OLCC Recommendations on Marijuana Policy

Attachment A

	Subject	Reason	Action Type	Section	Solution
1	Age Verification Equipment	OLCC would like authority to require the use of age verification equipment in order to prevent sales to minors.	Commission Request		Allow OLCC discretion to require age verification equipment.
2	Bonding	Measure 91 does not require marijuana producers to have a bond to cover their tax obligations	Commission Request		Allow OLCC discretion to require producers to purchase a bond to cover tax obligations.
3	Civil Penalty Authority	With uncertainty surrounding the kinds of potential compliance problems that will be faced during implementation, ready authority to utilize civil penalties to gain compliance would provide flexibility as the agency encounters unanticipated issues.	Commission Request	30(2)	Match OLCC's alcohol civil penalty authority.
4	Confiscation of Marijuana	OLCC may need to confiscate or seize limited amounts of marijuana to establish violations. Examples may include: in the case of minor decoy operations; to verify origin of product; to hold product that is in excess of recorded amounts.	Commission Request	7(5)	Amend section 7(5) to make clear that OLCC can possess for purposes related to powers and duties, including seizure and sale as in ORS 473.100 and 473.110.

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5	Fees	There is no fee authority in Measure 91.	Commission Request		Allow the OLCC to impose fees beyond the application fee contemplated in Measure 91 to cover such issues as label approvals and changes in location.
6	Firearms	To comply with U.S. Department of Justice legal guidelines, OLCC would need statutory authority to ban firearms on licensed premises.	Commission Request		Given ORS 166.170(1), if OLCC wants to ban firearms on licensed premises, it likely would need specific statutory authority.
7	Insurance	It is the OLCC's intent that the business practices of its licensees match practices generally followed within the business community, the OLCC should have an ability to require liability protection.	Commission Request		Create provisions that give OLCC the discretion to require marijuana licensees to carry insurance.

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8	Investigatory Tools	The issuance of subpoenas compel production of documents or testimony. They are normal regulatory tools necessary for the OLCC to vigorously regulate marijuana just as it does alcohol. These tools are used to determine facts, determine compliance or charges of violations, and to provide evidence of violations for adjudication and sanctions.	Commission Request	7(2)	Create provisions parallel with ORS 471.760OLCC to issue subpoenas, compel production of documents and/or testimony.
9	Lab Testing License	There is no license for labs to hold marijuana and test it for other licensees. This license is necessary to set quality control and health and safety standards.	Commission Request		Create a lab testing license. OLCC will then set the testing standards by rule.

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10	Laboratory Certification	There is widespread agreement on the deficiencies of labs testing marijuana products for potency, solvents, mold, pesticides and other agents related to public health and safety. A clear testing standard and independent lab certification should be required by OLCC.	Commission Request		Establish a third party lab certification process.
11	Limitations on Co-location of Licensees	OLCC may find it necessary to not allow multiple license types at the same location and would put the reason in rule. To clarify that this is a delegated power of the OLCC we would like to have it statutorily clarified.	Commission Request		Statutory authority to allow OLCC to limit license types at a single location.

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12	Origin of Seeds & Plants	Since seeds, cuttings, or small or mature plants are necessary for establishing a licensed facility, and the legislature should want to clarify the means by which initial grow stock is established for a regulated grow. Medical card grow inventory and cuttings legally regulated by the State of Oregon may be made available to those wishing to establish recreational grows.	Commission Request		Statutory direction for seed and plant origins.
13	Overlapping ODA jurisdiction	The Oregon Department of Agriculture and the OLCC have been working cooperatively to clarify and understand the extent of dual regulation required and to identify the need for authority changes. In most cases, ODA and OLCC will have dual responsibilities.	Commission Request		Amend statutes to deal with licensees who will be subject to licensure by both ODA and OLCC.

