Summary of Land Use Provisions in House Bill 3400 (Recreational and Medical Marijuana-Related Uses)

August 12, 2015

I. Introduction

Oregon House Bill 3400, adopted earlier this year, amended both the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (Ballot Measure 91, adopted by the voters in 2014) and the Oregon Medical Marijuana Act (codifed at Oregon Revised Statutes 475.300 through 475.346). The legislative mark-up version of HB 3400 is 111 pages long, and many of the provisions are unrelated to the regulation of land use and therefore unrelated to the county's current project to consider marijuana-related amendments to the Clackamas County Zoning and Development Ordinance (ZDO). The purpose of this summary document is to consolidate the land use provisions of HB 3400 into a concise reference to be used during the consideration and drafting of related ZDO amendments. Accompanying the excerpts from HB 3400 are brief staff comments on issues raised by the excerpts.

* Note: This summary document is based on Planning and Zoning Division staff review of HB 3400 and is not intended as legal guidance. It may be updated in the future as marijuana land use issues continue to evolve. Where excerpts from state law appear below, land use provisions are highlighted. Where the text is not highlighted, the excerpt is provided for context.

II. Ballot Measure 91, as amended (recreational marijuana)

A. Licenses: Licenses are required through the Oregon Liquor Control Commission for the commercial production, processing, wholesaling and retailing of recreational marijuana.

1. Section 1 of HB 3400 defines "**Marijuana Producer**" as *a person who produces marijuana in this state and* "**Produces**" as *the manufacture, planting, cultivation, growing or harvesting of marijuana.*

   Sections 12 and 13 of HB 3400 identify the requirements for a marijuana production license:

   SECTION 12. *Section 19, chapter 1, Oregon Laws 2015, is amended to read:*
   Sec. 19. *(1) The production of marijuana is subject to regulation by the Oregon Liquor Control Commission.*
   (2) A marijuana producer must have a production license issued by the commission for the premises at which the marijuana is produced. To hold a production license under this section, a marijuana producer:
   (a) Must apply for a license in the manner described in section 28, chapter 1, Oregon

Laws 2015;
(b) Must, until January 1, 2020, provide proof that an applicant listed on an application
submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older; and
(c) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.
(3) The commission shall adopt rules that:
(a) Require a marijuana producer to annually renew a license issued under this section;
(b) Establish application, licensure and renewal of licensure fees for marijuana producers;
(c) Require marijuana produced by marijuana producers to be tested in accordance with section 92 of this 2015 Act;
(d) Require marijuana producers to submit, at the time of applying for or renewing a license under section 28, chapter 1, Oregon Laws 2015, a report describing the applicant's or licensee's electrical or water usage; and
(e)(A) Require a marijuana producer to meet any public health and safety standards and industry best practices established by the commission by rule related to:
(i) The production of marijuana; or
(ii) The propagation of immature marijuana plants and the seeds of the plant Cannabis family Cannabaceae.
(B) For purposes of establishing rules under subparagraph (A)(ii) of this paragraph, the commission may not limit:
(i) The number of immature marijuana plants that may be possessed by a marijuana producer licensed under this section;
(ii) The size of the grow canopy a marijuana producer licensed under this section uses to grow immature marijuana plants; or
(iii) The weight or size of shipments of immature marijuana plants made by a marijuana producer licensed under this section.
(4) Fees adopted under subsection (3)(b) of this section:
(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana producers;
(b) Shall be in the form of a schedule that imposes a greater fee for premises with more square footage or on which more mature marijuana plants are grown; and
(c) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

SECTION 13. *(1) Subject to subsection (2) of this section, the Oregon Liquor Control Commission shall adopt rules restricting the size of mature marijuana plant grow canopies at premises for which a license has been issued under section 19, chapter 1, Oregon Laws 2015. In adopting rules under this subsection, the commission shall:*
(a) Limit the size of mature marijuana plant grow canopies, for premises where marijuana is grown outdoors and for premises where marijuana is grown indoors, in a manner calculated to result in premises that produce the same amount of harvested

