



**POLICE ADVISORY BOARD  
MEETING PACKET**

FOR

**Thursday, April 16<sup>th</sup>, 2015  
7 p.m.**

**Sherwood Police Department  
20495 SW Borchers Drive  
Sherwood, OR 97140**



Home of the Tualatin River National Wildlife Refuge



## Meeting Minutes

<b>Police Advisory Board</b>	
<b>Date &amp; Time:</b>	March 19, 2015 – 7 p.m.
<b>Location:</b>	Sherwood Police Community Room 20495 SW Borchers Dr., Sherwood, OR
<b>P.A.B. Members:</b>	<b>Council Liaison:</b>
Diane Foster	Linda Henderson
Sean Garland	<b>City Staff:</b>
Amy Miller-Juve	Jeff Groth-Police Chief
Dave McCart	Angela Hass-Executive Assistant
Rich Miller	Sylvia Murphy-City Recorder
Bob Silverforb	
Christian Verkest	
Chris West	
Laurie Zwingli	

### Attendees

#### 1. Call to Order (Groth)

The meeting was officially called to order at 7:03 p.m.

#### 2. Roll Call (Hass)

**Board members present:** Diane Foster, Sean Garland, Amy Miller-Juvé, Dave McCart, Bob Silverforb, Christian Verkest, Chris West, Laurie Zwingli.

**Board members absent:** Rich Miller

**Staff members present:** Chief Jeff Groth, City Recorder Sylvia Murphy, City Manager Joe Gall, Captain Ty Hanlon and Angela Hass, Executive Assistant. Council Liaison Linda Henderson.

#### 3. Business (Groth)

##### a. Election of Chairperson and Vice-Chairperson

Chief Groth opened the floor for suggestions or ideas for nominating the Chair and Vice Chair. It was suggested that the board members introduce themselves prior to making a decision.

## **b. Introductions of Police Advisory Board Members**

**Diane Foster** stated that she has lived in Sherwood for about 10 years and currently works in commercial insurance. She has studied Criminal Justice and Psychology at Western University.

**Sean Garland** has lived in Sherwood for 3 years and is a Project Manager for a major global financial company.

**Dave McCart** has been with Allied Systems for 20 years. Stated that his parents live in Sherwood.

**Amy Miller-Juvé** has lived in Sherwood for six years and works in education at OHSU. Has attended the University of Oregon, Oregon State University and Portland State University.

**Bob Silverforb** is retired and has lived in Sherwood for 13 years. Came here from San Francisco where he worked for a large company. Has served on several commissions here in Sherwood. He currently volunteers with an organization called SCORE where he works with folks to help them with a small business start-up.

**Christian Verkest** graduated from Sherwood High School and attended PCC for two years. He is continuing to study Criminal Justice.

**Chris West** has lived in Sherwood for 15 years. He is a professionally trained Forester and attended Berkley. For the last 28 years he has worked for a public and government affairs firm. He has two teenagers in high school and coaches many different sports here in Sherwood.

**Laurie Zwingli** has lived in Sherwood for 9 years and is raising three boys. She runs her own business in Old Town Sherwood and is serving as a liaison for the Sherwood Police Foundation and the Police Advisory Board.

### **Election of Chairperson and Vice-Chairperson - *Continued***

Chief Groth thanked everyone for sharing. He went on to explain that the positions are important, but not long term. He stated the Chairperson would run the meetings and choose the agenda topics with the assistance of staff. He stated the Vice-Chair would fill in when the Chair is gone. City Recorder Sylvia Murphy explained the nominating and voting process.

Bob Silverforb nominated Laurie Zwingli as Chair. Laurie questioned whether that would be okay since she is part of the Sherwood Police Foundation. She was told that it would be fine. Sylvia Murphy asked if there were additional nominations, with none received, the board was in favor of voting Laurie Zwingli into the position of Chairperson. Bob Silverforb volunteered to be the Vice Chair, as he has experience in this position. The motion was seconded and no one voted in opposition. Chief Groth asked the new Chair and Vice Chair to move towards the middle of the tables and Chair Zwingli took over the meeting.

## **c. Introductions of Key Staff**

Chief Groth stated it is important for the board to meet the key staff of the Sherwood Police Department and said that this will be done at the next few meetings. He stated Captain Ty Hanlon was present and asked him to introduce himself and go over his background.

**Captain Ty Hanlon** stated he is the Support Captain for the Department and has spent the last year and a half on a legislative committee for marijuana. He previously worked at the Beaverton Police Department and has three sons.

Chief Groth added more comments and stated that he will ask Captain Daniel to come in for the next meeting. He then introduced City Recorder Sylvia Murphy, and stated she was part of the board member interview process.

**City Recorder Sylvia Murphy** has lived in Sherwood for 24 years and has worked for the City for 14 years. She has held the position of City Recorder for nine years. She stated that she normally doesn't attend board meetings, but is always happy to attend if the board would like her to.

**Executive Assistant Angie Hass** has lived in Sherwood for 18 years and has four grown sons. She has been with the Police Department for 7½ years.

**Chief Groth** stated he started out at the Tualatin Police Department and left there in 2008 to accept the position of Chief of Police for the Sherwood Police Department.

Chief Groth stated that he will provide all board members with a Ride-Along Application as he feels it is important for everyone to get a chance to ride in a car. He stated at some point, the board members will meet all of the Police Officers.

**Linda Henderson**, City Councilor, was then introduced by Chief Groth. Councilor Henderson serves as liaison between this board and the City Council. Councilor Henderson stated that this is her 11<sup>th</sup> year on the City Council. She has two boys and has been a liaison to almost every board at one time or another, but this will be her first time on a new board. She encouraged everyone to go on a Ride Along and explained how you can get such an appreciation for what our Officers do and a better understanding of the staff and what they do. She stated, not only do our Officers protect, but they also serve.

**Joe Gall**, City Manager, was introduced by Chief Groth. City Manager Gall stated he won't be attending all meetings, but will come to some and said he is very pleased that we have created this board. He said before now we had no citizen input on the Police Department and the biggest part of the budget is Law Enforcement. He said he has been with the City for three years and came here from the City of Fairview. He has spent almost 30 years in local government and has two children in Sherwood schools. He said he loves his job and is very passionate, even though it can be difficult at times. He asked the board to feel free to ask questions. He stated that Councilor Henderson is a veteran councilor and will be able to help with questions as well. He thanked the board members for their service on the board.

**Dan King**, City Councilor, was in attendance as well and Chief Groth introduced him to the group. Councilor King stated that he was happy to be there.

#### **d. Review of Public Meetings Laws**

A Quick Reference Guide to Oregon's Public Meetings Law was provided to all board members (see record, Exhibit A) as well as a Quick Reference to Oregon's Public Records (see record, Exhibit B). Sylvia Murphy stated that the guides would cover the basic rules. She went over a few of the rules. She stated almost everything this board is going to do will be available to the public. She stated Angie Hass will be posting minutes and explained the process for approving minutes, distribution of materials and making them available to the public. She reviewed quorum and a majority of the board being five members. She informed the board not to **reply all** to emails as this could violate public meeting laws. She recommended the members establish email addresses for City business separate from their personal email accounts.

The City Manager stated that the Police Advisory Board could have citizen comment / input listed on the agendas. Sylvia Murphy stated that they don't have to, but if they do receive public comment, they should be consistent at their meetings. Sean Garland asked about communications through social media. Sylvia Murphy said that is something that folks would need to be careful with. Bob Silverforb asked if the agenda would always be posted on the City website. Sylvia stated that was correct and that it must be posted at a minimum of 24 hours prior to the meeting. She stated meetings will be at the Police Department unless stated otherwise. The City Manager shared how he distributes City information as well as the City Council's Agenda. Sylvia Murphy asked the board members to become familiar on the responsibilities of being a public official and that the information provided on their applications is public record.

Chris West asked if they would be informed about incidents before they are posted on social media, etc. and that perhaps they could be copied when a press release is issued? Chief Groth said that he would give some thought to that, but it might be difficult to do. He encouraged everyone to check the Police Department pages on social media on a regular basis. The Chief reviewed the position and function of the board and said in certain situations individuals can ask him questions directly. Chris West stated that he understood, but that he would still like to be included in press releases. He said he assumed that once a press release is issued, it would be on the Police Department's face book page. Chief Groth stated that is not the case. He asked the board members to subscribe to Flash Alert, which would be the best way to stay informed and said press releases are not done very often. Chief Groth stated that he will meet with the Chair and Vice-Chair to create agendas, but it is the board's meeting and it is ultimately up to them to create the agendas. He also mentioned to the board members that if they are using social media, they do need to keep in mind that they are representing the board. He stressed the importance of what social media can do for you and what it can do to hurt.

**e. Review of Robert's Rules of Order**

*(Already discussed.)*

**f. Marijuana Discussion**

Chief Groth stated that the City Council is very interested in input from the Police Advisory Board on this topic. Local government has a say on time, place and manner regarding the dispensaries. Captain Hanlon has been very involved and has been tracking on how this is going. The discussion tonight is whether or not the Police Advisory Board wants to be part of making these decisions.

The City Manager said that the Planning Commission has a draft drawn that will be going through the process, which includes a 1,000 foot buffer from schools and parks. The board can offer input as to if it is enough. The decision will ultimately go to the City Council. The recommendation has not been made to limit just to industrial areas. Captain Hanlon added that it would be very beneficial for the board members to learn more about the buffers. It would give them a better perspective as to what's available in the City. He believes that Old Town is out and the City Manager agreed that it is. Ms. Foster stated that the maps were posted on the City website today. Chris West asked if the YMCA was considered a school or park. The City Manager believes that was not included and would be considered as a buffer zone. He also mentioned that there are no applications filed with the State for the Sherwood area, currently. Captain Hanlon stated that there could be grow sites that are not dispensaries and that there are currently several grow sites. The City Manager stated that the on-line survey will be open through March and encouraged everyone to check it out for themselves. He also shared that it is important to know that we already have a youth substance problem.

Chief Groth stated that the reason this is on the agenda tonight is because it is very timely and important. Providing input is an opportunity, if the board chooses to do so. The Council has also requested his input as the Chief. Chair Laurie Zwingli asked how best to provide input. Chief Groth replied that responding with a statement would be appropriate.

Chris West asked who would approve the applications. The City Manager stated that the application approvals would be made at the staff level. Ms. Miller-Juvé asked if there were any statistics available to work with? The Chief stated that the law has been relatively silent on the medical marijuana. Could get some data but not sure if it would be much or helpful. We would locally want to regulate to ensure that the dispensaries are operating legally, because no-one else will be doing it. OLCC will be taking care of the recreational side of things. Captain Hanlon added that beginning July 1<sup>st</sup>, recreational marijuana will be legal and, in theory, every house can have up to 4 plants growing legally. It will not just be medical marijuana that we will need to worry about. Chief Groth stated that medical marijuana card holders can grow their own, plus have a caregiver grow for them, or go to a dispensary. There is a major concern about the impact of all of this.

The City Manager stated that the public hearing is April 14<sup>th</sup> and that would enable the Police Advisory Board to have a little more time. Since the next meeting is scheduled for after the 14<sup>th</sup>, it was suggested that the Police Advisory Board schedule a meeting before.

Chair Zwingli asked who was crunching results of survey? The City Manager said that Planning is, but that it has to be considered that some people taking the survey may not live in Sherwood. Mr. Garland asked if Chief Groth would like to share his thoughts with the board. He said if the board wanted to hear his thoughts, he would. They stated that they would.