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14	Payment of Tax	With a seed to sale tracking system, producers will know immediately for every sale, what tax is owed. There is no reason to wait almost two months for tax to be paid. This will allow for efficient tax collection. OLCC should be authorized to enable electronic payment of taxes if legal means are available and licensee has capability to do so.	Commission Request	34, 35	Amend Section 34 & 35 to require tax to be reported and paid in an efficient and reasonable manner as set by rule of the Commission.
15	Peace Office Authority	Providing the OLCC with equivalent Peace Officer Authority would allow the Commission to utilize the same discretion it has for enforcement of administrative and criminal violations of alcohol law. This would create potential efficiencies as existing experienced personnel could be cross trained to regulate both alcohol and marijuana.	Commission Request		Create peace officer authority over marijuana licensees similar to what is in ORS 471.775.

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16	Possession of Marijuana by Government Entities	ODA, OHA, and DEQ may all have a need to possess amounts of marijuana for compliance, and enforcement. There are no provisions that would protect individuals from criminal laws related to possession. State agencies with a need to possess limited amounts of marijuana for regulatory compliance should be authorized to do so. To effect this ability, protection of the regulatory workforce from violation of criminal laws related to possession is a practical step.	Commission Request		Add a statutory section that allows any government agency with some jurisdiction over marijuana licensees or that is involved in the testing of marijuana an exception from criminal laws related to marijuana.
17	Potential Overlap between Medical and Recreational	The OLCC desires to implement Measure 91 in full compliance with US Department of Justice guidance and would not want the integrity of that approach to be compromised by allowing product into the system that has not been subject to vigorous regulation.	Commission Request		If system integration is contemplated, require medical products that come into the recreational system to be subject to all of the standards recreational system.

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18	Presenting Identification for Age	One of the most important responsibilities of the OLCC will be to prevent minors from gaining access to marijuana, the OLCC should have broad authority to require necessary I.D. check regulations to deny entry to any licensed location. Sec 16 implies that a retailer only has to check ID if there is a question about a person's age. OLCC would like the ability to mandate checking ID if it deems necessary.	Commission Request	16	Amend this Section to allow OLCC to set by rule when IDs will be checked.
19	Processing Licenses	The OLCC would like to be able to develop license sub-categories for processors since this category is inclusive of diverse processing activities, some of which are increasingly complex and pose added regulatory challenges.	Commission Request	5(26),18	Allow OLCC to create three sub-categories of processor licenses: 1) Packaging; 2) Concentrates; and 3) Manufactured Products.
20	Producer Packaging for Sale	Producers should be able to package bulk product for retail sale without holding an additional processor license	Commission Request	5(27)	Allow OLCC to define packaging at the producer level or incorporate certain packaging privileges via an endorsement to the producer license.

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21	Regulatory Authority	The OLCC has operated with broad authority to protect public health and safety in alcohol regulation and has use that authority responsibly, providing similar statutory authority for the protection of the public in marijuana regulation would be a prudent and consistent.	Commission Request		Give OLCC authority to adopt rules to protect public health and safety.
22	Retail Packaging for Sale	Retail outlets may wish to receive bulk flower product from a producer and package that into individual packages without having to hold and additional processor license.	Commission Request		Allow OLCC discretion to define packaging at the retail level or incorporate certain packaging privileges via an endorsement to the retail license.
23	Review of Books and Records for Cause/Emergency	Given the nature of the product and that it is still illegal federally, the OLCC believes that with cause and in the case of an emergency, it should have an ability to immediately access books and records. Its regulations regarding licensing should support business practices that keep the books and records in an accessible manner.	Commission Request	23	Amend Sec. 23 to permit authority to examine if cause/emergency exists rather than the 72 hour provision in the Measure.

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24	Seed to Sale Tracking System	OLCC intends to implement an electronic marijuana tracking system that uses radio frequency tracking technology to monitor the growing, processing, wholesaling, retailing and transportation of marijuana products in the recreational system to comply U.S. Department of Justice legal guidelines. Authorization of this system would make clear state law affirms this implementation choice.	Commission Request		Grant specific authority for use of seed to sale tracking for all license types and that the system will be available to transportation, local government, and state government in order to account for marijuana they may encounter in the scope of their duties.
25	Server Permits	Servers of alcohol hold permits issued by the OLCC and must pass a background check and take mandatory education. Also, permitted servers are held accountable for liquor law violations. Issues have been raised regarding whether employees of marijuana licensees should be similarly licensed.	Commission Request		Require employees of marijuana licenses to hold a permit as a condition of employment.

