

November 25, 2013

TO: Honorable Mayor and City Council

FROM: N. Robert Shields, City Attorney
Scott Russell, Chief of Police

SUBJECT: **Medical Marijuana Dispensaries**

RECOMMENDATION:

Receive the report.

BACKGROUND:

On August 14, 2013 the Governor signed HB 3460 (providing for medical marijuana dispensaries) into law. The provisions of the law that authorize the Oregon Health Authority to register medical marijuana facilities under its administrative rules do not go into effect until March 1, 2014.

HB 3460 will allow medical marijuana dispensaries to be sited under certain restrictions in commercial and agricultural zones and directs the Oregon Health Authority to develop rules to regulate such dispensaries. The law provides little direction to local governments on how to effectively manage community expectations for safety, security, and livability with the opening of these dispensaries.

Community concerns regarding such dispensaries in other states have included their proximity to other businesses and services that could be fundamentally at odds with the dispensaries including such things as; child care/playgrounds, religious facilities, drug/alcohol treatment centers, existing high drug/crime areas, civic services, etc. The statute only restricts their placement within 1,000 feet of a school or another dispensary.

Public safety concerns with dispensaries in other states have included the potential for, and actual occurrence of, armed robberies and assaults over drugs and money located at the dispensaries, illegal sales of drugs to non-medical users, and extortion of dispensary owners/operators by criminal organizations. HB 3460 has limited provisions requiring additional security provisions for dispensaries.

Agenda Item Review: City Administrator x City Attorney x Finance x

DISCUSSION:

While we are unaware of any existing plans to site a medical marijuana dispensary in Woodburn at this time, we anticipate that there will be such efforts at numerous locations throughout the state after the law and administrative rules are in effect.

To mitigate these issues, some Oregon communities have enacted, or are considering, local ordinances. Medford has, in effect, banned medical marijuana dispensaries by taking the position that it will not issue business licenses to them because they are in violation of federal law. Medford has already revoked the business licenses of several businesses that it said were dispensing marijuana.

On November 5, 2013, the Legislative Counsel to the Oregon Legislature issued an opinion concluding that any local law (i.e., a city ordinance) that prevents or materially restricts medical marijuana facilities is preempted (i.e., overridden) by the Oregon state law:

In light of the legislative history, we believe that a local law that prevents or materially restricts the operation of medical marijuana facilities would stand as an obstacle to the accomplishment and execution of the purposes and objectives of HB 3460 and would therefore be preempted. A local law that restricts medical marijuana facilities by imposing different criteria from criteria affirmatively established in HB 3460 would also conflict with the purposes and objectives of HB 3460 and therefore be preempted.

While it is true that an opinion of Legislative Counsel is not legally binding on Oregon cities, it will certainly be cited by proponents of HB 3460 as compelling authority when local ordinances are challenged in court. On the other hand, despite the Legislative Counsel's opinion, the League of Oregon Cities continues to maintain that municipal authority exists to regulate in this area.

The legal issues of whether any local ordinance would conflict with state law and whether HB 3460 conflicts with federal law places the City in a difficult position as we seek to protect the safety of our citizens. We anticipate litigation over ordinances such as Medford's and will track the outcome in order to better advise the City Council.

Most Oregon cities have not enacted any ordinances in regard to medical marijuana dispensaries and will be relying on the state statute and the

administrative rules adopted under it to regulate the dispensaries. The Oregon Health Authority has a Medical Marijuana Dispensary Law Advisory Committee to assist it in drafting the new administrative rules. Local public officials on this committee include the Lincoln County District Attorney, the Yamhill County Sheriff and the Corvallis Chief of Police.

FINANCIAL IMPACT:

None from this informational report.

Attachments:

Exhibit A - HB 3460
Exhibit B - Newspaper Articles
Exhibit C - Legislative Counsel Opinion

Exhibit A

HB 3460

77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 3746

B-Engrossed

House Bill 3460

Ordered by the Senate July 1

Including House Amendments dated June 20 and Senate Amendments dated July 1

Sponsored by Representative BUCKLEY, Senator PROZANSKI;
Representative FREDERICK, Senator DINGFELDER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Directs Oregon Health Authority to establish registration system for medical marijuana facilities for transferring usable marijuana and immature marijuana plants from registry identification cardholders, designated primary caregivers of registry identification cardholders or marijuana grow sites to medical marijuana facilities and from medical marijuana facilities to registry identification cardholders or designated primary caregivers of registry identification cardholders.

