

**AGENDA**  
**Aurora City Council Meeting**  
Tuesday, July 08, 2014, at 7:00 P.M.  
City Council Chambers, Aurora City Hall  
21420 Main St. NE, Aurora, OR 97002

**1. Call to Order of the City Council Meeting**

**2. City Recorder Calls Roll**

**Mayor Graupp**  
**Councilor Sallee**  
**Councilor Brotherton**  
**Councilor Sahlin**  
**Councilor Vlcek**

**3. Consent Agenda**

- I. City Council Meeting Minutes – June 10, 2014
- II. Planning Commission Meeting Minutes –June 2014
- III. Historic Review Board Minutes –May 2014

**Correspondence**

- I. Oregon’s Medical Marijuana Program Overview from League of Oregon Cities General Council.

**4. Visitors**

Anyone wishing to address the City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the City Council could look into the matter and provide some response in the future.

**5. Mayor’s Report**

**6. Discussion with Parks Committee**

**7. Discussion with Traffic Safety Commission**

**8. Reports**

**A. Marion County Deputy Report – (included in your packet)**

**B. Finance Officer's Report – Financials** ( included in your packets)

1. Revenue & Expense Report

**C. Public Works Department's Report** – (included in your packet)

1. Monthly Status Report (Storm Water)
2. Monthly Status Report (Water)
3. Parks Report, OSU Tree Report
4. Sewer Dept Report

**D. City Recorder's Report** (included in your packet)

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**E. City Attorney's Report** – (not Included in your packet)

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**9. Ordinances and Resolutions & Proclamations**

- A. Discussion and or Action on Resolution Number 690 Resolution For New Bank Account Signers.

**10. New Business**

- A. Discussion and or Action on RFP for Park and Planter Strips Maintenance.

**11. Old Business**

- A.

**12. Adjourn**

**Minutes**  
**Aurora City Council Meeting**  
Tuesday, June 10, 2014, at 7:00 P.M.  
City Council Chambers, Aurora City Hall  
21420 Main St. NE, Aurora, OR 97002

STAFF PRESENT: Kelly Richardson, City Recorder  
Pete Marcellais, Marion County Deputy  
Mary Lambert, Finance  
Darrel Lockard, Public Works Superintendent  
Dennis Koho, City Attorney

STAFF ABSENT: None

VISITORS PRESENT: Tom Potter, Aurora  
Bill Simon, Aurora

1. Call to Order of the City Council Meeting

The meeting was called to order by Mayor Bill Graupp at 7:00 p.m.

2. City Recorder does roll call

Mayor Graupp – present  
Councilor Sallee- came in late at 7:27  
Councilor Brotherton -present  
Councilor Sahlin – present  
Councilor Vlcek – present

**3. Consent Agenda**

- I. City Council Meeting Minutes – May 13, 2014  
Councilor Brotherton, points out that regarding the discussion on pg 5 that it happened earlier in the meeting as it was bumped up to the front of the line. Also he would like to see the OLCC license renewals listed on the agenda.
- II. Planning Commission Meeting Minutes –May 2014
- III. Historic Review Board Minutes –April 2014

**Correspondence**

**I. None**

Motion to approve the consent agenda with the corrections stated was made by Councilor Vlcek and is seconded by Councilor Brotherton. Motion Approved by all.

#### 4. **Visitors**

Anyone wishing to address the City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the City Council could look into the matter and provide some response in the future.

No one spoke....

#### 5. **Mayor's Report,**

**A. Mayor Graupp** I just wanted to inform Council that there is an offer on the Eddy's property and apparently it has been accepted with conditions. It was also discovered that the foundation is not adequate. The concept for the new business would be an 1800 to 1900 Hispanic Cultural History of the Migrant Workers.

Also wanted to get you thinking about the possibility of a food cart business license that would better reflect what is needed based on the Planning Commission meeting last week we might want to think about it for the future.

During the discussion regarding food carts it is the consensus of the Council to revisit the food cart language to possibly expand the area involved because there is such a lack of food establishments in Aurora.

- ❖ At this time we will take a moment of silence for the Reynolds school shooting victims that took place earlier today. I would also like to acknowledge and thank our Marion County Deputy Pete Marcellais and the sheriff's office for their participation in our local schools regarding safety.

#### 6. **Public Hearing Opens at 7:28 pm**

**A.** Discussion and or Adoption of 2014/2015 Budget as Proposed by the Aurora Budget Committee.

No comments for the budget in the audience at this time we will move on to the staff report.

Councilor Sallee requests a copy of draft budget minutes.

Staff report has a few minor changes,

- pg 2 line 36 General Operating fund capital outlay remove \$100 for response in this area as we took it out of the other two areas it was in.
- Pg 12 line 22 General fund actual number that got left off during the changes. There are no changes to pg 2 line 33 as the total number did not change because it was a hard number, not a part of a formula.
- Pg 1 Geo bond the actual number on line 3 changed during the process. The total number did not change because it was a hard number, not a part of the formula.
- Discussion on pg 2 at during the budget discussion it was determined that it was not needed, so Mayor states that if we don't need it then let's make it clean and remove it as previously discussed.

Tom Potter, do we do any budget review for Deputy Pete each year Mayor explains that we do that each year at contract renewal time.

Mayor Graupp hearing no further comments closes the hearing at 7:38 PM.

Council discussion, regarding the budget Councilor Sallee asks clarification on the step increases as to when they go into affect Mayor Graupp explains that 1.5% goes into effect in July and 1.5% in January.

Mayor Graupp closes discussion.

Clarification for taxes 2.34% it is a fixed rate. It is the maximum tax rate the state allows us to pay. We receive the number from assessor's office.

No more questions at this time....

**7. Discussion with Parks Committee**, no RFP at this point. TTT is still mowing at this point until we let him know. Councilor Vlcek asks about mole control. Consensus is to let him (TTT)do it.

**8. Discussion with Traffic Safety Commission, NA**

**9. Reports**

**A. Marion County Deputy Report – (not included in your packet)**

- 3 kids involved in the recent thefts have all been handled.
- Potter was there damage to a truck yes.
- Bike Rodeo signs are up is there any more events coming up.
- 30<sup>th</sup> of the month I will be meeting with traffic safety people to focus on crosswalks.

Councilor Sallee, can we get the speed board placed on Liberty Street across from the church.

**B. Finance Officer's Report – Financials ( included in your packets)**

1. Revenue & Expense Report
2. Discussion on Audit Report

No discussion on audit it was a typo,

- I put this in an items list format until I know what you are looking for. The opening number messes it up so look down the report it's more accurate. Every quarter on % spent It will be a month behind because not everything is entered in time.

Councilor Vlcek, on quarterly report if there is any expenditure that is let's say 5 to 10% percent over spent just flag those items and bring it to our attention so we are not caught off guard.

**C. Public Works Department's Report** – (included in your packet)

1. Monthly Status Report (Storm Water)
  2. Monthly Status Report (Water)
  3. Parks Report, OSU Tree Report
  4. Sewer Dept Report
- 3 new pumps have been installed
  - Consumer Confidence Report (CCR) has been completed and given to Kelly for distribution.
  - Filbert Street graveling has been completed we did have some grading issues.
  - Waiting on Sayre we have a hydraulic break in our lines.
  - Street light on Albers Way yesterday they called for locates so should be complete.
  - I have a recommendation for part time staff later on.
  - The list of yearly projects on the bottom of my report is what Councilor Sallee asked for.
  - Liberty Street leaks will be done very soon.
  - Clean bill of health according to DEQ

There is a brief discussion regarding the wastewater drying beds I think if we dry it out we can haul and dump so there will not be as much cost involved. What is the smell factor (Darrel I really don't think it will smell.) Councilor Vlcek I just don't want to save a dollar and then have a smell factor to worry about.

Councilor Brotherton, we are working on a plan and we will bring the issues before council before we act on them.

We can go look at other facilities to see what others are doing and if they smell or not.

Councilor Sallee, do we have plans for something in the newsletter to conserve water. No not at this time hopefully everyone remembers last year.

Tom Potter has a question regarding the east side of the street I notice a humming sound that cycles about every 30 minutes. I live at 21244 Liberty is it someone pulling water from pudding with a well maybe? Darrell I will be listening.

**D. City Recorder's Report** (included in your packet)

- No questions

**E. City Attorney's Report** – (not Included in your packet)

- Nothing to report,
- Sahlin ask him to review the park RFP on insurance.

**10. Ordinances and Resolutions & Proclamations**

- A. Discussion and or Action on Resolution Number 686 Resolution In Accordance with ORS 221.760

A motion is made to approve Resolution Number 686 by Councilor Vlcek and is seconded by Councilor Sallee. Passed by All.

- B. Discussion and or Action on Resolution Number 687 Resolution to Receive State Revenue Share Funds.

A motion is made to approve Resolution Number 687 by Councilor Brotherton and is seconded by Councilor Vlcek. Passed by All.

- C. Discussion and or Action on Resolution Number 688 Resolution to Adopt the 2014/2015 Budget.

A motion is made to approve Resolution Number 688 by Councilor Sallee and is seconded by Councilor Vlcek. Is not considered.

A motion is made to approve Resolution Number 688 by Councilor Brotherton and is seconded by Councilor Vlcek. Passed by All.

- D. Discussion and or Action on Resolution Number 689 Resolution to Levy Taxes.

A motion is made to approve Resolution Number 689 by Councilor Vlcek and is seconded by Councilor Sallee. Passed by All.

Mayor Graupp informs the group that the Bond went down to defeat.

## **11. New Business**

- A. Discussion and or Action on Proposed Rate Increase for Wave Broadband.

A motion to accept the Wave Broadband rate increase is made by Councilor Brotherton and is seconded by Councilor Sallee. They do want to verify the 2.26% rate increase is within the allotted amount in the contract. Passed by All.

- B. Discussion and or Action on Recommendation from Planning Commission to Approve Extension of Previous Land Use Decision.

A motion to approve the recommendation from Planning Commission to approve the 1 year extension for the Bixler project is made by Councilor Sahlin and is seconded by Councilor Brotherton. Passed by all.

- C. Discussion and or Action on LOC Legislative Priorities Survey.

- Brownfield
- Natural Disasters

- Enhancing mental health services
- Is the consensus of the Council.

D. Discussion and or Action on Recommendation to Hire Part Time Public Works Assistant. Bill Simon.

Motion to approve recommendation of Public Works to hire Bill Simon as the part time public works assistant is made by Councilor Sahlin and is seconded by Councilor Brotherton. Passed by all.

E. Discussion and or Action on Renewal of Contract with Mid-Willamette Valley Council of Governments.

Motion to approve COG contract renewal is made by Councilor Sahlin and is seconded by Councilor Sallee. Passed by all.

## 12. Old Business

A. Discussion and or Action on ACVA Grant Fund Request for Island Maintenance.

Last time we used the Marion County inmate work crew so let's do that again until the RFP comes back and someone is identified.

It is the consensus of the Council to not approve ACVA request at this time.

## 13. Adjourn

Mayor Graupp adjourns the June 10, 2014 Council meeting at 8:58 pm.

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Bill Graupp, Mayor

ATTEST:

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Kelly Richardson, CMC City Recorder

**Minutes**  
**Aurora Planning Commission Meeting**  
Tuesday, June 03, 2014 at 7:00 P.M.  
Aurora Commons Room, Aurora City Hall  
21420 Main St. NE, Aurora, OR 97002

**STAFF PRESENT:** Kelly Richardson, City Recorder  
Renata Wakeley, City Planner

**STAFF ABSENT:** NONE

**VISITORS PRESENT:** Tara McKnight, Aurora  
Carl McKnight, Aurora  
Cliff Bixler, California  
Others were present but did not sign in.

**1. Call to Order of Planning Commission Meeting**

The meeting was called to order by Planning Chair Joseph Schaefer at 7:01 p.m.

**2. City Recorder Did Roll Call**

Chairman, Schaefer -	Present
Commissioner, Willman	Present
Commissioner, Gibson	Present
Commissioner, Graham	Present
Commissioner, Fawcett	Present
Commissioner, Weidman	Absent
Commissioner, Rhoden-Feely	Absent

**3. Consent Agenda**

**Minutes**

- I. Aurora Planning Commission Meeting –May 06, 2014, no comments.
- II. City Council Minutes – April, 2014
- III. Historic Review Board Minutes – April, 2014

A motion is made by Commissioner Gibson to approve the consent agenda as presented and seconded by Commissioner Fawcett. Motion Approved by all.

**Correspondence**

- I. NA

**4. Visitor**

Anyone wishing to address the Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Planning Commission could look into the matter and provide some response in the future.

**No one spoke during this section**

**5. Public Hearing Opens at 7:46 pm**

Chair Schaefer asks if anyone has any ex-parte contact to express and no claimed any except himself when following the last HRB meeting he spoke with the applicant and went by the site to look at the steps.

**City Planner Wakeley reads her staff report as stated below;**

**A. Discussion and or Action on Conditional Use Application 2014-01 & SDR 2014-01  
Property Address 21680 Main Street NE Carl and Tara McKnight.**

**CITY OF AURORA  
PLANNING  
COMMISSION**

<b>STAFF REPORT:</b>	Conditional Use Permit 2014-01 [CUP-14-01] and Site Development Review 2014-01 [SDR -14-01]	
<b>DATE:</b>	May 28, 2014 (for the June 3, 2014 Planning Commission meeting)	
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<b>APPLICANT/OWNER:</b>	Carl and Tara McKnight	
<b>REQUEST:</b>	Conditional Use Permit approval for installation of a food cart and Site Development Review approval for an outdoor garden/eating/retail space.	
<b>SITE LOCATION:</b>	21680 Main Street NE, Aurora OR Map 041.W.12CD, Tax Lot 4400	
<b>SITE SIZE:</b>	4,792 square feet or 0.11 acres	
<b>DESIGNATION:</b>	<u>Zoning:</u> Commercial (C) with Historic Commercial Overlay (HCO) <b>CRITERIA:</b>  Aurora Municipal Code (AMC) Chapters 16.22 Historic Commercial Overlay, 16.58 Site Development Review, and 16.60 Conditional Uses	
<b>ENCLOSURES:</b>	Exhibit A:	Assessor Map
	Exhibit B:	Application and site plan
	Exhibit C:	Historic Review Board minutes (May 22, 2014)

**I. REQUEST**

Conditional Use Permit approval for installation of a food cart and Site Development Review approval for an outdoor garden/eating/retail space

**II. PROCEDURE**

The application was determined by staff to be subject to Site Development Review (SDR) as the application can be considered new development that will intensify the use of the property. SDR applications are processed as Limited Land Use decisions under AMC 16.78. The application was determined by staff to be subject to a Conditional Use (CU) application as the proposed use is only permitted with conditional use approval. CU applications are processed as Quasi-Judicial Decisions under AMC 16.76. AMC 16.58 provides the criteria for reviewing Site Development Reviews and 16.60 provides the criteria for reviewing Conditional Uses.

