a facility must be submitted by a PRF electronically via the Authority's website, <http://mmj.oregon.gov>. The documentation required in subsection (2)(b) of this rule and the information and fingerprints described in subsection (2)(d) of this rule may be submitted electronically to the Authority or may be mailed but must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered to be incomplete. Applicable fees must be paid online at the time of application.

(4) The Authority must review each application received to ensure the application is complete, that the required documentation has been submitted, and the fee paid. The Authority shall return an incomplete application to the person that submitted the application. A person may re-submit an application that was returned as incomplete at any time.

(5) Applications will be reviewed in the order they are received by the Authority. An application that is returned as incomplete must be treated by the Authority as if it was never received.

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(6) A PRF who wishes to register more than one location must submit a separate application and application fee for each location.

(7) At the time of application the PRF will be asked, by the Authority, to sign an authorization permitting the Authority to publish the location of the facility if the facility is registered.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

**333-008-1030**

**Fees**

(1) The initial fees for the registration of a facility are:

(a) A non-refundable application fee of \$500; and

(b) A \$3,500 registration fee.

(2) The annual renewal fees for the registration of a facility are:

(a) A \$500 non-refundable renewal fee; and

(b) A \$3,500 registration fee.

(3) The Authority must return the registration fee if:

(a) An application is returned to the applicant as incomplete;

(b) The Authority denies an application; or

(c) An applicant withdraws an application.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

**333-008-1040**

**Application Review**

(1) Once the Authority has determined that an application is complete it must review the application to determine compliance with ORS 475.314 and these rules.

(2) The Authority may, in its discretion, prior to acting on an application:

(a) Contact the applicant and request additional documentation or information; and

(b) Inspect the premises of the proposed facility.

(3) Prior to making a decision whether to approve or deny an application the Authority must:

(a) Ensure that the criminal background check process has been completed and review the results;

(b) Contact the OMMP and obtain documentation of whether the location of the facility is the same location as a registered grow site under OAR 333-008-0025;

(c) Review available records and information to determine whether the proposed facility is located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school; and *Pre-school?*

(d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility.

(4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority must return the application to the applicant as incomplete.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

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**333-008-1050**

**Approval of Application**

- (1) If the proposed facility appears to be in compliance with ORS 475.314 and these rules, and the PRF has passed the criminal background check and is determined to reside in Oregon, the Authority must notify the applicant in writing that the application has been approved, that the facility is registered, and provide the applicant with proof of registration that includes a unique registration number.
- (2) A facility that has been registered must display proof of registration in a prominent place inside the facility so that proof of registration is easily visible to individuals authorized to transfer usable marijuana and immature plants to the facility and individuals who are authorized to receive a transfer of usable marijuana and immature plants from the facility at all times when usable marijuana or immature plants are being transferred.
- (3) A registered facility may not post any signs at the facility that use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration.
- (4) A facility's registration is only valid for the location indicated on the proof of registration and is only issued to the PRF that is listed on the application or subsequently approved by the Authority.
- (5) A facility's registration may not be transferred to another location.
- (6) If a proposed facility appears to be in compliance with ORS 475.314 and these rules except that the proposed facility does not yet have a security system installed and other security requirements in place, the Authority may issue a provisional registration that is valid for 60 days.
- (a) In order to receive provisional registration a PRF must submit to the Authority at the time of application a floor plan of the facility that has marked and labeled all points of entry to the facility, all secure areas required by these rules and the proposed placement of all video cameras.
- (b) The provisionally registered facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants until the security system and other security requirements are in place and the Authority has approved the provisionally registered facility to begin operating.
- (c) When the security system and other security requirements are in place the PRF must notify the Authority and if the Authority determines that the provisionally registered facility is in full compliance with these rules, the Authority must approve the facility for operation.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

**333-008-1060**

**Denial of Application**

- (1) The Authority must deny an application if:
- (a) An applicant fails to provide sufficient documentation that the proposed facility meets the qualifications for a facility in these rules; or
- (b) The PRF has been:
- (A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date the application was received by the Authority; or
- (B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or
- (C) Prohibited by a court from participating in the OMMP.

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(2) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### 333-008-1070

#### Expiration and Renewal of Registration

(1) A facility's registration expires one year following the date of application approval.

(2) If a PRF wishes to renew the facility's registration, the person must submit to the Authority within 60 days of the registration's expiration:

(a) An application renewal form prescribed by the Authority;

(b) The required renewal fees;

(c) Forms required for the Authority to do a criminal background check on the PRF.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### 333-008-1080

#### Notification of Changes

(1) A PRF must notify the Authority within 10 calendar days of any of the following:

(a) The person's conviction for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(b) The issuance of a court order that prohibits the person from participating in the OMMP;

(c) A decision to change the PRF;

(d) A decision to permanently close the facility at that location;

(e) A decision to move to a new location;

(f) A change in the person's residency; and

(g) The location of an elementary, secondary or career school attended primarily by minors within 1,000 feet of the facility.

(2) The notification required in section (1) of this rule must include a description of what has changed and any documentation necessary for the Authority to determine whether the facility is still in compliance with ORS 474.314 and these rules including but not limited to, as applicable:

(a) A copy of the criminal judgment or order;

(b) A copy of the court order prohibiting the PRF from participating in the OMMP;

(c) The location of the school that has been identified as being within 1,000 feet of the facility; or

(d) The information required in OAR 333-008-1120 and 333-008-1130 to determine the residency of the new PRF and to perform the criminal background check.

(3) Failure of the PRF to notify the Authority in accordance with this rule may result in revocation of a facility's registration.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### 333-008-1090

#### Required Closures

A facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants if:



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- (1) The PRF is convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;
  - (2) The PRF changes and the Authority has not:
    - (a) Performed a criminal background check on the proposed PRF in accordance with OAR 333-008-1130;
    - (b) Determined whether the individual is a resident of Oregon; and
    - (c) Provided written approval that the new PRF meets the requirements of ORS 475.314.
  - (3) The PRF has been ordered by the court not to participate in the OMMP; or
  - (4) An elementary, secondary or career school attended primarily by minors is found to be within 1,000 of the registered facility.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### 333-008-1100

#### Business Qualifications for Medical Marijuana Facility Registration

- (1) A facility must be registered as a business or at the time of applying to register a facility have filed a pending application to register as a business with the Office of the Secretary of State.
  - (2) The Authority may not approve an application until it has verified that the facility is registered as a business with the Office of the Secretary of State.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### 333-008-1110

#### Locations of Medical Marijuana Facilities

- (1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.
- (2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.
- (3) A facility may not be located:
  - (a) At the same address as a registered marijuana grow site;
  - (b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or
  - (c) Within 1,000 feet of another medical marijuana facility;
- (4) In order for the Authority to ensure compliance with this rule a PRF must submit with an initial application documentation that shows the current zoning for the location of the proposed facility.
- (5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising an existing public or private elementary, secondary or career school primarily attended by minors.
- (6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising a registered facility.

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(7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

**333-008-1120**

**Person Responsible for a Medical Marijuana Facility (PRF)**

(1) A PRF must:

(a) Be a resident of Oregon. Residency may be proved by submitting to the Authority:

(A) An Oregon driver's license, an Oregon identification card that includes a photograph of the person, or a military identification card that includes a photograph of the person; and

(B) Copies of utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the domicile of the PRF.

(b) Have legal authority to act on behalf of the facility; and

(c) Be responsible for ensuring the facility complies with applicable laws, if registered.

(2) A PRF may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) At the time of application a PRF must submit to the Authority a copy of the information described in paragraphs (1)(a)(A) and (B) of this rule.

(4) A PRF is accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of the PRF, who violate ORS 475.314 or these rules.

(5) If a PRF no longer meets the criteria of a PRF the Authority shall inform the PRF and the owner of the facility if different that:

(a) The PRF may no longer serve in that capacity;

(b) In order to remain certified, a change of PRF form must be submitted; and

(c) The facility may not operate until the Authority has approved a new PRF.

(6) If the Authority is notified that a change of PRF is needed, the current PRF is no longer able to serve as the PRF, or the PRF has been or will be removed by the owner of a facility, the owner of the facility must submit a change of PRF form to Authority within 10 business days of the notification or the Authority will begin proceedings to revoke the certification of the facility.

(7) If the PRF of record for the facility is no longer serving in that capacity the facility may not operate until a new PRF has been approved by the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

**333-008-1130**

**Criminal Background Checks**

(1) A PRF must, at the time of application, provide to the Authority:

(a) A criminal background check request form, prescribed by the Authority that includes but is not limited to:

(A) First, middle and last name;

(B) Any aliases;

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- (C) Date of birth;
  - (D) Driver's license information; and
  - (E) Address and recent residency information.
  - (b) Fingerprints in accordance with the instructions on the Authority's webpage:  
<http://mmj.oregon.gov>.
  - (2) The Authority may request that the PRF disclose his or her Social Security Number if notice is provided that:
    - (a) Indicates the disclosure of the Social Security Number is voluntary; and
    - (b) That the Authority requests the Social Security Number solely for the purpose of positively identifying the PRF during the criminal records check process.
  - (3) The Authority shall conduct a criminal records check in order to determine whether the PRF has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II in any state.
  - (4) The Authority must conduct a criminal background check in accordance with this rule on a PRF every year at the time of application renewal.
  - (5) If a PRF wishes to challenge the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the Department of State Police or Federal Bureau of Investigation, those challenges must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process specified in OAR 333-008-1060(2).
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### 333-008-1140