Chief Groth went on to share that the Planning Commission's idea of limiting to the industrial zone only with a 1,000 buffer is a good idea, but first and foremost, we are already fighting a very important battle against substance abuse in this community. He has been working with his staff, the School District, the Juvenile Department, etc. regarding this issue but this is not just about busting kids. It's about getting kids the help they need. Feels that the last thing we need is to have marijuana even more open for all to see. He has a hard time believing that we are going to be able to distinguish the medical versus the recreational. Having in the industrial areas would make it a little more difficult for kids to access. He is very concerned to have something with such a potential for abuse to be out in the recreational zones. Wherever dispensaries are located, we will be keeping an eye on them. Mr. West asked if he was talking about light or industrial. Chief Groth stated that he would have to look at the map again. Mr. West shared his views and informed the Chair that he needs to think a bit more about what his feelings are. Mr. Garland asked if there are pretty constant patrols in the industrial areas. Chief Groth stated that they do currently patrol, but that he is more specifically talking about having someone actually going in to the business. Not sure exactly what that looks like at this point.

Councilor Henderson shared that she had recently attended a summit and learned that Oregon is the 5<sup>th</sup> highest user of illegal and illicit drugs. She would be in favor of limiting to the industrial zones. Everyone attending the summit meeting agreed that marijuana is a gateway drug. Sherwood has a huge kid population. She explained that Chief Groth serves on a YSAT (Youth Substance Abuse Team) Board.

Chair Zwingli asked the board if they wanted to make a decision, or to schedule another meeting for further discussion. Chair Zwingli stated that she would personally like to have time

to gather information. The other board members agreed that they would like to have a little more time. The City Manager stated that Brad Kilby is very involved in this process and having him available to answer questions would be valuable. Mr. West made the motion to schedule an additional meeting and Vice Chair Silverforb seconded the motion. Chair Zwingli would like to have access to surveys, maps and proposed language and to see if Brad Kilby could be present. Chief Groth will be sure all will be available. Captain Hanlon will share a link to OMMP with the board members for more information.

Chair Zwingli asked Chief Groth if future meetings are set for the third Thursday of every month? Chief Groth replied that they are, unless the board prefers a different night. The board agreed that Thursday's would work. Chair Zwingli went over what the meeting on 4/2 will look like. Chief Groth will let everyone know tomorrow if City Hall is available on 4/2, since the Police Department will not be available that evening.

Mr. West stated that he would like to have a discussion as to whether there will be time for public comment at these meetings. His personal feeling is that they should be allowed, but would want to have a time limit. He believes it important for credibility with the community. Mr. West made a motion that the next and future meetings will include time for public comment. Mr. Verkest seconded the motion. All members agreed. A timer will be made available at future meetings.

A citizen attending the meeting asked about fines and violations for the medical marijuana dispensaries and what the City would be able to do? Chief Groth didn't see any reason why these couldn't be built into the City Code. He said that as far as he knows, there are currently no penalties in the City Code and explained the difference between municipal code and a criminal violations. Chair Zwingli asked the City Manager if he was aware if there was already something like that. He stated that he wasn't aware. Vice Chair Silverforb motioned to adjourn the meeting and Mr. West seconded the motion. All agreed.

#### **4. Next Meeting**

The next meeting will be held Thursday, April 2, 2015 at 7 p.m. in the Council Chambers at Sherwood City Hall. This will be a special meeting to discuss the marijuana issue.

#### **5. Adjourned**

Chair Laurie Zwingli motioned to adjourn at 9:05 p.m, a second was received and all members voted in favor.

#### **Approval of Minutes:**

\_\_\_\_\_  
Chair Zwingli

#### **Attest:**

\_\_\_\_\_  
Angie Hass, Executive Assistant

Protecting the public's right to know

# A QUICK REFERENCE GUIDE TO OREGON'S PUBLIC MEETINGS LAW

For local and state officials, members  
of Oregon boards and commissions, citizens,  
and non-profit groups

This guide is published as a public service by  
Open Oregon: a Freedom of information Coalition  
and the Oregon Attorney General's office.



## **A Time Saving Reference**

This guide is brought to you free of charge as a joint project between Open Oregon: A Freedom of Information Coalition and Oregon Attorney General Hardy Myers. Funding for this booklet came from the National Freedom of Information Coalition through a grant from the John S. and James L. Knight Foundation.

## **How to Use This Guide**

This summary is intended as a quick reference to the Oregon Public Meetings Law. The entire law may be found in Oregon Revised Statutes 192.610 to 192.690. Additional information may be obtained by sending an e-mail request to [info@open-oregon.com](mailto:info@open-oregon.com) or visiting [www.open-oregon.com](http://www.open-oregon.com)

For a comprehensive analysis of the law, refer to the latest edition of the Attorney General's Public Records and Meetings Manual, available for a nominal fee by calling (503) 378-2992 or writing to Department of Justice, Administrative Services, 1162 Court Street NE, Salem, Oregon 97301-4096.

## **What is Open Oregon?**

Open Oregon: A Freedom of Information Coalition is a non-profit educational and charitable organization with a single purpose: to assist and educate the general public, students, educators, public officials, media and legal professional to understand and exercise:

- Their rights to open government.
- Their rights and responsibilities under the Oregon public meetings and records laws.
- Their rights under the federal Freedom of Information Act.

**Open Oregon** is a 501(c)(3) non-profit corporation.

# The Spirit of Oregon's Public Meetings Law

## The Value of Openness

Understanding the letter of the Public Meetings Law is critical. Equally important is understanding and committing to the spirit of that law. Public bodies should approach the law with openness in mind. Open meetings help citizens understand decisions and build trust in government. It is better to comply with the spirit of the law and keep deliberations open.

*“Government accountability depends  
on an open and accessible process.”*

•  
**Hardy Myers**  
Oregon Attorney General

“Public bodies must conduct business  
in public - it’s really that simple.”

•  
**Bill Bradbury**  
Oregon Secretary of State  
Honorary Co-Chair, Open Oregon

“Oregon needs to protect its tradition  
of openness.”

•  
**Dave Frohnmayer**  
President, University of Oregon  
Honorary Co-Chair, Open Oregon

## **Oregon's Public Meetings Law**

"Open government" or "sunshine" laws originally were enacted nationwide in the early 1970s because of growing public unhappiness with government secrecy. As a result, every state and the District of Columbia enacted laws requiring government to conduct its business openly, rather than behind closed doors.

Open government laws benefit both government and the public. Citizens gain by having access to the process of deliberation - enabling them to view their government at work and to influence its deliberations. Government officials gain credibility by permitting citizens to observe their information-gathering and decision-making processes. Such understanding leads to greater trust in government by its citizens. Conversely, officials who attempt to keep their deliberations hidden from public scrutiny create cynicism, erode public trust and discourage involvement.

### **Policy**

Oregon's Public Meetings Law was enacted in 1973 to make sure that all meetings of governing bodies covered by the law are open to the public. This includes meetings called just to gather information for subsequent decisions or recommendations.

The law also requires that the public be given notice of the time and place of meetings and that meetings be accessible to everyone, including persons with disabilities.

The Public Meetings Law guarantees the public the right to view government meetings, but not necessarily to speak at them. Governing bodies set their own rules for citizen participation and public comment.

## Who is covered?

Because questions often arise about what groups must comply with the public-meetings law, it is useful to look at the definitions in the law. The law says that any “governing body” of a “public body” is required to comply. It offers these definitions:

- A **“public body”** is any state, regional, or local governmental board, department, commission, council, bureau, committee, subcommittee, or advisory group created by the state constitution, statute, administrative rule, order, intergovernmental agreement, bylaw or other official act.
- A **“governing body”** is two or more members of a public body who have the authority to make decisions for or recommendations to a public body on policy or administration. A group without power of decision is a governing body when authorized to make recommendations to a public body, but not when the recommendations go to individual public officials.

### Example

- *A school board must meet in public.*
- *So must most advisory committees that the school board creates, such as a budget committee.*
- *But if the school board chair asks several business leaders to meet with him to discuss future building needs, that meeting may be held in private.*

Private bodies, such as non-profit corporations, do not have to comply with the public-meetings law, even if they receive public funds, contract with governmental bodies or perform public services.

### Example

- *A school district contracts with Regence BlueCross BlueShield of Oregon to provide health insurance for district employees. The BlueCross BlueShield board of directors is not required to meet in public.*

Public agencies contracting with private bodies may require a private body to comply with the law for pertinent meetings. Federal agencies are not subject to Oregon’s Public Meetings Law.

## What is a Public Meeting?

A public meeting is the convening of any governing body for which a quorum is required to make or deliberate toward a decision on any matter, or to gather information. Decisions must be made in public, and secret ballots are prohibited. Quorum requirements may vary among governing bodies.

### Example

- *A county commission's goal-setting retreat is a public meeting if a quorum is present and they discuss official business.*
- *A training session for the commissioners is not a public meeting, unless a quorum is present and the commissioners discuss official business.*
- *A staff meeting absent a quorum of commissioners, whether called by a single commissioner or a non-elected official, is not a public meeting.*

Meetings accomplished by telephone conference calls or other electronic means are public meetings. The governing body must provide public notice, as well as a location where the public may listen to or observe the meeting.

Governing bodies must hold their meetings within the geographic boundaries of their jurisdiction. However, a governing body may meet elsewhere if there is an actual emergency requiring immediate action or to hold a training session, when no deliberation toward a decision is involved.

### Example

- *A library board is free to rotate meetings at different libraries in its district, but it may not meet outside its district.*

Federal and state law requires that meetings be held in places accessible to individuals with mobility and other impairments.

## What is Exempt from the Law?

On-site inspections, staff meetings and gatherings of associations to which a public body or its members belong are not considered public meetings. Chance social gatherings are not considered meetings as long as no official business is discussed.

### Example

- *Three out of five city councilors inspect a new landfill site. Their inspection does not constitute a public meeting, unless they deliberate toward a decision on a city matter.*
- *Later, the three city councilors attend a League of Oregon Cities conference. Again, this is not a public meeting, unless the councilors discuss official city business.*
- *That evening, the three councilors chat during a concert intermission. As long as they talk about the music, this is not a public meeting. But if they stray into discussion of official city business, then it is.*

Also exempt from the Public Meetings Law are:

- Meetings of state or local lawyers assistance committees.
- Meetings of medical peer review committees.
- Meetings of multidisciplinary teams reviewing child abuse and neglect fatalities.
- Judicial proceedings. However, see Oregon Constitution, Section 10.
- Review by the Workers' Compensation Board and the Employment Appeals Board of hearings on contested cases.
- Meetings of the Energy Facility Siting Council when it reviews and approves security programs.
- The Oregon Health and Science University regarding presidential selection process, sensitive business matters, or meetings of faculty or staff committees.
- Mediation by the agricultural mediation service program.

For some entities, the deliberation process alone is exempt, although information-gathering and decision-making must be public. This applies to the State Board of Parole, the Psychiatric Security Review Board, and state agencies conducting hearings on contested cases under the Administrative Procedures Act.

### **Notice of Meetings**

Governing bodies must give notice of the time, place and agenda for any regular, special or emergency meeting.

Public notice must be reasonably calculated to give actual notice to interested persons and media who have asked in writing to be notified of meetings and general notice to the public at large.

Governing bodies wishing to provide adequate notice should strive to provide as much notice as possible to ensure that those wishing to attend have ample opportunity – a week to 10 days for example.

At least 24-hour notice to members of the governing body, the public and media is required for any special meeting, unless the meeting is considered an emergency meeting. Appropriate notice is required for emergency meetings and should include phone calls to media and other interested parties. Notice for emergency meetings must also cite the emergency.

