

**IN THE OREGON TAX COURT  
REGULAR DIVISION**

**DESCHUTES COUNTY,**  
a political subdivision of the  
State of Oregon,  
Plaintiff,

v.

**DEPARTMENT OF REVENUE,**  
**DEPARTMENT OF ADMINISTRATIVE**  
**SERVICES, and**  
**OREGON LIQUOR CONTROL**  
**COMMISSION,**  
State of Oregon,  
Defendants.

TC No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY  
JUDGMENT**

Plaintiff alleges:

**I. STATEMENT OF FACTS**

1.

This action is a claim for declaratory judgment pursuant to Oregon’s Uniform Declaratory Judgment Act, ORS 28.010 *et seq.* (“UDJA”), specifically concerning the taxation of marijuana and marijuana products pursuant to ORS 475B.700 *et seq.*

2.

At all material times, Plaintiff Deschutes County (the “County”) was and is a political subdivision of the State of Oregon and formed under the laws of the State of Oregon.

**a. Statutes at Issue**

3.

ORS 475B.759 and 475B.760 establish the Oregon Marijuana Account as the recipient account for the majority of revenue generated by the taxation of marijuana and marijuana products in the state.

1 4.

2 Notwithstanding several codified exceptions dictating that distributions must temporarily  
3 also be made to the Oregon Liquor Control Commission (the “OLCC”) and the Oregon Criminal  
4 Justice Commission, ORS 475B.759(3)(b) directs the Department of Revenue (“DOR”) to make  
5 quarterly transfers of the entire Oregon Marijuana Account, with ten percent (10%) required to  
6 be transferred to Oregon cities (ORS 475B.759(3)(b)(A)), ten percent (10%) required to be  
7 transferred to Oregon counties (ORS 475B.759(3)(b)(B)), and the remaining eighty percent  
8 (80%) required to be utilized for enumerated programs such as the State School Fund, State  
9 Policy Account, or mental health or alcohol and drug abuse prevention programs (ORS  
10 475B.759(3)(c)).

11 5.

12 ORS 475B.759(3)(b)(B), subsections (i) and (ii) set forth a precise formula dictating each  
13 county’s quarterly share of the Oregon Marijuana Account. Subsection (i) concerns “marijuana  
14 producers” and dictates that each county’s share must equal the percentage of the “total  
15 commercially available area of all grow canopies ... in each county” compared to the “total  
16 commercially available area of all grow canopies ... located in this state.” Subsection (ii)  
17 concerns other types of marijuana businesses such as marijuana processors (ORS 475B.090),  
18 marijuana wholesalers (ORS 475B.100), and marijuana retailers (ORS 475B.105). Subsection  
19 (ii) further dictates that each county’s share must equal the percentage of the “number of licenses  
20 held ... in each county” for these other marijuana businesses compared to the “number of  
21 licenses held ... in this state.”

22 6.

23 ORS 475B.759(4), subsections (b) and (c) dictate the limited circumstances wherein a

1 county is not entitled to receive its share of the Oregon Marijuana Account. Subsection (b)  
2 specifies that “[a] county that has an ordinance prohibiting the establishment” of a marijuana  
3 producer “is not eligible to receive transfers of moneys under subsection [(i)]” discussed above.  
4 (Adopting such ordinances pursuant to ORS 475B.968 is commonly referred to as “opting out.”)  
5 Subsection (c) similarly specifies that “[a] county that has an ordinance prohibiting the  
6 establishment” of the other three types of marijuana businesses “is not eligible to receive  
7 transfers of moneys under subsection [(ii)]” discussed above.

8 7.

9 ORS 475B.759(6)(a) requires each county to certify with the Oregon Department of  
10 Administrative Services (“DAS”) by July 1 of each year if said county adopted an “opt out”  
11 ordinance “prohibiting the establishment” of marijuana producers and/or the three other  
12 enumerated marijuana businesses. ORS 475B.759(6)(c) further specifies that if a county initially  
13 “opted out” but later repeals such an “opt out” ordinance, that county would then be entitled to  
14 its share of the Oregon Marijuana Account. However, the distribution formulas discussed in  
15 paragraph 5 above dictate that such a county’s share of the Oregon Marijuana Account would be  
16 zero unless and until marijuana producers and/or other marijuana businesses are first licensed  
17 within the county. Nor does ORS 475B.759 provide for the opposite scenario, presumably based  
18 on the assumption that once “opted in” with marijuana producers and/or other marijuana  
19 businesses licensed and operating, no county could subsequently “prohibit the establishment” of  
20 said operating marijuana producers and/or other marijuana businesses.

21 8.

22 ORS 475B.077, first adopted in 2019, affirms pre-existing land use doctrines by  
23 clarifying that even if a county “opts out,” a previously-licensed marijuana producer becomes a

1 legal “nonconforming land use” and “may continue to be used to produce marijuana.”

2 ***b. Deschutes County’s Marijuana Ordinances***

3 9.

4 On June 1 and June 15, 2016, the County adopted Ordinances Nos. 2016-013, 2016-014,  
5 2016-015, 2016-016, 2016-017, 2016-018, and 2016-019 implementing comprehensive land use  
6 regulations for the marijuana industry in unincorporated Deschutes County. Those initial  
7 marijuana land use regulations were not appealed. With local regulations in place, on August 1,  
8 2016, the County effectively “opted in” by then adopting Ordinance No. 2016-012. Ordinance  
9 No. 2016-012 is attached as Exhibit 1.

10 10.

11 After “opting in” and gaining additional experience regulating the evolving marijuana  
12 industry, the County identified several weaknesses in its initial marijuana land use regulations.  
13 Accordingly, the County amended its initial land use regulations through the adoption of  
14 Ordinance No. 2018-012 on October 24, 2018. Ordinance No. 2018-012 is attached as Exhibit 2  
15 (attachments to the Ordinance omitted).

16 11.

17 On November 12, 2018, 12 petitioners appealed Ordinance No. 2018-012 to the Land  
18 Use Board of Appeals (“LUBA”) and raised new constitutional arguments not only challenging  
19 the amendments, but also the County’s initial marijuana land use regulations. In response to the  
20 12 petitioners’ constitutional arguments (that were not previously raised during local proceedings  
21 before the Deschutes County Board of County Commissioners), the County withdrew Ordinance  
22 No. 2018-012 for additional consideration, pursuant to ORS 197.830(13)(b).