The application was received and fees paid on May 12, 2014. The application was determined complete by Staff and notice was mailed to surrounding property owners on May 27, 2014. The City has until **September 8, 2014**, or 120 days from acceptance of the application to approve, modify and approve, or deny this proposal.

### III. APPEAL

Appeals are governed by AMC 16.76.260 and 16.78.120. An appeal of the Planning Commission's decision shall be made, in writing, to the City Council within 15 days of the Commission's final written decision.

### IV. CRITERIA AND FINDINGS

*The applicable review criteria for Site Development Review are found in AMC 16.58.*

#### **16.58.100 Approval Standards**

*The review of a Site Plan shall be based upon consideration of the following:*

**A. Provisions of all applicable chapters;**

FINDINGS: The subject parcel is zoned Commercial (C) with a Historic Commercial Overlay (HCO). AMC 16.22.020 includes eating and drinking establishments and general retail sales as permitted uses. AMC 16.22.030 lists food carts as permitted with conditional use approval. The applicant has submitted a concurrent application for conditional use approval along with site development review approval. Staff finds this criterion is met.

AMC 16.22.040.I. requires all properties, uses, and structures in the HCO to meet the requirements of Title 17, Historic Preservation. Comments from the Historic Review Board are included under Exhibit C. Staff finds this criterion is met.

**B. Buildings shall be located to preserve topography and natural drainage and shall be located outside areas subject to ground slumping or sliding;**

FINDINGS: Staff finds this criteria does not apply.

**C. Privacy and noise;**

- 1. Buildings shall be oriented in a manner which protects private spaces on adjoining residential properties from view and noise;**
- 2. On site uses which create noise, lights, or glare shall be buffered from adjoining residential uses;**

FINDINGS: No buildings are proposed and the adjacent zones are for commercial uses. The proposed use has street frontage to the north with landscaping and to the west with existing structures. Property to the east is developed with a carpet warehouse and gas station. Property to the south is developed for parking and all adjacent parcels are zoned for commercial uses. Staff finds this criteria is met.

**D. Residential private outdoor areas:**

FINDINGS: Staff finds this criteria does not apply.

**E. Residential shared outdoor recreation areas:**

## V. APPEAL

Appeals are governed by AMC 16.76.260 and 16.78.120. An appeal of the Planning Commission's decision shall be made, in writing, to the City Council within 15 days of the Commission's final written decision.

## VI. CRITERIA AND FINDINGS

*The applicable review criteria for Site Development Review are found in AMC 16.58.*

### **16.58.101 Approval Standards**

*The review of a Site Plan shall be based upon consideration of the following:*

#### **A. Provisions of all applicable chapters;**

FINDINGS: The subject parcel is zoned Commercial (C) with a Historic Commercial Overlay (HCO). AMC 16.22.020 includes eating and drinking establishments and general retail sales as permitted uses. AMC 16.22.030 lists food carts as permitted with conditional use approval. The applicant has submitted a concurrent application for conditional use approval along with site development review approval. Staff finds this criterion is met.

AMC 16.22.040.I. requires all properties, uses, and structures in the HCO to meet the requirements of Title 17, Historic Preservation. Comments from the Historic Review Board are included under Exhibit C. Staff finds this criterion is met.

#### **B. Buildings shall be located to preserve topography and natural drainage and shall be located outside areas subject to ground slumping or sliding;**

FINDINGS: Staff finds this criteria does not apply.

#### **D. Privacy and noise;**

- 1.** Buildings shall be oriented in a manner which protects private spaces on adjoining residential properties from view and noise;
- 2.** On site uses which create noise, lights, or glare shall be buffered from adjoining residential uses;

FINDINGS: No buildings are proposed and the adjacent zones are for commercial uses. The proposed use has street frontage to the north with landscaping and to the west with existing structures. Property to the east is developed with a carpet warehouse and gas station. Property to the south is developed for parking and all adjacent parcels are zoned for commercial uses. Staff finds this criteria is met.

#### **F. Residential private outdoor areas:**

FINDINGS: Staff finds this criteria does not apply.

#### **G. Residential shared outdoor recreation areas:**

FINDINGS: Staff finds this criteria does not apply.

*H. Shared outdoor recreation space shall be readily observable for reasons of crime prevention and safety;*

FINDINGS: The proposed uses and development of Lot 4400 are proposed to receive access via existing businesses on adjacent lots 4500 and 4600. The site is screened with landscaping and fencing. Staff finds this criteria does not apply.

*H. Demarcation of public, semipublic, and private spaces;*

FINDINGS: Staff finds this criteria does not apply as the space is private property.

*I. Crime prevention and safety:*

*3. Exterior lighting levels shall be selected and the angles shall be oriented towards areas vulnerable to crime;*

*4. Light fixtures shall be provided in areas having heavy pedestrian or vehicular traffic and in potentially dangerous areas such as parking lots, stairs, ramps and abrupt grade changes. Fixtures shall be placed at a height so that light patterns overlap at a height of seven feet which is sufficient to illuminate a person.*

FINDINGS: Criteria 1 and 2 are related to residential development and found not to apply. A lighting plan for the site was not provided by the applicant. A lighting plan in conformance with the above criteria shall be submitted for City review and approval prior to business license approval. The lighting plan must also show that lighting shall not reflect onto surrounding properties. This is included as a recommended conditional of approval.

*J. Access and circulation;*

*1. The number of allowed access points for a development shall be as determined by the City Engineer in accordance with standard engineering practices for city rights-of-way, as determined by Marion County for county rights-of-way, and as determined by the Oregon Department of Transportation for access to Highway 99E.*

*2. All circulation patterns within a development shall be design to accommodate emergency vehicles.*

FINDINGS: The development of lot 4400 proposes pedestrian access from lots 4500 and 4600 containing existing improvements. Staff finds this criterion does not apply.

*K. Public transit;*

FINDINGS: Pedestrian access to the property is proposed via adjacent businesses on lots 4500 and 4600 which have existing sidewalks. No transit stops abut or are adjacent to the subject properties. Staff finds this criterion does not apply.

*L. All parking and loading requirements shall be design in accordance with the requirements set forth in Chapter 16.42.*

FINDINGS: Parking shall be in conformance with the HCO zone and Title 17. Title 17 exempts parking requirements under Title 16 for additions to commercial structures and new commercial uses. Staff finds this criteria is met.

*M. All landscaping shall be designed in accordance with the requirements set forth in Chapter 16.38.*

FINDINGS: A preliminary landscape plan provided by the applicant is included under Exhibit B. AMC 16.38.030(C) requires the installation of all landscaping requirements prior to issuance of a certificate of occupancy. Prior to business license approval, the applicant shall be required to install all landscaping as shown on the subject application. If landscaping exceeds \$2,500, review and approval by the Historic Review Board (HRB) is also required in conformance with Title 17. This is included as a recommended condition of approval.

The subject property does not abut residential property and additional buffering and screening is not required.

*N. All public improvements shall be designed in accordance with the requirements of Chapter 16.34.*

FINDINGS: Public improvements and compliance with Chapter 16.34 are discussed under the conditional use review criteria below. Staff finds this criterion can be met, with conditions.

*O. All facilities for handicapped shall be designed in accordance with the requirements set forth in the ADA requirements;*

FINDINGS: ADA facilities are discussed under the conditional use review criteria below. Staff finds this criterion can be met, with conditions.

*P. All of the provisions and regulations of the underlying zone shall apply.*

FINDINGS: Staff finds the applicant meets the zone criteria under the HCO for permitted uses and can meet the criteria for Site Development Review and Conditional Use Permit approval, with recommended conditions of approval. Staff finds this criterion is met.

*The applicable review criteria for Conditional Use Permits are found in AMC Chapter 16.60-Conditional Uses.*

## **16.60 Conditional Uses**

*A. The planning commission may approve a conditional use permit only when the applicant has shown that all of the following conditions exist:*

*1. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;*

**FINDING:** The property abuts an established permitted use- an eating and drinking establishment. The applicant has provided a site plan for pedestrian access to the site via the existing businesses that front on Main Street (see Exhibit B). Food carts are permitted as a conditional use when located on the same property and accessory to an established eating and drinking establishment. Lot 4400, 4500 and 4600 are under the same ownership and AMC 16.04 for "lot" allows abutting property under the same ownership, whether in a platted lot or property described by metes and bounds, to be considered part of the same lot. Staff finds this criteria is met.

However, the site currently lacks vehicle access to bring food carts to and from lot 4400. Staff finds this criterion is not currently met, but could be met if vehicle access is provided. Applicant must show evidence of a long term access agreement or written permission for installation and/or removal of the food cart from owners of abutting properties prior to

installation of the cart. In addition, written permission for construction, landscaping or other improvement access to lot 4400 must also be documented. This is included as a recommended condition of approval.

If the applicant proposes additional parking or pedestrian access to Lot 4400 from adjacent properties not under their ownership (Lot 3600 or 4000 of Map 041W12CD, for example), evidence of a long term access agreement or recorded easement for parking and pedestrian access to benefit the subject property shall be provided to the City. If pedestrian access or parking from adjacent properties is proposed, expiration of the access agreement or recorded easements for parking and pedestrian access to lot 4400 shall automatically invalidate the conditional use approval for the food cart. This is included as a recommended condition of approval.

*2. All required public facilities have adequate capacity to serve the proposal and are improved to the standards in Chapter 16.34;*

**FINDING:** Lot 4400 fronts onto a public street on its north side, which is improved with a sidewalk. However, current topography precludes pedestrian and vehicle access from the northern frontage at this time. The applicant proposes pedestrian access from Main Street via established businesses on Lots 4500 and 4600 currently under their ownership. If the applicant proposes parking or pedestrian access from the properties to the east, the applicant will need to document written permission or agreement from the owner(s) of those lots. This is included as a condition of approval and notice to abutting property owners was provided, as part of the land use review process.

The HCO zone exempts parking under AMC 17.040.020.A.4 and 17.040.020.C.1 "additions to commercial structures are exempt from the parking requirements in Title 16". Staff finds this criterion does not apply. Staff finds evidence of sufficient parking to serve the property does not apply.

Sewer or grey water disposal hookups are not permitted. Restroom facilities shall be provided as part of the existing businesses on lots 4500 and 4600, which are currently under the same ownership. In order to ensure access to restroom facilities related to the conditional use, staff recommends the hours of operation for the food cart be limited to hours of operation of adjacent businesses. This is included as a recommended condition of approval.

Currently, lot 4400, 4500, and 4600 are under the same ownership. If lot 4400 is no longer under the same ownership of lot 4500 or 4600, the location of the food cart on the "same property/lot and accessory to an established indoor eating and drinking establishment" property shall no longer be met and the Conditional Use Permit shall be void. This is included as a condition of approval.

If an established indoor eating or drinking establishment is no longer in use on lot 4500 or 4600, the Conditional Use Permit shall be void as the criteria for a food cart on the same lot as an established eating and drinking establishment shall no longer be met. This is included as a recommended condition of approval for the conditional use permit application.

*3. The requirements of the zoning district are met;*

**FINDING:** AMC 16.22.030.C.1 states, "no structures, product display, or storage shall be located within yard setback or buffering and screening areas". The HCO zone has zero side and rear yard setbacks and staff finds this does not apply. Drive through units are prohibited.

A sign permit application was not included. If signage is proposed, the applicant shall be required to submit a sign permit application. This is included as a recommended condition of approval. Drive-through units are prohibited and the applicant is not proposing a drive through. Staff finds the requirements of the HCO zone for lot coverage, size, and uses are met. Additional development on Lot 4400 may be subject to additional land use requirements or applications. Staff finds this criteria is met.

4. *The use is compatible with surrounding properties or will be made compatible by imposing conditions;*

**FINDING:** Surrounding properties are commercially zoned and the proposed use is not found to be in conflict with other the surrounding properties. Staff finds this criterion is met.

5. *All parking and loading areas are designed and improved in accordance with the requirements set forth in Chapter 16.42;*

**FINDING:** No additional parking or loading areas are proposed. AMC 17.040.020.A.4 and 17.040.020.C.1 state "additions to commercial structures are exempt from the parking requirements in Title 16". Staff finds this criterion does not apply.

6. *All landscaping is designed and improved in accordance with the requirements set forth in Chapter 16.38;*

**FINDING:** No additional parking or loading areas are proposed. AMC 16.38.030.C. allows certificates of occupancy to be approved upon completion of landscaping requirements. Staff proposes the business license application be approved upon installation of landscaping, as submitted with the application. This is included as a recommended condition of approval. Staff finds this criteria can be met, with conditions.

AMC 17.44.030.B.1 requires properties up to twenty thousand square feet in the Historic Commercial Overlay to have at least fifteen (15) percent of the total lot area landscaped. Staff finds this criteria is met. Buffering between non-residential and residential uses is found not to apply.

7. *All public improvements are designed and constructed in accordance with the requirements set forth in Chapter 16.34;*

**FINDING:** No public improvements are requires as part of the proposed application for installation of a food cart and outdoor garden/eating/retail space. AMC 16.22.030.C.7. prohibits sewer or grey water disposal hookups. This is included as a recommended condition of approval.

Lot 4400 is land locked, with access proposed via existing businesses on lots 4500 and 4600. No street, sidewalk, storm, water or sewer improvements are required as part of the subject application. Staff finds this criterion is met.

8. *All facilities for the handicapped are designed in accordance with the requirements set forth in the ADA requirements;*

**FINDING:** The proposed site plan includes access from existing businesses on lots 4500 and 4600 to lot 4400 via steps. In order to meet this criteria, access must be revised to comply with ADA requirements and/or the property owners must show ADA compatibility via another access. This is included as a recommended condition of approval.

9. *The provisions of all applicable chapters of this title are satisfied; and*

**FINDING:** Staff finds the applicant meets the zone criteria under the HCO for permitted uses and can meet the criteria for Site Development Review and Conditional Use Permit approval, with conditions. Staff finds this criterion can be met.

10. *Properties located in the historic commercial or historic residential overlay comply with the requirements set forth in Title 17 of the Aurora Municipal Code. A certificate of appropriateness approved by the historic review board shall satisfy this requirement.*

**FINDING:** The property is located in the historic commercial overlay and is identified as the Aurora State Bank (Secondary Significant, Resource #62, in the Aurora Historic Building Inventory from 1985 and is listed as "eligible/contributing" in the July

2011 inventory completed by SHPO). The Historic Review Board (HRB) reviewed the application and site plan on May 22, 2014. See Exhibit C.