A meeting notice must include a list of the principal subjects to be considered at the meeting. This list should be specific enough to permit citizens to recognize matters of interest. However, discussion of subjects not on the agenda is allowed at the meeting.

#### **Example**

*The State Board of Higher Education plans to discuss building new college campus in Burns. An agenda item that says "Discussion of public works" would be too general. Instead, the agenda should say something like "Discussion of proposed Burns campus."*

## **Executive Sessions**

Governing bodies are allowed to exclude the public - but generally not the media - from the discussion of certain subjects. These meetings are called executive sessions.

Executive sessions may be called during any regular, special or emergency meeting. A governing body may set a meeting solely to hold an executive session as long as it gives appropriate public notice. Notice requirements for executive sessions are the same as for regular, special or emergency meetings. However, labor negotiations conducted in executive sessions are not subject to public notice requirements.

Notice of an executive session must cite the specific law that authorizes the executive session. This authorization also must be announced before going into the executive session.

Governing bodies may formally specify that the media not disclose information that is the subject of the executive session. Governing bodies should not discuss topics apart from those legally justifying the executive session. Media representatives may report discussions that stray from legitimate executive session topics and are not required to inform the governing body when they intend to do so.

No final action may be taken in executive session. Decisions must be made in public session. If a governing body expects to meet publicly to make a final decision immediately after an executive session, it should try to announce the time of that open session to the public before the executive session begins.

### **Example**

*• City councilors meet in executive session to discuss the city manager's performance. A local reporter attends. During the meeting, the councilors discuss whether the city should put a bond measure on the next ballot. The reporter may write a story on the council's bond-measure discussion, because that discussion was not allowed under the executive session rules. The reporter may not write about the city manager's performance.*

## **Executive Sessions Criteria**

Executive sessions are allowed only for very limited purposes. Those include:

- 1. To consider the initial employment of a public officer**, employee or staff member, but not to fill a vacancy in an elected office, or on public committees, commissions or advisory groups. These sessions are allowed only if the position has been advertised, standardized procedures for hiring have been publicly adopted, and the public has had an opportunity for input on the process. Executive sessions are not allowed to consider general employment policies.
- 2. To consider dismissal**, discipline, complaints or charges against a public official, employee, official, staff or individual agent, unless that person requests a public hearing.
- 3. To review and evaluate the job performance** of a chief executive officer, or other officer or staff member, unless that person requests an open hearing. Such evaluation must be pursuant to standards, criteria and policy directives publicly adopted by the governing body following an opportunity for public comment. The executive session may not be used for the general evaluation of agency goals, objectives, programs or operations, or to issue any directive to personnel on the same.
- 4. To deliberate with persons designated to conduct labor negotiations.** The media may be excluded from these sessions.
- 5. To conduct labor negotiations** if both sides request that negotiations be in executive session. Public notice is not required for such meetings.
- 6. To consider records** that are exempt by law from public disclosure.
- 7. To consult with counsel** concerning litigation filed or likely to be filed against the public body. Members of the media that are a party to that litigation, or represent a media entity that is a party, may be excluded.
- 8. To consult with persons designated to negotiate** real property transactions.

The media also is free to report on information gathered independently from executive session, even though the information may be the subject of an executive session.

#### **Example**

*• A reporter attends the executive session on the city council's discussion of the city manager's performance. Afterwards the reporter asks a councilor what she thinks of the city manager's performance. She shares her criticism. The reporter may use that interview to develop a story, even though the reporter first heard the information at the executive session.*

## **Minutes**

Written, sound, video or digital recording of minutes are required for all meetings.

The meetings law says minutes must be made available within a "reasonable time" after each meeting, but does not specify the time. Generally, this time frame should not exceed three weeks. Minutes must be preserved for a "reasonable time." This is generally interpreted to be at least one year. Minutes of many governing bodies are subject to records retention rules and schedules established by the State Archivist.

#### **Minutes must indicate:**

- Members present
- All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
- The result of all votes by name of each member (except for public bodies consisting of more than 25 members). No secret ballots are allowed.
- The substance of discussion on any matter.
- A reference to any document discussed at the meeting.

Minutes are not required to be a verbatim transcript and the meeting does not have to be tape recorded unless so specified by law. Minutes are public record and may not be withheld from

the public merely because they will not be approved until the next meeting. Minutes of executive sessions are exempt from disclosure under the Oregon Public Records Law. Governing bodies are allowed to charge fees to recover their actual cost for duplicating minutes, tapes and records. A person with a disability may not be charged additional costs for providing records in larger print.

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### **Enforcement**

County district attorneys or the Oregon Attorney General's Office may be able to answer questions about possible public meetings law violations, although neither has any formal enforcement role and both are statutorily prohibited from providing legal advice to private citizens.

Any person affected by a governing body's decision may file a lawsuit in circuit court to require compliance with or prevent violations of the Public Meetings Law. The lawsuit must be filed within 60 days following the date the decision becomes public record.

The court may void a governing body's decision if the governing body intentionally or willfully violated the Public Meetings Law, even if the governing body has reinstated the decision in a public vote. The court also may award reasonable legal fees to a plaintiff who brings suit under the Public Meetings Law.

Complaints of executive session violations may be directed to the Oregon Government Ethics Commission, 3218 Pringle Road SE, Suite 220, Salem OR, 97302-1544; 503-378-5105, for review, investigation and possible imposition of civil penalties.

Members of a governing body may be liable for attorney and court costs both as individuals or as members of a group if found in willful violation of the Public Meetings Law.

**For additional copies of this guide or information about Open Oregon, contact:**

Open Oregon: A Freedom of information Coalition  
PO Box 172, Portland, Oregon 97207-0172  
info@open-oregon.com  
www.open-oregon.com

**Additional resources:**

- **Oregon Attorney General's Public Records and Meetings Manual**, available by calling 503-378-2992 or writing to Department of Justice, 1162 Court Street NE, Salem, OR 97301-4096; [www.doj.state.or.us/oregonians/pubs.shtml](http://www.doj.state.or.us/oregonians/pubs.shtml)
- **Oregon Revised Statutes 192.610 to 162.690**, the Oregon Public Meetings Law, available in most libraries and on the internet at [www.leg.state.or.us](http://www.leg.state.or.us).
- **Oregon Newspaper Publishers Association**, 503-624-6397. Offers legal advice to member newspapers and general information about public records and meetings requirements; [www.orennews.com](http://www.orennews.com)
- **League of Oregon Cities**, 1201 Court St. NE, Salem, OR 97301. 503-588-6550; [www.orcities.org](http://www.orcities.org)
- **Association of Oregon Counties**, 1201 Court St. NE, Salem, OR 97301. 503-585-8351; [www.aocweb.org](http://www.aocweb.org)
- **Oregon School Boards Association**, 1201 Court St. NE, Salem, OR 97301. 503-588-2800; [www.osba.org](http://www.osba.org)
- **Special Districts Association of Oregon**, PO Box 12613, Salem, OR 97301-0613, 503-371-8667; [www.sdao.com](http://www.sdao.com)

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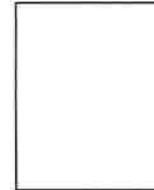
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A Freedom of Information Coalition

P.O. Box 172

Portland, Oregon 97207-0172



**Protecting the public's right to know**

Protecting the public's right to know

# A QUICK REFERENCE GUIDE TO OREGON'S PUBLIC RECORDS LAW

**For elected and appointed local and state public officials, members of Oregon boards and commissions, citizens, and nonprofit groups**

The guide is published as a public service by Open Oregon: a Freedom of Information Coalition in collaboration with the Oregon Attorney General's office.



*"Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided..."*

• Oregon Public Records Law

### How to Use this Guide

This publication is a quick step-by-step guide to the Oregon Public Records Law for those seeking information from government as well as for those keeping the records. It is divided into 12 sections, and includes TIPS and EXAMPLES on accessing public records.

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The entire law may be found in Oregon Revised Statutes 192.410 to 192.505. Additional information may be obtained by sending an e-mail request to [info@open-oregon.com](mailto:info@open-oregon.com) or contacting Open Oregon, PO Box 172, Portland, Oregon 97207. For the Legislative Counsel text of the law as of the 2005 legislative session, go to [www.open-oregon.com](http://www.open-oregon.com).

For a comprehensive analysis of the law, refer to the latest edition of the **Attorney General's Public Records and Meetings Manual**. The manual is reviewed and updated for consistency after each legislative session. Each new edition also incorporates appellate court decisions and Attorney General opinions interpreting the public records law. For information about purchasing the manual, go to [www.doj.state.or.us/oregonians/pubs.shtml](http://www.doj.state.or.us/oregonians/pubs.shtml) or call 503-378-2992, ext. 325, or write to Department of Justice, 1162 Court St. NE, Salem, OR 97301-4096.

### THE SPIRIT OF OREGON'S PUBLIC RECORDS LAW

The state of Oregon has a policy of openness. The most important advocate for open government is the public itself. The news media often acts on the public's behalf in seeking public records to inform citizens about the work done in their name. Individual citizens also perform this watchdog function using the public records law to inform themselves about how well the government is functioning.

*"Open records laws that are effective and well-understood are a fundamental component of democracy. Oregon's law ensures that public agencies conduct affairs in a transparent and accountable manner and provide that citizens have access to public processes."*

• Hardy Myers  
Oregon Attorney General

*"Government can only serve the people when citizens have the tools they need to witness it in action. Public records give every American those crucial tools."*

• Bill Bradbury  
Oregon Secretary of State  
Honorary Co-Chair, Open Oregon

*"Public access to public records is an essential component for effective governance in a democracy. The Oregon Public Records Law enhances good government and serves the interests of the people of Oregon."*

• Dave Frohnmayer  
President, University of Oregon  
Honorary Co-Chair, Open Oregon

## 1. OREGON'S PUBLIC RECORDS LAW

Oregon's public records law - ORS 192.410 to 192.505 - attempts to balance the need for efficient government with the public's need to know how government operates.

In 1973, Oregon joined many other states across the country in enacting the Public Records and Public Meetings Laws. At the time the Public Records law was passed, Oregon's law was one of the most sweeping in the nation. In the decades since, however, lawmakers have steadily added exemptions allowing more information to be kept from the public. While personal privacy was always protected by the law, recent heightened concerns about privacy, public safety and homeland security have caused agencies to further limit release of information. Ultimately, the law is intended to open government activities, not citizens' private lives, to the public.

The law makes an important distinction between elected officials and public bodies. The law applies to each similarly but two differences are noteworthy:

- The law imposes a seven-day deadline for elected officials to respond to a records request. Public bodies do not have a specific deadline; they simply must respond as soon as practicable and without unreasonable delay.
- The law provides for no administrative appeal of an elected official's denial; the requestor must file a lawsuit in court to pursue the denied records. Denials by non-elected public-body officials may be appealed to either the county district attorney or the state attorney general, depending on whether the agency is a state agency or a local agency; this appeal must precede the filing of a lawsuit.

### TIP: Don't call it FOIA

The state public records law is similar to the federal Freedom of Information Act in some ways, but they are separate laws with different provisions. For information about seeking records from the federal government, go to the Reporters Committee for Freedom of the Press: <http://www.rcfp.org/foi.html>

## 2. POLICY

On its face, Oregon's public records law sounds simple. It applies to all government records and writings. The law favors disclosure as the rule, and agencies have the burden of proving an exemption allows them to withhold information.

In practice, though, the law is more complex. The attorney general's office, 36 county district attorneys and Oregon's courts all have a role in interpreting the application of the law.