23 ///

12.

During subsequent local public hearings on Ordinance No. 2018-012, concerned community members testified that the 12 petitioners' new arguments implicitly challenged not only the County's marijuana land use regulations, but also Oregon's entire recreational marijuana program. Public testimony further noted marijuana industry activists' repeated attempts to strip local governments' marijuana land use authority with legislation introduced in the 2017, 2018 and 2019 sessions. And, testimony from both marijuana proponents and concerned community members indicated that the County's attempts to use its land use authority to reach a compromise between the disparate groups had failed in significant part due to the state's classification of marijuana as a farm crop. Rather than being forced to defend the constitutionality of Oregon's entire program through defending Ordinance No. 2018-012, a significant portion of the written and oral public testimony instead urged the County to "opt out" — thereby allowing existing marijuana businesses to continue but precluding new businesses from being established. Pursuant to ORS 475B.968, any "opt out" ordinance adopted by the County at that point in time would be automatically referred to county voters at the next general election.

13.

Responding to the aforementioned public testimony, the County adopted Ordinances Nos. 2019-014 and 2019-012 on August 19, 2019, and September 3, 2019, respectively. Ordinance No. 2019-012 repealed Ordinance No. 2018-012 in its entirety. Ordinance No. 2019-012 is attached hereto as Exhibit 3. Ordinance No. 2019-014, frequently referred to as an "opt out," temporarily halted new applications for only marijuana producers and processors until the issue could be ultimately decided by county voters. Ordinance No. 2019-014 had no impact on

1 “existing marijuana business,” and neither were new or existing marijuana wholesalers and  
2 retailers impacted. Ordinance No. 2019-014 is attached as Exhibit 4.

3 14.

4 Despite the County’s stated intentions, following the adoption of Ordinance No. 2019-  
5 014, the OLCC stopped processing licensing applications for those marijuana businesses that had  
6 applied for or received land use permits from the County but had not yet completed the OLCC’s  
7 lengthy licensing process. To further clarify its original intent, on October 16, 2019, the County  
8 adopted Ordinance No. 2019-015, affirming that “Section 1 of Ordinance No. 2019-014 does not  
9 apply to an applicant who as of [October 16, 2019] has a pending production or processing  
10 license application before the OLCC and who applied for County land use approval/LUCS  
11 allowing marijuana production and/or processing prior to August 19, 2019.” Ordinance No.  
12 2019-015 is attached as Exhibit 5 (attachment to the Ordinance omitted as that document is  
13 included as a separate exhibit). (Collectively, Ordinance Nos. 2019-014 and 2019-015 are  
14 referred to as the “Moratorium Ordinances.”) Since passing Ordinance No. 2019-015, the OLCC  
15 again continued to process licensing applications for those marijuana producers and processors  
16 that applied for County land use permits prior to the passage of the County’s Moratorium  
17 Ordinances.

18 15.

19 Between August 2, 2016 and August 19, 2019, the County issued forty-nine (49) land use  
20 permits to marijuana producers.

21 16.

22 Of the forty-nine marijuana producers with County land use permits, to date at least  
23 twenty-two (22) have received licenses from the OLCC. (Four (4) such licenses were

1 subsequently cancelled by the OLCC.)

2 17.

3 To the County's knowledge, the operators holding twelve (12) of the aforementioned  
4 forty-nine permits presumably no longer intend to operate under their land use permits as those  
5 operators have not pursued licensure under OLCC.

6 18.

7 Two locally-denied applications are on appeal before the Land Use Board of Appeals  
8 ("LUBA") and the Oregon Court of Appeals.

9 19.

10 Since August 2, 2016, the County issued seven (7) permits to marijuana processors, three  
11 (3) permits to marijuana wholesalers, and two (2) land use permits to marijuana retailers.

12 20.

13 Of the permits listed in paragraph 19 above, the OLCC has in-turn issued licenses to four  
14 (4) marijuana processors, two (2) marijuana wholesalers, and one (1) marijuana retailer.  
15 However, the OLCC has subsequently cancelled one (1) license to a marijuana processor and one  
16 (1) license to a marijuana wholesaler.

17 21.

18 As described in the figures outlined in paragraphs 15-20, the following table summarizes  
19 the total number of marijuana producers, processors, wholesalers, and retailers that currently  
20 legally operate in the County with both valid land use permits and OLCC licenses, thereby  
21 generating tax revenue that must be added to the Oregon Marijuana Account. The table also  
22 summarizes the number of additional marijuana producers and processors that may be  
23 established in the future if subsequently receiving OLCC licenses. However, as the Moratorium

Ordinances had no impact on marijuana wholesalers and retailers, any number of those business may still be established in Deschutes County.

	Operating in Deschutes County (Current Land Use Permit & OLCC License)	Potential to Operate in Deschutes County (Current Land Use Permit or Appeal; Pending OLCC License)	Total
Producers	18	17	35
Processors	3	3	6
Wholesalers	1	1	∞
Retailers	1	1	∞

Table 1: *Marijuana Businesses in Deschutes County*

***c. Deschutes County's Share of the Oregon Marijuana Account***

22.

On November 15, 2019, Deschutes County Administrator Tom Anderson received an email from Michelle Mulbreght with the OLCC directing the County to fill out the “November 2019 City/County Marijuana Status Verification Survey” corresponding to the third quarter for the 2019 calendar year. A copy of that email with the corresponding survey is attached as Exhibit 6.

23.

Question 5 of the OLCC Survey asked, “Did your jurisdiction **prohibit** OLCC Producers for all or any portion of [third quarter]?” (Emphasis in original). Questions 6, 7, and 8 ask the same questions with regard to “OLCC Processors,” “OLCC Wholesalers,” and “OLCC Retailers.” The OLCC Survey only allowed participants to check either “yes” or “no” with no opportunity to provide further comment. Because the County’s Moratorium Ordinances

1 temporarily prohibited only certain new marijuana businesses but did not otherwise “prohibit”  
2 existing businesses and thereby did not align with the OLCC Survey’s binary options, the  
3 County could not fill out the entirety of the OLCC Survey. Instead, on November 26, 2019, the  
4 County emailed a correspondence to Mulbreght outlining its unique circumstances. A copy of  
5 the November 26, 2019 email is attached as Exhibit 7 (ordinances included as attachments to the  
6 letter omitted as those documents are included as separate exhibits).