Limits expenditures for biennium beginning July 1, 2013, from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by authority for expenses incurred in implementing Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to medical marijuana; creating new provisions; amending ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + Section 2 of this 2013 Act is added to and made a part of ORS 475.300 to 475.346. + }

SECTION 2. { + (1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:

(a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or

(b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:

- (a) The name of the person responsible for the medical marijuana facility;
- (b) The address of the medical marijuana facility;
- (c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;
- (d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and
- (e) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana facility:

- (a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site;
- (b) Must be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;
- (c) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;
- (d) Must not be located within 1,000 feet of another medical marijuana facility; and
- (e) Must comport with rules adopted by the authority related to:

- (A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and
- (B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

(4)(a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.

(b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.

(c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.

(5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility shall display the proof of registration on the premises of the medical marijuana

facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.

(6)(a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry

identification cardholder, to receive the usable marijuana or immature marijuana plants.

(b) A registered medical marijuana facility shall maintain:

(A) A copy of each authorization form described in paragraph (a) of this subsection; and

(B) Documentation of each transfer of usable marijuana or immature marijuana plants.

(7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.

(8) The authority may inspect:

(a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and

(b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.

(9)(a) A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section 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.

(b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section 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.

(10) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346 or rules adopted under ORS 475.300 to 475.346. The authority may release to the public a final order revoking a medical marijuana facility registration.

(11) The authority shall adopt rules to implement this section, including rules that:

(a) Require a medical marijuana facility registered under this section to annually renew that registration; and

(b) Establish fees for registering and renewing registration for a medical marijuana facility under this section. + }

SECTION 3. ORS 475.302 is amended to read:

475.302. As used in ORS 475.300 to 475.346:

(1) 'Attending physician' means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) 'Authority' means the Oregon Health Authority.

(3) 'Debilitating medical condition' means:

(a) Cancer, glaucoma, agitation due to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

(c) Any other medical condition or treatment for a medical condition adopted by the authority by rule or approved by the authority pursuant to a petition submitted pursuant to ORS 475.334.

(4) { + (a) + } 'Delivery' has the meaning given that term in ORS 475.005.

{ + (b) + } 'Delivery' does not include transfer of { + :

(A) + } Marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer { - . - } { + ;

(B) Usable marijuana or immature marijuana plants from a registry identification cardholder, the designated primary caregiver of a registry identification cardholder or a marijuana grow site to a medical marijuana facility registered under section 2 of this 2013 Act; or

(C) Usable marijuana or immature marijuana plants from a medical marijuana facility registered under section 2 of this 2013 Act to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder. + }

(5) 'Designated primary caregiver' means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the authority. 'Designated primary caregiver' does not include the person's attending physician.

(6) 'Marijuana' has the meaning given that term in ORS 475.005.

(7) 'Marijuana grow site' means a location where marijuana is produced for use by a registry identification cardholder and that is registered under the provisions of ORS 475.304.

(8) 'Medical use of marijuana' means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of the person's debilitating medical condition.

(9) 'Production' has the meaning given that term in ORS 475.005.

(10) 'Registry identification card' means a document issued by the authority that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(11) 'Usable marijuana' means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as

allowed in ORS 475.300 to 475.346. 'Usable marijuana' does not include the seeds, stalks and roots of the plant.

(12) 'Written documentation' means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records.

SECTION 4. ORS 475.304 is amended to read:

475.304. (1) The Oregon Health Authority shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the authority that includes:

(a) The name of the person responsible for the marijuana grow site;

(b) The address of the marijuana grow site;

(c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and

(d) Any other information the authority considers necessary.

(2) The authority shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.

(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.

(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder { + , or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a medical marijuana facility registered under section 2 of this 2013 Act, + } upon request.

(6)(a) The authority shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated

with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed.

(8) The authority may adopt rules imposing a fee in an amount established by the authority for registration of a marijuana grow site under this section.

SECTION 5. ORS 475.309 is amended to read:

475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:

(a) { + (A) + } The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section, is the designated primary caregiver of the cardholder or applicant, or is the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304; and

{ - (b) - } { + (B) + } The person who has a debilitating medical condition, the person's primary caregiver and the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for medical use in amounts allowed under ORS 475.320 { - . - } { + ; or

(b) The person is responsible for or employed by a medical marijuana facility registered under section 2 of this 2013 Act and does not commit any of the acts described in this subsection anywhere other than at the medical marijuana facility. + }

(2) The Oregon Health Authority shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the authority shall issue a registry identification card to any person who pays a fee in the amount established by the authority and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician;

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application; and

(e) A written statement that indicates whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location.