The HRB provided the following comments/concerns: (1) fencing; (2) submission of a landscape plan to HRB for review and approval, if cost exceeds \$2,500; (3) tents/canopies; and (4) review of the food cart(s). Proposed conditions of approval to address HRB comments are summarized below:

The current fencing is not compatible with the historic commercial overlay, 17.40.070. Any replacement of existing fencing on site shall be required to meet AMC 17.40.070. Review and approval by the HRB prior to installation is recommended.

According to AMC 17.04.050.B.2., landscaping not exceeding \$2,500 in cost shall not require HRB review and approval. The applicant shall provide cost estimates for the landscaping proposed in the application to the City in order to determine if a landscape plan requiring HRB approval is required.

Based upon comments from the HRB, staff recommends the Planning Commission limit the number of tents, booths or canopies of any size on site at any time to one (1). If the owner proposes the use of tents, booths or canopies greater than one hundred twenty (120) square feet, a temporary structure permit under AMC 17.32.040 shall also be required. This is included as a condition of approval.

AMC 16.22.050.C includes several requirements for proposed food carts, including size, repair and licensing. At the time of application, no materials were provided regarding the size, condition, operation, etc of the food cart. The applicant simply provided a proposed food cart area and stated that the food cart may change over time. In order to maintain compliance with the criteria under 16.22.050.C and the requirements for review and approval for a conditional use permit, staff recommends two options: (a) continue the hearing to a date and time that the applicant can provide additional information on the proposed food cart for Planning Commission approval or (b) require that review and approval for the proposed food cart, and subsequent replacement or revised food carts, receive review and approval from the Historic Review Board on file with the City in order to maintain a valid conditional use permit. These options are included as a condition of approval.

*B. In reviewing an application for a conditional use, the commission shall consider the most appropriate use of the land and the general welfare of the people residing or working in the neighborhood. In addition to the general requirements of this title, the commission may impose any other reasonable conditions deemed necessary. Such conditions may include, but are not limited to:*

- 1. Limiting the manner in which the use is to be conducted, including restrictions on the hours of operation;*
- 2. Establishing additional setbacks or open areas;*
- 3. Designating the size, number, location and nature of vehicle access points;*
- 4. Limiting or otherwise designating the number, size, location, height and lighting of signs;*
- 5. Requiring fences, sight-obscuring hedges or other screening and landscaping to protect adjacent properties;*
- 6. Protecting and preserving existing soils, vegetation, wildlife habitat or other natural resources.*

**FINDINGS:** In order to assure restroom facilities are provided to customers on site as opposed to impacting surrounding properties/uses, staff recommends the hours of operation for the food cart be limited to hours of operation of businesses on lots 4500 and 4600. This is included as a recommended condition of approval.

The proposed uses abut commercial properties and uses and staff does not find additional buffering, setbacks or open areas are required.

In order to reduce impacts to abutting uses, the applicant must show evidence of a long term access agreement or written permission for installation and/or removal of the food cart from owners of abutting properties prior to installation of the cart. In addition, written permission for construction, landscaping or other improvements access to lot 4400 must also be documented.

Pedestrian access to the site is proposed via the existing businesses on Lot 4500 and 4600. If the applicant proposes additional parking or pedestrian access from adjacent properties (lot 3600 or 4000 of Map 041W12CD for example), evidence of a long term access agreement or recorded easement to benefit the subject property shall be required. This is included as a recommended condition of approval.

Applicant shall be required to meet sign code requirements of Title 16 and 17. Staff finds criteria 16.60.B

can be met, with conditions.

## **VII. CONCLUSIONS AND RECOMMENDATIONS**

Based on the findings in the staff report, staff recommends that the Planning Commission **approve** the application for Site Development Review (SDR-14-01) based upon the following:

- 1) Develop the subject property in accordance with plans approved by the city.
- 2) Comply with all City of Aurora and State of Oregon development, building and fire codes.
- 3) A lighting plan in conformance with AMC 16.58.100.I. shall be submitted for City review and approval prior to business license approval. The lighting plan shall also show that lighting shall not reflect onto surrounding properties.
- 4) Prior to business license approval, the applicant shall be required to install all landscaping as shown on the subject application. If landscaping exceeds \$2,500, review and approval by the Historic Review Board is also required in compliance with Title 17.

Based on the findings in the staff report, staff recommends that the Planning Commission **approve** the application for Conditional Use Permit (CUP-14-01) based upon the following:

- 1) Applicant must show evidence of a long term access agreement or written permission for installation and/or removal of the food cart from owners of abutting properties prior to installation of the cart. In addition, written permission for construction or landscaping access to lot 4400 must also be documented.

If the applicant proposes additional parking or pedestrian access from adjacent properties (Lot 3600 or 4000 of Map 041W12CD, for example), evidence of a long term access agreement or recorded easement to benefit the subject property shall be provided to the City. If pedestrian access or parking from adjacent properties is proposed, expiration of the access agreement or recorded easement for parking and pedestrian access to lot 4400 shall automatically invalidate the conditional use approval for the food cart.

- 2) If lot 4400 is no longer under the same ownership of lot 4500 or 4600, the location of the food cart on the "same property/lot and accessory to an established indoor eating and drinking establishment" property shall be voided, and the Conditional Use Permit shall be void. This is included as a condition of approval.

If an established indoor eating or drinking establishment is no longer in use on lot 4500 or 4600, the Conditional Use Permit shall be void as the criteria for a food cart on the same lot as an established eating and drinking establishment will no longer apply. This is included as a recommended condition of approval as part of the conditional use permit application.

- 3) If signage is proposed, the applicant shall be required to submit a sign permit application.
- 4) All conditions of approval must be met prior to business license approval. Prior to business license approval, the applicant shall be required to install all landscaping as shown on the subject application. Evidence of a valid business license for the food cart shall be on file with the city at all times.
- 5) Copies of current Marion County permits related to the food cart food handlers permits and other required Marion County permits shall be filed with the City.
- 6) Hours of operation of the proposed uses on Lot 4400 shall be limited to 10 am to 7 pm.
- 7) The applicant shall provide evidence of ADA access to Lot 4400 prior to business license approval.
- 8) Sewer or grey water disposal hookups are prohibited.
- 9) The number of tents, booths or canopies of any size on site at any time shall be limited to one. If the owner proposes the use of tents, booths or canopies greater than one hundred twenty (120) square feet, a temporary structure permit under AMC 17.32.040 shall also be required.
- 10) Any replacement of existing fencing on site shall be required to meet AMC 17.40.070. Review and approval by the HRB prior to installation is recommended.
- 11) The applicant shall provide cost estimates for the landscaping proposed in the application to the City in order to determine if a landscape plan requiring HRB approval is required.
- 12) At the time of application, no information on the proposed food cart was provided. The Planning Commission may choose to (a) continue the hearing to a date and time that the applicant can provide additional information on the proposed food

cart for Planning Commission approval

OR (b) require that review and approval for the proposed food cart, and subsequent replacement or revised food carts, receive review and approval from the Historic Review Board on file with the City in order to maintain a valid conditional use permit.

## VIII. PLANNING COMMISSION ACTION

- A. Approve the conditional use permit (CUP-14-01) and site development review (SDR 14-01) application for installation of a food cart and outdoor garden/eating/retail space.
  1. As recommended by staff, or
  2. As determined by the Planning Commission stating how the application satisfies all the required criteria, and any revisions to the recommended conditions of approval, or
- B. Deny the request for a conditional use permit and site development review approval for CUP 14- 01 and SDR 14-01 stating how the application does not meet the applicable approval criteria.
- C. Continue the hearing to a time certain or indefinitely (considering the 120 day limit on applications).

After the staff report is given before the applicant starts a few clarification questions are asked by Commissioners Willman and Fawcett regarding gray water disposal requirements for the food cart and ADA requirements to the lot itself.

Applicant Carl McKnight addresses the Planning Commission regarding his proposal and submits more information as requested.

1. Informs the PC that to date we have spent approximately \$1700.00 do not expect it to go over the \$2500.00 dollar amount that would require HRB approval.
2. He hands out a light plan to each member.
3. Gives each person a copy of a revised site plan showing the requested ADA accesses which shows a ramp instead of the proposed steps on lot 4500.

a few more clarification questions regarding pea gravel and size of ramp along with if this proposal will be seasonal or not.

**McKnight**, we have been trying to get in touch with the property owners to gain access for the food cart however we have been unsuccessful can't you just give us approval on this and if the property owner comes back and says no you cannot use my property for access then we will stop. Also we are requesting that HRB not have oversight on the food cart itself because we will be having different food vendors and that will just be too much each time. That is why I do not have any pictures or criteria to give you for approval because we don't know yet who will want to come. Our plan is to have revolving food carts. I would also like to know why we would need to obtain approval for signage because the sign criteria is in the code to follow. **Chair Schaefer** explains that there is no way we can just give a blanket approval on this and the food cart along with signage would need to have application made to HRB for approval each time.

One of the areas of concern from HRB was tents. McKnight, we had not really thought about tents however as other businesses in town utilize these I would like to as well.

The Commissioners at this point have a brief discussion regarding tents and ask a few questions regarding hours of operation. They go into code section 16.52.030 #5 anything over 120 square feet would require a temporary use permit.

**Chair Schaefer** points out that we really didn't have any application regarding tents or canopies or for music/bands before us tonight this keeps growing the more we discuss it.

We simply as stated previously we cannot give a blanket approval on the food cart there are specific criteria and so we need to see it each time to make sure it's within this criteria. Also we cannot approve any of this without having something written to prove accesses. This just isn't going to happen like that it is against the law and just not going to go there. It is up to you the applicant to show us each condition has been met.

There is some questions as to why a business license would be needed for each food cart and City Recorder Richardson informs them that everyone has to have a valid business license operating within the city limits.

Hearing no more testimony the hearing closes at 8:40 pm

Discussion between Commissioners regarding the SDR is to accept with the conditions as stated.

- 1) Develop the subject property in accordance with plans approved by the city.
- 2) Comply with all City of Aurora and State of Oregon development, building and fire codes.
- 3) A lighting plan in conformance with AMC 16.58.100.1. shall be submitted for City review and approval prior to business license approval. The lighting plan shall also show that lighting shall not reflect onto surrounding properties.
- 4) Prior to business license approval, the applicant shall be required to install all landscaping as shown on the subject application. If landscaping exceeds \$2,500, review and approval by the Historic Review Board is also required in compliance with Title 17.
- 5) The applicant shall provide ADA access to Lot 4400 prior to business license approval
- 6) If the applicant proposes access from adjacent properties (Lot 3600 or 4000 of Map 041W12CD, for example), evidence of a long term access agreement or recorded easement to benefit the subject property shall be provided to the City.

A motion is made by Commissioner Fawcett to approve SDR 14-01 with the conditions stated and is seconded by Commissioner Willman.

Discussion Regarding CUP 14-01

- 1) Applicant must provide a long term access agreement or written permission for installation and/or removal of the food cart from owners of abutting properties prior to installation of the cart. In addition, written permission for construction or landscaping access to lot 4400 must also be documented.

If the applicant proposes additional parking or pedestrian access from adjacent properties (Lot 3600 or 4000 of Map 041W 12CD, for example), evidence of a long term access agreement or recorded easement to benefit the subject property shall be provided to the City. If pedestrian access or parking from adjacent properties is proposed, expiration of the access agreement or recorded easement for parking and pedestrian access to lot 4400 shall automatically invalidate the conditional use approval for the food cart.

- 2) If lot 4400 is no longer under the same ownership of lot 4500 or 4600, the location of the food cart on the same property/lot and accessory to an established indoor eating and drinking establishment" property shall be voided, and the Conditional Use Permit shall be void.

If an established indoor eating or drinking establishment is no longer in use on lot 4500 or 4600, the Conditional Use Permit shall be void as the criteria for a food cart on the same lot as an established eating and drinking establishment will no longer apply.

- 3) If signage is proposed, the applicant shall be required to submit a sign permit application.
- 4) The applicant shall install all landscaping as shown on the subject application.
- 5) Evidence of a valid business license for the food cart shall be on file with the city at all times.
- 6) Copies of current Marion County permits related to the food cart food handlers permits and other required Marion County permits shall be filed with the City.
- 7) Hours of operation of the proposed uses on Lot 4400 shall be limited to the hours of operation of businesses on Lots 4500 and 4600 to ensure availability of restrooms.
- 8) The applicant shall provide ADA access to Lot 4400 prior to business license approval.
- 9) Sewer or grey water disposal hookups are prohibited. Disposal must occur outside of the City of Aurora.
- 10) The number of tents, booths or canopies of any size on site at any time shall be limited to one, for a period not to exceed 72 hours per week. If the owner proposes the use of tents, booths or

Canopies greater than one hundred twenty (120) square feet, a temporary structure permit under AMC 17.32.040 shall also be required. The minimum front setback for tents, booths or canopies shall be fifteen (15) feet.

11. Any replacement of existing fencing on site shall required to meet AMC 17.40.070 review and approval by the HRB prior to installation is required.

12. The applicant shall provide cost estimates for the landscaping proposed in the application to the City in order to determine if a landscape plan requiring HRB approval is required.

13. Proposed food carts, and subsequent replacement or revised food carts, shall receive review and approval from staff as part of the business license applications and be on file with the City in order to maintain a valid conditional use permit.

14. All conditions of approval must be met prior to business license approval.

Motion is made to approve CUP 14-01 as stated and modified is made by Commissioner Graham and is seconded by Commissioner Willman. Passes Unanimously.

## **6. New Business**

### **A. Discussion and or Action on Request for Extension SUB-09-01 and SDR-09-01for**

**Mr. Bixler property.** Mr. Bixler states I have recorded the subdivision and established easements and so forth, the map has been recorded as well. I am here to request a one year extension. Chair Schaefer my understanding is that the gateway portion of the code has not changed so there is nothing new governing this piece of property.

A motion is made by Commissioner Willman to approve the 1 year extension and is seconded by Commissioner Fawcett. Passed by all.

**B. Discussion and Review of Conditional Use Application in 1993 for Property Address**

**15109 Second Street.** Chair Schaefer explains the situation regarding a conditional use permit, in many jurisdictions they would expire after not being in use for a while however our code states if it's been more than 2 years we could revoke the permit. It's not about the applicant it's all about the neighbors.

I have rules changed, yes they have not sure if they have changed to affect it as a bed and breakfast except for the conditional use permit.

2. Has the impact changed or not.

Chair Schaefer asks the rest of the Commissioners what they think?

Fawcett, it's been a long time. They ask the applicant just how long it's been 9 years or so there is only 4 sweets available.

Willman I think its fine.

Schaefer, we could revoke because of dormancy.

We could issue business license

Or we could hold a public hearing so neighbors would get notified.