7 24.

8 Mulbreght responded to the County’s November 26 correspondence by forwarding the  
9 matter that same day to Kelvin Adkins-Heljeson with the DOR. A copy of Mulbreght and  
10 Adkins-Heljeson’s November 26 email exchange is attached as Exhibit 8. Notably, Adkins-  
11 Heljeson suggested that the County’s Ordinance “sounds more like a moratorium than a ban.”  
12 Mulbreght forwarded DOR’s response to the County the following day, thereby leading the  
13 County to believe that it would still receive its third-quarter share of the Oregon Marijuana  
14 Account as well as all subsequent transfers.

15 25.

16 After the County did not receive its third-quarter transfer, the OLCC and DOR  
17 recommended that the County contact the Oregon Department of Justice (“DOJ”). Accordingly,  
18 Deschutes County Legal Counsel David Doyle emailed Shannon O’Fallon, Senior Assistant  
19 Attorney General, on January 27, 2020. A copy of the email exchange between Doyle and  
20 O’Fallon is attached as Exhibit 9. O’Fallon responded that the “DOR is withholding distribution  
21 for now while it looks into whether Deschutes County is eligible for tax distributions given its  
22 opt out ordinance applicable to certain cannabis licenses.” When pressed for when a decision  
23 would be issued, O’Fallon only responded that she “presume[d] you will be getting additional

1 information from DOR.”

2 26.

3 On January 30, 2020, the County filed with DOR, the OLCC, and DAS (collectively, the  
4 “Agencies”) a *Petition for Declaratory Ruling* (the “Petition”) pursuant to ORS 183.410 and  
5 OAR 137-002-0010. The County also served a copy on DOJ. A copy of that Petition is attached  
6 as Exhibit 10 (attachments to the petition omitted as those documents are included as separate  
7 exhibits). Following the procedure set forth in the Oregon Administrative Procedures Act  
8 (“APA”), the Petition specifically asked the three Agencies to provide a formal interpretation of  
9 the relevant Oregon Marijuana Account statutes discussed in paragraphs 3 through 8 above.

10 27.

11 OAR 137-002-0020 provided the Agencies two options in response to the County’s  
12 January 30, 2020 Petition. Pursuant to subpart (2) of the aforementioned rule, the Agencies  
13 could have elected to initiate the formal APA declaratory ruling process. Or, pursuant to subpart  
14 (3), the Agencies could have elected to not take a position on the statutory interpretation issue by  
15 electing not to issue a declaratory ruling. However, as shown below, the only response  
16 ultimately received by the County was outside of the APA or any other applicable formal  
17 process.

18 28.

19 On February 19, 2020, Deschutes County Administrator Tom Anderson received a  
20 voicemail from Adkins-Heljeson with DOR. A transcript of that voicemail is attached as Exhibit  
21 11. That voicemail indicated that at that time, the DOR was still “working on a response” to the  
22 County’s Petition.

23 ///

1 29.

2 On March 10, 2020, Steve Marks, Executive Director of the OLCC, responded to the  
3 County's Petition with a letter noting that the "OLCC does not intend to take any action with  
4 regard to the [P]etition." Notably, that OLCC letter claimed that DOR had already "determined  
5 that the County's current opt-out ordinances adopted under ORS 475B.968 make it ineligible to  
6 receive its share of marijuana taxes." A copy of the March 10, 2020 letter is attached as Exhibit  
7 12.

8 30.

9 Responding to the OLCC letter, the County sent a correspondence to DAS, DOR, OLCC,  
10 and DOJ on March 19, 2020. A copy of that letter is attached as Exhibit 13 (attachment to the  
11 letter omitted). Therein, the County reminded the Agencies of their obligation under OAR 137-  
12 002-0020 to either formally decline to interpret the relevant statutes or to initiate the declaratory  
13 ruling process under the APA, and requested that the Agencies do so quickly. Last, the County  
14 disputed the OLCC's assertion that DOR had already determined the County was not entitled to  
15 its share of the Oregon Marijuana Account. If such a determination had been made, it had not  
16 been communicated to the County.

17 31.

18 On March 26, 2020, Nia Ray, Director of DOR, finally provided a response to the  
19 County. A copy of that March 26, 2020 letter is attached as Exhibit 14. First, the letter indicated  
20 that the DOR was not bound to respond to the County's Petition as the DOR "is not subject to  
21 the declaratory ruling (or contested case) provisions of the [Oregon Administrative Procedures  
22 Act]." Second, the letter suggested that DOR could alternatively issue a declaratory ruling under  
23 ORS 305.105, but the agency was declining to do so. (An appeal of a declaratory ruling issued

1 by the DOR pursuant to ORS 305.105 must be filed in the Oregon Tax Court). Third, despite  
2 claiming to decline to formally issue a declaratory ruling and thereby without providing the  
3 County requisite due process under the APA, ORS 305.105, or otherwise, the March 26, 2020  
4 letter nevertheless opined that the DOR “was prohibited from distributing state-shared marijuana  
5 tax revenue to the [C]ounty in December 2019, or subsequently, in accordance with ORS  
6 475B.759(3)(b)(B)(i) and (ii) and ORS 475B.759(4)(b) and (c) as they are currently codified.”  
7 DOR’s letter then subsequently provided several pages of analysis defending the aforementioned  
8 edict.

9 32.

10 On April 21, 2020, Marks sent a second letter to the County in response to the County’s  
11 March 19, 2020 letter. That second letter clarified that the OLCC likewise formally declined to  
12 “issue a ruling in accordance with notification requirements in OAR 137-002-0020(2)” because  
13 the County “has now received additional correspondence form the [DOR].” A copy of that April  
14 21, 2020 letter is attached as Exhibit 15.

15 33.

16 To date, the County has not received any response on its Petition, formal or otherwise,  
17 from DAS.

18 ***d. Opt-Out Election***

19 34.