(3) The authority shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the authority. A county health department that receives the information pursuant to this subsection shall transmit the information to the authority within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the authority.

(5)(a) The authority shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(b) In addition to the authority granted to the authority under ORS 475.316 to deny an application, the authority may deny an application for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section;

(B) The authority determines that the information provided was falsified; or

(C) The applicant has been prohibited by a court order from obtaining a registry identification card.

(c) Denial of a registry identification card shall be considered a final authority action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the authority's action.

(d) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the authority or a court of competent jurisdiction.

(6)(a) If the authority has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(b) of this section is applicable, the authority shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

(C) The name and address of the person's designated primary caregiver, if any;

(D) Whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location; and

(E) Any other information that the authority may specify by rule.

(b) When the person to whom the authority has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the authority shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the authority of any change in the person's name, address, attending physician or designated primary caregiver.

(B) If applicable, notify the designated primary caregiver of the cardholder { + , + } { - and - } the person responsible for the marijuana grow site that produces marijuana for the cardholder { + and any person responsible for a medical marijuana facility that transfers usable marijuana or immature marijuana plants to the cardholder under section 2 of this 2013 Act + } of any change in status including, but not limited to:

(i) The assignment of another individual as the designated primary caregiver of the cardholder;

(ii) The assignment of another individual as the person responsible for a marijuana grow site producing marijuana for the cardholder; or

(iii) The end of the eligibility of the cardholder to hold a valid registry identification card.

(C) Annually submit to the authority:

(i) Updated written documentation from the cardholder's attending physician of the person's debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8)(a) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the person's debilitating medical condition shall return the registry identification card and any other associated Oregon Medical Marijuana Program cards to the authority within 30 calendar days of notification of the diagnosis or notification of the contraindication.

(b) If, due to circumstances beyond the control of the registry identification cardholder, a cardholder is unable to obtain a second medical opinion about the cardholder's continuing

eligibility to use medical marijuana before the 30-day period specified in paragraph (a) of this subsection has expired, the authority may grant the cardholder additional time to obtain a second opinion before requiring the cardholder to return the registry identification card and any associated cards.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the authority pursuant to subsection (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the authority. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied.

(10) { + (a) + } A registry identification cardholder has the primary responsibility of notifying the { + designated + } primary caregiver

{ - and - } { + , + } { + the + } person responsible for the marijuana grow site that produces marijuana for the cardholder

{ + and any person responsible for a medical marijuana facility that transfers usable marijuana or immature marijuana plants to the cardholder under section 2 of this 2013 Act + } of any change in status of the cardholder.

{ + (b) + } If the authority is notified by the cardholder that a primary caregiver or person responsible for a marijuana grow site has changed, the authority shall notify the primary caregiver or the person responsible for the marijuana grow site by mail at the address of record confirming the change in status and informing the caregiver or person { + responsible for the marijuana grow site + } that their card is no longer valid and must be returned to the authority.

(11) The authority shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the authority within seven calendar days of notification of the revocation. If the cardholder is a patient, the patient shall return the patient's card and all other associated Oregon Medical Marijuana Program cards.

{ + (12) The authority shall revoke the registration of a medical marijuana facility registered under section 2 of this 2013 Act if a court has issued an order that prohibits the person responsible for the medical marijuana facility from participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346. + }

{ - (12) - } { + (13) + } The authority and employees and agents of the authority acting within the course and scope of their employment are immune from any civil liability that might be incurred or imposed for the performance of or failure to perform duties required by this section.

SECTION 6. ORS 475.320 is amended to read:

475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(b) Notwithstanding paragraph (a) of this subsection, if a

registry identification cardholder has been convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

(2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow site:

(a) May produce marijuana for and provide marijuana { + :

(A) + } To a registry identification cardholder or { - that person's - } { + a cardholder's + } designated primary caregiver as authorized under this section { - . - } { + ; or

(B) If the marijuana is usable marijuana or an immature marijuana plant and the registry identification cardholder authorizes the person responsible for the marijuana grow site to transfer the usable marijuana or immature marijuana plant to a medical marijuana facility registered under section 2 of this 2013 Act, to the medical marijuana facility. + }

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for whom marijuana is being produced.

(c) May produce marijuana for no more than four registry identification cardholders or designated primary caregivers concurrently.

(d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304 for each registry identification cardholder or designated primary caregiver for whom marijuana is being produced.

(e) Must provide all marijuana produced for a registry identification cardholder or designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.

(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule of the Oregon Health Authority.

(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the authority for each registry identification cardholder for whom the person responsible for the marijuana grow site is producing marijuana.