## 3. WHO IS SUBJECT TO THE LAW

The law applies to any "public body," and it defines that term broadly: every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; and any other public agency of the state. Schools, police and fire departments, county and state agencies, cities: all are subject to the public records law.

The public records law does not apply to private entities such as nonprofit corporations. Even some organizations that sound public or conduct some public functions are not public bodies. Oregon Public Broadcasting and the Oregon School Activities Association, for example, are not public bodies, according to the Attorney General's office. In 1994, however, the Oregon Supreme Court ruled that the law applies to an entity that is judged the "functional equivalent" of a public body.

### Ruling on private bodies

- Was the entity created by government or independently?
- Is the entity's functions traditionally performed by government?

- Does it have authority to make binding decisions or only recommendations?
- How much financial and non-financial support does it receive from government?
- Does the government employ the entity's officers and employees?
- What is the scope of governmental control over the entity.

#### TIPS for seekers of public records:

- Invest time in learning about the agency and the records it creates or maintains and routinely releases to the public. If you are seeking fire department records, find out what reports are generated after a house fire or a hazardous materials incident. That helps you later when you need to know what record to request. It helps the agency to know the specific document title because that's the easiest and most efficient process for the agency.
- All public bodies are required to follow state-approved schedules defining categories of records and how long they are to be maintained. These Records Retention Schedules act as an index to government records. Unless you specifically know the name of the record you are seeking, first contact the agency's Records Management program or officer. If the agency does not have a program, you may find additional information on the Oregon State Archives' Records Management website: <http://arcweb.sos.state.or.us/banners/recgmt.htm>.
- Work the chain of command: Overworked public employees may deny release of a record that is indeed public. They might be uncertain, wrong or just busy. Refer the request to a supervisor in the agency who might be more knowledgeable or have more authority. Do this in a courteous and non-confrontational way.
- Ask whether the agency employs a public affairs or public information official. That person typically is well-versed in the requirements of the records law and often is the person who responds to records requests.

- If the agency does not employ a public information specialist, ask the public employee to seek legal advice on the issue of releasing records. Often a quick phone call to the county counsel or the local district attorney clears up the matter.

#### 4. HOW IT WORKS

Requests - by regular citizens, reporters, attorneys or investigators - can be made in person, by letter, e-mail or phone. Most agencies prefer that initial requests be made informally to discuss the specific needs of the seeker. Media members, for example, often begin with a phone call and, if requested by the custodian, will follow up with a more detailed written request.

#### 5. SEEKERS VS. KEEPERS

While most public records are readily provided to those requesting them, contentiousness can arise between those seeking records and the custodians of public body records.

Because disclosure is the spirit of the law and most records are available for public disclosure, regular seekers of records often simply assume that the records they seek exist and are accessible. Conflicts can occur when record keepers are unaccustomed to requests or don't realize that their only concern should be whether the law exempts a record from disclosure.

#### Example

When responding to a public records request, custodians should:

- Make sure that any claim that the records are exempt from disclosure is supported by the law.
- Make sure that processing fees are reasonable.

- Make sure that the seeker's reason for wanting the record doesn't inappropriately influence the response.

While a seeker's approach should not technically influence whether or not a custodian will release a record, the projection of a professional, courteous and flexible demeanor can go a long way in enlisting the record holder's cooperation.

Custodians say that most records seekers who work with them daily wisely try to build a level of trust with record keepers.

### Example | Tips for those requesting records include

- Familiarization with the department to which the request is made. If you are uncertain which department is responsible for the records, ask.
- Patience, since many offices handle dozens of requests each day. Most requests are handled by workers in addition to their normal responsibilities.
- Avoid using offensive language and don't threaten the staff with lawsuits.
- Be clear with a request, which helps speed the information-gathering process. A written request could help with clarity.
- Don't stiff the record keeper, i.e. request a record, agree to the cost and then not follow through.
- A seeker does not need to provide a reason for wanting the records; however, it is often helpful to explain why disclosure of the record is in the public interest so that the proper information can be obtained.

### TIP: Make sure to follow through

- If you requested records, be prompt at picking them up and paying for them.
- If, for some reason, you cannot get them right away, let the custodian know you still plan to pick them up.
- If you plan to make future requests, ask the custodian of the records if there is anything you can do to make filling the next request easier.

## 6. CITE THE LAW

A request in writing should: **1.** indicate that the request for records is allowable under the Oregon Public Records Law; **2.** be as specific as possible about the record sought, with record title and date if possible; **3.** include a request that the agency cite any exemption it relies on in its response; and **4.** include a provision that fees over a specified amount (say \$10 or \$50, depending on the scope of the request) should be discussed in advance. See the "Automated Form Letters" at [www.open-oregon.com](http://www.open-oregon.com).

### Example | Tips for a request

- Type of document sought, being as specific as possible about the subject matter.
- Specific date ranges of the document.
- Other information that can narrow the search, such as dates and names.
- Ask the custodian whether the record is kept in paper or electronic form.
- To keep costs at a minimum, especially for voluminous requests, ask first to inspect a file, then ask for copies of relevant pages. (Note: the agency could charge for staff time, so this may end up not being less expensive.)

If a seeker is uncertain of the title or exact nature of a specific document, a good approach is to tell the custodian what you are trying to learn and enlist his or her help in seeing if that information can be retrieved through public records.

### TIP: Don't be adversarial

- Start with a phone call or a visit to ask about the availability of the records you are seeking. You might want to, or be asked to, put your request in writing, but a conversation in advance can clear up many issues. Some questions to ask: How hard is it to make the record available? How much time does the agency estimate it will need?

Is the agency even the custodian for the record at issue? What is the proper name for the record you are seeking?

- Keep in mind that records requests can add to busy government employees' regular duties. That's not to say they are not required by law to respond, but it is worth remembering that if you can make the task easier you might get the records more quickly.
- If you believe you ultimately will be in an adversarial position with the agency, start with a written request.
- Ask the agency to cite in writing any exemption it is relying on for withholding the information.

The law does not give a deadline for agencies to respond. Instead, it says the public body shall respond as soon as practicable and without unreasonable delay. The timing may depend, for example, on the size and scope of the request, how accessible the records are and whether legal review is necessary.

## 7. WHAT IS EXEMPT FROM DISCLOSURE UNDER THE LAW

The guiding principle of the records law is that every public record is subject to disclosure unless it is specifically exempted. However, most exemptions do not prohibit disclosure; they merely exempt the public body from the law's mandate to disclose public records.

Custodians presented with a records request should first ask themselves whether disclosure is prohibited by certain sections of the public records law or by another state or federal law.

If not, then ask whether the record is subject to a conditional exemption. Many exemptions are conditional in nature and disclosure is favored.

## Examples

- Police might withhold investigatory information compiled for criminal law purposes if untimely release would compromise a specific investigation.
- Public bodies might withhold records generated by the threat of – or filing of – litigation if release would give a plaintiff an advantage in that litigation. Records qualifying for this exemption must be records developed for the litigation rather than records from ordinary public body business.
- Public bodies might withhold information regarding their real estate transactions if release might give the other party an advantage in negotiations.
- While the intent of the records law is to create a transparent government, it is mindful of personal privacy.

Technically, no such balancing is required for “unconditional” exemptions because the Legislature already has struck the balance of these competing interests and has concluded that confidentiality interests outweigh public disclosure interests as a matter of law. These include public employee addresses, Social Security numbers, birth dates and telephone numbers, as well as personal privacy information that would “constitute an unreasonable invasion of privacy.”

While the section of the law on “unconditional” exemptions does not specifically contain the “public interest” stipulation, some specific exemptions do contain language of condition. One of those exceptions, for example, involves the internal advisory communications exemption, which protects the confidentiality of advice and observations a public employee gives to a superior or associate.

However, the public body must show that the public interest in encouraging frank communication between its officials and employees clearly outweighs the public interest in disclosure.

## 8. PUBLIC INTEREST VS. CONFIDENTIALITY

The phrase "public interest in disclosure" is not defined in the records law. The Oregon Court of Appeals has stated, however, that the law "expresses the Legislature's view that members of the public are entitled to information that will facilitate their understanding of how public business is conducted." Similarly, the court has characterized the public interest in disclosure as "the right of citizens to monitor what elected and appointed officials are doing on the job."

Federal courts have ruled that seekers must identify the public interest in disclosure with "reasonable specificity" whether they are simply seeking records or waivers of fees. Relevant specific factors include the seeker's identity and purpose, the character of the information, whether the information is already in the public domain, and how able the seeker is to disseminate the information to the public.

For that reason, even though the identity and motive of anyone requesting a public record are considered irrelevant and are not required by law, the fact a news reporter is requesting it can weigh in favor of release.

The seeker's motive (government accountability, say) and ability to spread the word (quickly and widely) often become deciding factors on whether a conditional exemption or disclosure shall rule.

### Example

- Community concern can equal public interest. In one case, a district attorney ordered police shooting reports released because "(t)his matter has been one of great community concern ... (and) (f)ull disclosure can only prompt a more intelligent and informed public debate on the issues involved."
- Public interest can mean furthering the public's watchdog role and citizens' interest in transparency. When a secret agreement

between an Oregon port and private companies was ordered released, the public interest was described this way: "It is inappropriate for a public body ... to participate with certain private enterprises in an investigation and evaluation of the pollution of the public waterways under circumstances hidden from public view. The public interest is not served by such secret agreements."

- There is more public interest in records involving top officials and - in general - when public safety, financial oversight or a pattern of problems is involved. A district attorney ordered a city agency to release its investigative findings in the public interest because "we are dealing with a high ranking public employee responsible for the expenditure of the public's money."

### TIP: Keep lines of communication open

- If the request is routine, include in your written request a deadline. You can say that if you do not receive the records or a response by 5 p.m. on a specified date, you will consider the lack of response a denial for purposes of appeal, even though that determination is not binding. However, make sure your deadline affords the agency a reasonable time to respond.
- If you are not sure which record will be of the most use to you, narrow your request. Once you have reviewed one record, you can decide whether it is helpful. You can then go back and ask for the same records for a longer time period, for example. Additionally, you can ask the records custodian for advice about the types of records most applicable to your request.
- If an agency refuses to release a record, ask for more information about what - generally - the record contains. If all of the record is public, except for one section that includes someone's Social Security number - that discussion may help the agency worker realize he or she needs to redact the exempt section and release the rest of the record.
- If the agency balks at releasing records, ask it to briefly describe the records it has and which exemption it thinks applies to each record.

## 9. HOW RECORDS ARE MADE AVAILABLE

The "custodian" of the public record is the public body or person mandated to create, maintain, care for or control the records. The custodian is required to provide "proper and reasonable opportunities for inspection and examination" of such records. In short, custodians, or record holders, are directed to take "reasonable" steps to accommodate members of the public while they inspect records. That often includes copying of records, but custodians are not required to "create" a record for a seeker.

Custodians are required to adopt "reasonable" rules necessary to protect their records. For example, people requesting information don't have the right to rummage at will through file cabinets, file folders or electronic files. The inspection of original documents that are not exempt from disclosure is ordinarily allowed if requested, but administrative measures may be adopted to supervise review of such documents.

## 10. HELPFUL HINTS FOR CUSTODIANS

- Designate one person to coordinate responses to requests.
- Make sure to listen to the seeker's request. Not all requests for information need to be directed to the agency's law office or risk management.
- If your agency is not responsible for the records, attempt to find the proper agency. Most records requests are made by people who are not familiar with government and they may be intimidated or not fully understand the bureaucracy. The more times a person is bounced from office to office, the more likely the situation will become adversarial.
- Clarify whether the seeker merely wants to inspect the records or actually wants copies.

