

CITY OF ROSEBURG
MEETING NOTICE
ROSEBURG CITY COUNCIL



NOTICE IS HEREBY GIVEN that

1. The Roseburg City Council meeting scheduled for October 12, 2015, has been cancelled.
2. A special meeting to solely address pending marijuana related issues will be held at 5:00 p.m. on Tuesday, October 13, 2015 in the City Council Chambers, 900 SE Douglas Avenue, Roseburg. No other business will be addressed at this meeting.

Anyone desiring more information regarding this notice may contact the City Manager's Office by calling (541) 492-6866.

Sheila R. Cox
City Recorder
Dated: October 8, 2015

***** AMERICANS WITH DISABILITIES ACT NOTICE *****

Please contact the City Recorder's Office, Roseburg City Hall, 900 SE Douglas, Roseburg, OR 97470-3397 (Phone 541-492-6866) at least 48 hours prior to the scheduled meeting time if you need an accommodation. TDD users please call Oregon Telecommunications Relay Service at 1-800-735-2900.



AGENDA

SPECIAL MEETING OF THE ROSEBURG CITY COUNCIL CITY COUNCIL CHAMBERS, 900 SE DOUGLAS

TUESDAY, OCTOBER 13, 2015
5:00 p.m.

CALL TO ORDER

Mayor Larry Rich

City Councilors

Alison Eggers
Lew Marks

Ken Fazio
John McDonald

Victoria Hawks
Tom Ryan

Steve Kaser
Andrea Zielinski

DISCUSSION ITEMS

1. Repeal of Tax Imposed by Ordinance No. 3438
2. Confirm Decision Not to Ban Recreational Marijuana
3. Referral of 3% Sales Tax on Recreational Marijuana
4. LUDO Amendments Relating to Legal Marijuana Activities

GOOD OF THE ORDER

ADJOURNMENT

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10/6/15



ROSEBURG CITY COUNCIL SPECIAL MEETING AGENDA ITEM SUMMARY

CONTINUED DISCUSSION ON HB 3400 – REMAINING MARIJUANA ISSUES

Meeting Date: October 12, 2015 at 6:00 P.M.

Department: City Recorder
www.cityofroseburg.org

Staff Contact: Sheila R. Cox *SR*
Contact Telephone Number: 492-6866

At the July 27, 2015 meeting, Council tabled the discussion on HB3400 which granted cities the authority to adopt an ordinance prohibiting certain commercial marijuana activities identified in the bill and refer the matter to the voters at the November 2016 general election. This continued discussion is the sole topic of the Special Council meeting scheduled for 6:00 p.m. on Monday, October 12, 2015.

At this special meeting, Council will need to act or give direction on the following four items:

1. REPEAL OF TAX IMPOSED BY ORDINANCE NO. 3438: Ordinance No. 3438 was adopted on October 27, 2014. The ordinance added Chapter 9.15 to the Roseburg Municipal Code and imposed a 0% tax on the sale of marijuana by a licensed medical marijuana dispensary under the Oregon Medical Marijuana Program and a 10% tax on "recreational" marijuana. However, under HB 3400, the 2015 Oregon Legislature vested the authority to impose a tax or fee on the production, processing or sale of marijuana items solely in the Legislative Assembly, except as provided by law – which effectively made the tax imposed by Ordinance No. 3438 an illegal tax which must be repealed.

Status/Action Requested: An ordinance repealing RMC 9.15 is attached to this memo as Attachment #1. Staff recommends Council proceed with first and second readings, followed by adoption of the ordinance at the Special meeting. Our next ordinance is number 3451.

2. CONFIRM DECISION NOT TO BAN RECREATIONAL MARIJUANA: At the July 27, 2015 meeting, Council also directed staff to prepare an ordinance prohibiting medical marijuana dispensaries from selling recreational marijuana beginning October 1, 2015. Staff presented that ordinance at the following meeting (August 10, 2015), but after further testimony from the public and discussion among Councilors, the ordinance failed to receive support for first reading by a vote of 5 to 3. Based on that vote, it appears the majority of

Council is *not* in favor of referring a potential ban of recreational marijuana and the other related activities outlined in HB 3400 to the voters. A copy of the memo presented at the July 27, 2015 Council meeting which outlines the six marijuana-related activities Council could potentially refer to the voters is attached as Attachment #2.

Status/Action Requested: Staff is asking for confirmation on Council's implied desire not to refer the six marijuana related activities outlined in HB 3400 to the voters at the November, 2016 general election.