20 As required by ORS 475B.968, the issue of whether unincorporated Deschutes County  
21 should opt out of permitting additional marijuana producers and processors was on the ballot for  
22 Deschutes County voters in November 2020 (the “Opt Out Election”).

23 ///

35.

Deschutes County voters voted to opt out of permitting additional marijuana producers and processors, with 69,472 votes for the opt out and 51,038 votes to continue permitting marijuana producers and processors.

36.

As a result of the election, the temporary moratorium enacted pursuant to the Moratorium Ordinances is now a ban on future permitting of marijuana producers and processors. All existing marijuana businesses (and the two applications currently on appeal) are not affected by the Opt Out Election results or the Moratorium Ordinances.

***e. Continuing Impact of Marijuana Businesses in Deschutes County***

37.

As described in paragraph 19, there are numerous marijuana businesses continuing to operate in Deschutes County. The impact of those business on the County is in no way mitigated by the Opt Out for future applications.

38.

Deschutes County is entitled to its share of the distributions from marijuana taxes to account for the marijuana businesses that continue to operate in Deschutes County.

39.

Despite the continuing impact of marijuana businesses in unincorporated Deschutes County, the County did not receive its share of the marijuana tax revenue for the third or fourth-quarter of 2019 and thus far has not received any shares in 2020.

///

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40.

Pursuant to the UDJA, the County requests that the Court declare the following rights, statuses, and/or legal relations:

**WHEREFORE**, the County seeks the following:

A. A declaration that Deschutes County’s Moratorium Ordinances and Opt Out Election have not “prohibited the establishment” of marijuana producers within the meaning of ORS 475B.759(4)(b) because at least eighteen (18) marijuana producers are legally operating in Deschutes County with both valid land use permits and OLCC licenses.

B. A declaration that Deschutes County’s Moratorium Ordinances and Opt Out Election have not “prohibited the establishment” of marijuana processors within the meaning

1 of ORS 475B.759(c) because at least three (3) marijuana processors are legally  
2 operating in Deschutes County with both valid land use permits and OLCC licenses.

3 C. A declaration that ORS 475B.759(4)(c) does not preclude Deschutes County from  
4 receiving its entire disbursements pursuant to ORS 475B.759(3)(b)(B)(ii) because the  
5 Moratorium Ordinances and Opt Out Election did not impact existing or new  
6 marijuana wholesalers or impact existing or new marijuana retail establishments.

7 D. Awarding Plaintiff its reasonable attorney fees and costs and disbursements incurred.

8 E. Awarding such other relief as the court deems appropriate.

9  
10 DATED: December 11, 2020.  
11

s/ D. Adam Smith

D. Adam Smith, OSB No. 170317

Amy Heverly, OSB No. 093817

Asst. Deschutes County Legal Counsel

1300 NW Wall Street, Suite 205

Bend, OR 97703-1960

Phone: (541) 388-6225

adam.smith@deschutes.org

amy.heverly@deschutes.org

Of Attorneys for Deschutes County

1 **CERTIFICATE OF SERVICE**

2  
3 I hereby certify that on the date listed below, I caused true and correct copies of the  
4 foregoing **DESCHUTES COUNTY'S COMPLAINT FOR DECLARATORY JUDGMENT**  
5 to be served upon the following listed parties by certified first-class U.S. mail:

6 Oregon Liquor Control Commission  
7 Steven Marks  
8 9079 SE McLoughlin Blvd.  
9 Portland, OR 97222-7355  
10 and  
11 PO Box 22297  
12 Milwaukie, OR 97269-2297  
13

14 Oregon Department of Administrative Services  
15 George Naughton  
16 155 Cottage St. NE U10  
17 Salem, OR 97301-3965  
18

19 Oregon Department of Revenue  
20 Nia Ray  
21 955 Center St. NE  
22 Salem, OR 97301-2555  
23

24 Oregon Department of Justice  
25 Renee Stineman, chief counsel  
26 1162 Court St. NE  
27 Salem, OR 97301-4096  
28  
29  
30  
31

32 DATED: December 11, 2020

33 s/ D. Adam Smith  
34 D. ADAM SMITH, OSB #170317  
35 Deschutes County Assistant Legal Counsel  
36 (541) 388-6593  
37 adam.smith@deschutes.org  
38

39 Of Attorneys for Deschutes County



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Repealing Deschutes County  
Ordinance No. 2015-009; Declaring an  
Emergency.

\*  
\*  
\*  
\*

ORDINANCE NO. 2016-012

WHEREAS, on December 21, 2015, the Board of County Commissioners, as authorized by section 134, chapter 614, Oregon Laws 2015 (Enrolled House Bill 3400), enacted Ordinance No. 2015-009 which prohibited (subject to referral to the electors of Deschutes County at the next General Election) in the unincorporated area subject to the jurisdiction of Deschutes County, the following businesses:

- (a) Marijuana processing sites registered under section 85 of HB3400A (2015);
- (b) Medical marijuana dispensaries registered under ORS 475.314;
- (c) Marijuana producers licensed under section 19, chapter 1, Oregon Laws 2015;
- (d) Marijuana processors licensed under section 20, chapter 1, Oregon Laws 2015;
- (e) Marijuana wholesalers licensed under section 21, chapter 1, Oregon Laws 2015;
- (f) Marijuana retailers licensed under section 22, chapter 1, Oregon Laws 2015; and

WHEREAS, subsequent to the enactment of Ordinance No. 2015-009, the Oregon Legislature did pass into law Senate Bill 1598 which provided that the authority of local jurisdictions to implement reasonable regulations on the operations of marijuana businesses was not prohibited by Oregon's Right to Farm law(s); and

WHEREAS, following extensive study and recommendations by county staff, the Planning Commission and an appointed citizen marijuana advisory committee the Board of County Commissioners held public hearings, work sessions and public deliberations on how best to regulate operations associated with marijuana businesses; and

WHEREAS, the Board of County Commissioners has now enacted county code provisions to regulate the impacts associated with the operation of marijuana businesses within the unincorporated area subject to the jurisdiction of Deschutes County, now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. In accordance with section 30 of Enrolled House Bill 4014 (2016), and ORS Chapter 203, Deschutes County Ordinance No. 2015-009 is repealed.