marijuana leaves and harvested marijuana flowers regardless of whether the marijuana is grown outdoors or indoors.
(b) Adopt a tiered system under which the permitted size of a marijuana producer's mature marijuana plant grow canopy increases at the time of licensure renewal under section 19, chapter 1, Oregon Laws 2015, except that the permitted size of a marijuana producer's mature marijuana plant grow canopy may not increase following any year during which the commission disciplined the marijuana producer for violating a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or a rule adopted under a provision of sections 3 to 70, chapter 1, Oregon Laws 2015.
(c) Take into consideration the market demand for marijuana items in this state, the number of persons applying for a license under section 19, chapter 1, Oregon Laws 2015, and to whom a license has been issued under section 19, chapter 1, Oregon Laws 2015, and whether the availability of marijuana items in this state is commensurate with the market demand.
(2) This section does not apply to a premises for which a license has been issued under section 19, chapter 1, Oregon Laws 2015, if the premises is used only to propagate immature marijuana plants.

2. Section 1 of HB 3400 defines "**Marijuana Processor**" as *a person who processes marijuana items in this state and* "**Processes**" as *the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts. Processes does not include packaging and labeling.*

   Section 14 of HB 3400 identifies the requirements for a marijuana processor license:

   SECTION 14. *Section 20, chapter 1, Oregon Laws 2015, is amended to read:*
   Sec. 20. *(1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission.*
   (2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed. To hold a processor license under this section, a marijuana processor:
   (a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;
   (b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;
   (c) If the marijuana processor processes marijuana extracts, may not be located in an area zoned exclusively for residential use; and
   (d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.
   (3) The commission shall adopt rules that:
   (a) Require a marijuana processor to annually renew a license issued under this section;

(b) Establish application, licensure and renewal of licensure fees for marijuana processors;

(c) Require marijuana processed by a marijuana processor to be tested in accordance with section 92 of this 2015 Act; and

(d) Require a marijuana processor to meet any public health and safety standards and industry best practices established by the commission by rule related to:

(A) Cannabinoid edibles;

(B) Cannabinoid concentrates;

(C) Cannabinoid extracts; and

(D) Any other type of cannabinoid product identified by the commission by rule.

(4) Fees adopted under subsection (3)(b) of this section:

(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana processors; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

Staff Comment: Paragraph 2(c) prohibits a marijuana processor who processes marijuana extracts from being "… located in an area zoned exclusively for residential use." [emphasis added] There is not a zoning district in unincorporated Clackamas County that is exclusively zoned for residential use. For example, the Urban Low Density Residential districts, while primarily intended for single-family dwellings, also allows parks, churches, schools and other uses. Staff can only surmise that this provision is intended to prohibit marijuana processors in districts primarily zoned for residential use.

3. Section 1 of HB 3400 defines "**Marijuana wholesaler**" as *a person who purchases marijuana items in this state for resale to a person other than a consumer.*

   Section 15 identifies the requirements for a marijuana wholesale license:

   SECTION 15. *Section 21, chapter 1, Oregon Laws 2015, is amended to read:*

   Sec. 21. *(1) The wholesale sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.*

   (2) A marijuana wholesaler must have a wholesale license issued by the commission for the premises at which marijuana items are received, stored or delivered. To hold a wholesale license under this section, a marijuana wholesaler:

   (a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;

   (b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

   (c) May not be located in an area that is zoned exclusively for residential use; and

(d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.
(3) The commission shall adopt rules that:
(a) Require a marijuana wholesaler to annually renew a license issued under this section;
(b) Establish application, licensure and renewal of licensure fees for marijuana wholesalers;
(c) Require marijuana items received, stored or delivered by a marijuana wholesaler to be tested in accordance with section 92 of this 2015 Act; and
(d) Require a marijuana wholesaler to meet any public health and safety standards and industry best practices established by the commission by rule.
(4) Fees adopted under subsection (3)(b) of this section:
(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana wholesalers; and
(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

4. Section 1 of HB 3400 defines "**Marijuana Retailer**" as *a person who sells marijuana items to a consumer in this state.*

   Sections 16 and 17 identify the requirements for a marijuana retail license:

   SECTION 16. *Section 22, chapter 1, Oregon Laws 2015, is amended to read:*
   Sec. 22. *(1) The retail sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.*
   (2) A marijuana retailer must have a retail license issued by the commission for the premises at which marijuana items are sold. To hold a retail license under this section, a marijuana retailer:
   (a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;
   (b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;
   (c) May not be located in an area that is zoned exclusively for residential use;
   (d) May not be located within 1,000 feet of:
   (A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
   (B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and
   (e) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.
   (3) The commission shall adopt rules that:
   (a) Require a marijuana retailer to annually renew a license issued under this section;
   (b) Establish application, licensure and renewal of licensure fees for marijuana retailers;