SECTION 7. ORS 475.323 is amended to read:

475.323. (1) Possession of a registry identification card

{ - or - } { + , + } designated primary caregiver identification card pursuant to ORS 475.309 { + or proof of registration as a medical marijuana facility under section 2 of

this 2013 Act + } does not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency. { + However, the Oregon Health Authority may inspect a medical marijuana facility registered under section 2 of this 2013 Act at any reasonable time to determine whether the facility is in compliance with ORS 475.300 to 475.346. + }

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers may not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or the district attorney's designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. The determination may be evidenced, for example, by a decision not to prosecute, the dismissal of charges or acquittal.

SECTION 8. ORS 475.331 is amended to read:

475.331. (1)(a) The Oregon Health Authority shall create and maintain a list of the persons to whom the authority has issued registry identification cards, the names of any designated primary

{ - caregivers and the addresses of authorized marijuana grow sites. - } { + caregivers, the names of persons responsible for a medical marijuana facility registered under section 2 of this 2013 Act, the addresses of authorized marijuana grow sites and the addresses of registered medical marijuana facilities. + } Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

(b) The authority shall develop a system by which authorized employees of state and local law enforcement agencies may verify at all times that { + : + } { - a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. - }

{ + (A) A person is a lawful possessor of a registry identification card;

(B) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(C) A location is an authorized marijuana grow site;

(D) A location is a registered medical marijuana facility; or

(E) A person is the person listed as the person responsible for a registered medical marijuana facility. + }

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the authority as necessary to perform official duties of the authority { + . + } { - ; and - }

(b) Authorized employees of state or local law enforcement agencies, { + who provide to the authority adequate identification, such as a badge number or similar authentication of authority, + } only as necessary to verify that { + : + }
 { - a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. Prior to being provided identifying information from the list, authorized employees of state or local law enforcement agencies shall provide to the authority adequate identification, such as a badge number or similar authentication of authority. - }

{ + (A) A person is a lawful possessor of a registry identification card;

(B) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(C) A location is an authorized marijuana grow site;

(D) A location is a registered medical marijuana facility; or

(E) A person is the person listed as the person responsible for a registered medical marijuana facility. + }

(3) Authorized employees of state or local law enforcement agencies that obtain identifying information from the list as authorized under this section may not release or use the information for any purpose other than verification that { + : + } { - a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. - }

{ + (a) A person is a lawful possessor of a registry identification card;

(b) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(c) A location is an authorized marijuana grow site;

(d) A location is a registered medical marijuana facility; or

(e) A person is the person listed as the person responsible for a registered medical marijuana facility. + }

SECTION 9. { + (1) Sections 1 and 2 of this 2013 Act and the amendments to ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331 by sections 3 to 8 of this 2013 Act become operative on March 1, 2014.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority by sections 1 and 2 of this 2013 Act and the amendments to ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331 by sections 3 to 8 of this 2013 Act. + }

SECTION 10. { + Notwithstanding any other law limiting expenditures, the amount of \$803,276 is established for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Health Authority for administrative and operating expenses incurred in implementing section 2 of this 2013 Act and the amendments to ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331 by sections 3 to 8 of this 2013 Act. + }

SECTION 11. { + This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an

emergency is declared to exist, and this 2013 Act takes effect on
its passage. + }

Exhibit B

Newspaper Articles

Buckley: State marijuana law trumps city law

Ashland Democrat says ordinances that ban pot dispensaries are a local overreach

By Damian Mann

Mail Tribune

October 16, 2013 2:00 AM

Oregon law will trump any local ordinances that attempt to ban medical marijuana dispensaries, Rep. Peter Buckley warned Tuesday.

"The city of Medford cannot regulate medical marijuana differently than the state," Buckley said.

Medford officials passed an ordinance on Sept. 5 that allows for the revocation or denial of a business license to anyone engaged in illegal activities based on federal, local or state laws. Marijuana is a controlled substance under federal law.

The ordinance was created as a response to Buckley-sponsored House Bill 3460, which will set up medical marijuana dispensaries around the state regulated by the Oregon Health Authority.

HB 3460 will not take effect until March 2014, after a rule-making committee establishes the legal framework for regulating pot dispensaries.

Buckley said it is not legal to operate a dispensary until HB 3460 takes effect.

On Tuesday, Buckley said he'd received many calls about the marijuana issue, noting he wished there was as much interest in education funding.

Because many of the questions revolved around whether a city could ban dispensaries, Buckley said he contacted the Legislative Counsel's office and received an opinion Tuesday that local ordinances cannot be used to block the implementation of state law.

"State law will trump local ordinances," he said.