Section 2. The text of this ordinance shall be provided to (a) the Oregon Health Authority; and (b) the Oregon Liquor Control Commission.

Section 3. EMERGENCY. This Ordinance being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on September 1, 2016.

Dated this 18<sup>th</sup> of Aug, 2016

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Alan Unger  
ALAN UNGER, Chair

Tammy Baney  
TAMMY BANEY, Vice Chair

ATTEST:

Bonnie Baker  
Recording Secretary

Anthony DeBone  
ANTHONY DEBONE, Commissioner

Date of 1<sup>st</sup> Reading: 18<sup>th</sup> day of Aug, 2016.

Date of 2<sup>nd</sup> Reading: 18<sup>th</sup> day of Aug, 2016.

	Record of Adoption Vote			
Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	✓			
Alan Unger	✓			
Tammy Baney	✓			

Effective date: 18<sup>th</sup> day of Sept, 2016.



BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending DCC Titles 9, 18, and 22 to  
Refine Standards for the Regulation and Enforcement  
of Marijuana Production on Rural Lands and  
Declaring an Emergency. \*

ORDINANCE NO. 2018-012

WHEREAS, the Board of County Commissioners directed the Deschutes County Community Development Department staff to initiate amendments (Planning Division File No. 247-18-000540-TA) to Deschutes County Code (DCC) Title 9, Chapter 9.12, Right to Farm; Title 18, Chapter 18.24, Redmond Urban Reserve Area Combining Zone; Chapter 18.116, Supplementary Provisions; Chapter 18.124, Site Plan Approval Criteria; Title 22, Chapter 22.24, Land Use Action Hearings; and Chapter 22.32, Appeals, refining standards for the regulation and enforcement of marijuana production on rural lands; and

WHEREAS, the Board of County Commissioners considered this matter after a duly noticed public hearing on August 28, 2018 and concluded that the public will benefit from the changes to the Deschutes County Code; now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS  
as follows:

Section 1. AMENDMENT. DCC 9.12, Right to Farm, is amended to read as described in Exhibit "A," attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 2. AMENDMENT. DCC 18.24, Redmond Urban Reserve Area Combining Zone, is amended to read as described in Exhibit "B," attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 3. AMENDMENT. DCC 18.116, Supplementary Provisions, is amended to read as described in Exhibit "C," attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 4. AMENDMENT. DCC 18.124, Site Plan Review, is amended to read as described in Exhibit "D," attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 5. AMENDMENT. DCC 22.24, Land Use Action Hearings, is amended to read as described in Exhibit "E," attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

///

Section 6. AMENDMENT. DCC 22.32, Appeals, is amended to read as described in Exhibit "F," attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 7. FINDINGS. The Board adopts as its findings Exhibit "G," attached and incorporated by reference herein.


Section 8. EMERGENCY. This Ordinance being necessary for the public peace, health, safety and welfare, an emergency is declared to exist, and this Ordinance becomes effective 30 days from adoption.


Dated this 24 of October, 2018

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
ANTHONY DeBONE, Chair

  
PHIL HENDERSON, Vice Chair

  
TAMMY BANEY, Commissioner

ATTEST:  
  
Recording Secretary

Date of 1<sup>st</sup> Reading: 24 day of October, 2018.

Date of 2<sup>nd</sup> Reading: 24 day of October, 2018.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	<u>X</u>	___	___	___
Phil Henderson	<u>X</u>	___	___	___
Tammy Baney	<u>X</u>	___	___	___

Effective date: 23 day of November, 2018.



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Repealing Deschutes County  
Ordinance No. 2018-012.

\*  
\*  
\*  
\*

ORDINANCE NO. 2019-012

WHEREAS, on October 24, 2018, the Board of County Commissioners (the "Board") adopted Ordinance No. 2018-012, revising the Deschutes County Code pertaining to marijuana production in unincorporated Deschutes County after a duly noticed public hearing on August 28, 2018; and

WHEREAS, twelve petitioners appealed Ordinance No. 2018-012 to the Land Use Board of Appeals ("LUBA") on February 12, 2019 raising new arguments that were not previously presented to the Board; and

WHEREAS, after reviewing the *Petition for Review* filed with LUBA and the new arguments and evidence contained therein, and upon recommendation of county staff, the Board directed the withdrawal of Ordinance No. 2018-012 for additional consideration pursuant to ORS 197.830(13)(b); and

WHEREAS, in furtherance of the County Commissioners' direction, staff timely filed a *Notice of Withdrawal* with LUBA on February 28, 2019; and

WHEREAS, due to the time necessary to reconsider the amendments (including the associated new arguments and evidence) and pending outcome of marijuana bills introduced during the Oregon Legislature's 2019 session, LUBA granted the County 180 days to reconsider the withdrawn ordinance rather than the standard 90 days; and

WHEREAS, the Board held a duly noticed public hearing on July 3, 2019 to take public testimony from the twelve petitioners (and others) regarding Ordinance No. 2018-012; and

WHEREAS, a significant portion of written and oral public testimony received during and after the July 3 public hearing requested that the Board prohibit the establishment of new marijuana businesses ("Opt Out") in unincorporated Deschutes County rather than further revising Ordinance No. 2018-012; and

WHEREAS, the County Commissioners later determined that an Opt Out is the more prudent option at this time for numerous reasons, including that an Opt Out requires that the matter be referred to the Deschutes County voters at the next General Election on November 3, 2020; and

WHEREAS, an Opt Out allows the Board to repeal Ordinance No. 2018-12 rather than being forced to unnecessarily expend County resources defending the constitutionality of the State of Oregon's Recreational Marijuana program pending a vote of the Deschutes County voters; and

WHEREAS, regardless of the Opt Out and subsequent results of the General Election, existing marijuana businesses within the unincorporated county established prior to the adoption of Ordinance No. 2019-014 must continue to comply with all Deschutes County Code provisions in effect at the time of their land use approval; and

WHEREAS, for the foregoing reasons, the Board chooses to repeal Ordinance No. 2018-012 in its entirety; now, therefore

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. Deschutes County Ordinance No. 2018-012 is repealed in its entirety.