#### Security for Registered Facilities

- (1) The PRF must ensure that a registered facility complies with OAR 333-008-1140 through 333-008-1180.
- (2) The PRF is responsible for the security of all usable marijuana and immature plants in the registered facility, including providing adequate safeguards against theft or diversion of usable marijuana and immature plants and records that are required to be kept.
- (3) The PRF must ensure that commercial grade, non-residential door locks are installed on every external door at a registered facility prior to opening for business and used while a facility is registered.
- (4) During all hours when the registered facility is open for business, the PRF must ensure that:
  - (a) All usable marijuana and immature plants received and all usable marijuana and immature plants available for transfer to a patient or a designated primary caregiver are kept in a locked, secure area that can only be accessed by authorized personnel.
  - (b) All areas where usable marijuana or immature plants are received for transfer by a registered facility are identified as a restricted access area by posting a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads, "Restricted Access Area – Authorized Personnel Only".
  - (c) All areas where usable marijuana or immature plants are available for transfer to a patient or designated primary caregiver are:

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- (A) Identified as a restricted access area and clearly identified by the posting of a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads "Restricted Access Area – No Minors Allowed";
  - (B) Supervised by the PRF or an employee of the registered facility at all times when a patient or designated primary caregiver is present; and
  - (C) Separate from any area where usable marijuana or immature plants are being transferred to a registered facility.
- (5) During all hours when the registered facility is not open for business the PRF must ensure that:
- (a) All entrances to and exits from the facility are securely locked and any keys or key codes to the facility remain in the possession of the PRF or authorized employees;
  - (b) All usable marijuana is kept in a safe; and
  - (c) All immature plants are in a locked room.
- (6) The PRF must ensure that:
- (a) Electronic records are encrypted, and securely stored to prevent unauthorized access and to ensure confidentiality;
  - (b) There is an electronic back-up system for all electronic records; and
  - (c) All video recordings and archived required records not stored electronically are kept in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the registered facility is open.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### 333-008-1150

#### Alarm System for Registered Facilities

- (1) Prior to opening for business, a PRF must ensure that a registered facility has a security alarm system, installed by an alarm installation company, on all facility entry or exit points and perimeter windows.
  - (2) At the time of application a PRF must submit to the Authority documentation of the:
    - (a) Alarm system that is installed or proposed for installation;
    - (b) Company that installed the system or plans to install the system;
    - (c) Features of the system that meet the criteria of this rule.
  - (3) A PRF must ensure that the facility is continuously monitored by the alarm system.
  - (4) The security alarm system for the registered facility must:
    - (a) Be able to detect movement inside the registered facility;
    - (b) Be programmed to notify a security company that will notify the PRF or his or her designee in the event of a breach; and
    - (c) Have at least two "panic buttons" located inside the registered facility that are linked with the alarm system.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### 333-008-1160

#### Video Surveillance Equipment for Registered Facilities

- (1) Prior to opening for business, a PRF must install a fully operational video surveillance recording system.

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- (2) At the time of application a PRF must submit to the Authority documentation of the:
- (a) Video surveillance system that is installed or proposed for installation;
  - (b) Company or person that installed the system or plans to install the system;
  - (c) Features of the system that meet the criteria of this rule.
- (3) Video surveillance equipment must, at a minimum:
- (a) Consist of:
    - (A) Digital or network video recorders;
    - (B) Cameras capable of meeting the requirements of OAR 333-008-1170 and this rule;
    - (C) Video monitors;
    - (D) Digital archiving devices; and
    - (E) A color printer capable of producing still photos.
  - (b) Be equipped with a failure notification system that provides prompt notification to the PRF or employees of any prolonged surveillance interruption or failure; and
  - (c) Have sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.
  - (4) All video surveillance equipment and recordings must be stored in a locked secure area that is accessible only to the PRF, authorized employees of the registered facility and the Authority.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### 333-008-1170

#### Required Camera Coverage and Camera Placement for Registered Facilities

- (1) A PRF must ensure that a registered facility has camera coverage for:
- (a) All secure and restricted access areas described in OAR 333-008-1140;
  - (b) All point of sale areas;
  - (c) All points of entry to or exit from secure and restricted access areas; and
  - (d) All points of entry to or exit from the registered facility.
- (2) A PRF must ensure that camera placement is capable of identifying activity occurring within 15 feet of all points of entry to the registered facility and exit from the registered facility and shall allow for the clear and certain identification of any individual and activities on the facility premises.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### 333-008-1180

#### Video Recording Requirements for Registered Facilities

- (1) The PRF must ensure that all camera views of all secure and restricted access areas and points of entry to or exit from the registered facility are continuously monitored by motion sensor video equipment or similar technology 24 hours a day.
- (2) A PRF must ensure that:
- (a) All surveillance recordings are kept for a minimum of 30 days and are in a format that can be easily accessed for viewing;
  - (b) The surveillance system has the capability to produce a color still photograph from any camera image;
  - (c) The date and time is embedded on all surveillance recordings without significantly obscuring the picture;

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- (d) Video recordings are archived in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place; and
- (e) Video surveillance records and recordings are available upon request to the Authority for the purpose of ensuring compliance with ORS 475.314 and these rules.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### 333-008-1190

#### Testing

- (1) A PRF must ensure that usable marijuana and immature plants are tested for pesticides, mold and mildew in accordance with this rule prior to the usable marijuana or immature plants being transferred to a patient or a designated primary caregiver.
- (2) Upon usable marijuana being transferred to a registered facility in accordance with OAR 333-008-1230, the PRF must ensure the usable marijuana is segregated into batches, that each batch is placed in an individual container or bag, and that a label is attached to the container or bag that includes at least the following information:
- (a) A unique identifier;
  - (b) The name of the person who transferred it; and
  - (c) The date the usable marijuana was received by the registered facility.
- (3) Sampling. A PRF must ensure that random samples from each batch are taken in an amount necessary to conduct the applicable test, that the samples are labeled with the batch's unique identifier, and submitted for testing.
- (4) Testing. A PRF must ensure that each sample is tested for pesticides, mold, and mildew and for an analysis of the levels of tetrahydrocannabinol (THC) and Cannabidiol (CBD).
- (a) Immature Plants. An immature plant may be tested for pesticides, mold or mildew by conducting a macroscopic or microscopic screening to determine if the plant has visible pesticide residue, mold or mildew.
- (b) Flowers or other usable marijuana plant material. Usable marijuana in the form of flowers or other plant material must be:
    - (A) Tested for pesticides, mold and mildew using valid testing methodologies and macroscopic or microscopic screening may not be used;
    - (B) Tested for pesticides by testing for the following analytes:
      - (i) Chlorinated Hydrocarbons;
      - (ii) Organophosphates;
      - (iii) Carbamates; and
      - (iv) Pyrethroids; and
    - (C) Analyzed, using valid testing methodologies, to determine the levels of THC and CBD.
  - (c) Edibles, Liquids and Solid Extracts. If the usable marijuana used in the edible, liquid or solid extract has been tested in accordance with this rule and tested negative for pesticides, mold or mildew, the edible, liquid or solid extract does not need to be tested for pesticides, mold and mildew but does need to be tested for an analysis of the levels of THC and CBD. If the usable marijuana used in the edible, liquid, or solid extract was not tested in accordance with this rule, the edible, liquid or solid extract must be tested for pesticides, mold or mildew in accordance with subsection (4)(b) of this rule.

(5) **Laboratory Requirements.** A PRF must ensure that all testing, except for testing of immature plants, is done by a third party or in-house laboratory that:

- (a) Uses valid testing methodologies; and
- (b) Has a Quality System for testing of pesticides, mold and mildew that is compliant with the:
  - (A) 2005 International Organization for Standardization 17025 Standard; or
  - (B) 2009 National Environmental Laboratory Accreditation Conference Institute TNI Standards.
- (6) Macroscopic or microscopic screening of immature plants must be conducted by a person who has a minimum of a bachelor's degree in horticulture, botany, plant pathology, microbiology, or an equivalent degree but is not required to be done by a laboratory.

(7) **Testing Results.** A laboratory must provide testing results to the PRF signed by an official of the laboratory who can attest to the accuracy of the results, and that includes the levels of pesticides, mold or mildew detected and the levels of THC and CBD.

(a) If an immature plant has visible pesticide residue, mold or mildew it must be deemed to test positive and must be returned to the person who transferred the immature plant to the registered facility.

(b) A sample of usable marijuana shall be deemed to test positive for mold and mildew if the sample has levels that exceed the maximum acceptable counts in the Pharmacopeia, Section 1111 (May 1, 2009), incorporated by reference.

(c) A sample of usable marijuana shall be deemed to test positive for pesticides with a detection of more than 0.1 parts per million of any pesticide.

(8) If an immature plant or sample of usable marijuana tests positive for pesticides, mold or mildew based on the standards in this rule the PRF must ensure the entire batch from which the sample was taken is returned to the person who transferred the immature plant or usable marijuana to the registered facility and must document how many or how much was returned, to whom, and the date it was returned.

(9) A registered facility may perform its own testing as long as the testing complies with this rule.

(10) The PRF may permit laboratory personnel or other persons authorized to do testing access to secure or restricted access areas of the registered facility where usable marijuana or immature plants are stored. The PRF must log the date and time in and out of all such persons.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1200**

#### **Operation of Registered Facilities**

(1) A PRF must ensure that a registered facility does not permit:

- (a) A minor to be present in any area of a registered facility where usable marijuana or immature plants are present, even if the minor is a patient or an employee; and
- (b) Consumption, ingestion, inhalation or topical application of usable marijuana anywhere on the premises of the registered facility, except that an employee of a registered facility who is a patient may consume usable marijuana during their work shift as necessary for his or her medical condition, in a closed room, alone if the usable marijuana is being smoked, not visible to the public or to patients or caregivers on the premises of the registered facility to receive a transfer of usable marijuana or an immature plant.

(2) A PRF must ensure that a registered facility uses an Oregon Department of Agriculture approved scale to weigh all usable marijuana.