Buckley said the law gives the state the authority to regulate dispensaries, and cities cannot preempt those rules.

Cities will have some discretion in determining times and manner of operations, he said.

Though marijuana is an illegal drug under federal law, states with medical or recreational-use marijuana laws won't be prosecuted by the U.S. government as long as there's no money laundering, sales to minors or growing on public lands, the U.S. attorney general has said.

Medford police Chief Tim George said he couldn't comment on questions about how Medford's ordinance on pot dispensaries might be trumped by state law.

"These are legal questions that are best referred to the city attorney," he said.

Calls made to the Medford city attorney's office were not immediately returned Tuesday.

The dispensaries can't be located within 1,000 feet of each other or a school.

A dispensary can be operated by anyone who doesn't have a felony record. The clinic cannot make a profit, though it can pay employees a wage and health insurance. The owner can also receive a salary.

Andrea Adams, a local medical cannabis advocate, said she expects resistance from cities in Oregon to the dispensary law.

She said there have been varying opinions about how much local cities can do to get around the law.

"It seems like a good option for communities here to open up a revenue stream and let dispensaries be a positive part of the community," she said.

Reach reporter Damian Mann at 541-776-4476, dmann@mailtribune.com or [@reporterdm](https://twitter.com/reporterdm).

Medford bans marijuana dispensaries

State Rep. Buckley calls move 'a huge overreaction' before rules are shaped

By Damian Mann

Mail Tribune

October 15, 2013 2:00 AM

Absolutely no medical marijuana dispensaries will be allowed in Medford despite a state law that makes them legal next year, city officials have decided.

MaryJane's Attic in the WinCo shopping center received a revocation of its business license on Sept. 26 for dispensing marijuana, according to Medford police Chief Tim George. Owners of MaryJane's declined to comment.

Dispensing medical marijuana violates federal law and currently violates state law, George said.

"I don't see how you could license unlawful activity," he said.

The City Council on Sept. 5 unanimously approved expanding an ordinance to deny or revoke a business license if the business is in violation of local, state or federal law. Previously, the ordinance only described how the business had to be conducted in a lawful manner.

The city had previously revoked business licenses for Southern Oregon NORML, Puffin' Stuff and The Green Compass in May after raids by police.

George said the ordinance will address Oregon House Bill 3460, which will authorize opening state-regulated medical marijuana dispensaries next year but allow some latitude for local jurisdictions to create their own regulations.

A state committee is in the process of generating rules for HB 3460 that will be rolled out next year.

After the rules are in place, George said, "The city will be relying on federal law."

Under existing state law, Oregon's 55,000 medical marijuana cardholders can grow pot themselves or find a person to grow it for them. The new law offers an additional option of purchasing medicine from state-regulated medical marijuana retail outlets.

Rep. Peter Buckley, an Ashland Democrat who helped craft HB 3460, said it's premature for local governments to pass ordinances before the rule-making process.

"I think it's a huge overreaction," Buckley said. "I think the fears are unreasonable."

Buckley said the state attorney general and the Oregon League of Cities both have endorsed HB 3460, which attempts to create a professionally run network of dispensaries throughout the state that will help cut down on the black market.

Buckley said members of law enforcement are on the committee that will be devising the rules for the House bill.

"I encourage people to take a deep breath and work with the rule-making process," he said.

Buckley said it is premature for clinics to set up shop to dispense medical marijuana ahead of the rule-making, though he said the Portland area already has dispensaries.

An outright ban on dispensaries in a community is not the intent of the House bill, Buckley said.

"To me, again, it seems like a very extreme move," he said.

He said there are many state laws that potentially conflict with federal law.

Theoretically, Buckley said, a law enforcement officer could arrest a medical marijuana cardholder for violating federal law, though that doesn't generally happen.

Councilor Bob Strosser, who voted for the ordinance, said, "I don't think we want to be in violation of any laws."

He said there are contradictions between federal and state law that need to be reconciled and are a potential "train wreck."

"The contradictions are what is troubling," he said.

Marijuana advocates decry the efforts by the city to rely on federal law rather than on HB 3460.

"We've put out a battle cry across the state," said Lori Duckworth, who formerly ran SONORML. "We're going to try to hit this head on."

Duckworth and her husband were arrested in a series of medical marijuana dispensary raids in May. The couple are facing racketeering and a host of other charges, including 11 counts each of conspiracy to deliver marijuana within 1,000 feet of a school and 11 counts each of manufacturing marijuana within 1,000 feet of a school.