3. REFERRAL OF 3% SALES TAX ON RECREATIONAL MARIJUANA: While HB 3400 directed that cities could *not arbitrarily* levy a tax on recreational marijuana if they chose not to ban such activities, it stated cities *could* adopt an ordinance imposing a tax of up to 3 percent on the sale of marijuana items by a retail licensee *if such ordinance was referred to the voters in a statewide general election.*

Status/Action Requested: If Council wants to allow the voters to decide at the November, 2016 general election if there should be a 3% local sales tax imposed on recreational marijuana sales, Staff will need direction to prepare the ordinance to accomplish the referral process in a timely manner.

4. LUDO AMENDMENTS RELATING TO LEGAL MARIJUANA ACTIVITIES: If Council has opted not to refer the HB 3400 issues to the voters, the City must begin the process of developing zoning regulations for recreational marijuana-related activities and commercial grow sites in our community – much like we did with the sale of medical marijuana in 2014.

State law places restrictions on where certain marijuana activities can locate, including prohibiting certain processors, dispensaries and retail establishments from locating in residential zones. Under HB 3400, before issuing a producer, processor, wholesaler or retailer license, the OLCC will be required to obtain a statement from the City that the requested license is for a location where the proposed use of the land is either a permitted or conditional use. In addition to those state requirements, cities can impose their own more stringent land use requirements and restrictions.

HB 3400 provides that cities may regulate marijuana facilities by imposing reasonable restrictions on:

- The hours of operation of recreational marijuana retailers and medical marijuana grow sites, processing sites and dispensaries;
- The location of recreational marijuana producers, processors, wholesalers and retailers, as well as medical grow sites, processing sites and dispensaries (with the 1,000-foot buffer between retailers);
- The manner of operation of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and dispensaries; and

- The public's access to the premises of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana grow sites, processing sites and dispensaries.

In summary, the City can regulate all marijuana-related activities that it has chosen not to ban and Staff recommends getting those regulations in place as soon as possible. Medical dispensaries were legally authorized to begin selling limited quantities of recreational marijuana on October 1, 2015 and that authority is set to end on December 31, 2016. By then recreational retail facilities will be open and selling recreational marijuana. The state plans to start accepting applications for recreational dispensaries on January 4, 2016 and at that same time, medical marijuana growers will also be able to apply for an OLCC license to grow recreational marijuana at the same site. Therefore City regulations must be in place as soon as possible, preferably before the state starts accepting applications for recreational dispensaries and communal grow sites.

Further, we would recommend that the regulations for recreational marijuana be developed to basically "mirror" those we've established for medical marijuana – for both land use and business registration purposes. Adopting new land use regulations takes time; notice of the intent to implement such regulations must be published locally at least 20 days prior, and filed with the state 35 days prior to the Planning Commission hearing the matter. Once Planning Commission has agreed on a recommendation, it would be forwarded to Council for final action. Staff would hope to have the proposed business registration regulations for recreational marijuana dispensaries ready for Council's consideration very soon thereafter.

Status/Action Requested: Staff would like Council direction to begin work on the LUDO amendments that will be required to implement land use regulations for all recreational marijuana activities and Code amendments relating to the business operations of recreational dispensaries.

FINAL NOTE: Just as a reminder, HB 3400 contained provisions that exempted licensed medical marijuana processors and dispensaries that have already registered with the state or that had applied to be registered by July 1, 2015, from the local prohibition if they have successfully completed the City's land use application process. Therefore, regardless of what Council does on these remaining issues, the medical marijuana dispensaries that are now legally operating in Roseburg will be allowed to continue providing medical marijuana to OMMP patients and limited quantities of recreational marijuana to persons without a medical marijuana card until the OLCC regulations are in place for recreational sales.

Attachments: #1 – Proposed Ordinance No. 3451 Repealing RMC 9.15 *"Establishing Tax on the Sale of Marijuana and Marijuana Infused Products"*; and
#2 – July 27, 2015 Agenda Staff Report regarding *"Options for Regulation of Recreational Marijuana"*.

