

Frequently Asked Questions about Recreational Marijuana

Isn't marijuana illegal under federal law? If so, how can Oregon legalize it?

Marijuana is classified under the federal Controlled Substances Act as a Schedule I drug, which means it is unlawful under federal law to grow, distribute, possess or use marijuana for any purpose. Individuals who engage in such conduct could be subject to federal prosecution.

However, the courts thus far have upheld a state's authority to decriminalize marijuana for state law purposes. Oregon did so for medical marijuana in 1998 and for recreational marijuana in 2014. What that means is someone who grows, distributes, possesses or uses marijuana within the limits of those state acts is immune from state prosecution, but might still be subject to federal prosecution if federal authorities desired to do so.

The following website is a great guide to what is currently legal in Oregon -
<http://whatslegaloregon.com/>.

What does the OLCC regulate?

Information about the OLCC's regulations regarding marijuana can be found at
<http://www.oregon.gov/olcc/marijuana/Pages/Frequently-Asked-Questions.aspx>.

As of July 1, 2015, Oregonians are allowed to grow up to four plants on their property, possess up to eight ounces of usable marijuana in their homes and up to one ounce on their person. Recreational marijuana cannot be sold or smoked in public. For more information go to: www.whatslegaloregon.com.

Marijuana retailers may not be located within 1000 feet of a school. All licensed businesses must be located in an area that is appropriately zoned. Also, local jurisdictions have authority to adopt reasonable regulations regarding the location of marijuana businesses, including regulations requiring that the businesses be located no more than 1000 feet from one another.

As of July 1, 2015, Oregonians can home grow of up to four plants per residence, regardless of how many people live in the residence. Four adults in one residence does not mean 16 plants. The limit is four per residence.

Should Oregon City voters vote to allow marijuana businesses, a marijuana business would need to comply with both Oregon City regulations and licensing requirements, and OLCC regulations and licensing requirements.

How are these businesses defined?

Marijuana means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

Marijuana processing site means an entity registered with the Oregon Health Authority to process marijuana.

Marijuana processor means an entity licensed by the Oregon Liquor Control Commission to process marijuana.

Marijuana producer means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.

Marijuana retailer means an entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.

Marijuana wholesaler means an entity licensed by the Oregon Liquor Control Commission to purchase items in this state for resale to a person other than a consumer.

Medical marijuana dispensary means an entity registered with the Oregon Health Authority to transfer marijuana.

Can the City Commission use home rule authority and vote to re-criminalize marijuana within our city?

No. A city's home rule authority is subject to the criminal laws of the state of Oregon. The Oregon Medical Marijuana Act (OMMA) and Measure 91 provide immunity from criminal prosecution for individuals who are acting within the parameters of those laws. Consequently, a council cannot remove the immunity provided by state law.

The immunity provided by state law does not extend to all crimes committed while engaging in marijuana-related activities. For example, the immunity provided by state law does not apply to the crime of driving under the influence. Likewise a city should be able to impose criminal penalties against a person engaging in a marijuana-related activity that violates another law, such as a business license ordinance, zoning or anti-smoking regulations. However, before doing so, the city should confirm that the state law immunities do not apply.

What about taxes?

Under HB 3400, cities may impose up to a 3 percent tax on sales of marijuana items made by those with recreational retail licenses by referring an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year. More information about taxes can be found at <http://www.oregon.gov/DOR/programs/businesses/Pages/marijuana.aspx>

Where will tax money go?

Measure 91 provides distribution of revenue after costs to the following:

- 40% to Common School Fund
- 20% to Mental Health Alcoholism and Drug Services
- 15% to State Police
- 10% to Cities for enforcement of the measure
- 10% to Counties for enforcement of the measure
- 5% to Oregon Health Authority for alcohol and drug abuse prevention

Why is Oregon City considering legalization of marijuana businesses?

Oregon City voters will make the decision whether or not to allow marijuana related businesses within the City limits. Should Oregon City voters in favor of these types of businesses, the City may need to

have time place and manner regulations in place so as to provide a legal process for permitting and regulating these types of businesses.

I don't live in Oregon City - where should I find out information?

If you live outside the City limits, please check with Clackamas County regarding marijuana regulations. Visit the website below or call County Planning staff at (503) 742-4500.

<http://www.clackamas.us/planning/marijuana.html>

What authority does Oregon City have to regulate recreational marijuana?

Measure 91 recognizes that cities can adopt “reasonable time, place and manner regulations” of the “nuisance aspects” of facilities that sell marijuana to consumers. In enacting those regulations, the law requires cities to make specific findings that the regulated businesses would create adverse effects. The measure notes that authority is in addition to, and not in place of, other authority granted to cities under their charters, relevant statutes, and the Oregon Constitution.

Does state law place any restrictions on where marijuana businesses can locate?

Yes. Medical marijuana dispensaries, recreational marijuana retail stores, and medical and recreational marijuana processors that process marijuana extracts cannot locate in a residential zone.

In addition, medical marijuana dispensaries and recreational marijuana retail stores are subject to the following restrictions:

Neither can locate within 1,000 feet of certain public and private schools, unless the school is established after the marijuana facility.

Medical marijuana dispensaries cannot locate within 1,000 feet of another dispensary.

Medical marijuana dispensaries cannot locate at a grow site.

Finally, before issuing any recreational marijuana license, the OLCC must request a statement from the city that the requested license is for a location where the proposed use of the land is a permitted or conditional use. If the proposed use is prohibited in the zone, the OLCC may not issue a license. A city has 21 days to act on the OLCC’s request, but when that 21 days starts to run varies:

If the use is an outright permitted use, 21 days from receipt of the request; or

If the use is a conditional use, 21 days from the final local permit approval.

I have heard that cities can impose “reasonable restrictions” on medical and recreational marijuana businesses. What does that mean?

HB 3400 expressly provides that cities may impose reasonable regulations on the following:

- The hours of operation of retail licensees and medical marijuana grow sites, processing sites and dispensaries;
- The location of all four types of recreational licensees, as well as medical marijuana grow sites, processing sites and dispensaries, except that a city may not impose more than a 1,000-foot buffer between retail licensees;

- The manner of operation of all four types of recreational licensees, as well as medical marijuana processors and dispensaries; and
- The public's access to the premises of all four types of recreational licenses, as well as medical marijuana grow sites, processing sites and dispensaries.

The law also provides that time, place and manner regulations imposed on recreational licensees must be consistent with city and county comprehensive plans, zoning ordinances, and public health and safety laws, which would be true of any ordinance imposed by a city.

What about the appearance of these businesses, such as design, signs, etc.

Most of these issues are already regulated under City Code. For example, new commercial, office and manufacturing buildings have to comply with the zoning code and various design standards. Signs are regulated under the City's sign code.

What is marijuana retail?

A marijuana retail is defined as the sale of marijuana items to a consumer in this state by an entity licensed by the OLCC.

What is marijuana production?

Marijuana production is defined as the manufacturing, planting, cultivating, growing, or harvesting of marijuana by an entity licensed by the OLCC to do so.

What is marijuana processing?

Processing of marijuana is defined as an entity licensed by the OLCC to process marijuana – for example, processing marijuana into usable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and selling usable marijuana and marijuana infused products at wholesale to marijuana retailers.

What is the definition of a school?

Oregon statute defines a school as:

- (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)