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26	Use of Marijuana in a Vehicle	The prohibition of any use of marijuana in a car is consistent with the protection of public safety. The Measure prohibits using marijuana while driving but not in a car.	Commission Request		Prohibit use of marijuana in a car in a manner that mirrors the open container prohibition in ORS 811.170.
27	Commission Membership	The OLCC was formed to regulate alcohol and the ballot measure clearly designated the OLCC as the body charged with regulation of marijuana, however, the OLCC has no industry representation requirement for a member from the marijuana industry. The OLCC currently has one member designated as a representative of the alcohol industry.	Other		Require at least one person from marijuana industry be on Commission. (May create problems with federal law.)
28	Contraband in Correctional Facilities	There is inconsistency between Measure 91 and other state law regarding the penalties for bringing marijuana into a correctional facility.	Other	55	Harmonize criminal penalty in Section 55 and ORS 162.185 or repeal section 55.

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29	Definition of marijuana product.	It is not clear whether concentrates produced without the use of chemical solvents would be defined as marijuana products under Sec 5 (19).	Other	5(19)	Expand definition of marijuana products to explicitly include these products.
30	Electronic Fund Transfer	OLCC may need authority to require electronic fund transfer for the payment of taxes, application fees and license fees.	Other		Allow OLCC discretion to require electronic fund transfer payment.
31	Home Delivery	Unclear what "bona fide order" means in the context of marijuana legalization. Concern that might lead to push for home delivery.	Other	27	Does the legislature want to allow home delivery?
32	Marijuana Lounges/Bars	There is a lack of clarity surrounding the issue of private lounges or clubs that only would allow members to access a private premises. This raises the question of should marijuana use be allowed at lounges if it is not served and sold or, should these potential social uses of marijuana be banned.	Other		Licensing or authority for marijuana lounges/bars.

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33	Name of Commission	The nature of OLCC regulation is changing and the question of changing the name of the Commission is raised by that change.	Other		Change Commission name to reference new cannabis authority.
34	Racketeering Law	Racketeering as a crime includes alcohol but the Measure did not include this for marijuana. Historical criminal relationships and cartels are a present threat to a well-regulated recreational marijuana system and providing for the application of racketeering crimes to marijuana is a tool to ensure the integrity of the recreational program.	Other		Amend measure 91 to include the definition contained in ORS 166.715(6)(a)(BB).
35	Residency Requirement	Residency requirement is a policy issue with implications for public safety and economic security. Since marijuana is not available for interstate commerce and legal only within the state, limiting licensing to residence of that state is an option available to the legislature.	Other	29	Enact residency requirement and requirement for formation of business entity in Oregon of both the applicant an the business entity.

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36	1000 Feet of a School	As written, the OLCC could approve license applications within 1000 feet of a school but the business would violate Criminal Law. While OLCC could manage this issue by rule, cleaning up the statutes would provide policy clarity.	Technical Fix	7, 29(2)(a)	Specify no licensees within 1000 feet of a school.
37	Age Discrimination	Being able to insure that minors do not access marijuana is of the highest priority for OLCC. There are statutes that make it clear that it is not age discrimination to enforce age restrictions against minors consuming alcohol or frequenting a place that serves alcohol or liquor. The same should be made clear for enforcing the state's marijuana age restrictions.	Technical Fix		Add parallel provisions to ORS 659A.403(2) and 659A.409.
38	Controlled Substance Definition	For purposes of safety and clarity, marijuana as a controlled substance should be recognized in the Oregon Vehicle Code.	Technical Fix	72	Add definition of marijuana as a controlled substance in ORS 475.005 into the Oregon Vehicle Code.