ORDINANCE NO. 3451
AN ORDINANCE REPEALING ROSEBURG MUNICIPAL CODE CHAPTER 9.15
ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED
PRODUCTS AND DECLARING AN IMMEDIATE EFFECTIVE DATE

WHEREAS, under the authority of a home rule municipal corporation, on October 27, 2014, the Roseburg City Council adopted Ordinance No. 3438, entitled *An Ordinance Adding Chapter 9.15 To The Roseburg Municipal Code Establishing A Tax On The Sale Of Marijuana And Marijuana-Infused Products In The City of Roseburg*; and

WHEREAS, Roseburg Municipal Code Chapter 9.15 as adopted by Ordinance No. 3438 imposed a 0% tax on the sale of marijuana by a licensed medical marijuana dispensary under the Oregon Medical Marijuana Program and a 10% tax on any and all gross sale amounts paid to the seller of marijuana and marijuana-infused products by persons who were purchasing marijuana and marijuana-infused products but were not doing so under the Oregon Medical Marijuana Program; and

WHEREAS, under HB 3400 (2015), the Oregon Legislature vested the authority to impose a tax or fee on the production, processing or sale of marijuana items solely in the Legislative Assembly, except as provided by law; and directed that cities could not arbitrarily adopt or enact an ordinance imposing such tax or fee, but could adopt an ordinance imposing a tax or fee of up to 3 percent on the sale of marijuana items by a retail licensee if such ordinance was referred to the voters in a statewide general election;

WHEREAS, the Legislature's adoption of HB 3400 brings to question the status of the tax imposed under Ordinance No. 3438 and the Council desires to repeal said ordinance rather than be subjected to a legal challenge regarding the tax;

NOW THEREFORE THE ROSEBURG CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Roseburg Municipal Code Chapter 9.15 establishing a tax on the sale of marijuana and marijuana-infused products, as adopted by Ordinance No. 3438 on October 27, 2014, is hereby repealed in its entirety.

Section 2. Whereas the tax enacted under Roseburg Municipal Code Chapter 9.15 became an unlawful tax upon the Legislature's adoption of HB 3400, pursuant to Section 8.6 of the Roseburg City Charter, the Council hereby finds it necessary for the preservation of the peace, health and safety of the City for this ordinance to take effect immediately.

ADOPTED BY THE ROSEBURG CITY COUNCIL THIS 13TH DAY OF OCTOBER, 2015.
APPROVED BY THE MAYOR THIS 13TH DAY OF OCTOBER, 2015.

LARRY RICH, MAYOR

ATTEST:

SHEILA R. COX, CITY RECORDER



ROSEBURG CITY COUNCIL AGENDA ITEM SUMMARY

OPTIONS FOR REGULATION OF RECREATIONAL MARIJUANA

Meeting Date: July 27, 2015
Department: City Recorder
www.cityofroseburg.org

Agenda Section: ITEMS FROM DEPARTMENTS
Staff Contact: Sheila R. Cox
Contact Telephone Number: 492-6866

ISSUE STATEMENT AND SUMMARY July 1, 2015 marked the end of the prohibition of marijuana possession and consumption in Oregon, which leaves Council with certain options regarding the regulation of recreational marijuana within our City limits. Staff will acquaint Council with those options and request direction on how to proceed.

BACKGROUND

A. Council Action History. As I'm sure everyone recalls, a great deal of time was spent in 2014 drafting regulations relating to the sale of medical marijuana under the Oregon Medical Marijuana Program ("OMMP"). Passage of Measure 91 will make recreational marijuana legally available next year and once again, Council is under a "time line" to make decisions on how that will be regulated within our City limits.

B. Analysis. Beginning October 1, 2015, unless the Council adopts an ordinance prohibiting it, medical marijuana dispensaries operating in Roseburg will be allowed to sell limited amounts of marijuana to people who do not have a medical marijuana card. Senate Bill 460 authorizes "early-sales" of recreational marijuana by medical marijuana dispensaries *before* the state - or local - regulations are even in place and before medical marijuana growers can apply for an OLCC license to grow recreational marijuana on the same site where medical marijuana is grown. The City can prohibit these "early sales" simply by adopting an ordinance prohibiting the sale of marijuana retail products by licensed medical dispensaries and providing a copy of the ordinance to the Oregon Health Authority ("OHA") and the Oregon Liquor Control Commission ("OLCC"). In order to meet this deadline, Council would need to adopt such an ordinance in August.