Duckworth, whose case is still ongoing, said her organization has become Southern Oregon Community Center and Clinic at 815 Bennett Ave., Medford. She resigned as executive director and is only an adviser to the organization.

"SONORML is gone," she said.

Reach reporter Damian Mann at 541-776-4476, dmann@mailtribune.com or @reporterdm.

Exhibit C

Legislative Counsel Opinion



JOHN A. KITZHABER, MD
Governor

August 14, 2013

The Honorable Kate Brown
Secretary of State
136 State Capitol
900 Court Street, NE
Salem, OR 97301

Dear Secretary Brown:

Today, I am signing enrolled House Bill 3460, which authorizes the Oregon Health Authority to establish procedures to license and regulate medical marijuana dispensaries. Nothing in this law protects the dispensaries, growers, caregivers or patients from federal prosecution. I have received many requests to veto this bill, but I am signing it after careful consultation with members of my staff as well as the Director of the OHA.

I understand the concerns opponents of HB 3460 have expressed, and share those concerns to a certain extent. I have asked the Director of the OHA to broadly engage all of the stakeholders, including law enforcement, when promulgating the rules regarding dispensaries. The bill itself does provide OHA with the authority to inspect and audit the financial records of the dispensaries, and I believe it will be critical to set fees for dispensaries that will provide sufficient funding to OHA so that they can be extraordinarily vigorous in their enforcement of the rules that are developed.

There are two main goals we wish to achieve: first, we want to ensure the overall safety of our communities through appropriate rules to license and regulate dispensaries and second, we want to allow the patients safe access to marijuana if they are eligible for treatment under the Oregon Medical Marijuana Program.

It is my hope that if these goals are not achieved under HB 3460 as written, that its sponsors will be open to fine-tuning the legislation in future sessions.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Kitzhaber".

John A. Kitzhaber, M.D.
Governor

LJR/smg



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

November 5, 2013

Representative Peter Buckley
900 Court Street NE H272
Salem OR 97301

Re: Regulation of Medical Marijuana Dispensaries

Dear Representative Buckley:

You have asked us whether either chapter 4, Oregon Laws 2013 (special session) (Senate Bill 863), or chapter 726, Oregon Laws 2013 (House Bill 3460), preempts a local government from restricting or prohibiting the operation of a state-registered medical marijuana facility within the jurisdiction of the local government. We understand your question to arise from the announced intention of a municipality to deny business licenses to medical marijuana facilities on the grounds that operation of the facilities would violate the federal Controlled Substances Act (CSA), 21 U.S.C. 801 et seq.

We conclude that SB 863 may present some barriers to municipal attempts to specifically target medical marijuana facilities. We conclude that HB 3460 preempts most municipal laws specifically targeting medical marijuana facilities. Finally, we conclude that while a municipality may not be required to violate federal law to comply with a conflicting state law, a municipality may not act contrary to state law merely because the municipality believes that the action will better carry out the purposes and objectives of federal law.

Before reviewing the specific provisions of the CSA, SB 863 and HB 3460, we believe that it is helpful to review and discuss the law concerning home rule and state preemption.

Article IV, section 1, Article VI, section 10, and Article XI, section 2, of the Oregon Constitution, act as limitations on state regulation of local charters and acts of incorporation. The provisions affirm the right of a municipality to select the form of municipal government and to exercise police power (regulate for the common health and welfare) within the municipality. See generally La Grande/Astoria v. Public Employees Benefit Board, 281 Or. 137, 576 P.2d 1204 (1978), adhered to on rehearing 284 Or. 173, 586 P.2d 765 (1978). The general rule for noncriminal matters is that a municipality may enact ordinances regarding matters that are primarily of local concern, provided that the ordinances do not conflict with state law.

If a matter is primarily of state concern, or is of both state and local concern, the matter becomes more complicated. A state law that addresses a concern with the structure or policies of a municipality must be justified by a need to safeguard the interests of the persons or entities affected by the procedures of the municipality. However, if a state law primarily addresses substantive social, economic or other regulatory objectives, the state law prevails over a contrary municipal policy concern. See La Grande/Astoria. State law is generally presumed to not displace a local law that regulates local conditions absent a clear intent to do so, but state

law will prevail over a conflicting local law even without a clear expression of intent to preempt the municipal law. Springfield Utility Board v. Emerald People's Utility District, 191 Or. App. 536, 84 P.3d 167 (2004), aff'd, 339 Or. 631, 125 P.3d 740 (2005).