After a brief discussion on what is the best way to handle this everyone agrees that the applicant should apply for a conditional use permit and proceed with a public hearing so everyone is notified of what is happening on the property. The applicant agrees as well.

**C. Discussion and or Action on Information Regarding Metro Area Boundary Update.**

Chair Schaefer is not impressed with the way that it is written however it is of little or no impact to us.

**7. Old Business**

**A. Discussion and or Action regarding Manufacturing in the Commercial Zone.**

Everyone agrees that the proposed code language discussed at last month's meeting is fine but do we want to move forward with a text amendment now or wait until we discuss other potential areas of concern such as garages and tents.

**Consensus to discuss further changes at the July meeting.**

**7. Commission Action/Discussion**

**A. City Planning Activity (in Your Packets)**  
Status of Development Projects within the City.

➤ City Planner Wakeley had no discussion items in addition to what has been previously discussed or presented on her report.

**8. Adjourn**

**Chairman Schaefer adjourned the June 3, 2014 meeting at 10:05 pm**



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Chairman, Schaefer

**ATTEST:**



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Kelly Richardson, City Recorder

**HISTORIC REVIEW BOARD MINUTES  
21420 MAIN ST. NE, AURORA OR 97002  
May 22, 2014**

**Staff Members Present:** Kelly Richardson, City Recorder

**Others Present:** Tara McKnight, Canby

The meeting of May 22, 2014 was called to order at 7:06 p.m. by Chairman Abernathy.

**Chairman Townsend takes Roll Call**

Chairman Gayle Abernathy – Present  
Member Bill Simon – Present  
Member Merrra Frochen – Present  
Member Mella Dee Fraser – Present  
Member Karen Townsend – Present

**CONSENT AGENDA**

**A. Minutes**

- I. Historic Review Board Minutes – April 24, 2014  
two changes were discussed one on page 2 regarding removing daughter as it was a girlfriend however ill-relevant to the minutes so it was removed all together. On the last page under old business rather than deadline be set it would be more like a benchmark.

A motion to approve the HRB minutes of April 24, 2014, as corrected was made by Member Townsend, seconded by Member Simon and passed unanimously.

**CORRESPONDENCE**

- I.

**VISITORS**

No one spoke.

**5. OLD BUSINESS**

- A. **Discussion and or action on Sign Inventory**, No discussion on this topic at this time.
- B. **Discussion and/or action on paint color list.**  
Everyone on the Board likes how it is written.
- C. **Discussion and or action on Historic Inventory list**, Townsend makes suggested changes to Historic Guideline and Kelly will make updates in draft form in the document for each meeting.

Headings or categories were needed to determine what other information is needed.

## 6. NEW BUSINESS

### A. Discussion and or action on Conditional Use Permit for 21680 Main Street Owners McKnight. Pheasant Run Winery Tasting Room.

Tara McKnight explains there concept, the goal is to create a garden space and make a positive visual impact as you drive in to Aurora we would like to enhance it and make it inviting and included would be an outside gallery. In the Southeast corner of the lot we want to have a food cart from time to time.

Questions regarding the concept from HRB,

1. Is there going to be a lot line adjustment or does the lot you're proposing to do this all on the same lot as the bank building.
2. What are you proposing for landscaping because it makes a difference if it is over \$2500 based on each lot? Checkerboard brick pavers, seating and possibly grass Is what we have so far.

Applicant states that they believe it won't be over \$2500 value out of pocket so shouldn't require an application be made for landscape.

3. Fencing what are you proposing what does OCLL require for fencing. Our concern is that you may need a fence application which requires approval as well.

4. How do you propose getting the food cart in there? Applicant states behind the tree we would create a gate so we could bring it in and out that way.

5. Steps, going to area proposed the materials are slabs of nice concrete or natural stone, the board states we have little guidance on what stairs should be made out of. Building codes rules would apply on these.

6. What about tents or canopies? The applicant states possibly for a weekend event because of rain or shade needed for an event we had not really thought about it.

Townsend reads the guidelines regarding tents and canopies however there is little language regarding this in title 17.

The Board states that many of these items such as food cart and outdoor materials were not presented here tonight so it's hard to include these items. Your application is really not complete at this point, we have very little to look at.

Applicant states, regarding the food cart we want it to be a variety of different vendors so the look would change depending on who was on site at the time. Members state and with no information presented on the cart itself we cannot really comment.

Member Simon asks clarification of the rest of the board regarding the guidelines on tents and leaving them up which was not appropriate to the historic district, creating a flea market effect.

Member Townsend states that this was written because businesses were putting up tents.

We are unclear at this point what we are to comment on to Planning Commission because there is not a lot to comment on if no sign app is presented and no landscaping plan is needed.

These are the items that as a board we would need an application for and area of concerns,

1. Fencing application if and when it was needed.
2. Stairs to make sure it fits with the historic preservation of the area.
3. Signage on cart along with application that could be flexible signage for Pheasant run, only if visible from right of way (being sidewalks or roadways).
4. Pop up tents and canopies. No preference on color in good condition.
5. Landscape plan with materials submitted along with surfaces and possible pop up tents.

Member Townsend agrees to write the letter for the next Planning Commission meeting addressing our concerns.

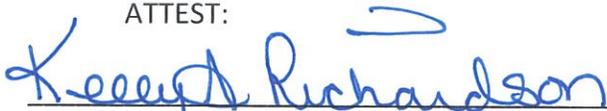
## 7. ADJOURN

Chairman Abernathy adjourned the meeting of May 22, 2014 at 8:50 pm.



Gayle Abernathy, Chairman

ATTEST:



Kelly Richardson, CMC City Recorder

HRB Memo to Planning Commission

Re: Pheasant Run Winery Conditional Use Permit/Food cart use/Landscape

May 26, 2014

The applicant attended the HRB meeting on May 22 and was available to answer questions from the board. From this discussion the HRB had these concerns and comments for the Planning Commission to consider in granting conditions of the requested permit. Overall, the board had a positive impression of the plan as described by the applicant, however there were items not addressed either by application or code that we have outlined here.

**Food Cart:**

The applicant does not currently own/lease a food cart and envisioned that various vendors would provide service on call. Discussion about how a vendor's cart might be approved according to code was discussed and a suitable/practical plan needs to be worked out with the Planning Commission for the occasions when applicant desires a food presence. (In our previous discussions on food carts, the HRB was under the impression that all carts would be directly under the regular control of the participating restaurant/food establishment.) Also to be determined is how the food cart would enter and exit the property.

**Fencing:**

No application was presented for fencing and the applicant was unsure about what will be required by OLCC to secure the area when alcohol is consumed. The current fencing is an older wire, temporary type fence with metal stake posts which may not stand up to security or to current design standards for permanent fencing within the district. A fence application would be separate from the current application and would need HRB approval.

**Landscape:**

Most or all of the property on the site plan appears to be attached to the gallery building adjacent to the bank building. Depending on how many properties are involved, the landscape threshold for requiring a landscape plan to go before the Historic Review Board could be either \$2500 or \$5000. (Any fencing would not be part of the cost of landscaping.) The applicant does not have a firm figure as to what the costs will be for the design presented although it includes various surfaces such as compacted gravel, stone stairs, plantings as well as the expected soils/mulch, etc. and materials for the bocce court and chess board. It may be determined that a landscape plan application be required if the cost exceeds \$2500 in the area that is part of the gallery property, in which case the HRB would ask that an application fee be waived. The HRB found the attached plan to be approvable as is as long as the materials are specified.

**Potential Need for Coverings:**

No structures, covered pavilions, etc. are currently proposed. If proposed, those should be reviewed by HRB.

Tents and awnings that might be erected to cover various areas (although not awnings attached to a temporary food cart or umbrellas at tables) are a concern. The Historic Guidelines (now used as information only) previously regulated the use of tents and limited their use to two seven-day periods per year. The purpose of this was to limit the overuse of tents in a historically sensitive area and avoid a flea market appearance based on previous abuse by retailers and homeowners, where the tents never seemed to go down and became faded, unsightly and were a significant detraction from the buildings as well as encouraging the collection of various items under them. Anticipating that the winery/gallery might desire to use the garden area as a venue or sometimes cover the outdoor gallery area or a musical act, we believe the Planning Commission should work with HRB to devise suitable guidelines for tent/covering use that is practical for this type of occasional use yet still maintains control for the previous reasons. (The previous rules allowed for special events allowed by the city such as Aurora Colony Days.)

The Plan as presented:

The proposed plan does seem to be a good fit, both for the business and the historic commercial district. The HRB recognizes that the applicant has a history of providing quality work to previous projects. The applicant needs to demonstrate how they can comply with the code on details. It is also important that the rules be consistently followed within the entire historic district to avoid the issues that the code seeks to dispel.

Thank you for your consideration on these points.

Gayle Abernathy, Chairman

# An Overview of Oregon's Medical Marijuana Program

By Sean O'Day, LOC General Counsel

On November 3, 1998, Oregon voters approved Ballot Measure 67 allowing the medical use of marijuana in Oregon within specified limits. Codified at ORS 475.300-475.346 and known as the Oregon Medical Marijuana Act (OMMA), the law protects medical marijuana users who comply with its requirements from state criminal prosecution. Although the Oregon Legislature has made some modifications to the act, the program remains largely the same as it did when the voters adopted it almost 15 years ago.

In the beginning, the program existed in relative obscurity. During its first year, from May 1, 1999, to May 1, 2000, the program served approximately 600 registered patients. By July 2010, it reached more than 45,000 registered patients. Today, there are nearly 60,000 registered patients, and more than 30,000 registered caregivers. The increase in the number of people participating in the program, along with the emergence of medical marijuana dispensaries, has brought the program and related issues to the forefront of public policy discussions in city halls all across the state.

To aid local elected officials in those discussions, this article provides an overview of the Oregon Medical Marijuana Program (OMMP), including the development and recent enactment of legislation relating to dispensaries. The article also explores the roles and functions of local government with respect to the OMMP, including that of a regulator and discusses the current state of the law with respect to local control.

## The Purpose and Evolution of the Oregon Medical Marijuana Program

The Oregon Medical Marijuana Program began with the adoption of the OMMA by the voters in 1998. Since that time, the Legislature amended the OMMA in 1999, 2005, 2007, and most recently in 2013. Other than the development of a dispensary program, the basic structure and purpose of the OMMA has largely remained the same since its initial adoption. The goal of the OMMA is to permit, without fear of prosecution, small amounts of marijuana for patients with debilitating medical conditions when a doctor has concluded that the use of marijuana can help with those conditions.

## The Contours of the OMMA

To accomplish its goals, the OMMA requires the Oregon Health Authority to establish a registration process for medical marijuana patients, their primary caregivers and

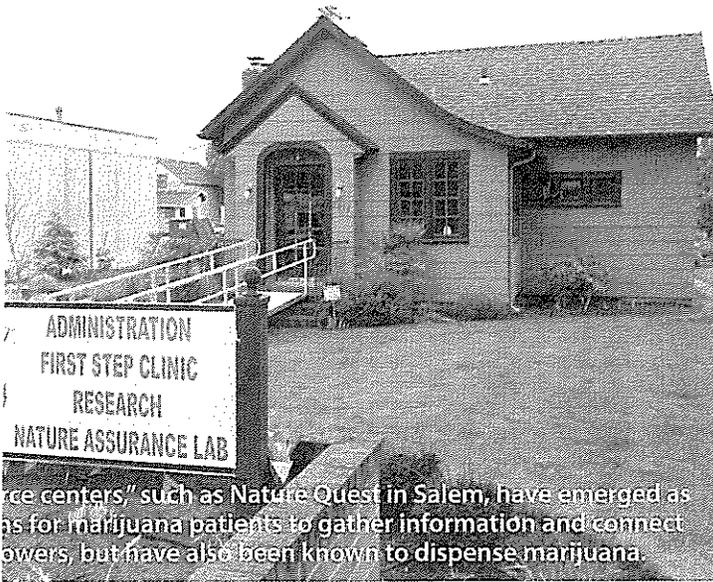
their growers. The OMMA exempts individuals holding a registry identification card from state criminal penalties, so long as the individuals act in accordance with the limits set out in the act. Individuals need not be a cardholder in order to enjoy the benefits of the act, however. The OMMA also provides as a defense to a criminal charge of possession or production of marijuana that the person is engaging in the medical use of marijuana with the limits set out in the act under the recommendation of a physician.

To either obtain a registry card, or be eligible to assert an affirmative defense, patients must have a "qualifying medical condition" diagnosed by an Oregon licensed physician who agrees that the use of medical marijuana could help mitigate the patient's symptoms after conducting a thorough physical exam and reviewing the patient's medical records. The Oregon Health Authority maintains the list of qualifying medical conditions.

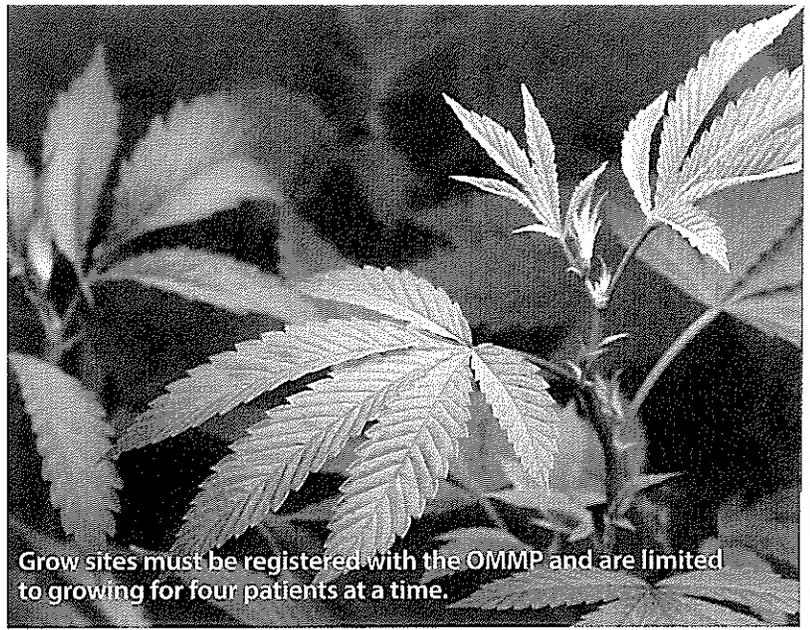
Once registered, patients are issued a medical marijuana card. Patients are required to carry with them their current OMMP Registry ID cards when possessing medical marijuana away from home or their grow site. Patients are not allowed to cultivate or consume medical marijuana in public view, drive under the influence of medical marijuana, share medical marijuana with anyone who is not currently registered with the OMMP, sell medical marijuana or give it to a minor.

When they register, patients may also register a primary caregiver. Patients may have only one primary caregiver at any time. A primary caregiver may possess marijuana for his or her patient and assist the patient with the use of the medical marijuana.