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(3) The following persons are the only persons permitted in any area of a registered facility where usable marijuana or immature plants are present, and only in accordance with these rules, as applicable:

- (a) A PRF;
- (b) An owner of a registered facility;
- (c) An employee of the registered facility;
- (d) Laboratory personnel in accordance with OAR 333-008-1190;
- (e) A contractor authorized by the PRF to be on the premises of a registered facility;
- (f) A patient, designated primary caregiver, or growers;
- (g) An authorized employee or authorized contractor of the Authority; and
- (h) Other government officials that have jurisdiction over some aspect of the registered facility or that otherwise have authority to be on the premises of the registered facility.

(4) A PRF must have written detailed policies and procedures and training for employees on the policies and procedures that at a minimum, cover the following:

- (a) Security;
- (b) Testing;
- (c) Transfers of usable marijuana and plants to and from the facility;
- (d) Operation of a registered facility;
- (e) Required record keeping;
- (f) Labeling; and
- (g) Violations and enforcement.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1210**

#### **Record Keeping**

(1) A PRF must ensure that the following information is documented and maintained electronically in a manner that can easily be shared with the Authority or accessed by the Authority:

- (a) All Authorization to Transfer forms, including the date on which a form was received;
- (b) Any written notifications from a patient with regard to any change in status as required by ORS 475.309(7)(a)(B) or (10)(a);
- (c) Any revocation of an Authorization to Transfer form;
- (d) All transfer information required in OAR 333-008-1230 and 333-008-1240;
- (e) Documentation of the costs of doing normal and customary business used to establish the reimbursement amounts for transfers of usable marijuana or immature plants, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.
- (f) The amount of money paid by a registered facility to a grower for each transfer of usable marijuana or immature plants;
- (g) The amount of money paid by each patient or designated primary caregiver for a transfer of usable marijuana or an immature plant;
- (h) The laboratory reports of all testing and other information required to be documented in OAR 333-008-1190; and
- (i) All other information required to be documented and retained in these rules.



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(2) The PRF must ensure that information required to be documented pursuant to section (1) of this rule is maintained in a safe and secure manner that protects the information from unauthorized access, theft, fire, or other destructive forces, and is easily retrievable for inspection by the Authority upon request, either at the registered facility or online.

(3) A PRF must ensure that a registered facility uses an electronic data management system for the recording of transfers of usable marijuana and immature plants. The system must meet the following minimum requirements:

(a) Record the information required to be documented in this rule and OAR 333-008-1230 and 333-008-1240;

(b) Provide for off-site or secondary backup system;

(c) Assign a unique transaction number for each transfer to or from the registered facility;

(d) Monitor date of testing and testing results;

(e) Track products by unique transaction number through the transfer in, testing and transfer out processes;

(f) Generate transaction and other reports requested by the Authority viewable in PDF format;

(g) Produce reports, including but not limited to inventory reports; and

(h) Provide security measures to ensure patient and grower records are kept confidential.

(4) Documents and information required to be maintained in these rules must be retained by the PRF for at least one year.

(5) A PRF must provide the Authority with any documentation required to be maintained in these rules upon request, in the format requested by the Authority, or permit the Authority access to such documentation on-site.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### 333-008-1220

#### Labeling

(1) Prior to transferring usable marijuana a PRF must ensure that a label is affixed to the usable marijuana that includes but is not limited to:

(a) The amount of THC and CBD in the usable marijuana;

(b) If pre-packaged, the weight or volume of the packaged usable marijuana in metric units;

(c) The amount of usable marijuana in a finished product in metric units;

(d) Potency information; and

(e) Who performed the testing.

(2) If the registered facility transfers usable marijuana in a form that is edible, the PRF must ensure that the usable marijuana has a warning label on the outside of the packaging that includes the following: "WARNING: MEDICINAL PRODUCT – KEEP OUT OF REACH OF CHILDREN" in bold capital letters, in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### 333-008-1230

#### Transfers to a Registered Facility

(1) A patient may authorize usable marijuana or immature marijuana plants to be transferred to a registered facility by signing an Authorization to Transfer form prescribed by the Authority. A

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patient may authorize transfers to more than one registered facility. A separate form must be provided for each registered facility. The Authorization must include, but is not limited to, the following information:

- (a) The patient's name, OMMP card number and expiration date and contact information;
- (b) The name and contact information of the individual who is authorized to transfer the usable marijuana or immature marijuana plants to the registered facility and that individual's OMMP card number and expiration date;
- (c) The name and address of the registered facility that is authorized to receive the usable marijuana or immature marijuana plants; and
- (d) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(2) Only a patient, the patient's designated primary caregiver, or the patient's grower may be authorized to transfer usable marijuana or immature plants to a registered facility.

(3) The original Authorization to Transfer form must be provided to the registered facility to which a transfer may be made by the patient or person authorized to transfer the usable marijuana or immature plants. The patient should retain a copy of the Authorization to Transfer form for his or her records and provide a copy to the person authorized to transfer the usable marijuana or immature plants.

(4) An Authorization to Transfer form automatically expires on the date the patient's OMMP card expires, unless the patient has specified an earlier expiration date. If the patient renews his or her OMMP card the patient may execute a new Authorization to Transfer form in accordance with this rule.

(5) Once usable marijuana or an immature plant is transferred to a registered facility pursuant to a valid Authorization to Transfer form, the usable marijuana or immature plant is no longer the property of the patient unless the usable marijuana or immature plants are returned by the registered facility.

(6) Prior to a registered facility accepting a transfer of usable marijuana or immature plants the PRF must ensure that:

- (a) It has a valid Authorization to Transfer form on file that authorizes the individual that is transferring the usable marijuana or immature plants to make the transfer; and
- (b) The individual transferring the usable marijuana or immature plants is the individual authorized to make the transfer.

(7) A PRF must ensure that when a registered facility accepts a transfer of usable marijuana or an immature plant the batch of usable marijuana and each immature plant are segregated in accordance with the testing rule, OAR 333-008-1190 and that the following information is documented, as applicable:

- (a) The unique identifier;
- (b) The weight in metric units of all usable marijuana received by the registered facility;
- (c) The number of immature plants received by the registered facility;
- (d) The amount of a finished product received by the registered facility, including, as applicable, the weight in metric units, or the number of units of a finished product;
- (e) A description of the form the usable marijuana was in when it was received, for example, oil or an edible product;
- (f) Who transferred the usable marijuana or the immature plant, the individual's OMMP card number and expiration date of the card, a copy of the individual's picture identification, the date

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the usable marijuana or an immature plant was received, and the name of the patient who authorized the transfer; and

(g) The amount of reimbursement paid by the registered facility.

(8) Nothing in these rules requires a PRF or a registered facility to accept a transfer of usable marijuana or immature plants.

(9) A PRF must ensure that:

(a) From the time that a batch or plant has been received by the registered facility until it is tested in accordance with these rules, the usable marijuana and immature plants are segregated, withheld from use, and kept in a secure location so as to prevent the marijuana or plants from becoming contaminated or losing efficacy, or from being tampered with or transferred except that samples may be removed for testing; and

(b) No usable marijuana or immature plants are transferred to a patient or designated primary caregiver until testing has been completed, the registered facility has received a written testing report, and the usable marijuana and immature plants have tested negative for pesticides, mold and mildew.

(10) Usable marijuana and immature plants must be kept on-site at the facility. The Authority may cite a PRF for a violation of these rules if during an inspection it cannot account for its inventory or if the amount of usable marijuana at the registered facility is not within five percent of the documented inventory.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

### 333-008-1240

#### Transfers to a Patient or Designated Primary Caregiver

(1) Prior to a registered facility transferring usable marijuana or an immature plant to a patient or a designated primary caregiver the PRF must ensure that:

(a) The usable marijuana or an immature plant has not tested positive for mold, mildew or pesticides as specified in OAR 333-008-1190; and

(b) The identity and cardholder status of the person requesting usable marijuana or an immature plant is verified by viewing the person's OMMP card and picture identification and making sure the two match.

(2) The PRF must ensure that for each transfer of usable marijuana or an immature plant to a patient or a designated primary caregiver the following information is documented:

(a) The name, OMMP card number and expiration date of the card of each person to whom the registered facility transfers usable marijuana or an immature plant;

(b) A copy of the person's picture identification;

(c) The amount of usable marijuana transferred in metric units, if applicable;

(d) The number of immature plants transferred, if applicable;

(e) The amount of a finished product transferred in metric units, or units of the finished product, if applicable;

(f) A description of what was transferred;

(g) The date of the transfer; and

(h) The amount of money paid by a patient or a designated primary caregiver to a registered facility for the transfer of usable marijuana or an immature plant.

(3) The PRF must ensure that a registered facility does not transfer at any one time more usable marijuana or immature plants than a patient or designated primary caregiver is permitted to

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possess under ORS 475.320(1)(a). A PRF is not responsible for determining whether a patient or designated primary caregiver is limited in the amount of usable marijuana he or she can possess under ORS 475.320(1)(b).

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

**333-008-1250**

**Inspections**

(1) The Authority must conduct an initial inspection of every registered facility within six months of approving an application to ensure compliance with these rules, and must conduct a routine inspection of every registered facility at least every year.

(2) The Authority may conduct a complaint inspection at any time following the receipt of a complaint that alleges a registered facility is in violation of ORS 475.314 or these rules.

(3) The Authority may conduct an inspection at any time if it believes, for any reason, that a registered facility or a PRF is in violation of ORS 475.314 or these rules.

(4) A PRF and any employees, contractors, or other individuals working at a registered facility must cooperate with the Authority during an inspection.

(5) If an individual at a registered facility fails to permit the Authority to conduct an inspection the Authority may seek an administrative warrant authorizing the inspection pursuant to ORS 431.262.