Section 2 of SB 863 finds and declares the existence of a paramount state interest and a need to safeguard economic concerns against contrary municipal concerns. Section 3 of SB 863 expressly prohibits a local government from adopting or enforcing any local law or measure "to inhibit or prevent the production or use of agricultural seed, flower seed, nursery seed or vegetable seed or products of agricultural seed, flower seed, nursery seed or vegetable seed." The definitions for agricultural seed, flower seed, and vegetable seed are established in statute. Nursery seed is defined in SB 863 as any propagant of "nursery stock," which is defined in ORS 571.005 to include plants and plant parts of a type kept for propagation or sale. We presume that SB 863 is to be construed in harmony with other state laws and therefore interpret the term "nursery seed" as referring only to propagants of those plants or plant parts that may be propagated and sold without violating state law. To the extent that the state has authorized the propagation and distribution of medical marijuana, we believe that medical marijuana falls within the statutory definition of nursery stock and is therefore within the coverage of SB 863. Although SB 863 does not state what constitutes a product of nursery seed, we believe that the definitions require that products of nursery seed include, at a minimum, marijuana plants or parts of marijuana plants. Whether State Department of Agriculture rules for the administration of SB 863 will define nursery seed products in a manner that includes resins, salts or other items falling within the ORS 475.005 definition of marijuana cannot be determined at this time.

Since medical marijuana plants and plant parts are nursery seed products for purposes of SB 863, a local government may not adopt or enforce any local law or measure to prevent or inhibit the production or use of medical marijuana seeds or seed products under conditions allowed by state law, including but not limited to the growing, possession or distribution of medical marijuana by a registered medical marijuana facility. We hasten to add, however, that SB 863 does not act as a barrier to local government enforcement of state or federal laws, including but not limited to any criminal laws, regarding the growing, possession or distribution of marijuana that is not expressly allowed under state law. Nor does Senate Bill 863 act as a barrier to the adoption of local criminal ordinances regarding marijuana other than medical marijuana. See, e.g., State v. Tyler, 168 Or. App. 600, 7 P.3d 624 (2000) (local government has broad authority under Article XI, section 2, of Oregon Constitution, to adopt criminal ordinances unless the local ordinance is incompatible with state law such as by criminalizing behavior that state law has decriminalized, unless state and local law cannot operate concurrently or unless legislature intended state law to be exclusive).

We interpret the SB 863 prohibition on local laws "to inhibit or prevent the production or use" of nursery seed and seed products to mean that a local law may not have the purpose of preventing or inhibiting production or use. The purpose of a local law may be express or may be inferred by the local law having a material impact on production or use. We do not believe that SB 863 prohibits a local law of general application that treats the production and use of nursery seed equally with other activities or that has only an incidental effect on production or use. For instance, a city could require that a state-registered medical marijuana facility comply with a city ordinance requiring a license for all businesses but could not enact or enforce the city ordinance in a manner that is intended to prevent or materially inhibit, or has the effect of preventing or materially inhibiting, the growing, possession or distribution of medical marijuana by a registered facility.

HB 3460 requires the Oregon Health Authority to adopt rules establishing a registration system for facilities to dispense medical marijuana to cardholders registered as provided under the Oregon Medical Marijuana Act (OMMA) or to caregivers for those cardholders. The bill sets forth the registration qualifications that a facility and its operator must meet and requires the authority to issue a facility registration if the facility and operator qualify. HB 3460 lacks express preemption language. Preemption may, however, also occur when state law is so pervasive as to occupy a field. There is no uniform test for occupation preemption. Occupation of one aspect of a field may leave other aspects of the field open to local regulation, so determining the existence of preemption by occupation must rely on a case-by-case evaluation of the state law.

Section 2 (1) of HB 3460 requires the Oregon Health Authority to establish a registration system "to authorize the transfer" of usable marijuana and immature marijuana plants from a cardholder or caregiver to the person responsible for a medical marijuana facility and from a medical marijuana facility to a caregiver or cardholder. Section 2 (3) sets out the qualifications that a medical marijuana facility must meet to obtain a state registration. Section 2 (5) provides that if an application is properly submitted, the facility meets the subsection (3) qualifications and the person to be responsible for the facility passes a criminal background check, the authority "shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration." Taken together, the provisions do not provide for a local government to impose additional requirements for the issuance of a state registration or require a facility to also obtain a local registration. That limitation is insufficient by itself to indicate that the state intended to preempt all aspects of the field of medical marijuana dispensaries, so it is necessary to determine whether and to what extent the adoption of local laws regarding medical marijuana facilities might conflict with HB 3460.