- Seek clarification if a request is ambiguous, overly broad or misdirected.
- Estimate the time and expense required to respond.
- Consider whether any exemptions apply; if so, whether the public body wants to disclose the record despite an exemption.
- If you believe a record is exempt, discuss the request with a supervisor or anyone who may have more experience with such requests.
- Release of records may be delayed to consult with legal counsel about exemptions.
- When denying a request, cite the specific exemption(s) on which you rely.
- If no exemptions apply, coordinate release of the records in a timely manner.

## 11. FEES

Under the law, a public body may require a person to pay for the expense required to release public records. Fees are calculated to reimburse the agency for its "actual cost" in summarizing, compiling or tailoring a record to meet the person's request - and no more. Charges may include time spent locating the records, reviewing in order to redact exempt material, supervision, attorney time, and copying and sending records.

Seekers who regularly request public records, such as media representatives, are often granted fee waivers or reductions. They ensure a fee is established before the work begins, and many will ask for a fee waiver if, in their opinion, the release of specific records is in the public's interest.

### Example

• A neighborhood association president seeking records concerning military aviation safety at an airbase near the neighborhood – to be disseminated to the general public – may satisfy the public interest standard for a waiver if it is demonstrated that fee requirements inhibit the neighborhood's ability to obtain the government records in question. (Note: a more common reason to waive or reduce the cost is in instances in which it would cost more to calculate the fee than simply provide the requested record.)

Fee waivers are up to the agency, which can charge only a "reasonable amount." The public body is directed to weigh the public interest issue when deciding on a waiver or reduction.

Agencies, however, are not required to grant a complete fee waiver, even if the public interest test is met. A seeker dissatisfied with a denial of either a waiver or a reduction may petition the attorney general or district attorney in the same manner as a person appeals when inspection of a public record is rejected.

### TIP: Go narrow first

- To keep fees low, ask for just one document, review it and tailor your broader request.
- Ask to inspect the documents, rather than asking for copies. (Note: this could still cost the requestor in staff time.)
- Agencies should use lower-wage workers when possible, rather than top managers, to keep down the hourly cost of staff time assessed to seekers.

## 12. HOW TO APPEAL A DENIAL

If the initial request for a record is denied, the custodian should be prepared to give a written explanation for the refusal. It is suggested that upon first denial of access by a subordinate agency employee, the requestor should seek a decision at a higher agency level. In some cases there is a

negotiation that allows the release of portions of a record while protecting the privacy of those involved.

Make sure you have a written record of your original request and the denial. These documents will help with your appeal.

The offices of the state attorney general or local district attorney become involved when a record keeper has denied a citizen access to records or if the custodian has exceeded the "reasonable" amount of time responding to the request.

Once a public body denies a request, the seeker can file a public records petition with either the local district attorney or the state attorney general. See the "Automated Form Letters" at [www.open-oregon.com](http://www.open-oregon.com).

### Example

The appeal should include:

- The name of the agency from which the records were requested and denied;
- Name of the custodian of the record and how to contact him or her;
- A copy of the denied request;
- A statement that the request was denied, and, if known, who denied it and when;
- The written response from the public agency, if available;
- Other information that clarifies the seeker's argument that the record should be disclosed.

Since the records law is one of disclosure and many of the exemptions are voluntary, the attorney general or district attorney may simply recommend that the public body in question release the records – even if they could be covered by an exemption. (Note: the attorney general or district attorney applies the law. Whether to choose to assert a

discretionary exemption that covers a requested record is for the agency to decide.)

If the agency refuses to disclose voluntarily, a petition for a public records order can be submitted to the attorney general for state agencies or district attorney for local public bodies. An order is issued within seven working days – to either deny the appeal or issue an order that the record be disclosed.

If a petition is denied, the requestor may still file a lawsuit in circuit court to try to force disclosure.

If a petition is granted, the public body has seven business days to decide what to do and then seven more days to actually do it. Typically, when ordered to release the records, agencies do so promptly. If the agency wishes to fight the order, it must file suit against the requestor in circuit court.



### What is Open Oregon?

Open Oregon: A Freedom of Information Coalition is a nonprofit educational and charitable organization with a single purpose: to assist and educate the general public, students, educators, public officials, media and legal professionals to understand and exercise:

- Their rights to open government.
- Their right and responsibilities under the Oregon public records and meetings laws.
- Their rights under the federal Freedom of Information Act.

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Open Oregon is a 501(C)(3) nonprofit corporation. Go to [www.open-oregon.com](http://www.open-oregon.com) for additional copies of this guide and other information about public records and meetings.

Funding for this project came from the National Freedom of Information Coalition through a generous grant from the John S. and James L. Knight Foundation.



## Meeting Minutes

Police Advisory Board	
<b>Date &amp; Time:</b>	April 02, 2015
<b>Location:</b>	Sherwood City Council Chambers 22560 SW Pine Street, Sherwood, OR
<b>P.A.B. Members:</b>	<b>Council Liaison:</b>
Laurie Zwingli-Chair	Linda Henderson
Bob Silverforb-Vice Chair	<b>City Staff:</b>
Diane Foster	Jeff Groth-Police Chief
Sean Garland	Angela Hass-Executive Assistant
Dave McCart	Ty Hanlon-Police Captain
Rich Miller	Michelle Miller-Senior Planner
Amy Miller-Juve	
Christian Verkest	
Chris West	

### Attendees

#### 1. Call to Order (Silverforb)

The meeting was officially called to order at 7:05 p.m.

#### 2. Roll Call (Silverforb)

**Board members present:** Vice Chair Bob Silverforb, Diane Foster, Sean Garland, Rich Miller, Amy Miller-Juvé, Christian Verkest, Chris West, Chair Laurie Zwingli (*arrived at 7:08*)

**Board members absent:** Dave McCart

**Staff members present:** Chief Jeff Groth, Captain Ty Hanlon, Senior Planner-Michelle Miller and Angela Hass, Executive Assistant.

#### 3. Business (Silverforb/Zwingli)

##### a. Marijuana Discussion

Senior Planner Michelle Miller introduced herself and presented a PowerPoint going over the code amendments to take back to the Planning Commission (see Exhibit A). It was pointed out that tonight's discussion is not about recreational marijuana. (*Chair Zwingli arrived and took her position as Chair for the meeting.*) Recreational marijuana will be touched upon at another time.

The City was granted a moratorium on medical marijuana dispensaries for one year, which is due to expire soon. We are looking to place more strict guidelines, as a city, which we are allowed to do.

The City of Sherwood is looking to put limited buffers in place, where children might be present, same as Salem, Newberg and Tigard. The City would notify property owners within 1,000 feet when a dispensary would be going in. Ms. Miller stated that all of the blue text shown on the Plan Amendment (see Exhibit B) was updated to the draft code language. She announced that a public hearing is scheduled for April 14<sup>th</sup> and noted that the moratorium expires on May 1<sup>st</sup>. Ms. Miller stated that the commission had concerns about the YMCA and therefore has deemed it an area where a dispensary would not be allowed. Dispensaries are allowed to be no larger than 5,000 square feet.

Vice Chair Silverforb asked Ms. Miller's opinion about the results of the survey. She stated that she felt that several people aren't aware that we can't completely ban the dispensaries and that we have to take the results for what they're worth. It was mentioned that City of Sherwood voters opposed recreational use whereas Washington County approved. This makes it more challenging to regulate something that folks don't really want. Mr. Garland asked what Portland was doing. Ms. Miller stated that Portland is basically following the State guidelines. Mr. West asked if the Planning Commission or City staff are recommending the 5,000 square foot limitation. Ms. Miller stated it was probably more on the Planning Commission side. It was presented and no-one opposed. Mr. West believes that 5,000 square feet is very big. He asked about building codes and if there is a requirement to put in sprinkler systems. Ms. Miller stated it would depend on the site. If it was required for the State building code, it would most likely be required. TVF&R would also have to take a look at it and a Building Official would review.

Ms. Miller-Juvé asked about seating in the dispensaries and if there would be restrictions to having a secondary business in the dispensary, more specifically a hookah bar. Ms. Miller stated that smoking in buildings is illegal. Chief Groth added that State law prohibits smoking in dispensaries. Mr. Garland asked if there is law against eating the edibles while in the dispensaries. Captain Hanlon stated that they cannot. Chair Zwingli said that an employee can, however. Captain Hanlon said employees can, but only if they have an OMMP card. Ms. Miller-Juvé asked if there has been any discussion about staffing requirements. Ms. Miller believes it would be the same as the State requirements, but will look into. Ms. Miller-Juvé asked if there are currently any liquor stores located near the areas where a dispensary would be allowed. Ms. Miller stated that there is only one liquor store in Sherwood. Mr. Garland asked if the only reason dispensaries are not allowed in current shopping centers is because of schools and park locations. Captain Hanlon asked for clarification on "plaza". The definition of "plaza" is, a square in a city or town; an open area usually located near urban buildings and often featuring walkways, trees and shrubs, places to sit, and sometimes shops. Chair Zwingli asked if patients are required to go to a specific dispensary. Captain Hanlon said they are not required to. Chair Zwingli suggested that closing at 6 pm might make it difficult if a patient works during the day. Ms. Miller has received that same input and has learned that the busiest time for the dispensaries is 5-7 p.m. Mr. Garland asked about the difference between "dispensary" and "facility". Ms. Miller stated that verbiage should state "dispensary". The State uses the word "facility".

Ms. Miller-Juvé asked if marijuana can be delivered. Ms. Miller stated that mobile businesses are not allowed. Chair Zwingli asked about fees and fines for non-compliance. In regards to signs, Ms. Miller stated that we currently already have a sign code that would be enforced. There are different rules for commercial and industrial zones. The Code Enforcement Officer

would levy signs as needed. Chief Groth explained how it works and replied that we would follow the same enforcement process as with any other business. Chief Groth stated that some of the violations would fall under criminal. In the past we typically send a letter of warning, etc. He wasn't sure exactly how it will be handled if it was a violation of hours. The remedy would be to come into compliance. Ms. Miller believes that this will be covered in the municipal code. Mr. West asked if the Police Advisory Board (PAB) would want to recommend fines for violations such as delivery prohibition, hours, etc. Also asked if the PAB could recommend action with regards to the municipal code. Chief Groth stated, "yes" but to keep in mind to stay within time, place and manner. It is important to understand that the State has regulatory language. The OLCC will be covering the recreational marijuana. Unfortunately, we do not have this on the medical marijuana side, which is what concerns him. Captain Hanlon stated that growers are going to be regulated, but things could look completely different in 6 months. Medical marijuana businesses are trying to get both recreational and medical to be sold out of one facility. This is all just still in the works, but believes it will happen, in time.

Mr. Miller has a concern about security. Asked if there have been studies conducted regarding criminality in dispensaries. Ms. Miller stated that there is a study out from Texas showing that they have not seen any increase in crime within these types of businesses. There isn't a lot of data regarding this, as dispensaries haven't been around very long. The City doesn't regulate what landlords allow for businesses. Questions about criminality seem to be common, though.

Mr. Garland asked if the main reason for the buffers around the parks was because of kids. Ms. Miller stated that the idea was to not have near children and that the location of the parks is predominantly in residential areas. Crafting around parks seemed like a logical decision. Mr. Garland stated that there seems to be a lot of empty businesses in our shopping centers and it would be nice to fill some of those spots. Ms. Miller stated that they have heard this from others as well.

Vice Chair Silverforb commented on the study done by the University of Texas and said that it was pretty interesting information. Mr. West asked if the City requires secure storage of product and cash? Chair Zwingli stated that the State does have requirements for secure storage of product. Captain Hanlon stated that is being discussed right now. Mr. West is more concerned about product. Ms. Miller-Juvé read part of an article that showed increased crime in relation to cash.