Stat. Auth.: ORS 431.262, 475.314, 475.338

Stats. Implemented: ORS 431.262, 475.314

**333-008-1260**

**Violations**

(1) A registered facility is in violation of ORS 475.314 or these rules for:

(a) A PRF or an employee of a facility failing to cooperate with an inspection;

(b) The submission by a PRF of false or misleading information to the Authority in support of an application or in seeking to retain registration;

(c) Transferring usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver;

(d) Accepting a transfer of usable marijuana or immature plants without a valid authorization from the patient;

(e) Possessing a mature marijuana plant at the registered facility;

(f) Failing to document and maintain information in the manner required by these rules;

(g) Failing to account for usable marijuana or immature plants on the premises of the registered facility, taking into account a five percent loss;

(g) Failing to submit a plan of correction in accordance with OAR 333-008-1270;

(h) Failing to comply with a final order of the Authority, including failing to pay a civil penalty;

or

(i) Failing to comply with ORS 475.314 or any of these rules.

(2) It is a violation of ORS 475.314 and these rules to operate a facility without being registered by the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

**333-008-1270****Enforcement**

(1)(a) **Informal Enforcement.** If, during an inspection the Authority documents violations of ORS 475.314 or any of these rules, the Authority may issue a written Notice of Violation to the PRF that cites the laws alleged to have been violated and the facts supporting the allegations.

(b) The PRF must submit to the Authority a signed plan of correction within 10 business days from the date the Notice of Violation was mailed to the person. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the Notice.

(c) A PRF must correct all deficiencies within 10 days from the date of the Notice, unless an extension of time is requested from the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(d) The Authority must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority it must notify the PRF in writing and request that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed.

(e) If the registered facility does not come into compliance by the date of correction reflected on the plan of correction, the Authority may propose to revoke the registration of the facility or impose civil penalties.

(f) The Authority may conduct an inspection at any time to determine whether a registered facility has corrected the deficiencies in a Notice of Violation.

(2) **Formal Enforcement.** If, during an inspection or based on other information the Authority determines that a registered facility or PRF is in violation of ORS 475.314 or these rules the Authority may issue:

(a) A Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470; or

(b) A Notice of Imposition of Civil Penalties in accordance with ORS 183.745. Civil penalties may be issued for any violation of ORS 475.314 and these rules, not to exceed \$500 per violation per day.

(3) The Authority must determine whether to use the informal or formal enforcement process based on the nature of the alleged violations, whether there are mitigating or aggravating factors, and whether the PRF or the registered facility has a history of violations.

(4) The Authority must issue a Notice of Proposed Revocation if the:

(a) Facility no longer meets the criteria in ORS 475.314(3)(a) to (d); or

(b) PRF is not a resident of Oregon, has disqualifying criminal convictions as described in OAR 333-008-1120, or a court has issued an order that prohibits the PRF from participating in the OMMP under ORS 475.300 through 475.346 unless a new PRF is approved by the Authority.

(5) The Authority may maintain a civil action against a facility that is operating but not registered in accordance with ORS 475.314 and these rules.

(6) The Authority must post a final order revoking the registration of a facility on the Authority's website and provide a copy of the final order to the OMMP.

(7) To the extent permitted by law, if the Authority discovers violations that may constitute criminal conduct or conduct that is in violation of laws within the jurisdiction of other state or local governmental entities, the Authority may refer the matter to the applicable agency.

(8) If the registration of a facility is revoked the PRF must make arrangements to return the usable marijuana and immature plants in amounts still possessed by the facility, to the person who transferred the usable marijuana or immature plants and must document the same.

Stat. Auth.: ORS 431.262, 475.314, 475.338

Stats. Implemented: ORS 431.262, 475.314

### **333-008-1280**

#### **Confidentiality**

(1) Any criminal background information received by the Authority about a PRF during the criminal background check process is confidential and is not subject to disclosure without a court order.

(2) The name of a PRF and the address of a registered facility is confidential and is not subject to disclosure without a court order, except as provided in section (5) of this rule, or unless a PRF has authorized disclosure.

(3) If an application has been denied, the information submitted to the Authority in an application for registration of a facility is not confidential and may be subject to disclosure under ORS 192.410 through 192.505.

(4) A final order revoking the registration of a facility is not confidential and may be posted on the Authority's website or otherwise made public by the Authority.

(5) Authorized employees of state and local law enforcement agencies may verify with the Authority at all times whether:

(a) A location is the location of a registered facility; or

(b) A person is listed as the PRF of a registered facility.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314, 475.331

### **333-008-1290**

#### **Change of Location**

(1) A registered facility that changes location must submit a new application that complies with OAR 333-008-1020.

(2) A facility may not operate at a new location unless it is registered by the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

**Oregon Medical Marijuana Program proposed revised rules  
333-008-0010**

**Definitions**

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

- (1) "Act" means the Oregon Medical Marijuana Act.
- (2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Authority.
- (3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.
- (4) "Authority" means the Oregon Health Authority.
- (5) "Debilitating medical condition" means:
  - (a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;
  - (b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
    - (A) Cachexia;
    - (B) Severe pain;
    - (C) Severe nausea;
    - (D) Seizures, including but not limited to seizures caused by epilepsy; or
    - (E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;
  - (c) Post-traumatic stress disorder; or
  - (d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the Authority by rule or approved by the Authority pursuant to a petition submitted under OAR 333-008-0090.
- (6) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.
- (7) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority. "Designated primary caregiver" does not include the person's attending physician.
- (8) "Food stamps" means the Supplemental Nutrition Assistance Program as defined and governed by ORS 411.806 through 411.845.
- (9) "Grow site" means a specific location registered by the Authority used by the grower to produce marijuana for medical use by a specific patient.
- (10) "Grow site registration card" means the card issued to the patient and displayed at the grow site.
- (11) "Grower" has the same meaning as "person responsible for a marijuana grow site."
- (12) "Immature plant" has the same meaning as "seedling or start."
- (13) "Marijuana" means 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,

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derivative, mixture, or preparation of the plant or its resin. 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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(14) "Mature plant" means a marijuana plant that does not fall within the definition of a seedling or a start.

(15) "Medical marijuana facility" is a facility, registered by the Authority, under OAR 333-008-1050.

(16) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(17) "Oregon Health Plan (OHP)" means the medical assistance program administered by the Authority under ORS chapter 414.

(18) "OMMP" refers to the office within the Authority that administers the provisions of the OMMA, and all policies and procedures pertaining thereto, as set forth in these rules.

(19) "Parent or legal guardian" means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(20) "Patient" has the same meaning as "registry identification cardholder."

(21) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose.

(22) "Person responsible for a medical marijuana facility" has the meaning given that term in OAR 333-008-1010.

(23) "Primary responsibility" as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS chapter 677, the patient's physician assistant licensed under ORS chapter 677, or the patient's nurse practitioner licensed under ORS chapter 678; and,

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(24) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(25) "Registry identification card" means a document issued by the Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(26) "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 Authority.



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~~(275)~~ "Replacement registry identification card" means a new card issued in the event that a registry identification cardholder's card, designated primary caregiver identification card, grower identification card, or grow site registration card is lost or stolen, or if a registry identification cardholder's designation of primary caregiver, grower, or grow site has changed.

~~(286)~~ "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all three criteria shall be considered a mature plant.

~~(297)~~ "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

~~(308)~~ "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

~~(3129)~~ "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

### 333-008-0020

#### New Registration Application and Verification

(1) A person may apply for a registry identification card on forms prescribed by the Authority. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form signed and dated by the applicant;

(b) Copies of legible and valid U.S. state or federal issued photographic identification that includes last name, first name, and date of birth from the applicant, the designated primary caregiver, and grower, as applicable. Acceptable forms of current U.S. state or federal issued photographic identification include but are not limited to:

(A) Driver's license;

(B) State identification card;

(C) Passport; or

(D) Military identification card.

(c) Written documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Authority, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) If applicable, a completed and notarized "Declaration of Person Responsible for Minor" form for any person under 18 years of age, signed and dated by the person responsible for the minor;

(e) The name of a designated primary caregiver, if any;

~~(f) and one~~ The name of a designated grower (either the patient or another person), if any and the location of the grow site; and

~~(g)~~ f) An application fee and grow site registration fee, if applicable, in the form of cash, bank check, money order, or personal check.

(2) The Authority shall process an application prior to issuing registry identification cards to assure that the application is complete and information provided has been verified.

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- (a) The Authority shall only accept applications that are mailed or are hand-delivered.
- (b) If an applicant does not provide all the information required and the application is considered incomplete, the Authority shall notify the applicant of the information that is missing, and shall allow the applicant 14 days to submit the missing information.
- (c) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsections (2)(b) and (3)(e) of this rule, the application shall be rejected as incomplete. An applicant whose application is rejected as incomplete may reapply at any time. If an applicant submits an application fee and the application is subsequently denied or rejected, the application fee may be applied toward a new application submitted within one year of the denial or rejection date.
- (d) The Authority may reject an application if the application or supporting documents appear to be altered (for example, writing is whited out). An application shall be denied in accordance with OAR 333-008-0030 if an application or supporting documents are determined to have been falsified.
- (e) The Authority may verify information on each application and accompanying documentation, including:
- (A) Contacting each applicant by telephone or by mail. If proof of identity is uncertain, the Authority may require a face-to-face meeting and may require the production of additional identification materials;
- (B) Contacting a minor's parent or legal guardian;
- (C) Contacting the Oregon Medical Board to verify that an attending physician is licensed to practice in the state and is in good standing;
- (D) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Authority shall notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application. If the Authority is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed 30 days to submit written documentation or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030;
- (E) Contacting the Division of Medical Assistance Programs, Department of Human Services-Self Sufficiency, or the Social Security Administration (SSA) to verify eligibility for benefits; and
- (F) Conducting a criminal records check under ORS 181.534 of any person whose name is submitted as a grower.
- (3) Application fees.
- (a) A non-refundable application fee of \$200 is required at the time of application.
- (b) If applicable as specified in OAR 333-008-0025, a non-refundable grow site registration fee of \$50 is required at the time of application.
- (c) An applicant who can demonstrate current receipt of SSI benefits, current eligibility for OHP benefits or current receipt of food stamp benefits through the Oregon SNAP program qualifies for a reduced non-refundable application fee.
- (A) An applicant demonstrating receipt of SSI benefits by providing a copy of a current monthly SSI benefit card showing dates of coverage is entitled to a reduced application fee of \$20.