Patients registered with the OMMP are allowed to create a grow site at only one address. Patients may grow for themselves or designate a grower. A patient's grow site must be registered with the OMMP. The registration must include the address of the site and the name of the person responsible for the site. If patients elect to have someone other than themselves grow marijuana, the patients or their designated primary caregivers may reimburse the person responsible for their grow sites for the costs of supplies and utilities associated with the production of marijuana. No other costs associated with the production of marijuana, including the cost of labor, may be reimbursed. A person responsible for a grow site may produce marijuana for no more than four patients at a time. All grow sites must display a grow site registration card for each patient for whom marijuana is being produced.



“Resource centers” such as Nature Quest in Salem, have emerged as places for marijuana patients to gather information and connect with growers, but have also been known to dispense marijuana.



Grow sites must be registered with the OMMP and are limited to growing for four patients at a time.

The OMMA legalizes the possession and delivery of medical marijuana for a registered patient, the patient's primary caregiver, and/or an individual designated by the patient to grow medical marijuana for the patient. There are, however, limits on how many plants and how much usable medical marijuana each patient is allowed. The OMMA places the following limitations on possession:

- **Patient:** Six mature marijuana plants, 18 seedlings and 24 ounces of usable marijuana.
- **Registered grow site:** Six mature marijuana plants and 24 ounces of usable marijuana for each patient or caregiver for whom the marijuana is being produced. Limited to growing for four patients at any given time.

### The Emergence of Dispensaries and HB 3460

With the growth in participation, over time facilities began to emerge where medical marijuana patients gathered to obtain information and connect with potential growers. Often termed “resource centers,” these facilities also were known to dispense marijuana. Because the original act did not contemplate these types of facilities, the legality of their operations was suspect. Wanting to develop a program that would identify where these types of facilities were and could be located, and to ensure safe access, in 2013 the Legislature adopted HB 3460 (codified at ORS 475.314).

Among its provisions, HB 3460 directed the Oregon Health Authority to establish a registration system for medical marijuana facilities (commonly referred to as dispensaries). HB 3460 grants criminal immunity to persons working for a registered medical marijuana facility. The bill also restricts the location of a medical marijuana facility to property that is zoned either commercial, industrial, mixed use or agricultural, and provides that a facility cannot be at the same location as a grow site, or within 1,000 feet of a school (elementary, secondary or career attended primarily by minors) or within 1,000 feet of another medical marijuana facility.

Unlike the original OMMA, which prevented the purchase of marijuana beyond the reimbursement of certain expenses, HB 3460 allows a dispensary operator to reimburse a grower for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage. Similarly, a dispensary is permitted to seek reimbursement for immature plants and medical marijuana products based on its normal and customary costs of doing business.

### The Role of the Federal Government

The use of medical marijuana is still illegal under federal law. The Controlled Substances Act (CSA) classifies marijuana as a Schedule I drug, making it illegal under federal law to manufacture, distribute or dispense. The Schedule I classification means the federal government has concluded that the drug has a high potential for abuse (undefined term in the act), has no currently accepted medical use in treatment, and lacks accepted safety protocols for use of the drug under medical supervision. Thus, the OMMA neither protects marijuana plants from seizure nor individuals from prosecution if the federal government chooses to take action against patients, primary caregivers or growers under the Controlled Substances Act.

Notwithstanding the federal ban, as of the date of this article, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of those developments, U.S. Department of Justice (DOJ) Deputy Attorney General James M. Cole issued a memorandum (the “Cole Memo”) to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA. The Cole Memo guidance applies to all of DOJ's federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

*(continued on page 18)*

## Medical Marijuana Overview

*continued from page 17*

The guidance makes it clear that DOJ is committed to prosecuting enforcement of the CSA, but that, as a general matter, federal resources in states with medical marijuana laws should not be focused on individuals who are “in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.” The memo further states, however, that federal resources should be focused on:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

### The Role of Local Government

Local governments interact with the OMMA in three general capacities: as an employer; as law enforcement; and as a regulatory body.

As an employer, a local government might have employees who are patients registered with the OMMP. There are a myriad of issues that might arise if an employee is a registered OMMP patient. As such, cities should consult their attorney before inquiring whether an employee is an OMMP patient or taking any other action related to an employee’s use of medical marijuana. Nonetheless, cities should understand that the OMMA expressly provides that nothing in the law shall be construed to require an employer to accommodate the medical use of marijuana in any workplace. In addition, the Oregon Supreme Court held in the case *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries* that Oregon employers do not have to accommodate an employee’s use of medical marijuana under Oregon’s disability and discrimination laws.

A local government also interacts with the OMMA in its capacity as a law enforcement body. Local law enforcement personnel may take any action they believe is necessary to enforce the criminal laws of the state, including violations of the OMMA or the state’s criminal laws relating to use and possession of marijuana. As part of this process, local law enforcement personnel may verify with the Oregon Health Authority at any time whether a particular patient, designated primary caregiver, person responsible for a grow site, or grow site location is registered with OMMP by calling the 24-hour LEDS (Law Enforcement Data System). In addition, the OMMA expressly states that possession of a medical marijuana identification card or a primary caregiver card does not alone constitute probable cause to search the person or property of the cardholder.

Further, the OMMA provides that usable marijuana and paraphernalia used to administer marijuana that is seized shall be returned immediately upon a determination by the district attorney in whose county the property was seized that the person from whom the property was seized is entitled to the protections found in the OMMA. However, law



Marijuana patients must have a “qualifying medical condition” diagnosed by an Oregon licensed physician who agrees that the use of medical marijuana could help mitigate the patient’s symptoms.

enforcement officials who return usable marijuana are at risk of prosecution under the CSA. In the case of *State v. Ehrensing*, the Oregon Court of Appeals concluded that seized marijuana need not be returned to a cardholder whose case was dismissed for lack of speedy trial because: the OMMA's provision did not allow return under that type of circumstance, and return would have violated federal law. Similarly, in a publicly shared opinion, the attorney general has advised the Oregon State Police to seek an appeal of any court order requiring the return of seized marijuana to a cardholder on the grounds that the return provisions of the OMMA are preempted by federal law. It stands to reason that such advice is equally applicable to local law enforcement.

Finally, local governments interact with the OMMA as a regulatory body. While some jurisdictions are allowing dispensaries and grow sites to operate under the terms of HB 3460 (2013), others are considering or have imposed additional regulations up to and including a ban on such activities. Medical marijuana advocates have taken issue with such regulations and argue that HB 3460 (2013) prevents local governments from enacting restrictions on medical marijuana facilities. In addition, they argue that SB 863, passed in the 2013 special session and intended to preempt local regulation of genetically-modified organisms, also preempts local regulation of medical marijuana.

Partially to address those arguments and to provide time to study these issues, the Legislature adopted SB 1531 during the 2014 short session. This bill does essentially two things. First, it reaffirms a city's authority to adopt reasonable time, place and manner restrictions on medical marijuana activities. Second, SB 1531 removes criminal immunity from any person operating a medical marijuana facility in a jurisdiction that has adopted a moratorium on medical marijuana facilities, provided the moratorium was adopted prior to May 1, 2014 (with an end date not to exceed May 1, 2015).

Applying home rule principles, the League believes that in addition to the options set out in SB 1531, cities have the authority to further regulate dispensaries through business licenses, zoning laws and development permits, and to enforce violations of those ordinances with civil penalties. Nonetheless, medical marijuana advocates maintain that cities are preempted from doing so. Consequently, cities should work closely with their attorneys to fully understand the extent the city may regulate issues related to medical marijuana and to assess the risk of having to defend its authority to adopt local regulations.

**Editor's Note:** *Because of the complexities and nuances of the OMMA and its interaction with federal law and other state laws, this article is necessarily general and is not intended to provide legal advice. This article should not serve as a substitute for competent legal counsel. City officials should consult with their city attorney in accordance with their city's policies for doing so, to ensure that you fully understand these laws.* ■

# Marijuana Tourism



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# Enforcement Options: A Roadmap for Cities

SB 1531 established a May 1 deadline to adopt a one-year moratorium on medical marijuana dispensaries, and 145 cities have officially done so. Even though the moratorium period has begun, there are still several actions any city can take with regard to the dispensaries. At the League's Marijuana Workshop last month in Portland, Eugene City Attorney Glenn Klein outlined five current options that arguably exist for cities. Not all attorneys agree that these options are available, and the city charters or city codes in some cities would not authorize some of these options. Consequently, it is critical that a city discuss with its city attorney whether an option may be available and what the potential legal risks are of proceeding with that option.

## Ban

Cities can simply take formal action to ban the existence of medical marijuana dispensaries. According to Klein, SB 1531 "did not preempt a city's home rule power to enact a ban." However, he also noted that there are "many out there who disagree" with his interpretation of the bill, and as a result, a city enacting a ban is risking a legal challenge and the potential for substantial costs.

"If someone sues the city over a ban and succeeds, then the city might have to pick up their legal costs too," Klein noted.

There is a banning option that carries slightly less risk, Klein says. "A city could ban any business which necessarily violates federal or state law," he said. In addition, cities with a business license program can adopt an ordinance stating it will not issue a license to any business that operates in violation of federal or state law.

## License

Most cities have the ability to license or adopt a licensing program. Therefore, as part of an existing licensure program, a city could require a license for a medical marijuana dispensary. Alternatively, cities that do not have a formal licensing program could adopt a business license requirement specifically for dispensaries. By adopting a license

requirement, a city can more easily employ certain regulations such as background checks.

On the other hand, this option does carry its share of risk for cities.

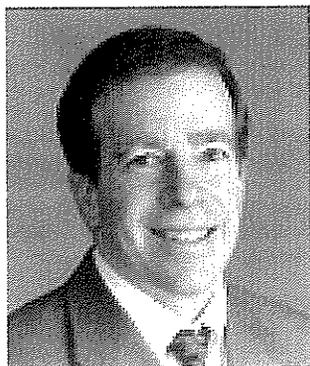
Klein says that by granting a license, a city would "give a business permission to conduct an operation that violates federal law." Could this potentially lead to federal prosecution? Klein says that's unknown, but not out of the realm of possibility. Another consideration is that in just two years a new president will occupy the White House, and federal policies could change. Still further risk involves the potential loss of federal funding for grants. Klein notes that many federal grants typically have several pages of conditions that must be met, including the requirement that a recipient is compliant with federal law.

## Regulate

Klein says it is "absolutely clear" that cities are not preempted from adopting "reasonable regulations" with regard to medical marijuana dispensaries. "Some tried to argue that SB 1531 only allows cities to adopt regulations by May 1, but the bill is clear; the May 1 deadline only applies to outright bans."

But what are reasonable regulations? Klein says eventually this could be decided in the courts. But in the meantime, there are statewide examples of cities adopting analogous regulations such as geographic limits, specific hours of operation, and prohibition on the types of products dispensaries can sell.

In addition, a city has the option to exclude dispensaries in certain zones as defined by its zoning code. According to Klein, the city of Eugene's code treats a dispensary as a "specialty retail" business, which is authorized only in commercial zones, and not in industrial zones. So in this case, even though state law would allow a dispensary in an industrial zone, local zoning code would not. Eugene also requires a conditional use permit in some of its commercial zones.



**"The worst thing a city can do in this case is adopt regulations without having first figured how they will be enforced."**

**– Glenn Klein, Eugene City Attorney**

Another option would be for a city to expand the existing 1,000-foot buffer that further defines where a dispensary can locate. "A city could apply the buffer to include areas where children may congregate, such as a day care center, a library or a transit center," Klein said.

A city can also enforce regulations on the dispensaries' hours of operation. Klein cites the example of jurisdictions which have copied the Oregon Liquor Control Commission's guidelines for liquor store operations: 10:00 a.m. to 7:00 p.m. "These jurisdictions decided, 'If it's reasonable for liquor stores, it's reasonable for dispensaries,' so they adopted that limitation."

Klein says cities face two main risks if they choose to pursue regulations on dispensaries, one legal and the other operational. "The first is litigation over whether they are reasonable," he said. The bigger risk, depending on the nature of regulations adopted, is that enforcement may be an "administrative nightmare."

"I've seen city councils elsewhere in the state adopt regulations that sounded really good, but were nearly impossible to enforce. The worst thing a city can do in this case is adopt regulations without having first figured how they will be enforced."

## Tax

Klein says he's not aware of any jurisdiction that has adopted a gross receipts tax on dollars received by a medical marijuana dispensary. "But nothing I'm aware of prohibits a jurisdiction from doing this," he notes. "Cities have home rule authority, and I think they can."



## Wait and See

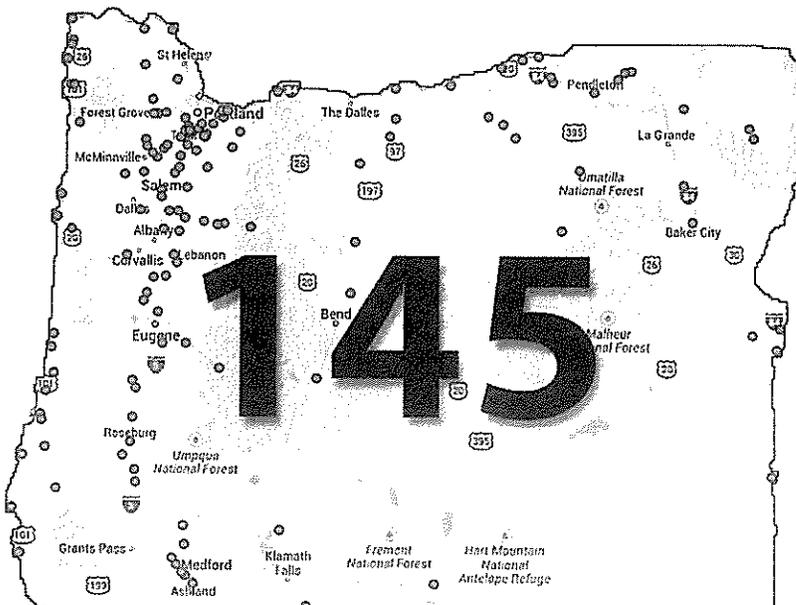
For cities like Eugene, which did not formally adopt a ban, Klein says this option boils down to waiting to see if problems develop, then presenting those problems to the city council, along with some options for how to resolve them.

He says that for cities taking this approach, the best course of action for city councils is to have staff "monitor the situation for problems and know its okay to come to you with potential solutions."

## Final Caution – Consult City Attorney

During his remarks at the League workshop, Klein implored cities to talk to their city attorney before pursuing any course of action. He cited two very important reasons:

"First, there are a lot of grey areas here, and you as policy makers need to be aware of the risks. Your city attorney can help you assess those risks and decide whether to move forward. The other reason is that your charters are different, and therefore your city codes may be different. One city may be able to do something that another city can't."