Section 2. All Deschutes County Code regulations adopted pursuant to Ordinance Nos. 2016-013, 2016-014, 2016-015, 2016-016, 2016-017, 2016-018 and 2016-019 and in existence prior to Ordinance No. 2018-012 shall remain in effect.

Dated this 3 of September, 2019

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Absent, excused  
PHILIP G. HENDERSON, Chair

Patti Adair  
PATTI ADAIR, Vice Chair

ATTEST:

Ann Leuninger  
Recording Secretary

Anthony DeBone  
ANTHONY DEBONE

Date of 1<sup>st</sup> Reading: 19 day of August, 2019.

Date of 2<sup>nd</sup> Reading: 3 day of September, 2019.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Philip G. Henderson				X
Patti Adair	X			
Anthony DeBone	X			

Effective date: 2 day of December, 2019.



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Prohibiting the Establishment of  
Certain Marijuana Businesses Within Unincorporated  
Deschutes County; Referral to the Electors and  
Declaring an Emergency. \*  
\*  
\*  
\*  
ORDINANCE NO. 2019-014

WHEREAS, in November 2014, Ballot Measure 91 was passed by the voters of Oregon generally legalizing recreational use of marijuana within the state; and

WHEREAS, the Board of County Commissioners (the "Board") adopted Ordinance No. 2015-009 on December 21, 2015, prohibiting the establishment of marijuana businesses within unincorporated Deschutes County ("Opt Out"); and

WHEREAS, after securing legislative assurance in 2016 through the passage of Senate Bill 1598 that statutory right to farm protections would not override local governments' authority to adopt local time, place and manner regulations governing marijuana businesses, the Board adopted Ordinances No. 2016-013, 2016-014, 2016-015, 2016-016, 2016-017, 2016-018 and 2016-019 on June 1 and June 15, 2016, implementing comprehensive land use regulations for the marijuana industry in unincorporated Deschutes County, and subsequently adopted Ordinance No. 2016-012 on August 2, 2016, effectively "Opting In" by repealing Ordinance No. 2015-009; and

WHEREAS, following their initial adoption, the Board committed to reexamine Deschutes County's marijuana land use regulations approximately one year post-implementation after gaining additional experience regulating the evolving marijuana industry; and

WHEREAS, after hosting thirteen public meetings, work sessions, and hearings attended by state agencies, marijuana industry representatives, and concerned members of the community, on October 24, 2018, the Board of County Commissioners adopted Ordinance No. 2018-012, revising the original marijuana land use regulations; and

WHEREAS, twelve petitioners appealed Ordinance No. 2018-012 to the Land Use Board of Appeals ("LUBA") on February 12, 2019, raising new arguments that were not previously presented to the Board; and

WHEREAS, after reviewing the *Petition for Review* filed with LUBA and the new arguments and evidence contained therein, and upon recommendation of county staff, the Board directed the withdrawal of Ordinance No. 2018-012 for additional consideration pursuant to ORS 197.830(13)(b); and

WHEREAS, the Board held a duly noticed public hearing on July 3, 2019, to take public testimony from the twelve petitioners (and others) regarding Ordinance No. 2018-012; and

WHEREAS, concerned members of the community testified during the public hearing that the new arguments raised by the twelve petitioners essentially tasked the County with defending the constitutionality of the State of Oregon's Recreational Marijuana program; and

WHEREAS, further testimony noted that despite the provisions of Senate Bill 1598, authorizing local governments to adopt reasonable time, place and manner regulations (which provided the singular basis for the County to repeal its initial Opt Out and allow marijuana businesses), there have been numerous attempts to legislatively strip or limit that authority in the 2017, 2018, and 2019 Oregon Legislative Sessions; and

WHEREAS, further testimony also noted that while the County has utilized extensive resources over several years to attempt to develop reasonable time, place, and manner marijuana regulations, there has been noticeable and vocal dissatisfaction from citizens on all sides of the issue consistently expressing doubt that these regulations have the ability to successfully harmonize ostensibly incompatible land uses in the rural County due to marijuana's classification as a farm crop; and

WHEREAS, a significant portion of written and oral public testimony received during and after the July 3 public hearing requested that the Board prohibit the establishment of new marijuana businesses ("Opt Out") in unincorporated Deschutes County rather than further revising Ordinance No. 2018-012; and

WHEREAS, an Opt Out imposed by Deschutes County will only be applicable within the unincorporated County and will not impact marijuana operations or businesses within any city limits; and

WHEREAS, an Opt Out is not in conflict with the aforementioned Ballot Measure 91 wherein the voters of Oregon expressed no opinion or direction regarding marijuana's status as a farm crop, or the appropriate location of commercial grow sites and processing operations; and

WHEREAS, an Opt Out will only impact future recreational production and processing businesses and medical marijuana processing facilities; existing marijuana businesses will not be impacted nor will the Opt Out impact or prohibit future medical dispensaries or production sites, or future recreational retail or wholesale; and

WHEREAS, disallowing future recreational production sites and future marijuana processing will not impact the availability of marijuana products from medical dispensaries or retail and wholesale outlets; and

WHEREAS, for the foreseeable future, it is uncertain if recreational marijuana production sites can be established in the County due to newly-adopted Senate Bill 218 authorizing the Oregon Liquor Control Commission to establish a moratorium on recreational producer licenses until January 2, 2022; and

WHEREAS, the State's moratorium enacted by Senate Bill 218 provides a unique opportunity to refer the matter to the Deschutes County voters while minimally impacting any would-be applicants seeking to establish new marijuana production or processing facilities; and

WHEREAS, so long as referring the matter to voters at the next General Election, ORS 475B.968 authorizes the County to adopt an ordinance prohibiting the establishment of any one or more of the six categories of state licensed or registered marijuana businesses in the unincorporated area subject to the County's jurisdiction; and

WHEREAS, based in substantial part on the testimony provided during and after the aforementioned July 3 public hearing, the Board prefers to immediately impose an Opt Out of new recreational marijuana production and processing businesses and medical marijuana processing facilities within the unincorporated county, and likewise refer the question of whether to continue the Opt Out to the Deschutes County voters at the next General Election on November 3, 2020; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. In accordance with ORS 475B.968 the following are prohibited in the unincorporated area subject to the jurisdiction of Deschutes County:

- (a) Marijuana processing sites registered under ORS 475B.840;
- (b) Marijuana producers licensed under ORS 475B.070
- (c) Marijuana processors licensed under ORS 475B.090;


Section 2. This ordinance shall be referred to the electors of Deschutes County at the General Election on Tuesday, November 3, 2020.