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39	Definition of Extract/Concentrates	It is common practice for extracts to be made with vegetable glycerin or other non-toxic solvents and the regulation of extracts should cover the variation of industry practices in creating extracts. Given definition of "extract" not clear where a concentrate made with vegetable glycerin or other non-toxic solvents would fall. The statute should be changed to include these as marijuana products.	Technical Fix	5(19)	Expand definition of extract to include vegetable glycerin or other non-toxic solvents and allow the OLCC to regulate these and other extract processes.
40	Definition of Leaves	The measure only taxes flowers, leaves and immature plants. Definition of flower and immature plant is clear, definition of leaves is not. Leaves should be defined as everything that is not a flower or immature plant, exclusive of unusable waste material. This will reduce confusion and allow for effective tax collections.	Technical Fix	33	Clarify definition of leaves to be everything that is not flower or immature plant, exclusive of unusable waste material.

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41	Definition of Marijuana	Marijuana has been re-classified and is not in the plant family Moraceae. Further, the definition of marijuana should be the same as that in the Oregon Medical Marijuana Program (OMMP).	Technical Fix	5(12)(a)	Amend 5(12)(a) to read: "Marijuana" means all parts of the plant genus Cannabis within the plant family Cannabaceae , whether growing or not, other than marijuana extracts.
42	Definition of School	The definition of school has been a problem related to other state licensing activities, for the purposes of siting recreational marijuana licensees, OLCC believes a clear definition of "school" as a K-12 school with mandatory attendance would provide certainty for the licensing process.	Technical Fix	5	Add definition. K-12 with mandatory attendance.
43	Fingerprints & Background Checks	Without the authority to obtain fingerprints, background checks will not conclusively prove identity and OLCC may be limited from accessing certain criminal history data.	Technical Fix		Grant specific authority to allow OLCC to obtain fingerprints from applicants.

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44	Immature Plant Definition	The Measure and the OMMP define immature plant differently. There should be no distinction in the definition of immature plants between the medical and recreational program.	Technical Fix	5(9)(29)	Use the medical definition of immature plants.
45	Imposition of Tax Limitation	This raises concerns about tax collections after 36 months.	Technical Fix	34(3)	Clarify that tax can not be imposed after 36 months. (similar language used in ORS 473.060(3)).
46	License Renewal	The OLCC would like to have the flexibility to create an even work flow for license renewals. This will prevent large peaks of renewals following implementation. Generally, the license renewal should be due one calendar year from the date of issuance.	Technical Fix	26	Amend Section 26 to say that licenses are issued for a period of one year.
47	Licensee Possession Limits	The measure exempts individuals who hold marijuana licenses from certain marijuana offenses, but does not tie this exemption to operation of the licensed business.	Technical Fix	79(6)	Clarify that Section79(6) only applies to licensees when they are exercising privileges under their license.

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48	Minor Attempts to Purchase	Sec 49 reads "A person under 21 years of age may not attempt to purchase marijuana items." Similar provision in chapter 471 states a minor may not, "attempt to purchase, purchase or acquire marijuana items."	Technical Fix	49	Revise section in order to make it consistent with standards for alcoholic beverages.
49	ODOT Definition	ODOT is improperly referred to in the Measure as ODA and needs to be changed to ODOT.	Technical Fix	49(5)	Spell out ODOT rather than use "department."
50	Tax Collection	The measure is not clear that the OLCC has the authority to enforce liens for delinquent taxes. OLCC believes it should have strong fiduciary powers to collect taxes owed and to do so in a timely manner.	Technical Fix	37	Create authority for OLCC to enforce liens for delinquent taxes.

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51	Tax Deductions	Act permits tax deductions for business expenses for production and sale of things like meth, cocaine. The Legislature should consult with the Oregon Department of Revenue on the treatment of tax deductions for business expenses as they relates to income earned in the marijuana industry.	Technical Fix	71, 74	Limit tax deductions to business expenses connected with marijuana production and sale permitted under the Act; retain prohibition for all other deductions disallowed under IRC Section 280E.
52	Tax Records Retention	Records retention period shorter than time period for revenue to do tax audit. Consult with the Department of Revenue recommendation concerning the maintenance of records for the purposes of tax audits.	Technical Fix	39	Make records retention period longer.