SB 1531 allowed cities and counties to adopt a one-year moratorium on medical marijuana dispensaries and 145 cities have done so. In addition, five cities have instituted a ban on moratoriums:

- Jacksonville
- Hermiston
- Medford
- Oakridge
- Tualatin

For a list of cities with moratoriums, visit the League's medical marijuana webpage at [www.orcities.org/marijuana](http://www.orcities.org/marijuana).

## Marijuana Q & A

**What advice would you have for Oregon local governments as they are looking at various trends going forward, with respect to medical marijuana, and if it comes to pass, recreational?**



**Chris McKenzie, Executive Director, League of California Cities**

My most cogent advice is that you want to get the medical marijuana part done right. Doing that, you will learn a lot in the event retail or recreational use comes along. That means if you haven't taken the steps to do the moratorium,

invest time in thinking about what local regulations you want to have. The experience you have there is going to be helpful if your voters approve full retail activity.



**Kevin Bommer, Deputy Director, Colorado Municipal League**

Oregon is a strong local control state. That has to be enshrined in anything you do going forward. You have to get the house in order regarding medical marijuana, especially if you are going to link medical and recreational together like we did here in Colorado.

Medical might be the logical ones to apply. That helps on the regulatory side because these are known entities, to state and local regulatory and law enforcement agencies. They know who these operators and employees are. To the extent that medical works, if retail is going to happen it has a better chance if medical is not a mess.

**What are the impacts on cities regarding marijuana tourism?**

Bommer – If you Google “Colorado Marijuana Tourism” you’ll be surprised at what you see. It’s not surprising that it happened, just that more people weren’t aware of it. There are entrepreneurs who have opened businesses since Colorado doesn’t exclude out-of-state residents from purchasing, only limiting the amount they can purchase (.25 ounces) at a retail store.

Here in Colorado, there are companies that will pick up tourists at the airport, take them on a tour of retail centers and grow facilities, and along the way the tourists can purchase the product if they like. The buses are pretty fancy, and they all have blacked-out windows. This is a growing economy with no particular regulation, other than having to abide by the existing laws and regulations that apply to businesses and individuals.

**What does the League see happening next with the Legislature?**



**Scott Winkels, Intergovernmental Relations Associate, League of Oregon Cities**

With regard to the dispensaries and where I think the Legislature will go in 2015, there’s some enthusiasm behind cleaning up the land use regulation language in HB 3460, ultimately making it something that resembles the

land use code. The Legislature has said they don’t want dispensaries in residential areas, and I think that’s certainly achievable. I also think the Legislature is going to look at the federal (Cole) memo regarding a robust and vigorous enforcement and regulatory structure. One thing they may do there is require background checks for people who work in the dispensaries.

Another issue is to make sure that police officers have access to a dispensary. This would be the same as we have with a liquor establishment: a police officer would be able to enter a dispensary and conduct an inspection. This is currently not in the state statutes.

Also, the Legislature is going to have to address the conflict between federal law and language in HB 3460 that prevents a dispensary within 1,000 feet of a school. There is a federal law against locating a dispensary within 1,000 feet of “places where minors congregate.” This is a significant language discrepancy, and it’s my understanding that U.S. attorneys in other states have forced dispensaries to move, even those that are sanctioned, if they were located in proximity to a preschool. For the applicant, local governments, kids and schools, truing up that requirement needs to happen.

**How do cities participate in conversations about legalization of marijuana without appearing to be in support of approving legalization?**

McKenzie – As we’ve been working on legislation, we’ve actually begun to build relationships with people in the marijuana industry. The people we could probably cut a deal with are those who would like to have a well-regulated, responsible business. But there’s another dynamic. There’s nothing as valuable as having an idea that the public is passionate about. I’ve been telling my board we need to do some polling about the viability of retaining our local authority, specifically to decide whether to opt-in or to add on regulations. If Californians find out there is a stealth retail measure that preempts local control, and we can get that

message out, then we can take some of the ground away from the other side. If we do our polling early enough and it verifies what we think it will say, we can start having some advanced public dialogue with the other side. Not because we want to help draft their measure. I want to send the message that we're open to that conversation, but if they cross the local control line we will do everything we can to obstruct their success. So you have to do it from a collaborative position, but also one of strength, so that you can be a much better non-opponent. Their goal is to keep us out of that election. They'll do that by making sure our members get to decide if the activity happens in their city.



**Candice Bock, Government Relations Advocate, Association of Washington Cities**

This has been a big challenge, and it prompted us to actually create a legislative policy position we called "actively neutral." With 281 cities, we had representation on both sides of the issue. Some cities were feeling like they should be able to

say they wanted nothing to do with marijuana, while some said the system only works if everyone is allowed their fair share. So we worked with our board and legislative committee on a policy direction that preserved our number one goal: maintain local control and existing regulatory authority over anything, not just marijuana.

As an association of cities, we don't get involved in initiatives or political campaigns, so we don't typically engage with groups that are putting together initiatives. We couldn't be involved in a formal fashion, but we wanted to have input on how these groups can work best with local governments.

**In terms of long-term effects of marijuana – THC levels are going up. Do you see issues with potency of the product?**



**Tom Burns, Director of Pharmaceutical Purchasing, Oregon Health Authority**

Certainly the potency has gone up over the years. But this is not an OHA issue. We will label it, and the patient will know the potency. But that's something the market will develop and bear. Unfortunately, there's been no testing, so

we don't know if a THC of 51 or 21 produces effects the same way the product affects a disease in the body. This might be something the FDA takes up someday.

*(continued on page 24)*

**Illegal? Yes.**

Scott Kerin leads the drug unit in the U.S. Attorney's office in Oregon. He says he regularly fields questions from Oregon local governments regarding the legality of medical marijuana dispensaries.

"I have been asked repeatedly: 'If we allow dispensaries to set up, are we aiding and abetting a federal crime?'" Kerin noted during his presentation at the League's Marijuana Workshop.

"Technically, yes."

Kerin added that what he wanted local governments to take away from his remarks was that marijuana is "still illegal under federal law." He said cities need to know if they engage in any activity that is in violation of federal law, there could be consequences.

"There's a risk that a district attorney's office or the federal government will take an interest, and someone will be subject to prosecution," he said.

To provide some guidance for local governments as they make decisions about dispensaries, Kerin outlined the "enforcement priorities" of the U.S. Department of Justice, which help determine how his office allocates resources for enforcement and prosecution. Specifically, he cited eight priorities that are outlined in a memorandum issued by the Department of Justice on August 29, 2013, commonly referred to as the Cole Memo (*see OMMA article, page 16*). These priorities are where the department is currently focusing its efforts.

Kerin noted that there is always the possibility these priorities and related policies could be subject to change "as elections occur and new administrations take office."

He encouraged attendees to not only consider the Cole Memo, but to make sure any regulatory structure enacted is robust and vigorous, and that it has an enforcement mechanism behind it.

"If that happens, you're less likely to draw the attention of law enforcement," he said.



*Scott Kerin from the U.S. Attorney's office speaks at the League's Marijuana Workshop.*

Marijuana Q&A

continued from page 23

**Looking at reasonable limitations, what about 1,000 feet within a park? Is this reasonable under time, place and manner restrictions?**

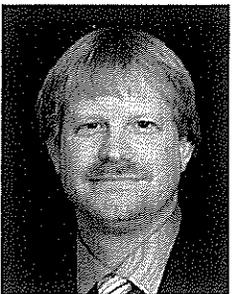


Sean O'Day, General Counsel, League of Oregon Cities

Given children congregate in a park, that's a reasonable regulation. Keep in mind, however, that's something you'd be adopting at the local level and you'd be using civil enforcement as your way of enforcing that should a dispensary get a license and begin operating. If that, coupled with

the existing 1,000-foot rules in state law, result in effectively a ban, then you have two types of legal issues. First, is this reasonable? The second is preemption, and do you have the authority to impose this ban? Understand that a dispensary which violates these 1,000-foot rules loses its criminal immunity. So you have different types of enforcement depending on the rules you enforce locally and how the dispensary complies with state law.

**No public consumption, including growing, is allowed in public. Is a backyard considered public? What about a greenhouse?**



Rob Bovett, Legal Counsel, Association of Oregon Counties

Oregon law says it can't be seen from a public vantage point. Someone could be growing or using marijuana in their backyard as long as where they're doing it is not visible from a public vantage point. In that way Oregon is different from other states.

**With respect to dispensaries, why not just do it through pharmacies?**

Bovett – The federal Controlled Substances Act. Oregon, like other medical marijuana programs, doesn't provide for physicians to prescribe marijuana. They only issue recommendations. The reason is the federal Controlled Substances Act. Every prescriber is licensed by the Drug Enforcement Agency (DEA) to prescribe. If they actually issued a prescription for marijuana, which is a Schedule 1 controlled substance, they would have their ticket pulled and they would no longer be able to prescribe anything. The same is true for pharmacies—all are DEA-licensed facilities. If they dispense a Schedule 1 controlled substance, they would lose their license. That's not to say using pharmacies wouldn't be a good model. If we could get the feds to change their policy, it makes practical sense to have pharmacies dispense Schedule 2 or 3 controlled substances, but until Congress approves that statutory change we can't go there.

**As the OHA is sending inspectors out, how are you going to deal with the vastness with respect to population?**

Burns – We'll go where the dispensaries are. If a local jurisdiction has a large number of dispensaries, we'll have a lot of inspectors there. It has nothing to do with population. It has everything to do with where the dispensaries are located.

**Can a jurisdiction adopt local taxes on sales of marijuana?**

O'Day – I think so. Cities should consult with their city attorney though. Right now there's no preemption on that, as we heard earlier from Glenn Klein.

**What about a city's ability to cap the number of dispensaries within a jurisdiction, say as low as one or two?**

O'Day – Applying a home rule/preemption analysis, I think you can cap it down to zero. Whether or not a cap is reasonable under SB 1531, I think you're probably looking at having to litigate. If a city sets a low cap, and someone thinks it's unreasonable, a city could face a lawsuit. That's why it's so important for city leaders to talk to their city attorney. When you are considering these issues and any form of restriction or regulation you might look at putting out there, it's important to have a candid conversation with your city attorney. Even though they may not be able to give you a clear yes or no about what a court might rule, they can at least help you assess the legal risk and the cost of defending that decision. ■

## Online Resources

Visit [www.orcities.org/marijuana](http://www.orcities.org/marijuana) for:

- Presentations from the League's Marijuana Workshop
- A list of cities with moratoriums on medical marijuana dispensaries
- Information on the Oregon Medical Marijuana Act
- OHA rules set out in SB 1531
- Federal guidance regarding marijuana enforcement

# Working with the Oregon Health Authority



Tom Burns, Director of Pharmaceutical Purchasing, Oregon Health Authority

The Oregon Health Authority (OHA) was tasked by the Legislature to provide regulatory oversight of the state's medical marijuana dispensary licensing program. OHA Director of Pharmaceutical Purchasing Tom Burns will oversee the dispensary licensing and oversight program, and presented an overview at the League's Marijuana Workshop of the OHA's role and how local governments can work with the OHA in dealing with dispensaries.

## Dispensary Oversight

OHA's ability to regulate dispensaries was narrowly written in HB 3460 and requires OHA to provide a license to any applicant who can meet specific basic criteria. However, Governor Kitzhaber also included three guidelines for OHA's regulations in a signing letter: assure public safety, assure patient safety, and enforce rules vigorously. As a result, OHA worked with a rules advisory committee, held over 17 hours of meetings, and published temporary rules to start the licensing program.

Currently, the OHA must grant a license if an application shows a proposed dispensary:

- Is not within 1,000 feet of a school or another dispensary;
- Is in an area zoned for industrial, commercial, agricultural or mixed use;
- Has a security system; and
- Is testing for health hazards.

However, the OHA cannot reject an application if local ordinances ban dispensaries or if zoning codes prevent locating a dispensary at the designated site. As Burns stated: "I may well, as the health authority, issue a license. It's up to you guys to decide if that license is any good in your jurisdiction."

## OHA and Your City

In addition to licensing, the OHA is required to inspect dispensaries yearly, and is planning on conducting sting operations when they hear of facilities that are operating improperly. So they need local officials and enforcement agencies to inform them of sites that are violating the licensing rule. For example, if the police notice that the security system is not operational, citizens notice that marijuana is packaged in a way that is enticing to children, or if there is evidence of on-site use of the marijuana, OHA needs cities to inform them.

But, OHA cannot ensure shops are shut down if their license is revoked. OHA may only impose civil penalties; they cannot bring criminal charges. So, they need assistance from local law

enforcement and prosecutors. OHA was not given authority to shut the physical doors at a facility that loses its license and, therefore, must work with law enforcement agencies to shut these facilities down. Burns recommended that local governments remain in contact with his office to monitor the dispensaries within your city saying, "We want desperately to work with local law enforcement. We cannot do this ourselves."

## Future Rulemaking

Currently, OHA is working on making permanent rules regarding dispensary licensing under HB 3460. They intend to complete this process by July 31. In addition, they are working on finalizing rules relating to edible marijuana products and marketing restrictions required under SB 1531. Copies of all these proposed rules and schedules for submitting testimony can be found at [www.oregon.gov/oha/mmj](http://www.oregon.gov/oha/mmj). Burns also pointed out that as the program moves forward, the OHA will likely revisit these rules.