Another matter the Council will need to decide upon is whether or not to allow City voters to determine if the six marijuana activities regulated under House Bill 3400A, which cities *can* ban with voter approval, should indeed be banned in the City of Roseburg. Cities in counties that defeated Measure 91 by a margin greater than 55 percent of the vote may do so by Council adoption of an ordinance. Cities in counties where Measure 91 received 45 percent

of the vote or more may refer an "opt-out" measure to their voters. In Douglas County, the vote was 45.59% in favor and 54.51% opposed, so a referral would be required. In the City, the votes were as follows:

	<u>Yes</u>	<u>No</u>
Ward 1:	846	847
Ward 2:	838	1,245
Ward 3:	965	1,014
Ward 4:	1,131	850
Total	3,780	3,956

Such a referral could place a moratorium on the following marijuana-related activities until after the general election in November, 2016:

1. Medical marijuana processors (preparing edibles, skin and hair products, concentrates and extracts – for medical purposes);
2. Medical marijuana dispensaries (would only apply to *new* applications);
3. Recreational marijuana processors (preparing edibles, skin and hair products, concentrates and extracts – for "non-medical" purposes);
4. Recreational marijuana producers (growers);
5. Recreational marijuana wholesalers; and
6. Recreational marijuana retailers.

If the Council wants to refer the matter to the voters, the first step would be to adopt an ordinance banning any or all of the marijuana activities listed above and provide a copy of the ordinance to OHA (if prohibiting medical marijuana activities) and/or the OLCC (if prohibiting recreational marijuana activities). The OHA and OLCC would then stop registering and licensing the prohibited activities and the Council would refer the ordinance to the voters at the next state-wide general election on November 8, 2016. This action would at a minimum, delay recreational sales of marijuana in Roseburg until after the outcome of the 2016 election. This ordinance would need to be adopted within 180 days of the governor signing the bill into law – and Governor Brown signed the bill on Tuesday, July 14, 2015.

If no action is taken to prohibit recreational sales of marijuana, Council could instead present a measure at the 2016 election imposing a tax of 3% on its sale. If that passed, the 3% tax would be *in addition to* the 17% tax that the state will impose on recreational sales of marijuana – of which the City would receive a portion of the 10% that will be distributed to cities that do not prohibit marijuana activities. Needless to say, if the City prohibits recreational sales of marijuana, it cannot impose a local marijuana tax and it is not eligible to receive state marijuana tax revenues. Additionally, the 10% sales tax on the sales of marijuana and marijuana infused products approved by Council in 2014 will be moot.

C. Financial and/or Resource Considerations. At this time, it would be very difficult to determine the true financial and/or resource impact these matters might have on the City.

D. Timing Issues. As stated above, if Council wants to adopt an ordinance prohibiting medical marijuana dispensaries from participating in the “early sales” of recreational marijuana, the ordinance must be effective and filed with the state prior to October 1, 2015. If Council wants to give City voters an opportunity to “ban” any or all of the six marijuana-related activities that *can be banned by the voters*, an ordinance referring the matter to the voters at the November, 2016 election must be adopted within 180 days of July 14, 2015.

Just so Council is aware, HB 3400 also contained provisions that exempted licensed medical marijuana processors and dispensaries that have already registered with the state or that have applied to be registered by July 1, 2015, from the local prohibition if they have successfully completed the city land use application process. So regardless of what Council does on these two issues, the medical marijuana dispensaries that are now legally operating in Roseburg, will be allowed to continue providing medical marijuana to OMMP patients.

STAFF RECOMMENDATION Staff recommends that Council direct Staff to draft two ordinances: one prohibiting licensed medical marijuana dispensaries from selling recreational marijuana; the other referring the matter of the other identified marijuana-related activities to the voters at the November, 2016 general election.

SUGGESTED MOTION If Council concurs with Staff’s recommendation, the appropriate motions would be as follows:

1. ***“I MOVE TO DIRECT STAFF TO PREPARE AN ORDINANCE PROHIBITING MEDICAL MARIJUANA DISPENSARIES FROM SELLING RECREATIONAL MARIJUANA IN THE CITY OF ROSEBURG.”***
2. ***“I MOVE TO DIRECT STAFF TO PREPARE AN ORDINANCE, TO BE REFERRED TO THE VOTERS IN THE NOVEMBER, 2016 GENERAL ELECTION, PROHIBITING THE SIX MARIJUANA-RELATED ACTIVITIES OUTLINED IN THIS MEMORANDUM IN THE CITY OF ROSEBURG.”***

ATTACHMENTS

1. League of Oregon Cities Publication: *2015 Marijuana Legislations: What Local Governments Need to Know.*