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(B) An applicant demonstrating current eligibility for OHP benefits by providing a copy of the applicant's current eligibility statement is entitled to a reduced application fee of \$50.

(C) An applicant demonstrating receipt of current food stamp benefits, verified by enrollment in Oregon's Food Stamp Management Information System database system and by providing current proof of his or her food stamp benefits, is entitled to a reduced application fee of \$60.

(d) The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(e) The Authority shall notify an applicant who submits a reduced application fee for which the applicant is not eligible and will allow the applicant 14 days from the date of notice to pay the correct application fee and submit a current valid proof of eligibility.

(f) The application fees established in paragraphs (3)(c)(B) and (C) of this rule are effective for applications received on or after October 1, 2013.

(4) The application forms referenced in this rule may be obtained by contacting the Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or by calling 971-673-1234.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

### 333-008-0025

#### Marijuana Grow Site Registration

(1) A patient must register a marijuana grow site with the Authority. The address of a medical marijuana facility may not be listed by a patient on the grow site application as the location of the marijuana grow site. The Authority will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Authority an application, prescribed by the Authority, that includes:

(a) The name of the grower;

(b) The date of birth of the grower;

(c) The physical address of the marijuana grow site where marijuana is to be produced;

(d) The mailing address of the grower;

(e) The registry identification card number of the patient, if known, for whom the marijuana is being produced; and

(f) A non-refundable grow site registration fee of \$50 in the form of cash, bank check, money order, or personal check. If the grower is the applicant, he or she is not required to pay the grow site registration fee. The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

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(3) The Authority shall conduct a criminal background check on the grower as authorized under ORS 475.304.

(a) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offense occurred on or after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(b) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offenses occurred after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(c) The Authority shall notify a patient by certified mail that the grower is ineligible and the patient will be allowed the opportunity to identify another grower.

(4) The Authority shall issue a marijuana grow site registration card to a patient who has met the requirements of section (2) of this rule, unless the grower is disqualified under section (3) of this rule.

(5) A grower must display a marijuana grow site registration card for each patient for whom marijuana is being produced, at the marijuana grow site at all times.

(6) All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a patient by a grower, are the property of the patient and must be provided to the patient, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a registered medical marijuana facility, upon request.

(7) All marijuana produced for a patient must be provided to the patient or designated primary caregiver when the grower ceases producing marijuana for the patient.

(8) A grower must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the grower ceases producing marijuana for the patient.

(9) A patient or the designated primary caregiver of the patient may reimburse the grower for the costs of supplies and utilities associated with production of marijuana for patient. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.

(10) A grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.

(11) The Authority may not register a grow site if the location of the grow site is the same location as a medical marijuana facility.

Stat.Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

### 333-008-0045

#### Interim Changes

(1) A patient shall notify the Authority within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.

(2) A patient shall notify, as applicable, the designated primary caregiver, and the grower, and the person responsible for a medical marijuana facility of any changes in status including, but not limited to:

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- (a) The assignment of another individual as the designated primary caregiver for the patient;
  - (b) The assignment of another individual as a grower for the patient;
  - (c) The revocation of an Authorization to Transfer form under OAR 333-008-1230; or
  - (de) The end of eligibility of the patient to hold a registry identification card.
- (3) If the Authority is notified by the patient that a designated primary caregiver or a grower has changed, the Authority shall notify the designated primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that their card is no longer valid and must be returned to the Authority within seven calendar days.
- (4) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Authority within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Authority may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.
- (5) Change forms may only be submitted to the Authority via mail or in person at the OMMP office.
- (6) If a patient's designated primary caregiver, grower or grow site has changed, the non-refundable fee to receive a replacement card is \$100. If the patient qualifies for the reduced application fee of \$20, the non-refundable fee to receive a replacement card is \$20.
- (7) If a patient is registering a new grow site at any time other than when submitting a new application or a renewal application, a grow site registration fee will not be charged.
- Stat. Auth.: ORS 475.309 & 475.312  
Stats. Implemented: ORS 475.309 & 475.312

### 333-008-0050

#### Confidentiality

- (1) The Authority shall create and maintain either paper or computer data files of patients, designated primary caregivers, growers, and grow site addresses. The data files shall include all information collected on the application forms or equivalent information from other written documentation, plus a copy of OMMP registry identification cards, effective date, date of issue, and expiration date. Except as provided in section (2) of this rule, the names and identifying information of registry identification cardholders and the name and identifying information of a pending applicant for a card, a designated primary caregiver, a grower, and a marijuana grow site location, shall be confidential and not subject to public disclosure.
- (2) Names and other identifying information made confidential under section (1) of this rule may be released to:
- (a) Authorized employees of the Authority as necessary to perform official duties of the Authority, including the production of any reports of aggregate (i.e., non-identifying) data or statistics;
  - (b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify:
    - (A) That a person is or was a lawful possessor of a registry identification card;

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(B) That a person is or was a person responsible for a registered medical marijuana facility;

~~(B)~~(C) That the address is or was a documented grow site, and how many people are authorized to grow at that grow site; or

(D) How many people a person was or is authorized to grow for; or

(E) That an address is or was the location of a registered medical marijuana facility.

(c) Other persons (such as, but not limited to, employers, lawyers, family members) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or grower. The release of information must specify what information the Authority is authorized to release and to whom.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

### 333-008-0120

#### System to Allow Verification of Data at All Times

(1) The Authority shall establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, grower, person responsible for a medical marijuana facility, grow site location, or medical marijuana facility is listed or registered with the Authority.

(2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.

(3) The Authority may allow the release of reports related to verification if it is without identifying data.

(4) The Authority shall have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two business days, the Authority shall ensure program staff are available by phone for verification purposes.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 -- 475.346

## Brownsville couple plans pot dispensary



FEBRUARY 01, 2014 6:00 AM • BY JENNIFER MOODY,  
ALBANY DEMOCRAT-HERALD

**BROWNSVILLE** — If all goes as planned, Randy and Gayle Simpson hope to open the mid-valley's first medical marijuana dispensary in Brownsville later this year.

The Brownsville couple came before the Brownsville City Council on Wednesday to detail their plans and take questions.

House Bill 3460, passed last year, gave Oregonians the right to start applying to operate state-sanctioned dispensaries as of March 3. City Administrator Scott McDowell noted a dispensary is an allowed use under Brownsville's current zoning codes, as long as the state gives it the proper certification.

Some Oregon cities are moving to change codes to prevent the establishment of medical marijuana dispensaries, but Mayor Don Ware said that question hasn't come up yet in Brownsville.

"We haven't said that," he said. "If we choose to be against it, probably, but who knows. We're not that far along."

Ware and the three council members present had no questions other than to ask where people currently have to drive to find a medical marijuana dispensary. Those can be found in Salem or Eugene, the Simpsons replied.

The Simpsons, both 58, currently hold medical marijuana cards and said they have found the plant beneficial, especially for Randy's ulcerative colitis.

They believe most people who use medical marijuana would otherwise be dependent on prescription drugs made with opiates, which they said produce far worse side effects.

"We've seen the good it (medical marijuana) does people," Gayle said in a later interview with the Democrat-Herald. "It truly is a medicine."

The Simpsons plan to start by offering just the marijuana for sale, but may branch out later into tinctures, food products known as "medibles," and concentrated oils. No live plants will be sold.

An agreement for their first choice of location fell through, but Gayle said the two are negotiating for a new one in the city limits that looks promising. She said she hoped to know more in a couple of weeks.

While both said they know they'll face criticism and opposition, Gayle said, "Generally we hear people are happy a dispensary is coming into town."

Naysayers often worry about such dispensaries attracting a criminal element, but the two don't believe that will be the case.

Most medical marijuana users Gayle knows "just want to get in, they want to get their medicine and they want to go home and medicate so they can feel better."

Only people 18 and older who have a medical marijuana card and official picture identification will be allowed to shop in the dispensary, she said. "They're cardholders who want to be operating within the confines of the law. That's why they're cardholders."

As per the temporary rules set out by the Public Health Division of the Oregon Health Authority, the dispensary will have a heavy-duty security system, complete with alarms, video recorders, motion detectors and backup recording systems.

The couple also won't hesitate to call out an officer for anyone who may be shopping for nefarious purposes, Gayle said. "Randy and I will prosecute to the fullest extent of the law."

The Simpsons said their dispensary will comply with each of the rules detailed in the 28 pages set out by the state's health division, including weighing products with government-approved scales and strict documentation of all inventory coming in or going out.

It's a lot to do, Gayle said. "But I'm good with that because I want people to know this is not some shaky, fly-by-night operation."



## Resolution 554

**A RESOLUTION ESTABLISHING SUPPORT BETWEEN BROWNSVILLE AREA DRUG EDUCATION NETWORK (BADEN), THE CITIZENS OF BROWNSVILLE, ITS ELECTED AND APPOINTED OFFICIALS AND THE LOCAL LAW ENFORCEMENT FOR THE PREVENTION OF DRUG USE WITHIN OUR COMMUNITY, AND FOR PROCLAIMING BROWNSVILLE A NO DRUG ZONE.**

Be it resolved that the City of Brownsville supports a partnership with community individuals, leaders and organizations that have the desire to provide a safe and healthy environment for our citizens, and

Be it further resolved that the City of Brownsville supports the goal of promoting drug awareness and education in our schools, and throughout our community, and

Be it further resolved that the City of Brownsville supports a policy of zero tolerance for all illegal drugs, the City of Brownsville approves being designated a No Drug Zone.