As cities look at the various tools available to regulate dispensaries within city limits, working as a partner to OHA in insuring the facility is following the licensing rules should be top of the list. As Burns said: "If they are not following these rules, we will close them down." ■

**GHD**

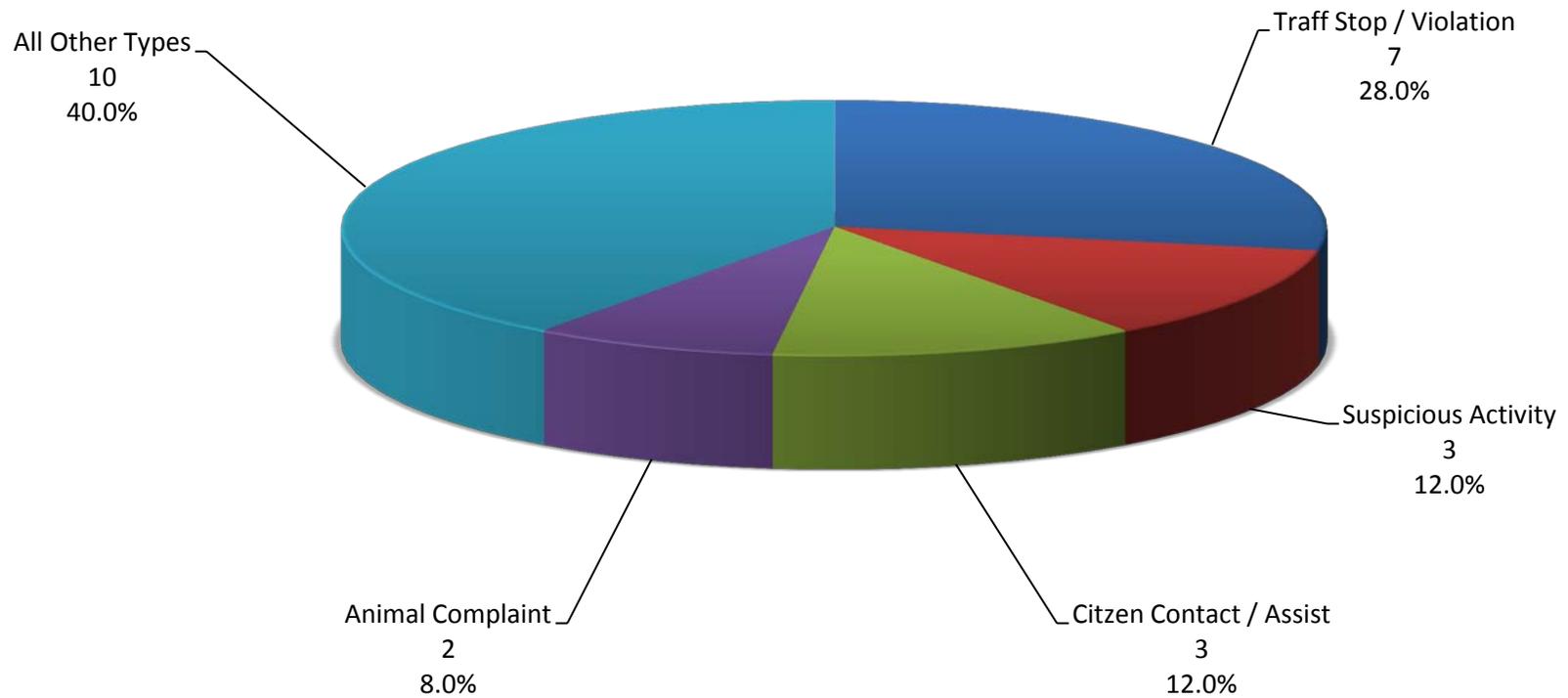
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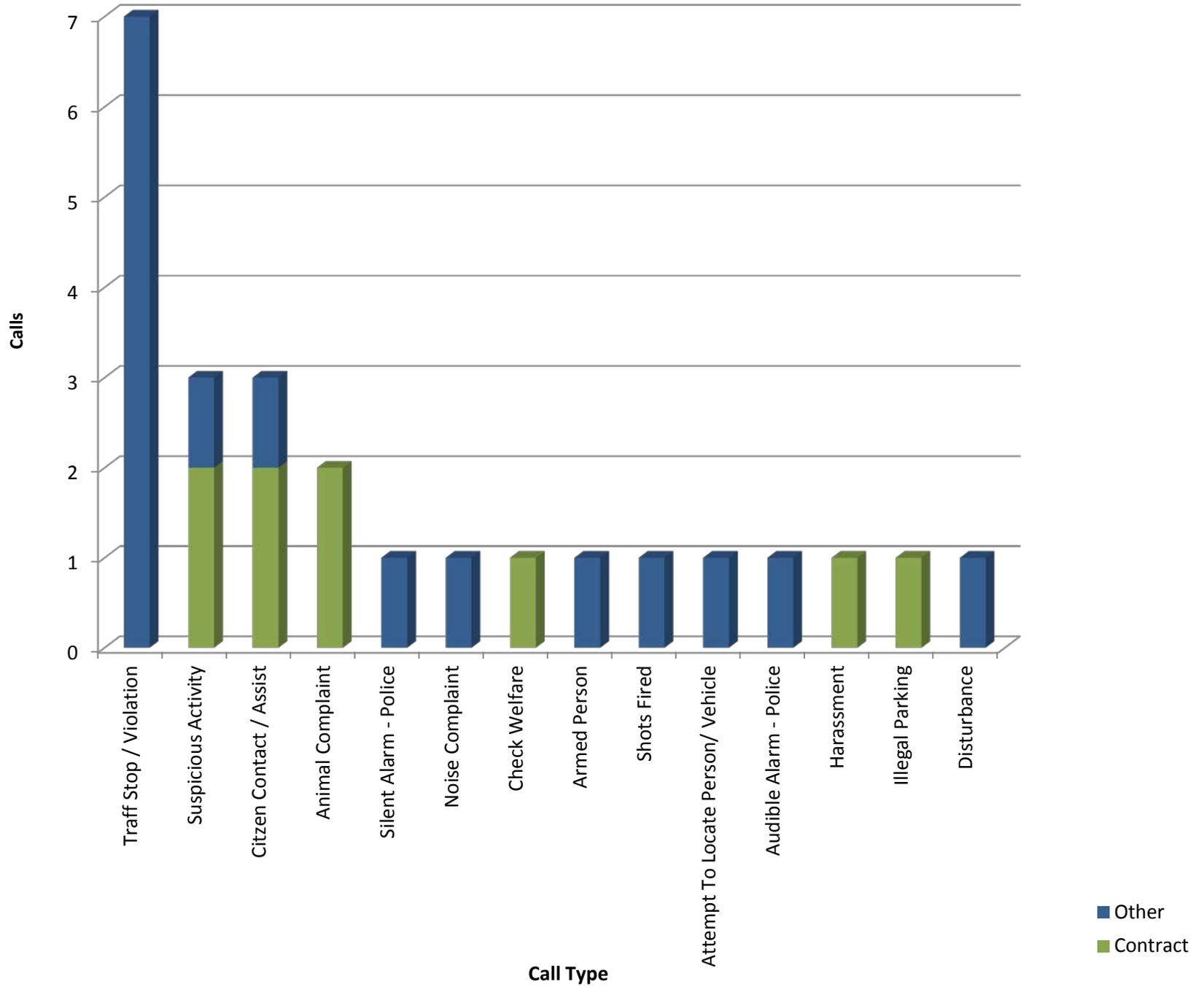
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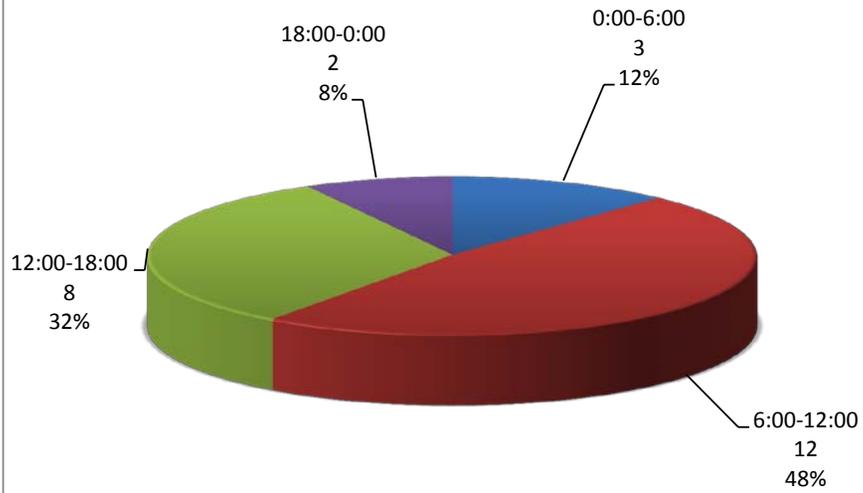
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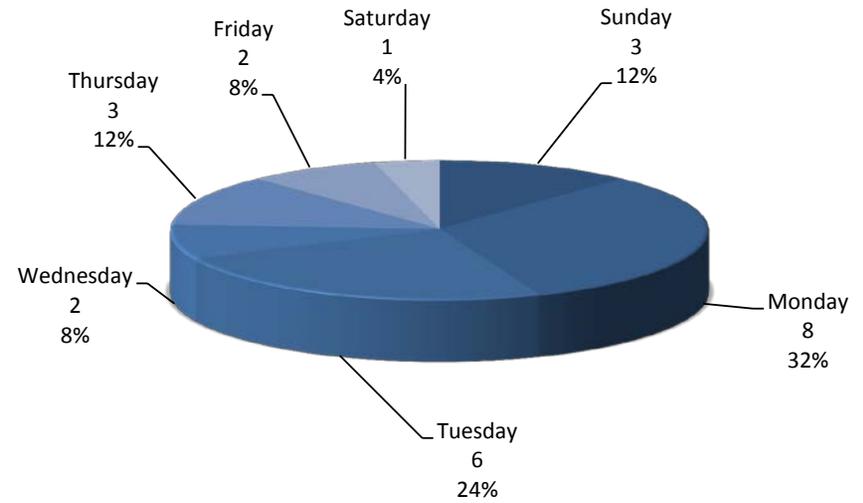
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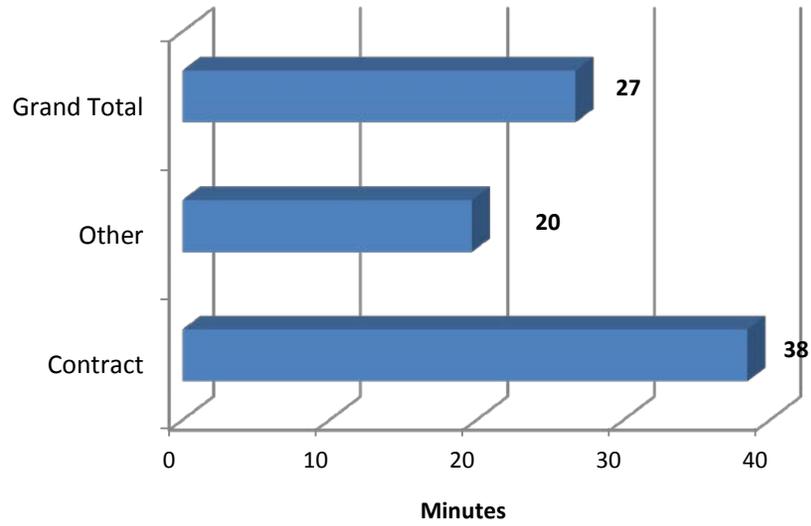
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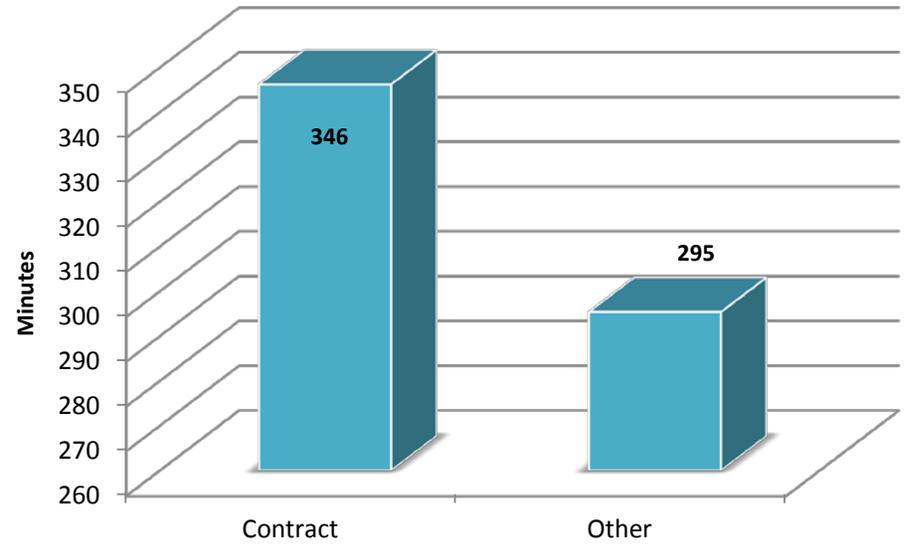
**Aurora Calls for Service by Day of Week  
June 2014**



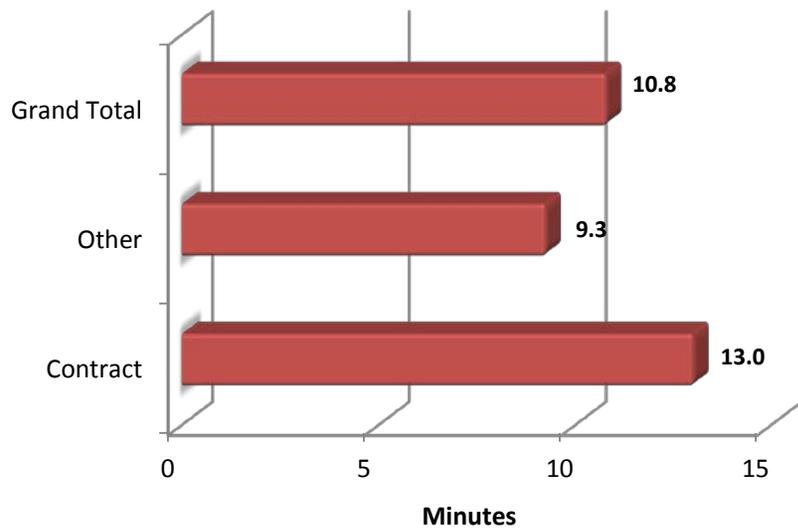
**Aurora Calls Average Call Length  
June 2014**



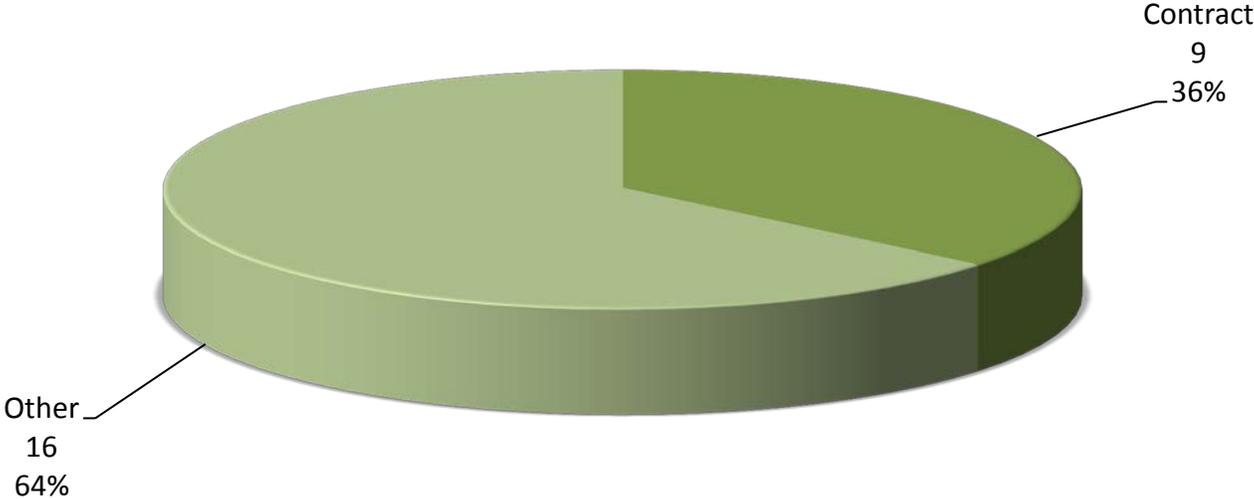
**Aurora Calls Total Call Length  
June 2014**