Mr. West commented on Chief Groth's preference for industrial areas. Mr. West is concerned about these businesses being out and away from view, for safety reasons. Chief Groth stated that he is not concerned about increased crime as there is no evidence to support that. He is more concerned about who the product is given to. He is not aware of dispensaries being hit. He thinks that there is an assumption that business owners are going to do what they can to keep their product secure and doesn't believe that is going to be an issue. His concern is solely holding them accountable for following City and code regulations. He reported that the Sherwood Police Department has had very few instances where there were issues with the Oregon Medical Marijuana Program. Stated that there is language in the City Municipal Code which does address this. He then went over possible violations and fines, etc.

Mr. Garland stated that he knows that the City can't tell business owners what to put on signs, but wondered if the City has any recommendations. Ms. Miller said that it has been recommended that they keep the codes the same as what they currently have. We really don't want to make separate regulations for marijuana businesses. This would make for a real legal challenge. The Chief said that it is important to keep in mind that we are only talking about

the medical marijuana program and that it has not been an "in your face" program. It is based on providing medicine for people who have been given a prescription to use. Mr. Miller thanked Chief Groth for reminding everyone of that and feels that it is important to get the word out. Chief Groth stated that even if the medical marijuana program hasn't caused a lot of problems, the reality is that marijuana is becoming more socially accepted, we need to think about it possibly becoming a problem. He asked Ms. Miller what would be the soonest someone could open a business once an application has been received and approved. Ms. Miller replied that there would be a 30 day completeness review. Generally 6-8 weeks after an application has been completed. The Chief stated that we could be looking at no sooner than July and as we process through this, we need to consider that with the timing of recreational marijuana becoming legal, we would be looking at more than just the medical marijuana.

Chief Groth went over the role of the Code Enforcement Officer and stated that he's not sure how comfortable he would be having a non-sworn, unarmed officer responding to these types of businesses. Chair Zwingli asked about procedures when a minor tries to buy liquor. Chief Groth stated that it is considered a criminal offense and that it could be the same for medical marijuana. Mr. West asked if they can ask the City Council to empower Officers to take care of these types of calls. Chief Groth stated that he believes these are already in place through the State or City codes. The code language could be changed if needed.

Chair Zwingli asked if someone who holds a card is allowed to smoke in public? The answer was "no". Ms. Miller-Juvé asked if someone does not possess a card, are they allowed in a dispensary? The answer was "no". Captain Hanlon stated that the medical marijuana dispensary business owners are very serious about this being medicinal and are following the rules. Ms. Miller-Juvé asked if a sign could be required stating that no-one is allowed that doesn't hold a marijuana card. Captain Hanlon believes that may already be in place. Ms. Miller said that she could look into it. Vice Chair Silverforb stated that the rules are very specific and believes that the people running these programs are going to be very careful to follow so that they don't get shut down. The concern seems to be whether or not people are going to be allowed in that shouldn't be and Chief reiterated that is his concern as well. Often times these places charge more than they are supposed to and in some cases selling to those who don't possess cards. Some dispensaries have unknowingly allowed undercover Officers in which resulted in them getting raided, books seized and their businesses shut down. Washington County Drug Team has had to shut some down. The City has to do what is best at their end and the Police Department will handle as best they can. Ms. Miller-Juvé wondered if the board could make a recommendation for a larger buffer. Chief Groth asked Ms. Miller if the City can put a limit on how many dispensaries we'll allow. Ms. Miller replied that the LOOC discourages doing so. Ms. Foster said that with the current buffers, we would have limits.

Mr. Garland commented that given the late hour, the board may need to begin getting some recommendations ready. Chair Zwingli asked about residential areas and a discussion ensued about the 5,000 sq. foot limit. Mr. West asked Chair Zwingli if he could make some recommendations for the City Council. Chair Zwingli suggested they work with time, place and manner, when providing the recommendations.

Mr. West's recommendation included that dispensaries are only allowed in industrial, to change the word "facility" to "dispensary" and to go with times included in draft. He would like to have the code say mobile and delivery services prohibited. He stated that he has an issue with allowing the businesses to be 5,000 square feet. It was mentioned that Washington County lists 3,000 sq. feet. He would like to recommend 2,500 sq. feet. Ms. Foster asked what businesses currently have. Ms. Miller stated that they are all different. Mr. Verkest shared that

Red Robin is 6,000 sq. feet and Mod Pizza is 2,000. Mr. Garland asked why folks are concerned about size of business. Chair Zwingli stated that the bigger they are the more product they would have. Mr. West says it would be easier to deal with a confined space and keeping track of customers in the store. Chief Groth said he would suggest that the board would recommend to use the State regulations. Ms. Miller says that State language is already included. Mr. Miller asked if dispensaries will be selling accessories, edibles, etc. Ms. Miller said that edibles are allowed, but has not ran across the accessories. Captain Hanlon said that they are allowed to sell paraphernalia, but that is not the norm. The recreational piece coming into place will have more regulations. Mr. West asked if the City can state we only allow the dispensary with no retail section, no paraphernalia. He would like to add restriction to selling only medical marijuana. Ms. Miller has not seen anything in the guidelines regarding this issue. Mr. West will keep in his recommendation.

Chair Zwingli asked if there was any discussion regarding limiting to industrial. Ms. Foster would prefer allowing in both light industrial and industrial. Input was given. Mr. Miller agreed to keep in industrial. Chair Zwingli would like to change hours to extend to 7 p.m. That was acceptable per other board members. Chair Zwingli asked if there was discussion regarding adding the word "delivery". All seemed to agree it was okay to add. Chair Zwingli asked about size. Discussion ensued. Ms. Miller shared that legal felt that it was decided to keep same as other businesses in industrial zones. Ms. Miller said that 5,000 sq. feet would be the maximum, but it would be up to the business owner. 5,000 sq. feet is the limit in the industrial zone. It would be somewhat new if we were to limit the size. Mr. Garland shared that he didn't foresee these types of businesses being that large. Captain Hanlon said that no-one will be getting into these businesses without an Oregon Medical Marijuana card. Mr. Miller felt that we should start out with the smaller limitations and if we want to change down the road, we can.

Chair Zwingli asked if there were any thoughts on limiting to sales of just medical marijuana. Mr. Garland thought that it might be unfair to ask a patient to be able to buy their medicine but not be allowed to purchase what they would need to take the medicine. Mr. West shared why he feels it is important to limit. Vice Chair Silverforb shared his feelings on why he feels it is important to allow the sale of paraphernalia so that the patients can take their medicine. Ms. Miller-Juvé asked Chief Groth if it would make his job more difficult. He explained that currently there is a municipal code regarding no possession of paraphernalia. Ultimately, he believes the issue will take care of itself. Mr. West asked if that will go away with the legalization of marijuana. Chief Groth said not unless it is appealed.

Chair Zwingli went over the recommendations agreed upon for Ms. Miller to include in her Staff Report that she will present to the Planning Commission:

- 1) Limit to industrial areas only.
- 2) Add definition for term of "plaza"
- 3) Change facility to dispensary
- 4) Change the hours to Sunday-Thursday to 7 p.m.
- 5) Should not operate as a mobile or delivery business
- 6) Limit size to 2,500 sq. feet

Mr. Miller seconded the motion. Ms. Foster and Mr. Garland opposed. Chair Zwingli said the motion was approved.

Mr. West asked if the recommendations could still go to the City Council if the recommendations don't move forward by the Planning Commission. Ms. Miller stated that the recommendations

will follow to the City Council as well. Chair Zwingli asked if there were any other items to discuss. Captain Hanlon shared two websites that the board members may want to check out: leafy.com and weedmaps.com. These websites will give everyone an opportunity to see dispensaries that are already up and running.

#### **4. Adjourned**

Ms. Miller-Juvé motioned to adjourn the meeting at 9:31 p.m. Ms. Foster seconded the motion. All members voted in favor and the meeting was adjourned.

#### **Approval of Minutes:**

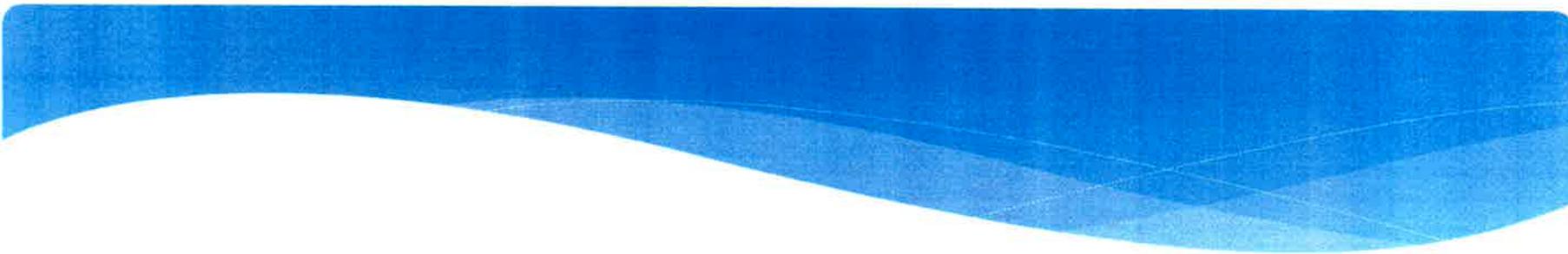
\_\_\_\_\_  
Chair Zwingli

#### **Attest:**

\_\_\_\_\_  
Angie Hass, Executive Assistant

# MEDICAL MARIJUANA DISPENSARIES

Planning Commission  
Work Session  
March 24, 2015



## ***Tonight's Work Session***

- Recap of the Public Work Session on March 10<sup>th</sup>
- Review Survey Results
- Discussion of the Draft Code Language
- **Outcome:** Amendments ready for Public Hearing on April 14, 2015

# Public Work Session Discussion

## Table Discussion Comments

- **Split opinion, no consensus but good discussion**
- **Liked the addition of a parks buffer**
- **Keep the same hours as OLCC liquor store**
- **Staff-level decision with adequate notice**
- **Concern about cash business operation**
- **Consider what Tualatin did -3000' buffer**

# Public Work Session Discussion

<b>Restrict Location through Zoning?</b>	<b>Vote</b>
<b>Industrial Only</b>	<b>9</b>
<b>Commercial Only</b>	<b>1</b>
<b>No Restriction on Zoning allow Commercial and Industrial (State Regulations)</b>	<b>17</b>