APPROVED BY THE COUNCIL this 19th day of September 2005.

CITY OF BROWNSVILLE

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Administrator



## U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

## MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

Memorandum for All United States Attorneys  
Subject: Guidance Regarding Marijuana Enforcement

Page 2

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.<sup>1</sup>

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

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<sup>1</sup> These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

Memorandum for All United States Attorneys  
Subject: Guidance Regarding Marijuana Enforcement

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must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

Memorandum for All United States Attorneys  
Subject: Guidance Regarding Marijuana Enforcement

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As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman  
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch  
United States Attorney  
Eastern District of New York  
Chair, Attorney General's Advisory Committee

Michele M. Leonhart  
Administrator  
Drug Enforcement Administration

H. Marshall Jarrett  
Director  
Executive Office for United States Attorneys

Ronald T. Hosko  
Assistant Director  
Criminal Investigative Division  
Federal Bureau of Investigation

# The State

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## Coos Bay puts moratorium on medical pot shops

The Associated Press January 23, 2014

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COOS BAY, Ore. — Coos Bay has joined Oregon cities putting a moratorium on medical marijuana dispensaries the state has legalized.

The World newspaper of Coos Bay (<http://bit.ly/19QSPIR>) reports the moratorium gives the city a year to examine its land-use laws to deal with dispensaries. Development Director Eric Day says he's looking at "how best to plan for allowing them."

He says the code would have allowed dispensaries in much of the city.

The state plans to begin accepting applications for dispensary licenses March 3.

One major Oregon city, Medford, banned dispensaries, arguing medical marijuana is still illegal under federal law.

Others have taken a tack similar to that of Coos Bay.

The Ashland City Council voted this week to accept dispensaries, striking a provision allowing business licenses to be denied for unlawful activity.

Information from: The World, <http://www.theworldlink.com>

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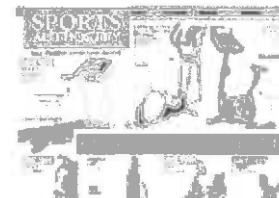
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THIS WEEK ONLY

April 18, 2006

**Honorable Mayor and Members of the  
Hermosa Beach City Council**

**Regular Meeting of  
April 25, 2006**

**SUBJECT: INTERIM URGENCY ORDINANCE TO PROHIBIT THE ESTABLISHMENT  
OF MEDICAL MARIJUANA DISPENSARIES**

**Recommendation:**

Adopt the attached urgency ordinance: Ordinance No. 06-\_\_\_,

“AN INTERIM ORDINANCE OF THE CITY OF HERMOSA BEACH PURSUANT TO GOVERNMENT CODE SECTION 65858 PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND DECLARING THE URGENCY THEREOF.” (ATTACHMENT A)

**Background**

In 1996, California voters enacted Proposition 215, called “The Compassionate Use Act of 1996.” The Act sets forth the circumstances under which marijuana may be prescribed, dispensed and used for medicinal purposes in California.

The United States Justice Department takes the position that the distribution and use of marijuana for medicinal purposes violates federal drug laws. Accordingly, the Drug Enforcement Administration has from time to time raided and shut down some medicinal marijuana dispensaries in California. Nonetheless, the DEA’s enforcement efforts have been inexplicably inconsistent, and numerous dispensaries have opened in the last two years throughout the State. The conflict between federal law and Proposition 215 has yet to be fully resolved in the courts.

**Analysis**

The purpose of the present agenda item is to consider an urgency ordinance to place a 45-day moratorium on the establishment of new medical marijuana dispensaries in the City of Hermosa Beach. Currently medical marijuana dispensaries are considered to be a permitted use of property similar to dispensing medicines in a medical clinic, pharmacy or medical office as allowed in the commercial zones under Article 17 of the Municipal Code (Zoning Ordinance). Potential dispensaries can be permitted if they meet minimum parking and development standards. There is no requirement for a conditional use permit or other discretionary review to establish these facilities. The City has comported itself in conformance with Proposition 215.


Medical marijuana dispensaries have been established throughout commercial zones in the region and may locate in close proximity to residentially zoned properties and sensitive land uses. Staff believes that it is necessary to review and analyze the impact of medical marijuana dispensaries and to formulate any necessary regulations, consistent with State law, governing the location and operation of the facilities in order to protect residents and businesses from harmful secondary effects. Regulation similar to liquor establishments or requiring a certain distance from schools or parks may be necessary. Other cities have developed such requirements. Due to the potential proliferation of such establishments in the city, and because time will be required to

prepare and adopt those regulations, this Ordinance is intended to place an interim moratorium on the establishment of any new medical marijuana dispensaries for 45 days, effective from the date of adoption of the urgency ordinance.

Consistent with Government Code Section 65858, the Council may adopt up to two extensions of the moratorium after providing notice pursuant to Section 65090 and holding a public hearing. The maximum duration of the extensions are ten (10) months, fifteen (15) days for the first, and twelve (12) months for the second.

**FISCAL IMPACT**

There is no fiscal impact for this item at this time.

  
\_\_\_\_\_  
Stephen R. Burrell  
City Manager

**Attachments**

1. Urgency Ordinance

P:/MedMJ



**ORDINANCE NO. 06-\_\_\_\_\_****AN INTERIM ORDINANCE OF THE CITY OF HERMOSA BEACH  
PURSUANT TO GOVERNMENT CODE SECTION 65858 PROHIBITING  
THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES AND  
DECLARING THE URGENCY THEREOF.**

The City Council of the City of Hermosa Beach does hereby ordain as follows:

**SECTION 1. Purpose and findings.** Currently medical marijuana dispensaries are considered to be a permitted use of property in the commercial zones under the City's zoning ordinance. Medical marijuana dispensaries may be established in the City within close proximity to residentially zoned properties and sensitive uses such as residential property, schools and day care centers. Other cities with medical marijuana dispensaries have reported an increase in loitering around dispensaries, an incident of armed burglary within dispensaries, parking and traffic violations, and increased complaints from neighbors about increased pedestrian and vehicular traffic and noise. City staff believes that it is necessary to formulate regulations, consistent with State law, governing the location and operation of medical marijuana dispensaries in order to protect residents and businesses from harmful secondary effects of these establishments. Due to the recent proliferation of such establishments in cities throughout the region, and because such uses are permitted under the City's zoning regulations and further, because time will be required to prepare and adopt those regulations, this Ordinance is intended to place an interim moratorium on the establishment of any new medical marijuana dispensaries as of the date of adoption hereof, until new regulations are prepared and adopted by the City Council.

**SECTION 2. Moratorium established.** A moratorium is hereby established on the establishment of medical marijuana dispensaries in the City. Notwithstanding any provision of the Hermosa Beach Municipal Code to the contrary, no medical marijuana dispensary shall be established in the City, whether or not a permit of any kind is required from the City; further, no application for a permit of any kind (including a building permit) will be accepted, processed or considered during the pendency of this ordinance or any extension thereof for establishment of a medical marijuana dispensary. This Ordinance and the moratorium established herein applies to any site, facility, location, use, cooperative or business that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians, pursuant to Health & Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations adopted in furtherance thereof.

**SECTION 3. Definitions.** For purposes of this Ordinance, a "medical marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health & Safety Code Section 11362.5. The word "marijuana" shall have the same meaning as the definition of that word in Health & Safety Code Section 11018.

**SECTION 4. Penalties.** Violation of any provision of this Ordinance shall constitute a misdemeanor and shall be punishable by a fine not to exceed \$1,000 or by imprisonment in County jail for not to exceed six (6) months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of this Ordinance. In addition to the foregoing, any violation of this Ordinances hall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

**SECTION 5. Severability.** If any part or provision of this Ordinance or the application to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such part of provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

**SECTION 6. Urgency.** Based on the findings set forth in Section 1 hereof, the recent proliferation of medical marijuana dispensaries in the City and the secondary effects of those dispensaries poses a current and immediate threat to the public health, safety and welfare. This Ordinance is necessary to alleviate and address that threat until permanent zoning regulations can be established. This ordinance is adopted pursuant to California Government Code Section 65858 and shall take effect immediately upon adoption by a four-fifths vote of the City Council. This ordinance shall be in full force and effect for a period of forty-five (45) days from the date of its adoption unless extended by the City Council in accordance with the provisions of California Government Code Section 65858.

**SECTION 7. Conflicting Laws.** For the term of this Ordinance, or any extension thereof, the provisions of this Ordinance shall govern over any conflicting provisions of any other City code, ordinance, resolution or policy.

**PASSED, APPROVED AND ADOPTED** this 25th day of April, 2006.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



JACKIE LACEY  
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER  
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

July 15, 2013

The Honorable John Kitzhaber  
900 Court Street N.E.  
Salem, Oregon 97301-4047

Dear Governor Kitzhaber:

As District Attorney for the County of Los Angeles, I am in the unique position of having observed first-hand the proliferation of illegal storefront pot shops in Los Angeles, and the numerous and ongoing deleterious effects it has created for cities and communities across California. Below is an excerpt of the type of letters we receive every day:

“[t]his illicit drug-peddling establishment is extremely detrimental to the neighborhood...now it is showing signs of degradation...this business attracts suspicious loitering and illegal activity which has negatively impacted the safety and security of residents, especially the children.”

Although regulating marijuana activities in your state maybe a noble endeavor, legalizing marijuana sales through the storefront model is not the answer. We know this first-hand. As a result of its failure to prohibit storefront pot shops from the inception, the City of Los Angeles has been hit by an onslaught of lawsuits after the City tried to stop the damage it had created. These lawsuits are costing the City millions of dollars.