(c) Require marijuana items sold by a marijuana retailer to be tested in accordance with section 92 of this 2015 Act; and
(d) Require a marijuana retailer to meet any public health and safety standards and industry best practices established by the commission by rule.
(4) Fees adopted under subsection (3)(b) of this section:
(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana retailers; and
(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

SECTION 17. *If a school described in section 22 (2)(d), chapter 1, Oregon Laws 2015, that has not previously been attended by children is established within 1,000 feet of a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, the marijuana retailer located at that premises may remain at that location unless the Oregon Liquor Control Commission revokes the license of the marijuana retailer under section 30, chapter 1, Oregon Laws 2015.*

B. Reasonable Regulations: Section 33 of HB 3400 authorizes the County to impose reasonable regulations on the operation of licensed recreational marijuana businesses.

SECTION 33. *Section 59, chapter 1, Oregon Laws 2015, is amended to read:*
Sec. 59.
(1) For purposes of this section, "reasonable regulations" includes:
(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;
(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;
(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;
(d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;
(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;
(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and
(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.
(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.
(3) Regulations adopted under this section must be consistent with city and county

comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.

Staff Comment: The word "reasonable" is not defined by HB 3400. Dependent on the result of discussion with County Counsel about statutory construction, a dictionary definition of "reasonable" may be relevant.

C. Farm Use: Section 34 explicitly applies various farm-related provisions of state law to marijuana and requires a land use compatibility statement from the County as part of the Oregon Liquor Control Commission's marijuana business licensing process.

SECTION 34. (1) Notwithstanding any other provision of law, marijuana is:

(a) A crop for the purposes of "farm use" as defined in ORS 215.203;
(b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;
(c) A product of farm use as described in ORS 308A.062; and
(d) The product of an agricultural activity for purposes of ORS 568.909.
(2) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use:
(a) A new dwelling used in conjunction with a marijuana crop;
(b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; and
(c) A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a marijuana crop.
(3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.
(4)(a) Prior to the issuance of a license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.
(b) A city or county that receives a request for a land use compatibility statement under this subsection must act on that request within 21 days of:
(A) Receipt of the request, if the land use is allowable as an outright permitted use; or
(B) Final local permit approval, if the land use is allowable as a conditional use.
(c) A city or county action concerning a land use compatibility statement under this subsection is not a land use decision for purposes of ORS chapter 195, 196, 197 or 215.

Staff Comment: It appears that marijuana production is permitted outright in the Exclusive Farm Use District. In addition, the definition of farm use at ORS 215.203 permits wholesaling and certain levels of processing (i.e., 10,000-square-foot maximum processing space with a minimum of 25% of processed crops grown onsite). ORS 30.930 prohibits the

county from regulating farm practices as nuisances or trespass. This effectively limits significantly the degree to which farming practices associated with marijuana may be restricted by the county. Outside of the EFU zone, HB 3400 provides less clarity. However, the use of the word "may" (*A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.*) strongly suggests that the County is not required to permit marijuana production in its forest and rural residential zones. However, these zones currently permit a broad range of farm uses, including horticulture, raising of crops, and marketing of farm products. In some cases, processing of farm products is permitted.

III. Oregon Medical Marijuana Act, as amended

A. Registration: Registration is required through the Oregon Health Authority for production and processing of medical marijuana and for medical marijuana dispensaries.

1. Grow Site Possession Limits: Section 82 of HB 3400 establishes limits on the number of plants and amount of marijuana that may be at a grow site.