**Aurora Calls Average Call Arrival Time  
June 2014**



**Aurora Calls by Primary Deputy  
June 2014**

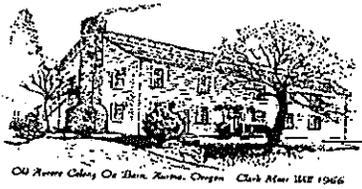


## Aurora Calls for Service May 2014

EVENTID	CASEID	Combined Type	PRIMARY UNIT	CREATE DATE	DISPATCH DATE	ARRIVAL DATE	CLEARED DATE	Arrival in Minutes	Call Length in Minutes	DISPOSITION	ZONE	PRIORITY	AGENCY	SOURCE	LOCATION
SMS201406030073		Illegal Parking	A195	6/3/2014 11:13	6/3/2014 11:13	6/3/2014 11:13	6/3/2014 11:23	0.02	9.82	0 AAP		4 SMS			21324 LIBERTY ST NE, AURORA, 97002 (4TH ST NE/BOBS AV NE)
SMS201406030112		Citizen Contact / Assist	A195	6/3/2014 14:36	6/3/2014 14:36	6/3/2014 14:36	6/3/2014 15:07	0.02	30.55	0 AAP		4 SMS			21339 LIBERTY ST NE, AURORA, 97002 (4TH ST NE, 4TH ST NE/BOBS AV NE, BOBS AV NE)
SMS201406030121		Citizen Contact / Assist	A195	6/3/2014 15:03	6/3/2014 15:03	6/3/2014 15:03	6/3/2014 15:13	0.02	10.25	0 AAP		4 SMS			21611 MAIN ST NE, AURORA, 97002 (1ST ST NE, EHLEN RD NE/2ND ST NE)
SMS201406030161	SMS14009660	Shots Fired	A139	6/3/2014 18:32	6/3/2014 19:03	6/3/2014 19:37	6/3/2014 20:21	33.28	44.62	5 AAP	T4	SMS			14853 OTTAWAY RD NE, AURORA, 97002 (YUKON ST NE/FILBERT ST NE)
SMS201406100141	SMS14010182	Disturbance	A162	6/10/2014 16:37	6/10/2014 16:48	6/10/2014 17:05	6/10/2014 17:44	17.62	38.35	5 SMS01-AU		3 SMS			14633 OTTAWAY RD NE (MapBook:1532), AURORA (HIGHWAY 99E NE/)
SMS201406110067	SMS14010237	Check Welfare	A195	6/11/2014 11:21	6/11/2014 11:21	6/11/2014 11:45	6/11/2014 12:09	23.70	24.18	5 SMS01-AU		3 SMS			21404 LIBERTY ST NE (MapBook:1532), AURORA (3RD ST NE/4TH ST NE)
SMS201406120083	SMS14010323	Harassment	A195	6/12/2014 11:25	6/12/2014 11:26	6/12/2014 11:51	6/12/2014 12:19	24.75	28.22	5 SMS01-AU		4 SMS			HIGHWAY 99E NE, AURORA/OTTAWAY RD NE, AURORA(MapBook:1532)
SMS201406120132	SMS14010337	Suspicious Activity	A195	6/12/2014 15:12	6/12/2014 15:12	6/12/2014 15:12	6/12/2014 15:53	0.00	41.23	5 AAP		4 SMS			20905 YAKIMA ST NE, AURORA, 97002 (OTTAWAY RD NE/ROOSTER ROCK AV NE)
SMS201406130039	SMS14010391	Citizen Contact / Assist	A115	6/13/2014 9:38	6/13/2014 9:38	6/13/2014 9:38	6/13/2014 9:46	0.02	8.63	5 AAP		4 SMS			21420 MAIN ST NE, AURORA, 97002 (3RD ST NE/4TH ST NE; Near:AURORA POLICE DEPT)
SMS201406140217	SMS14010546	Noise Complaint	A166	6/14/2014 22:47	6/14/2014 23:11	6/14/2014 23:49	6/15/2014 0:10	38.57	20.22	5 SMS01-AU		4 SMS			14853 OTTAWAY RD NE (MapBook:1532), AURORA (YUKON ST NE/FILBERT ST NE)
SMS201406160077		Traff Stop / Violation	A144	6/16/2014 11:36	6/16/2014 11:36	6/16/2014 11:36	6/16/2014 11:47	0.00	11.00	0 SMS01-AU T6		SMS			AIRPORT RD NE, AURORA/EHLEN RD NE, MARION COUNTY(MapBook:1432)
SMS201406200100	SMS14010935	Animal Complaint	A195	6/20/2014 12:57	6/20/2014 12:57	6/20/2014 12:57	6/20/2014 13:05	0.00	8.13	5 AAP		4 SMS			20812 FILBERT ST NE, AURORA, 97002 (WALNUT ST NE/HEMLOCK AV NE)
SMS201406240115	SMS14011249	Animal Complaint	A195	6/24/2014 14:44	6/24/2014 14:44	6/24/2014 14:44	6/24/2014 15:18	0.00	34.42	5 SMS01-AU		4 SMS			20812 FILBERT ST NE (MapBook:1532), AURORA (WALNUT ST NE/HEMLOCK AV NE)
SMS201406250147	SMS14011318	Suspicious Activity	A195	6/25/2014 14:11	6/25/2014 15:13	6/25/2014 16:21	6/25/2014 19:01	68.72	159.38	5 AAP		4 SMS			14953 BOBS AV NE, AURORA, 97002 (LIBERTY ST NE, LIBERTY ST NE/SAYRE DR NE, SAYRE DR NE) ***WILL CALL****
SMS201406260079		Suspicious Activity	A106	6/26/2014 10:14	6/26/2014 10:32		6/26/2014 10:46		14.00	0 SMS01-AU		4 SMS			14953 BOBS AV NE (MapBook:1532), AURORA (LIBERTY ST NE/SAYRE DR NE)
SMS201406290030		Audible Alarm - Police	A136	6/29/2014 7:36	6/29/2014 7:38		6/29/2014 7:45		6.52	7 SMS01-AU		5 SMS			21687 HIGHWAY 99E NE (MapBook:1432), AURORA (LIBERTY ST NE, 1ST ST NE/2ND ST NE)
SMS201406290064	SMS14011604	Armed Person	A164	6/29/2014 10:47	6/29/2014 10:48	6/29/2014 10:51	6/29/2014 11:35	3.25	44.13	5 SMS01-AU T2		SMS			LIBERTY ST NE, AURORA/4TH ST NE, AURORA(MapBook:1532)
SMS201406290168		Attempt To Locate Person/ Vehicle		6/29/2014 19:44			6/29/2014 20:17			0 SMS01-AU		5 SMS			1ST ST NE, AURORA/HIGHWAY 99E NE, AURORA(MapBook:1432)
SMS201406300037		Traff Stop / Violation	A171	6/30/2014 9:38	6/30/2014 9:38	6/30/2014 9:38	6/30/2014 9:45	0.00	7.07	0 SMS01-AU T6		SMS			AIRPORT RD NE, AURORA/EHLEN RD NE, MARION COUNTY(MapBook:1432)
SMS201406300051		Traff Stop / Violation	A115	6/30/2014 10:27	6/30/2014 10:27	6/30/2014 10:27	6/30/2014 10:37	0.00	9.55	0 SMS01-AU T6		SMS			AIRPORT RD NE, AURORA/EHLEN RD NE, MARION COUNTY(MapBook:1432)
SMS201406300052		Traff Stop / Violation	A171	6/30/2014 10:27	6/30/2014 10:27	6/30/2014 10:27	6/30/2014 10:45	0.02	17.97	0 SMS01-AU T6		SMS			1ST ST NE, AURORA/EHLEN RD NE, AURORA(MapBook:1432)
SMS201406300066		Traff Stop / Violation	A115	6/30/2014 11:31	6/30/2014 11:31	6/30/2014 11:31	6/30/2014 12:14	0.00	43.35	0 SMS01-AU T6		SMS			HIGHWAY 99E NE, AURORA/1ST ST NE, AURORA(MapBook:1432)
SMS201406300067		Traff Stop / Violation	A171	6/30/2014 11:32	6/30/2014 11:32	6/30/2014 11:32	6/30/2014 11:42	0.00	9.45	0 SMS01-AU T6		SMS			HIGHWAY 99E NE, AURORA/1ST ST NE, AURORA(MapBook:1432)
SMS201406300072		Traff Stop / Violation	A171	6/30/2014 11:52	6/30/2014 11:52	6/30/2014 11:52	6/30/2014 12:02	0.00	9.93	0 SMS01-AU T6		SMS			1ST ST NE, AURORA/MAIN ST NE, AURORA(MapBook:1432)
SMS201406300092	SMS14011694	Silent Alarm - Police	A136	6/30/2014 13:28	6/30/2014 13:30	6/30/2014 13:57	6/30/2014 14:08	27.57	10.57	5 SMS01-AU T2		SMS			15163 OTTAWAY RD NE (MapBook:1532), AURORA (CODY LN NE/JENNYMARIE LN NE)

**CITY OF AURORA - TREASURER'S REPORT for May 2014**

	FUND	April 30 BALANCE	REVENUE TOTAL	TOTAL EXPENSES	May 31 BALANCE
10	GENERAL	269,358.27	20,649.43	31,083.84	258,923.86
15	CITY HALL BUILDING	118,165.54	143.06	0.00	118,308.60
25	PARK RESERVE	1,134.04	0.60		1,134.64
29	PARK SDCs	24,706.39	2,219.35		26,925.74
30	STREET/STORM	155,479.96	4,519.52	5,377.30	154,622.18
35	ST/STORM RESERVE	40,051.61	26.36		40,077.97
39	ST/STORM SDCs	18,940.03	2,911.65		21,851.68
40	WATER OPERATING	174,078.58	2,404.32	10,226.52	166,256.38
42	SPW MAINTENANCE	31,534.51	16.82		31,551.33
45	WATER RESERVE	23,764.91	12.67		23,777.58
49	WATER SDCs	39,543.06	5,567.05		45,110.11
50	SEWER OPERATING	159,637.50	-25.27	7,238.21	152,374.02
55	SEWER RESERVE	44,598.77	23.79		44,622.56
57	G. O. DEBT SERVICE	258,611.48	1,335.32	245,406.25	14,540.55
59	SEWER SDCs	24,531.23	2,046.17		26,577.40
	<b>TOTALS</b>	<b>1,384,135.88</b>	<b>41,850.84</b>	<b>299,332.12</b>	<b>1,126,654.60</b>



# City of Aurora

FOUNDED 1856  
"National Historic Site"

Public Works department

## City Council Public Works Activity Report July 2014

Waste Water: Lift station pumps are being repaired, 4 have been rebuilt, 4 installed. Expect to install fifth pump when repaired in Airport Rd lift station.

Water: Routine operation and maintenance. Wells have gone from 4-5 hours a day to 6-7 hours a day with the warmer weather.

Consumers Confidants Reports (CCR) are completed and mailed to residents and state.

Leak on Liberty may have been fixed,(need to wait a few days to see if it dries up)

Streets: Routine operation and maintenance.

The Street light on Albers way has been re-installed by the power company and to confirm the old base in driveway has been disconnected before we pull the old base.

Park: The park has some issues with the schedule of mowing, edging, flower beds maintenance, ect. It has been prepped for the summer season  
No one showed up for the walk thru for the RFP.

### Administration

Public Works scheduling and planning for staff.

Budget on track for current 2013-2014

Also reviewing Budget for 2014-2015

Respectfully: Darrel Lockard

### Public works project list

sink hole status of 21370 Main st  
Sayer Dr, these are gravel streets  
old light pedestal needs removed  
Leak on Liberty  
Wastewater solids drying beds

# Memo

To: City Council  
From: Kelly Richardson  
CC: None  
Date: 7/3/2014  
Re: Recorders Report Month of June 2014 report

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Activities and ongoing projects are as follows:

- ❖ Ongoing secretarial duties for the City Council and Planning and Historic Review Board, along with attending the meetings once a month.
  - Working closely with Historic Review Board on guideline updates and changes.
- ❖ Attending Conference Committee Meetings
- ❖ Records Request update
  - None pending
- ❖ Working on Election Forms and Packets
- ❖ Ongoing needs of the City
- ❖ Working on organization of electronic files
- ❖ Completed insurance needs with CIS and Gustafson INS.
- ❖ Updating Planning and Zoning Files and Forms/Checklists **ONGOING**
- ❖ Working with HRB on Historic Review Guidelines Updates and Formatting. **Ongoing**
- ❖ Updating water files and statistics to better reflect accurate information in Springbrook our utility billing and accounting software.
- ❖ updating our printer to better suite our growing needs.

RESOLUTION NUMBER. 690

A RESOLUTION CHANGING BANK ACCOUNT SIGNERS FOR THE CITY OF AURORA, COLUMBIA BANK BUSINESS ACCOUNTS AND REPEALING RESOLUTION NO. 680.

WHEREAS, the City Council of the City of Aurora finds it necessary to designate new authorized account signatures at Columbia Bank due to a change in City staffing circumstances which no longer exists due to probationary period.

WHEREAS, the Aurora City Council has determined that each check signed for the General Fund checking account, shall contain the signature of one Council member and one City employee each; and

WHEREAS, the City of Aurora also maintains a safety deposit box at Columbia Bank and has determined that the access shall be granted to each authorized account signers;

NOW THEREFORE, BE IT RESOLVED that the City of Aurora designates the following as authorized account signers: that each check signed for the General Fund checking account, shall contain the signature of one Council member and one City employee each, because staff circumstances and probationary period no longer exists.

**City of Aurora Council Members**

Bill Graupp, Mayor  
Jason Sahlin, Councilor

**City of Aurora Employees**

Kelly Richardson  
Darrel Lockard

**APPROVED** by the Aurora City Council this 8th day of July, 2014.

\_\_\_\_\_  
Bill Graupp - Mayor

ATTEST:

\_\_\_\_\_  
Kelly Richardson, CMC - City Recorder