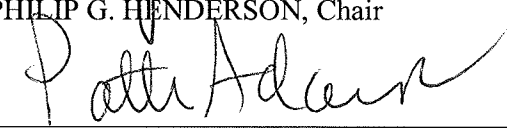
Section 3. The text of this ordinance shall be provided to (a) the Oregon Health Authority; and (b) the Oregon Liquor Control Commission.

Section 4. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.


Dated this 19 of August, 2019

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
\_\_\_\_\_  
PHILIP G. HENDERSON, Chair

  
\_\_\_\_\_  
PATTI ADAIR, Vice Chair

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
ANTHONY DEBONE

Date of 1<sup>st</sup> Reading: 19 day of August, 2019.

Date of 2<sup>nd</sup> Reading: 19 day of August, 2019.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Philip G. Henderson	<u>X</u>	___	___	___
Patti Adair	<u>X</u>	___	___	___
Anthony DeBone	<u>X</u>	___	___	___

Effective date: 19 day of August, 2019.



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Clarifying Ordinance No. 2019-014  
Which Prohibited the Establishment of Certain  
Marijuana Businesses Within Unincorporated  
Deschutes County; Referral to the Electors and  
Declaring an Emergency.

\*  
\*  
\*  
\*

ORDINANCE NO. 2019-015

WHEREAS, on August 19, 2019, the Board of County Commissioners adopted Ordinance No. 2019-014 (full copy attached, incorporated herein and identified as Exhibit A); and

WHEREAS, in accordance with sound legal principles such as ORS 215.427(3) (Oregon's "goal-post statute") and to avoid an erroneous retroactive application of law, the Board of County Commissioners' clear intent was always to allow any land use application received prior to August 19, 2019, to be fully processed (including any appellate review) with those successful applicants then subsequently continuing through the licensing process governed by the Oregon Liquor Control Commission (OLCC); and

WHEREAS, the OLCC expressed its understanding that Ordinance No. 2019-014, as worded, precludes OLCC from licensing those producer and processor applicants in Deschutes County who had, prior to August 19, 2019, applied for local land use permits but not yet had their OLCC licensing applications approved; and

WHEREAS, on September 25, 2019, the Board of County Commissioners authored a letter directed to OLCC (full copy attached, incorporated herein and identified as Exhibit B) stating that Ordinance No. 2019-014 has no impact on the County's past marijuana production land use decisions and providing that in the opinion of Deschutes County, the adoption of Ordinance No. 2019-014 does not preclude those applicants from moving forward in the licensure process with OLCC; and

WHEREAS, OLCC has informed Deschutes County that despite the Board's September 25<sup>th</sup> letter, that OLCC understands that it is still precluded from licensing those producer and processor applicants in Deschutes County who had, prior to August 19, 2019, applied for local land use permits; and

WHEREAS, in an effort to resolve the ongoing conflicting understandings as to the intent, reach and impact of Ordinance No. 2019-014, and to ensure that OLCC reviews and processes licensing applications for producers and processors who previously applied for land use approvals from Deschutes County, the Board of County Commissioners ordains as provided below; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. Ordinance No. 2019-014 (Exhibit A) remains adopted in its entirety.

Section 2. Ordinance No. 2019-014 is clarified with the addition of Section 3 below.

Section 3. Section 1 of Ordinance No. 2019-014 does not apply to an applicant who as of the date this Ordinance is in effect has a pending production or processing license application before the OLCC and who applied for County land use approval/LUCS allowing marijuana production and/or processing prior to August 19, 2019.

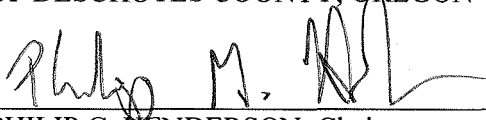
Section 4. This affirms that Ordinance No. 2019-014, as clarified by this Ordinance shall be referred to the electors of Deschutes County at the General Election on Tuesday, November 3, 2020.

Section 5. The text of this Ordinance shall be provided to (a) the Oregon Health Authority; and (b) the Oregon Liquor Control Commission.

Section 6. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

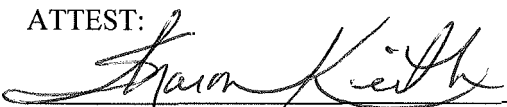
Dated this 16 of October, 2019

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

  
PHILIP G. HENDERSON, Chair

  
PATTI ADAIR, Vice Chair

ATTEST:

  
Recording Secretary

  
ANTHONY DEBONE

Date of 1<sup>st</sup> Reading: 16 day of October, 2019.

Date of 2<sup>nd</sup> Reading: 16 day of October, 2019.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Philip G. Henderson	<u>X</u>	—	—	—
Patti Adair	<u>X</u>	—	—	—
Anthony DeBone	<u>X</u>	—	—	—

Effective date: 16 day of October, 2019.

**Tom Anderson**

---

**From:** michelle.mulbreght@oregon.gov via SurveyMonkey  
<member@surveymonkeyuser.com>  
**Sent:** Friday, November 15, 2019 7:01 AM  
**To:** Tom Anderson  
**Subject:** MJ Distribution Survey - Response Needed

[EXTERNAL EMAIL]

## November 2019 City / County Marijuana Status Verification

We're running a survey and would love your input. Please let us know what you think below. Thanks for participating!

Are you representing a city or county?

- ☐ City
- ☐ County

Please do not forward this email as its survey link is unique to you.  
[Privacy](#) | [Unsubscribe](#)

Powered by  SurveyMonkey



## November 2019 City / County Marijuana Status Verification

### To Whom It May Concern:

To receive local distribution of marijuana taxes collected, each city and county must verify with the Oregon Liquor Control Commission whether they allow recreational marijuana businesses or not. By submitting this survey you are verifying your jurisdiction's existing policy related to recreational marijuana businesses for the months of July 2019 to September 2019.