Since conflict due to impossibility is rare, we focus on whether and to what extent a local law regarding a state-registered medical marijuana facility might stand as an obstacle to the accomplishment and execution of the full purpose and objectives of House Bill 3460. Having already described section 2 of the bill, we believe it helpful to examine the legislative history to determine the purposes and objectives behind HB 3460. Multiple exhibits introduced for House Bill 3460 suggest a few primary purposes and objectives. In no particular order, those purposes and objectives were to: 1) Ensure that medical marijuana cardholders who are unable or unwilling to grow their own medical marijuana have access to a reliable source of medical marijuana; 2) ensure that medical marijuana obtained by cardholders is safe and of known quality; 3) discourage cardholder support of black-market marijuana sources; 4) supply law enforcement with information that would allow law enforcement to better distinguish lawful grow sites and suppliers from unlawful grow sites and suppliers; and 5) ensure a consistent and uniform approach throughout the state to law enforcement regarding medical marijuana facilities.

In light of the legislative history, we believe that a local law that prevents or materially restricts the operation of medical marijuana facilities would stand as an obstacle to the accomplishment and execution of the purposes and objectives of HB 3460 and would therefore be preempted. A local law that restricts medical marijuana facilities by imposing different criteria from criteria affirmatively established in HB 3460 would also conflict with the purposes and objectives of HB 3460 and therefore be preempted. It may be possible, though, for some types of local law to place a minor restriction on medical marijuana facilities that is sufficiently insignificant to avoid conflicting with the purposes and objectives of HB 3460. For instance, a local law that imposes special traffic control measures around medical marijuana facilities might not conflict with the purposes and objectives of HB 3460 as long as the measures did not unduly interfere with the operation of the facilities. We note, though, that validity of such a law under SB

863 cannot be determined until the State Department of Agriculture has adopted rules for implementing that bill.

As a final matter, we address the effect of state law and federal law conflict on the responsibilities of local government. It is common for state and local governments to engage in the enforcement of federal laws. However, Amendment X of the United States Constitution also stands for the proposition that the federal government may not require states or local jurisdictions to enforce federal laws. "It is well established that the federal government lacks constitutional authority to commandeer the policy-making or enforcement apparatus of the states by requiring them to enact or enforce a federal regulatory program." Willis v. Winters, 350 Or. 299, 253 P.3d 1058 (2011) (citing Printz v. United States, 521 U.S. 898, 925-931, 117 S. Ct. 2365, 138 L.Ed.2d 914 (1997), and New York v. United States, 505 U.S. 144, 161-169, 112 S. Ct. 2408, 120 L.Ed.2d 120 (1992)). Therefore, while local governments are subject to compliance with both federal and state law, the enforcement of federal law by local government is a discretionary act.

Whether a local government may invoke federal law to avoid compliance with state law depends on whether the federal law conflicts with and supersedes the state law. The CSA does not expressly preempt state laws regulating controlled substances, nor does it occupy the field of controlled substances regulation. 21 U.S.C. 903. The CSA instead provides that state law is not preempted "unless there is a positive conflict" between the federal law provision and the state law "so that the two cannot consistently stand together." Those words are the classic description of preemption by conflict. Conflict may exist either because it is impossible for a person to be in compliance with both the state and federal law or, much more commonly, where the state law stands as an obstacle to accomplishing and executing the full purposes and objectives of the federal law.

For purposes of this opinion we limit our discussion to the theoretical impact of a state law and federal law conflict on local government. We expressly do not venture any examination for potential conflicts between HB 3460 and the CSA.

With regard to local governments, state law will conflict with the purposes and objectives of a federal law if the state law requires a local government to take an action that is prohibited under federal law or prohibits the local government from performing an action required under the federal law. See, e.g., State v. Ehrensing, 255 Or. App. 402, 296 P.3d 1279 (2013) (holding that law enforcement was excused from complying with OMMA provision requiring return of seized medical marijuana where return would violate federal Controlled Substances Act prohibition on delivery of controlled substance). In examining whether a state law interferes with accomplishing and executing the full purposes and objectives of a federal law, both the purposes and objectives of the federal law and the effect of the state law must be precisely identified. If a municipality believes that compliance with state law would require the municipality to take an action that would stand as an obstacle to accomplishing and executing the purposes and objectives of a federal law, the municipality should seek an adjudication of the matter. A municipality may not, however, take an action that is contrary to state law merely because the municipality believes that the municipal action will better achieve the purposes and objectives of federal law. See Willis v. Winters (law enforcement could not refuse to issue concealed weapon permit to OMMA cardholder qualifying under state law on grounds that refusal would better achieve purposes of federal Gun Control Act).

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel



By
Charles Daniel Taylor
Senior Deputy Legislative Counsel