Our empirical evidence proves that storefront pot shops are merely fronts for drug dealing. It is imperative that marijuana activities and profit be kept mutually exclusive. Medical marijuana laws meant to provide the seriously ill with access to marijuana and immunity from prosecution have been exploited in California by criminal street gangs and other criminal enterprises, including drug cartels and organized crime. Due to the massive profits to be made, there is a growing cottage industry of doctors making millions of dollars issuing “medical” marijuana recommendations to any recreational user willing to pay a fee.

The Honorable John Kitzhaber  
July 15, 2013  
Page Two

Drugs, money and crime are inextricably linked. Directly tied to the influx of storefront pot shops is the increase in crime and drug abuse. We are also experiencing an increase in illegal commercial warehouse grow operations, mobile delivery services and injuries and property damage caused by explosions from volatile THC chemical extraction labs operated by "patients."

Based on our failed experiment with "medical" marijuana, I am urging you to veto House Bill 3460.

Very Truly Yours,



JACKIE LACEY  
District Attorney

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# Marijuana in Oregon

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## Arrests, Usage, and Related Data

**Jon Gettman , Ph.D.**

**The Bulletin of Cannabis Reform**

**[www.drugscience.org](http://www.drugscience.org)**

**10/19/2009**

## Marijuana in Oregon

### Introduction

This state report is part of a comprehensive presentation of national, state, county, and local level data on marijuana arrests in the United States. The primary report in this collection is "Marijuana Arrests in the United States (2007)".<sup>1</sup> Additional details on marijuana arrests and related topics in Oregon are available in the Marijuana Policy Almanac<sup>2</sup>, from which the data presented below has been excerpted. Arrest totals are based on Uniform Crime Reporting (UCR) program data; local data may differ due to various reasons, including reporting procedures and data availability.

There were 9,201 arrests for marijuana offenses in Oregon in 2007, representing an arrest rate of 246 per 100,000, which ranks Oregon at number 32 in the nation. There were an estimated 410,000 past year marijuana users in Oregon during 2007. Reconciling this estimate with the number of arrests for marijuana offenses provides an arrest rate of 2,244 per 100,000 users, which ranks Oregon at number 41 in the nation.

In terms of overall severity of maximum sentences for marijuana possession, Oregon ranks number 4 in the nation (based on penalties for a first offense). When it comes to penalties for just under 1 ounce of marijuana, Oregon is ranked at number 12 along with 10 other states (because of similarities between states there are only 12 rankings in this category). Here are the penalties for possession of various amounts of marijuana in Oregon:

<b>Amount</b>	<b>Max. Sentence</b>	<b>Max. Fine</b>
<b>1 Ounce*</b>	fine only	\$1,000
<b>2 Ounces</b>	10 years	\$100,000
<b>3 Ounces</b>	10 years	\$100,000
<b>4 Ounces</b>	10 years	\$100,000

(\*To simplify comparisons, for some states this category covers amounts just under 1 ounce)

Marijuana possession arrests accounted for 94% of all marijuana arrests in Oregon during 2007. (Nationally, marijuana possession arrests account for 89% of all marijuana arrests.) There were 8,642 arrests for marijuana possession in Oregon in 2007, and 559 arrests for marijuana sales. The arrest rate for marijuana possession in Oregon was 231 per 100,000 for 2007, while the arrest rate for marijuana sales was 15. Marijuana arrests also accounted for 47% of all drug arrests in Oregon during 2007.

<sup>1</sup> [http://www.drugscience.org/Archive/bcr7/bcr7\\_index.html](http://www.drugscience.org/Archive/bcr7/bcr7_index.html)

<sup>2</sup> [http://www.drugscience.org/States/US/US\\_home.htm](http://www.drugscience.org/States/US/US_home.htm)

## Marijuana in Oregon

Here is an overall scorecard for how Oregon ranks nationally in terms of marijuana arrests, penalties, and marijuana use.

Category	Ranking
Maximum Sentences for Possession	4
Maximum Sentence for Possession of 1 ounce	12
Arrest Rate per 100,000 population	32
Arrest Rate per 100,000 users	41
Past Month Users (Pct.)	10
Past Year Users (Pct.)	7
Past Month Users Age 12 – 17 (Pct.)	11
Past Year Users Age 12 – 17 (Pct.)	7

This report provides a summary of the following topics related to marijuana arrests in Oregon: (1) related national trends, (2) trends in Oregon marijuana arrests and marijuana use, (3) the costs of marijuana arrests in Oregon, (4) statistics on past month and past year marijuana use in Oregon by age group, (5) county level rankings in marijuana arrests and rates, and (6) drug treatment admissions for alcohol, marijuana, and other drugs. Extensive detail on these and related subjects, including local agency marijuana arrest data and historical data, is available in table format in the on line Marijuana Policy Almanac<sup>3</sup> for Oregon and other states, as well as similar national data.

### 1) Background – National Trends in Arrests and Marijuana Use from 2003 to 2007

While marijuana arrests have increased significantly since the 1980s, the prevalence of marijuana use in the United States has remained essentially unchanged.

Marijuana arrests in the United States increased from 755,200 in 2003 to 872,720 in 2007. This represents an average annualized change of +2.93% per year.

Historically, marijuana arrests in the United States increased by 150% in the 1990s, rising dramatically from 287,850 in 1991 to 723,627 in 2001, an average annualized change of 8.74% per year. During this time the number of individuals who reported marijuana use in national surveys increased modestly from 19.2 million in 1991 to 21 million in 2001.

The arrest rate for marijuana offenses (possession and sales combined) in the United States has increased from 260 per 100,000 in 2003 to 290 in 2007. This represents an average annualized change of +2.19% per year.

The number of past year marijuana users in the United States has remained relatively stable during this period, changing from 25.5 million annual users in 2003 to 25.2 million annual users in 2007. The number of past month users has also remained the same, 14.6 million in both 2003 and 2007.

On a percentage basis, annual marijuana use was reported by 10.78% of the population in 2003 and 10.22% in 2007, while monthly use was reported by 6.18% in 2003 and 5.92% in 2007.

<sup>3</sup> [http://www.drugscience.org/States/US/US\\_home.htm](http://www.drugscience.org/States/US/US_home.htm)

## Marijuana in Oregon

Consequently, at the national level over the last five years, an increase in marijuana arrests of 2.93% per year has resulted in an average annualized decrease in the number of annual marijuana users of 0.21% per year and a similar decrease in the prevalence of annual marijuana use of 0.03% per year.

### 2) Marijuana Arrest and Use Trends in Oregon (2003 – 2007)

Marijuana arrests in Oregon increased from 6,381 in 2003 to 9,201 in 2007. The arrest rate in 2003 was 179 per 100,000 while in 2007 it was 246.

Compared to a 2.93% average annual increase in marijuana arrests nationally, marijuana arrests in Oregon increased by 7.59% per year. (While the arrest rate nationally increased 2.19% annually in this period, in Oregon the arrest rate changed by 5.15% per year.)

During this same period, the number of annual marijuana users in Oregon increased from 406,000 in 2003 to 410,000 in 2007. This was an average annualized change of 0.20% per year. The number of monthly marijuana users decreased from 262,000 in 2003 to 237,000 in 2007, which produced an average annualized change of -1.99%.

### 3) The Costs of Marijuana Laws

The above comparison of marijuana arrests and marijuana use provide a basis for evaluating the benefits of marijuana laws. Here are three perspectives that help frame the issue of evaluating the costs of marijuana laws in Oregon.

#### a) Fiscal Costs.

The criminal justice system in Oregon cost \$2.23 billion for 2006. This includes state, county, and local costs. Here is the breakdown for those costs:

Police Protection	\$938.29 million
Judicial and Legal Services	\$368.01 million
Corrections	\$921.71 million
<b>Total</b>	<b>\$2.23 billion</b>

The federal Office of National Drug Control Policy (ONDCP) provides a simple way of making a general estimate of the criminal justice costs of drug-related arrests. Actually, estimating the costs of different types of arrests is a very complicated challenge because of the differences between individual offenses and, for example, the investigative and follow-up work they require. However the use of a percentage basis method provides a general estimate of the costs associated with marijuana offenses. The method utilized by ONDCP is to (a) calculate the percentage of total arrests accounted for by drug arrests and then (b) apply that percentage to total criminal justice system costs.

There were 151,602 arrests in Oregon in 2006. There were 8,338 marijuana arrests that year, accounting for 5.50% of all arrests in Oregon for 2006. Consequently, according to this percentage basis method of estimation, marijuana arrests cost \$122.54 million in Oregon for 2006.



## Marijuana in Oregon

### ***b) Opportunity Costs***

Budgets are, out of necessity, about making choices. This is especially true when resources are scarce, such as when state and local governments are grappling with budget gaps between revenue and program commitments. Economists recognize opportunity costs as the consequences of making specific budgetary decisions. Providing funds for one program often means accepting less or no funds for some other government activity. For example, providing law enforcement with the obligation, or opportunity, to make arrests for marijuana offenses deprives law enforcement of funds to apply to other investigations and activities.

Law enforcement agencies publish statistics on their ability to resolve known offenses through the arrest of criminal suspects. After an offense is reported to the police, the objective is “cleared” by an arrest. Crime rates are based on the number of reported offenses. Arrest rates are based on the number of arrests. Clearance rates, usually provided for the most serious crimes, are based on the percentage of known offenses cleared by arrest.

Here are the 2007 clearance rates for serious crimes in Oregon:

Murder	55.90%
Rape	27.50%
Robbery	35.80%
Assault	60.20%
Larceny	20.80%
Motor Vehicle Theft	12.40%
<b>All the above crimes</b>	<b>26.80%</b>

Another significant aspect of evaluating law enforcement priorities concerns the growing economic impact of what is referred to as “white-collar crime.” This is a broad term for what are essentially non-violent theft, including such crimes as fraud, identity theft, embezzlement, and securities fraud. While a great deal of media attention is devoted to law enforcement responses to street crimes, the economic impact of these crimes is dwarfed by the magnitude of white-collar crime, which is conservatively estimated to have an impact of 10 times the value of street crimes.