SECTION 82. *ORS 475.320 is amended to read:*
475.320.
(1) Subject to subsection (2) of this section, a registry identification cardholder and the designated primary caregiver of the registry identification cardholder may jointly possess six or fewer mature marijuana plants.
(2)(a) A person may be designated to produce marijuana under ORS 475.304 by no more than four registry identification cardholders.
(b) A person who is designated to produce marijuana by a registry identification cardholder may produce no more than six mature marijuana plants per registry identification cardholder.
(3) If the address of a person responsible for a marijuana grow site under ORS 475.304 is located within city limits in an area zoned for residential use:
(a) Except as provided in paragraph (b) of this subsection, no more than 12 mature marijuana plants may be produced at the address; or
(b) Subject to subsection (5) of this section, if each person responsible for a marijuana grow site located at the address first registered with the Oregon Health Authority under ORS 475.304 before January 1, 2015, no more than the amount of mature marijuana plants located at that address on December 31, 2014, in excess of 12 mature marijuana plants, not to exceed 24 mature marijuana plants, may be produced at the address.
(4) If the address of a person responsible for a marijuana grow site under ORS 475.304 is located in an area other than an area described in subsection (3) of this section:
(a) Except as provided in paragraph (b) of this subsection, no more than 48 mature marijuana plants may be produced at the address; or
(b) Subject to subsections (5) and (6) of this section, if each person responsible for a marijuana grow site located at the address first registered with the authority under ORS

475.304 before January 1, 2015, no more than the amount of mature marijuana plants located at that address on December 31, 2014, in excess of 48 mature marijuana plants, not to exceed 96 mature marijuana plants, may be produced at the address.
(5) If the authority suspends or revokes the registration of a person responsible for a marijuana grow site that is located at an address described in subsection (3)(b) or (4)(b) of this section:
(a) No more than 12 mature marijuana plants may be subsequently produced at any address described in subsection (3) of this section at which the person responsible for that marijuana grow site produces marijuana.
(b) No more than 48 mature marijuana plants may be subsequently produced at any address described in subsection (4) of this section at which the person responsible for that marijuana grow site produces marijuana.
(6) If a registry identification cardholder who designated a person to produce marijuana for the registry identification cardholder pursuant to ORS 475.304 terminates the designation, the person responsible for the marijuana grow site whose designation has been terminated may not be designated to produce marijuana by another registry identification cardholder, except that the person may be designated by another registry identification cardholder if no more than 48 mature marijuana plants are produced at the address for the marijuana grow site at which the person produces marijuana.

Staff Comment: Medical marijuana grows currently are permitted in several ways under the Zoning and Development Ordinance (e.g., as a farm use in rural residential districts, as a home occupation subject to standards that apply generally to all home occupations, as a production use in industrial zones). Amendments to the ZDO to prohibit or restrict medical marijuana production would not prevent existing approved grow sites from continuing to operate but would convert those sites to nonconforming uses. Nonconforming uses enjoy statutory protections but are also limited in some ways.

2. Medical Marijuana Processors: Section 85 of HB 3400 provides, in pertinent part:

(3) To qualify for registration under this section, a marijuana processing site:
(a) May not be located in an area that is zoned for residential use if the marijuana processing site processes cannabinoid extracts;

3. Medical Marijuana Dispensaries: Section 86 of HB 3400 provides, in pertinent part:

(3) To qualify for registration under this section, a medical marijuana dispensary:
(a) May not be located in an area that is zoned for residential use;
(b) May not be located at the same address as a marijuana grow site;
(c) Must be registered as a business, or have filed an application to register as a business, with the office of the Secretary of State;
(d) May not be located within 1,000 feet of:
(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a);

(e) Must not be located within 1,000 feet of another medical marijuana dispensary;

SECTION 86a. *If a school described in ORS 475.314 (3)(d) that has not previously been attended by children is established within 1,000 feet of a medical marijuana dispensary, the medical marijuana dispensary may remain at its current location unless the Oregon Health Authority revokes the registration of the medical marijuana dispensary.*

4. Reasonable Regulations: Section 89 of HB 3400 authorizes the County to impose reasonable regulations on the operation of medical marijuana uses.

(1) For purposes of this section, "reasonable regulations" includes:
(a) Reasonable limitations on the hours during which the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may operate;
(b) Reasonable conditions on the manner in which a marijuana processing site or medical marijuana dispensary may transfer usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts, immature marijuana plants and seeds;
(c) Reasonable requirements related to the public's access to the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary; and
(d) Reasonable limitations on where the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may be located.
(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of marijuana grow sites of persons designated to produce marijuana by registry identification cardholders, marijuana processing sites and medical marijuana dispensaries that are located in the area subject to the jurisdiction of the city or county.