# Public Work Session Discussion

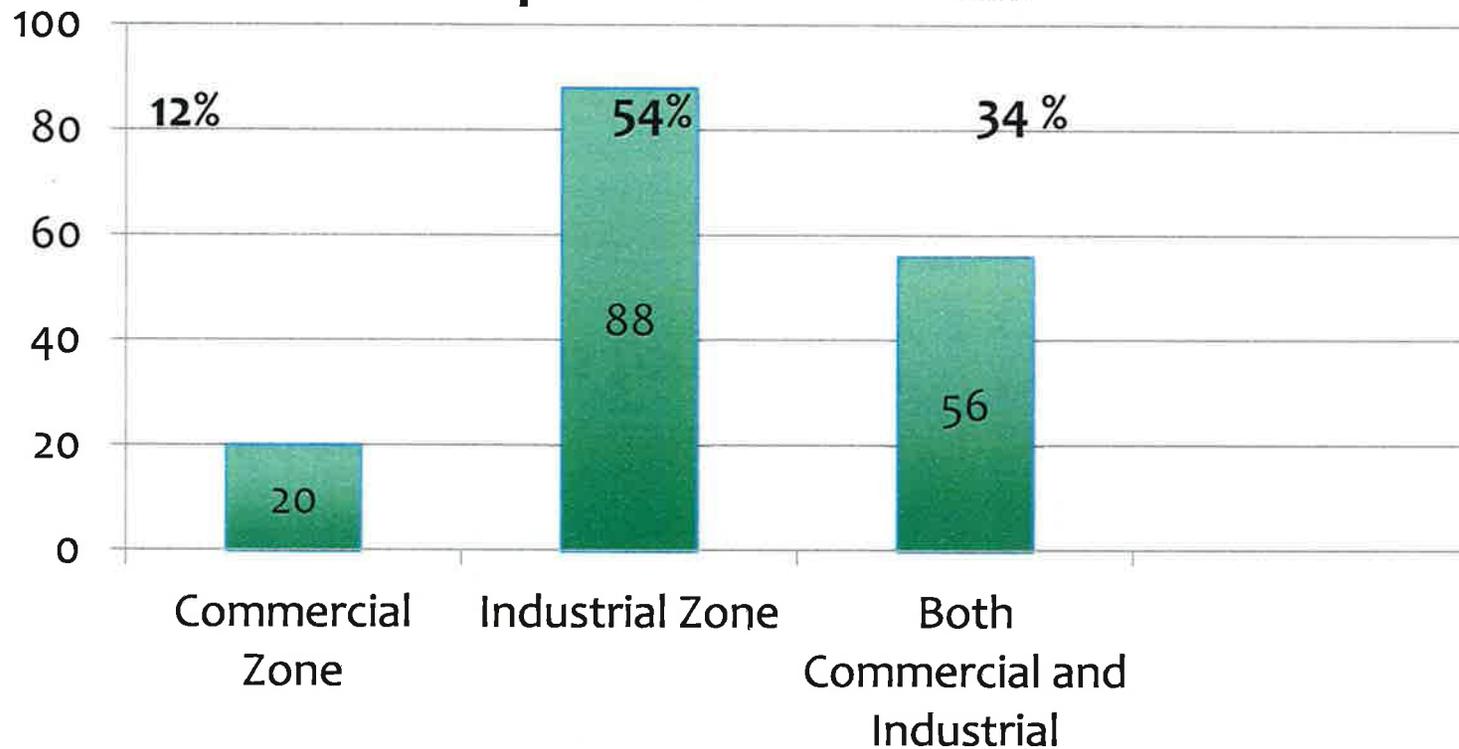
Should there be additional Buffers where Dispensaries could not be located?	Vote
1000 feet from a Park	13
Increase School Buffer	6
Residential Buffer	9
No Additional Buffers	11

# Public Work Session Discussion

Who should be the decision- making authority for the land use process for approving Medical Marijuana Dispensaries?	Vote
Staff level with notice (Type II)	25
Hearing Officer	1
Planning Commission	0

# Local Survey Results

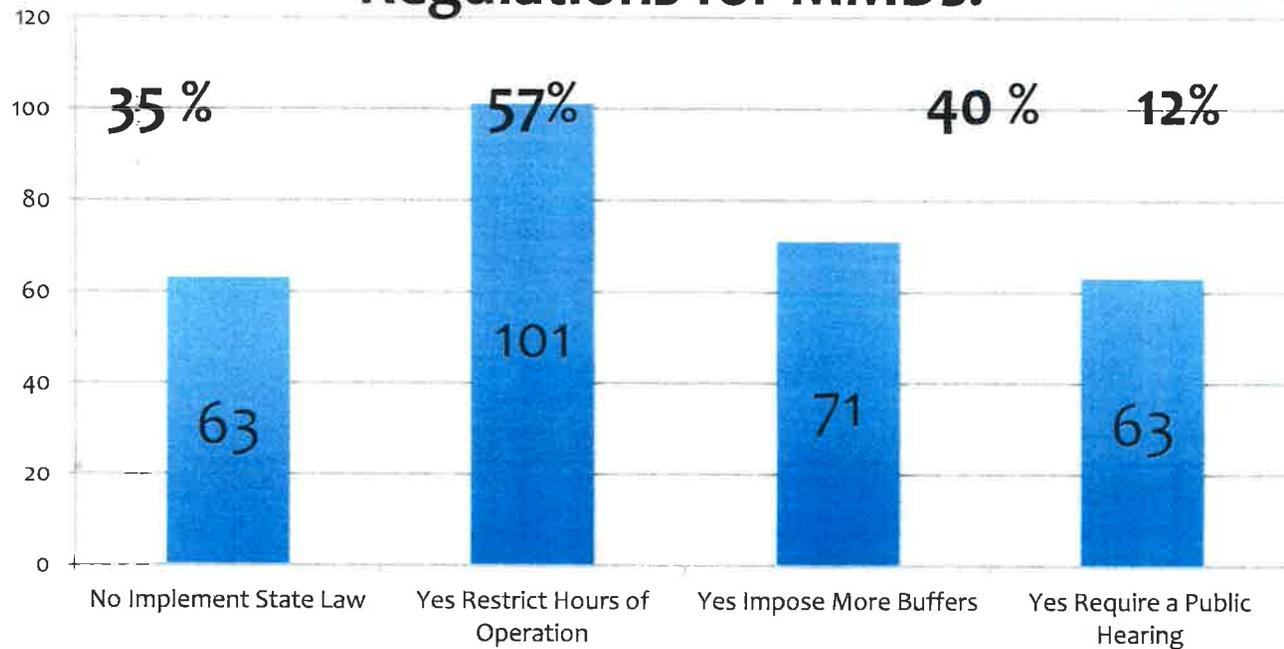
**What Zone Should Medical Marijuana Dispensaries be located?**



Based on 165 responses

# Local Survey Results

## Should the City Consider Additional Regulations for MMDs?



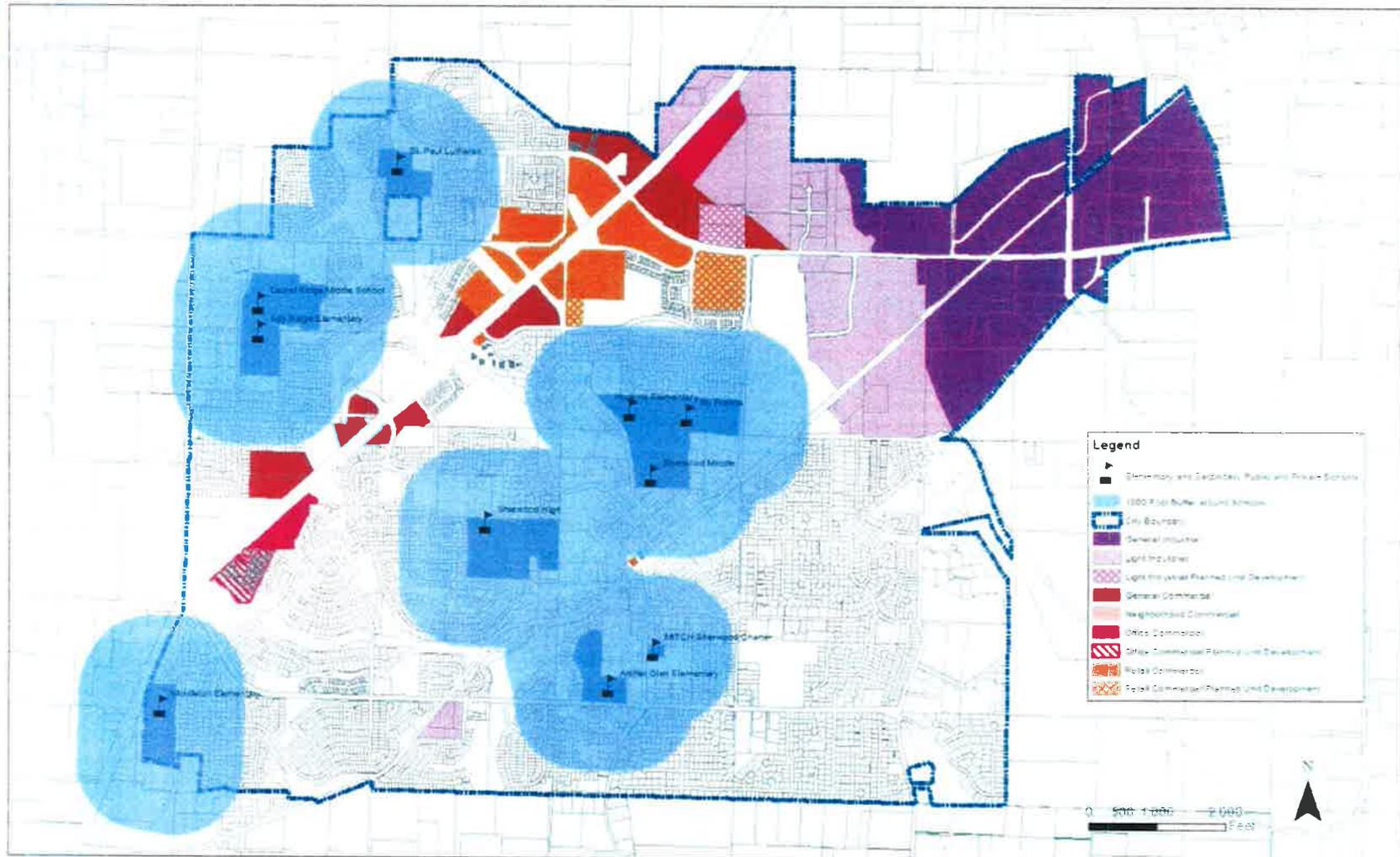
Based on 178 responses

# Statewide Medical Marijuana Dispensary Land Use-Related Regulations

- \* **Dispensary must be located in Commercial, Industrial Mixed Use or Agricultural zone**
- \* **Cannot be in same location as a Grow site**
- \* **Cannot be within 1,000 feet from a school-public or private**
- \* **Cannot be within 1,000 feet from another medical marijuana facility or dispensary**
- \* **Must be a Registered Business in Oregon**
- \* **Must install a Security System**
- \* **Cannot be Mobile**