Marijuana arrests also divert law enforcement and criminal justice system resources from possession and sales offenses involving other illicit drugs. In 2007, marijuana arrests were 47% of all drug arrests in Oregon. Other drugs such as cocaine, heroin, methamphetamine, and synthetic narcotics such as Oxycontin present far more serious threats to both individuals and the public. These other illegal drugs also have far more severe dependence liabilities than marijuana. Here is a summary of drug arrests in Oregon for 2007:

Drug	Arrests	Pct.
Opiates/Cocaine	3,463	18%
Marijuana	9,201	47%
Synthetic Narcotics	863	4%
Other Dangerous Drugs	5,992	31%
<b>All Illicit Drugs</b>	<b>19,574</b>	<b>100%</b>

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The need to improve clearance rates for serious crime, to devote greater resources to white-collar crime, and to address the problems presented by more dangerous drugs all provide compelling reasons for society to reconsider whether the opportunity costs of marijuana law enforcement are acceptable.

### *c) Social Costs*

Marijuana arrests have a disproportionate impact on two demographic groups – young people and minorities. In many cases an arrest for marijuana possession makes a criminal out of an otherwise law-abiding individual. It is not surprising that the majority of marijuana arrests involve teenagers and young adults given the popularity of marijuana use with younger age groups. However differences in the arrest rates between whites and blacks cannot be explained by differences in marijuana use. In 2007, for example, 10.5% of whites used marijuana in the last year while 12.2% of blacks reported such use. For marijuana use in the last month, the comparable figures were 6% of whites and 7.2% of blacks. These figures indicate that marijuana use by blacks is about 20% more prevalent than use by whites. While this is a statistically significant difference, it does not explain why arrest rates for marijuana possession for blacks are three times higher nationally than for whites. For example, the arrest rate per 100,000 for blacks in 2007 was 598, while for whites the arrest rate was 195.

Here are selected 2007 marijuana possession arrest rates for Oregon:

Group	Pct of Arrests	Arrest Rate per 100,000
All individuals	100%	231
Males age 15 to 19	27%	1,819
Females age 15 to 19	6%	430
Males age 20 to 24	19%	1,335
Females age 20 to 24	3%	239
Whites	94%	238
Blacks	4%	491

### **4) Marijuana Use**

There were 410,000 annual marijuana users in Oregon during 2007, of which 237,000 reported marijuana use in the past month. As noted above, the number of annual marijuana users in Oregon increased from 406,000 in 2003 to 410,000 in 2007. This was an average annualized change of 0.20% per year. The number of monthly marijuana users decreased from 262,000 in 2003 to 237,000 in 2007, which produced an average annualized change of -1.99%.

There is general consensus that minors should not use alcohol, marijuana, or tobacco. According to the most recent (2007) data 16.10% or 48,000 youths aged 12 to 17 in Oregon used marijuana in the past year. Of these, 7.80% (of the total population of this age group) or 23,000 youths used marijuana in the past month. Marijuana's illegal status did not prevent these youths from having access to marijuana. Indeed, most teenagers report that marijuana is fairly easy to obtain. One of the reasons marijuana remains easy for youths to obtain is the profit incentive created by the illegal market. Simply put, teenagers make money by selling marijuana to other youths, which increases the availability of marijuana among teens. In this way, marijuana's illegality makes it more widely and readily available to teenagers.

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Here are data on the prevalence and population estimates for marijuana use by various age groups in Oregon:

### Past Month Marijuana Use (2007)

Age	Pct.	Pop.
Age 12 to 17	7.80%	23,000
Age 18 to 25	18.60%	72,000
Age 26 +	5.80%	142,000
<b>Total</b>	<b>7.60%</b>	<b>237,000</b>

### Past Year Marijuana Use (2007)

Age	Pct.	Pop.
Age 12 to 17	16.10%	48,000
Age 18 to 25	33.90%	131,000
Age 26 +	9.50%	231,000
<b>Total</b>	<b>13.10%</b>	<b>410,000</b>

### 5) County-Level Rankings

Most marijuana arrests are made by local police agencies. Individual agencies and officers exercise considerable discretion regarding law enforcement, not just for marijuana offenses, but for a number of offenses. The number of marijuana arrests also varies because of differences in local populations and the local prevalence of marijuana use. Furthermore, some areas have exceptionally high arrest rates for marijuana because they attract large visitor populations. Because arrest rates are calculated by dividing the number of arrests by the local resident population, numerous arrests of visitors to the area artificially inflate the local arrest rate. For a town with a relatively small population, the arrest of several people driving through the town or on a nearby highway (such as an interstate) can produce a comparatively high arrest rate for marijuana possession.

College towns may have large arrest rates for marijuana offenses because they have larger resident populations of young adults, among whom marijuana use is more prevalent than in older populations. On the other hand, college towns may have lower arrest rates for marijuana possession, for example, because of the discretionary policies of local police agencies.

Similarly, areas with large concentrations of African-Americans may have higher arrest rates for marijuana possession than other areas because law enforcement agencies throughout the United States consistently arrest more blacks for marijuana possession than whites.

Areas such as beach towns, ski resorts, and natural resource areas also exhibit relatively high marijuana arrest rates because they attract numerous visitors, including large numbers of young adults.

Finally, some areas have larger arrest rates for marijuana possession simply because marijuana use is popular among the local residents; local police agencies have aggressive enforcement policies, or both.

County level marijuana possession arrest rates should be compared against the benchmark provided by the statewide arrest rate of 231 in Oregon for 2007. The following tables provide the leading counties in

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Oregon for marijuana possession arrests, marijuana possession arrest rates, the possession arrest rates for males aged 15 to 19, and the possession arrest rates for blacks:

### Oregon County Leaders in Marijuana Possession Arrests (2007)

Lane	1,700
Multnomah	1,030
Jackson	743
Washington	711
Marion	685

### Oregon County Leaders in Marijuana Possession Arrest Rates (2007)

Sherman	3,411
Gilliam	2,443
Douglas	593
Lane	499
Jackson	372

### Oregon County Leaders in Marijuana Possession Arrest Rates, Males Aged 15 to 19 (2007)

Gilliam	35,908
Sherman	20,502
Columbia	4,505
Douglas	4,467
Jackson	3,490

### Oregon County Leaders in Marijuana Possession Arrest Rates of Blacks (2007)

Gilliam	62,677
Douglas	2,974
Coos	2,454
Lane	1,316
Josephine	1,248

## 6) Drug Treatment Admission Trends

Data on drug treatment admissions is often used to justify devoting law enforcement resources to making marijuana arrests. The argument is two-fold. First, the number of marijuana-related admissions to drug treatment facilities is offered as evidence that marijuana is a dangerous drug. Second, marijuana arrests are justified because they force people to get treatment.

There are a number of flaws to this argument. Alcohol is also responsible for a large proportion of drug treatment admissions, however regulation is widely recognized as the most effective policy for

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restricting access and reducing prohibition related crime. Furthermore, despite well-deserved public concern over drug abuse and a general consensus that it should be reduced, drug abuse is not a crime. The legal basis for drug laws is that the manufacture, distribution, sale, and possession of drugs are illegal. It is unconstitutional to criminalize illness, mental health problems, or drug dependency in the United States. Alcoholism, for example, is not illegal. Instead we hold alcoholics legally accountable for their conduct, such as being drunk in public or driving while intoxicated. Forcing individuals into drug treatment programs is a dubious justification for making arrests of individuals for marijuana possession. Law enforcement officers, prosecutors, and other criminal justice professionals are not medically trained or certified to diagnose drug dependency and make discretionary decisions about individual treatment requirements.

However the most significant characteristic of marijuana-related drug treatment admissions is that a majority of them in Oregon are the result of referrals from the criminal justice system, often as an alternative to jail time as a sentence for a marijuana possession or sales offense.

During 2007, there were 7,023 admissions for drug treatment services in Oregon. Of these, 64.00% were the result of referrals from the Oregon criminal justice system.

Here is a breakdown of the majority of 2007 drug treatment admissions in Oregon:

Primary Drug	Admissions	Pct.
Alcohol	27,267	56%
Marijuana	7,023	14%
Cocaine	1,107	2%
Synthetic Narcotics	1,477	3%
Methamphetamine	8,113	17%
<b>All Admissions</b>	<b>48,868</b>	<b>100%</b>

### Sources:

Sentences for Marijuana Possession were obtained from: ImpacTeen Illicit Drug Team. Illicit drug policies: Selected laws from the 50 states. Berrien Springs, MI: Andrews University, 2002. [http://www.impactteen.org/generalarea\\_PDFs/IDTchartbook032103.pdf](http://www.impactteen.org/generalarea_PDFs/IDTchartbook032103.pdf) and updated from other sources. Rankings of sentences were calculated independently and are based on the maximum number of days allowed by state law for the listed quantities of marijuana. The overall ranking is based on a weighted index for the four quantity levels. The weighting used in this index was: 70% for penalties for 1 ounce and 10% each for the penalties for 2, 3, and 4 ounces.

All arrest and clearance data were obtained from the FBI's Uniform Crime Reporting (UCR) Program. Data on drug use were obtained from the National Survey on Drug Use and Health (NSDUH); data on drug treatment admissions were obtained from the Treatment Episodes Data Set (TEDS). NSDUH and TEDS are compiled and published by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services. Data on Criminal Justice Service costs were obtained from the Criminal Justice Expenditure and Employment Extracts Program (CJEE) of the Bureau of Justice Statistics of the U.S. Department of Justice. More information on source data for this report can be obtained at <http://www.drugscience.org/States/Notes.htm>.