# SCHOOL ZONE BUFFER

1000 Foot School Buffers with Industrial and Commercial Zones

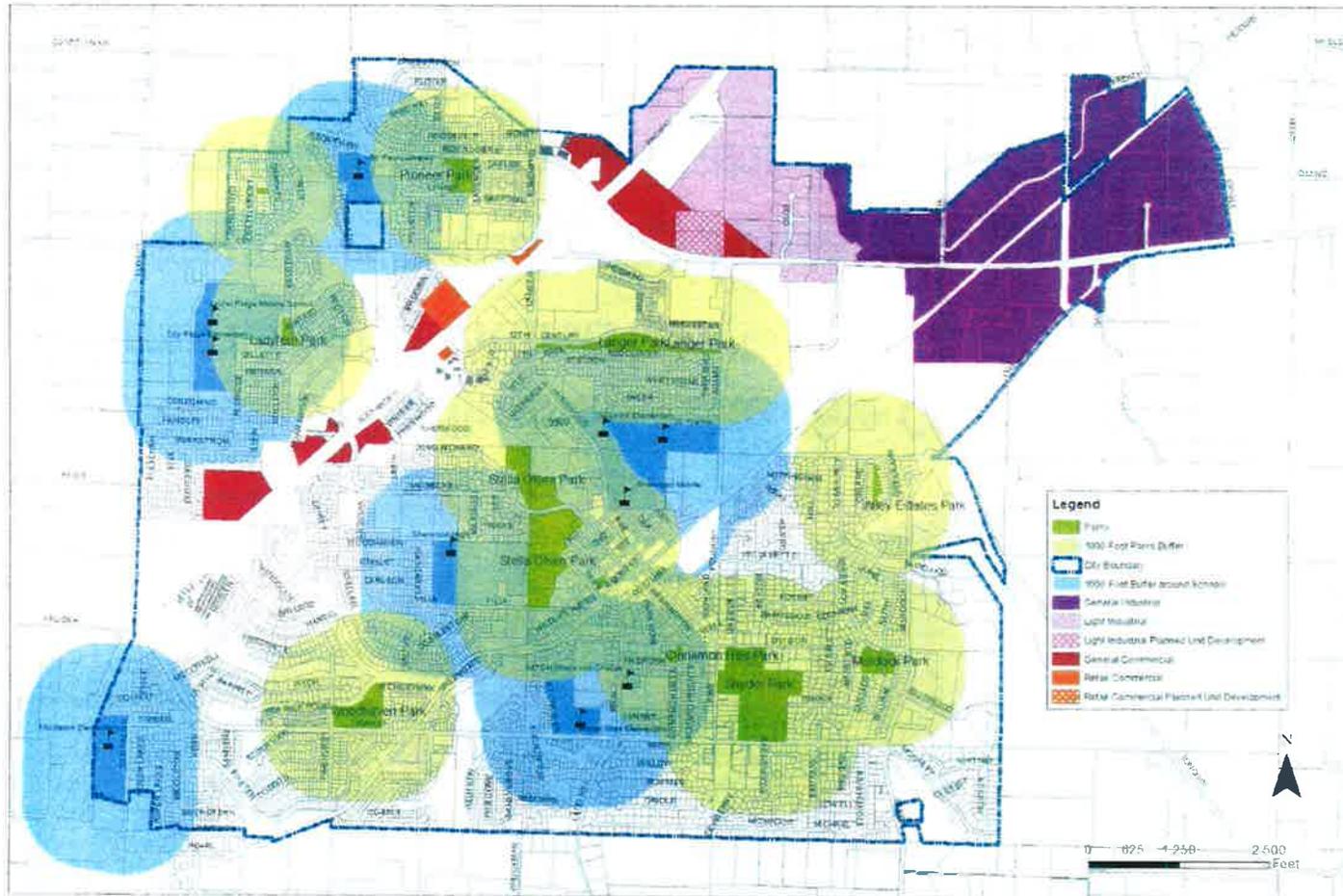


# PROPOSED CODE AMENDMENTS

- \* **Add Definitions to Chapter 16.10**
- \* **Add Medical Marijuana to the Use Categories in Commercial and Industrial**
- \* **Add Medical Marijuana Dispensary to Type II process**
- \* **Add Criteria for Medical Marijuana Dispensary in Special Use category**
  - \* **Hours**
  - \* **Add Buffers**
  - \* **Security Measures**

# MEDICAL MARIJUANA DISPENSARIES

1000 Foot School and Park Buffers



# **MEDICAL MARIJUANA REGULATION TIMELINE FOR LAND USE REGULATIONS**

**PLANNING COMMISSION HEARING:  
APRIL 14, 2015**

**PLANNING COMMISSION MAKES  
RECOMMENDATION TO CITY COUNCIL**

**CITY COUNCIL HEARING  
TENATIVE DATE: *May 5, 2015***

Medical Marijuana Dispensaries

Plan Amendment -**DRAFT CODE LANGUAGE**

April 2, 2015

Additions are in BLUE

**Add to Section 16.10- DEFINITIONS**

**MEDICAL MARIJUANA DISPENSARY:** A retail facility registered by the Oregon Health Authority that is allowed to receive marijuana, immature marijuana plants or usable marijuana products (such as edible products, ointments, concentrates or tinctures) and to transfer that marijuana, immature plants, or usable project to a person with a valid Oregon Medical Marijuana Program card (a patient or the patient’s caregiver). A dispensary includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.

**MOBILE VENDOR:** A service establishment operated from a licensed and moveable vehicle that vends or sells food and/or drink or other retail items processed or prepared on-site to walkup customers.

***EXISTING Definitions (for reference purposes)***

***Public Park:*** A park, playground, swimming pool, reservoir, athletic field, or other recreational facility which is under the control, operation or management of the City or other government agency.

***Educational Institution:*** Any bona-fide place of education or instruction, including customary accessory buildings, uses, and activities, that is administered by a legally-organized school district; church or religious organization; the State of Oregon; or any agency, college, and university operated as an educational institution under charter or license from the State of Oregon. An educational institution is not a commercial trade school as defined by Section 16.10.020.

***Add to Land uses tables of Chapter 16.22.10 and 16. XX tables with footnotes to see Special Uses***

**Chapter 16.22 Commercial Land Use Districts**

16.22.020 - Uses

A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C), and not permitted (N) in the Commercial Districts. The specific land use categories are described and defined in Chapter 16.88 Use Classifications and Interpretations.

B. Uses listed in other sections of this code, but not within this specific table are prohibited.

C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88 Use Classifications and Interpretations.

D. Additional limitations for specific uses are identified in the footnotes of this table.

COMMERCIAL USES	OC	NC	RC	GC
<b>COMMERCIAL</b>				
General Retail - sales oriented				
• General retail trade, not exceeding 10,000 square feet of gross square footage.	P	P	P	P
• General retail trade greater than 10,000 square feet of gross square footage	N	P	P	P
• <a href="#">Medical Marijuana Dispensary, not exceeding 5,000 square feet of gross square footage</a>	<u>N</u>	<u>N</u>	<u>P<sup>9</sup></u>	<u>P<sup>9</sup></u>

[9. See Special Criteria for Dispensaries under Chapter 16.38.020 .](#)

## CHAPTER 16.31 INDUSTRIAL LAND USES

### 16.31.020 - Uses

A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C) and not permitted (N) in the industrial zoning districts. The specific land use categories are described and defined in Chapter 16.88.

B. Uses listed in other sections of this code, but not within this specific table are prohibited.

C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88

D. Additional limitations for specific uses are identified in the footnotes of this table.

INDUSTRIAL USES	LI	GI	EI
<b>COMMERCIAL</b>			
General Retail - sales oriented			
<ul style="list-style-type: none"> <li>Incidental retail sales or display/showroom directly associated with a permitted use and limited to a maximum of 10 % of the total floor area of the business.<sup>7</sup></li> </ul>	C	C	P
<ul style="list-style-type: none"> <li><a href="#">Medical Marijuana Dispensary, not exceeding 5,000 square feet of gross square footage</a></li> </ul>	<u>P<sup>10</sup></u>	<u>P<sup>10</sup></u>	<u>N</u>
<ul style="list-style-type: none"> <li>Tool and Equipment Rental and Sales, Including Truck Rental.<sup>7</sup></li> </ul>	P	P	P
<ul style="list-style-type: none"> <li>Retail plant nurseries and garden supply stores (excluding wholesale plant nurseries).</li> </ul>	P	P	N
<ul style="list-style-type: none"> <li>Wholesale building material sales and service</li> </ul>	C	P	N
<ul style="list-style-type: none"> <li>Retail building material sales and lumberyards<sup>7</sup></li> </ul>			

[10. See Special Criteria for Dispensaries under Chapter 16.38.020.](#)

***Add Medical Marijuana Dispensary to Category Type II Land Use Procedures for Processing Development Permits.***

CHAPTER 16.72 Procedures for Processing Developing Permits

16.72.010 - Generally

A. Classifications

Except for Final Development Plans for Planned Unit Developments, which are reviewed per Section 16.40.030, all quasi-judicial development permit applications and legislative land use actions shall be classified as one of the following:

2. Type II

The following quasi-judicial actions shall be subject to a Type II review process:

a. Land Partitions

b. Expedited Land Divisions - The Planning Director shall make a decision based on the information presented, and shall issue a development permit if the applicant has complied with all of the relevant requirements of the Zoning and Community Development Code. Conditions may be imposed by the Planning Director if necessary to fulfill the requirements of the adopted Comprehensive Plan, Transportation System Plan or the Zoning and Community Development Code.

c. "Fast-track" Site Plan review, defined as those site plan applications which propose less than 15,000 square feet of floor area, parking or seating capacity of public, institutional, commercial or industrial use permitted by the underlying zone, or up to a total of 20% increase in floor area, parking or seating capacity for a land use or structure subject to conditional use permit, except as follows: auditoriums, theaters, stadiums, and those applications subject to Section 16.72.010.4, below.

d. "Design Upgraded" Site Plan review, defined as those site plan applications which propose between 15,001 and 40,000 square feet of floor area, parking or seating capacity and which propose a minimum of eighty percent (80%) of the total possible points of design criteria in the "Commercial Design Review Matrix" found in Section 16.90.020.4.G.4.

e. Industrial "Design Upgraded" projects, defined as those site plan applications which propose between 15,001 and 60,000 square feet of floor area, parking or seating capacity and which meet all of the criteria in 16.90.020.4.H.1.

f. Homeowner's association street tree removal and replacement program extension.

g. Class B Variance

h. Street Design Modification

i. Subdivisions between 4—10 lots

j. Medical Marijuana Dispensary permit

## **16.38 SPECIAL USES**

### **16.38.010 GENERAL PROVISIONS**

Special uses included in this Section are uses which, due to their effect on surrounding properties, must be developed in accordance with special conditions and standards. These conditions and standards may differ from the development standards established for other uses in the same zoning district. When a dimensional standard for a special use differs from that of the underlying zoning district, the standard for the special use shall apply.

## 16.38.020 MEDICAL MARIJUANA DISPENSARY

### A. CHARACTERISTICS:

1. A medical marijuana dispensaries is defined in Section § 16.10.

2. Registration and Compliance with Oregon Health Authority Rules. A medical marijuana dispensary must have a current valid registration with the Oregon Health Authority under ORS 475.314. Failure to comply with Oregon Health Authority regulations is a violation of this Code.

B. APPROVAL PROCESS: Where permitted, a medical marijuana dispensary is subject to approval under § 16.72.010A.2a., the Type II land use process.

### C. STANDARDS

#### 1. Hours of Operation:

a. A medical marijuana facility may not be open to the public before 10:00 am and not later than 6:00 pm from Sunday through Thursday.

b. A medical marijuana dispensary may not be open to the public before 10:00 am and not later than 8 pm on Friday and Saturday.

#### 2. Security Measures Required.

a. Landscaping must be continuously maintained to provide clear lines of sight from a public right of way to all building entrances.

b. Exterior lighting must be provided and continuously maintained.

c. Any security bars installed on doors or windows visible from a public right of way must be installed interior to the door or window, in a manner that they are not visible from the public right of way.

#### 3. Co-location prohibited.

a. A medical marijuana dispensary may not be located at the same address as a marijuana manufacturing facility, including a grow operation.

b. A medical marijuana dispensary may not be located at the same address with any facility or business at which medical marijuana is inhaled or consumed by cardholders.

#### 4. Mobile Businesses Prohibited.

A dispensary may not operate as a mobile business as defined in Chapter 16.10.

5. Drive-Through, Walk-Up. A medical marijuana dispensary may not have a walk-up window or a drive-through.

6. Proximity Restrictions.

A dispensary may not be located within 1,000 feet of any of the uses listed below. For purposes of this paragraph, the distance specified is measured from the closest points between the property lines of the affected properties:

a. An Educational Institution: public or private elementary, secondary, or career school that is attended primarily by children under 18 years of age.

b. Another medical marijuana dispensary.

c. A Public Park or Plaza.