By submitting this form, the city/county is verifying the city/county status for OLCC recreational producers, processors, wholesalers, or retailers licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015. This Verification will be utilized to determine eligibility for distribution of marijuana tax proceeds.

The Quarterly City/County Marijuana Status Verification survey must be **submitted by November 30, 2019**. Cities or counties with verification surveys submitted after this date will not be eligible for tax distribution.

Please answer the following questions based on your jurisdiction's status for the time period of **July 1, 2019 to September 30, 2019**.

If you have any questions or concerns, please contact the OLCC at (503) 872-5077 or [michelle.mulbreght@oregon.gov](mailto:michelle.mulbreght@oregon.gov).

\* 1. Are you representing a city or county?

☐ City

☒ County

\* 2. Who is submitting this Verification form?

First Name

**Tom**

Last Name

**Anderson**

Title

**County Administrator**

Jurisdiction

n

(City/County) Name

**Deschutes County**

Phone

Number

**541-388-6565**

Email

**toma@deschutes.org**

\* 3. Please acknowledge the following

☐



I acknowledge that I have authority to verify the status of my jurisdiction for purposes of marijuana tax distribution.

\* 4. Are you the best point of contact to receive emails related to Marijuana Status Verification in future months?



Yes



No

Next





## November 2019 City / County Marijuana Status Verification

Please answer the following questions based on the time period of **July 1, 2019 to September 30, 2019.**

- \* 5. Did your jurisdiction **prohibit** OLCC Producers for all or any portion of the time period above?

☐ Yes  
☐ No

} see attached letter

- \* 6. Did your jurisdiction **prohibit** OLCC Processors for all or any portion of the time period above?

☐ Yes  
☐ No

} see attached letter

- \* 7. Did your jurisdiction **prohibit** OLCC Wholesalers for all or any portion of the time period above?

☐

☐ Yes  
☒ No

\* 8. Did your jurisdiction prohibit OLCC  
Retailers for all or any portion of the  
time period above?

☐ Yes  
☒ No

Prev

Done

## Pauline Word

---

**From:** Tom Anderson  
**Sent:** Tuesday, November 26, 2019 1:11 PM  
**To:** 'michelle.mulbreght@oregon.gov'  
**Subject:** Marijuana Status Verification Survey  
**Attachments:** Marijuana Survey 11-19.pdf

Ms. Mulbreght,

Please see the attached regarding the marijuana status verification survey recently sent to Deschutes County.

I am available to respond to any questions you may have.

Respectfully,



**Tom Anderson | County Administrator**

1300 NW Wall Street | Bend, Oregon 97703

Tel: (541) 388-6565



*Enhancing the lives of citizens by delivering quality services in a cost-effective manner.*



November 26, 2019

Michelle Mulbreght  
Oregon Liquor Control Commission (OLCC)  
9079 SE McLoughlin Blvd  
Portland, OR 97222  
michelle.mulbreght@oregon.gov

Re: Marijuana Status Verification Survey

Dear Ms. Mulbreght,

We have received OLCC's November 2019 City/County Marijuana Status Verification survey; however, due to unique circumstances occurring in the county during the reporting period (July 1 through September 30, 2019) concerning marijuana we are unable to respond singularly within the structure of the survey, and instead offer this more detailed accounting of the status of marijuana businesses in Deschutes County.

On August 19, 2019, Deschutes County adopted Ordinance No. 2019-014 (attached), which temporarily prohibits Deschutes County from receiving or processing new applications seeking to establish marijuana production and/or processing businesses within unincorporated Deschutes County ("Opt Out"). Subsequently, on October 16, 2019, Deschutes County adopted Ordinance No. 2019-015 (attached), which clarifies the intent of Ordinance No. 2019-014, in that the opt out does not apply to applicants who applied for County land use approval for production or processing prior to August 19, 2019, and who have pending production or processing applications before the OLCC. Existing and new marijuana retail and wholesale businesses are unaffected by the opt out and may continue to operate and/or submit land use applications, as Ordinance Nos. 2019-014 and 2019-015 apply to marijuana production and processing businesses only.

Per ORS 475B.968, the matter will be referred to the electors of Deschutes County at the General Election on November 3, 2020. Per Ordinance No. 2019-014, existing marijuana businesses are not impacted by this opt-out and continue to operate pursuant to the conditions of their approvals, which remain valid. At the time of this writing, Deschutes County has issued 62 land use approvals for marijuana production, processing, retail, and wholesale, 25 of which have received licenses from OLCC. Therefore, while the

County has temporarily opted out of receiving and processing new marijuana production and processing applications, existing lawful marijuana businesses as well as new retail and wholesale businesses continue to operate, generate tax revenue, and generate impacts that are mitigated, in part, with local distribution of marijuana tax revenue.

Despite the Opt Out, Deschutes County and its residents continue to deal with a multitude of impacts caused directly and indirectly by existing marijuana businesses. Accordingly, and as required by ORS 475B.759, the State must continue to distribute marijuana tax revenue to Deschutes County.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Anderson", written in a cursive style.

Tom Anderson, County Administrator

Attachments:

Deschutes County Ordinance No. 2019-014

Deschutes County Ordinance No. 2019-015



## November 2019 City / County Marijuana Status Verification

### To Whom It May Concern:

To receive local distribution of marijuana taxes collected, each city and county must verify with the Oregon Liquor Control Commission whether they allow recreational marijuana businesses or not. By submitting this survey you are verifying your jurisdiction's existing policy related to recreational marijuana businesses for the months of July 2019 to September 2019.

By submitting this form, the city/county is verifying the city/county status for OLCC recreational producers, processors, wholesalers, or retailers licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015. This Verification will be utilized to determine eligibility for distribution of marijuana tax proceeds.

The Quarterly City/County Marijuana Status Verification survey must be **submitted by November 30, 2019**. Cities or counties with verification surveys submitted after this date will not be eligible for tax distribution.

Please answer the following questions based on your jurisdiction's status for the time period of **July 1, 2019 to September 30, 2019**.

If you have any questions or concerns, please contact the OLCC at (503) 872-5077 or [michelle.mulbreght@oregon.gov](mailto:michelle.mulbreght@oregon.gov).

\* 1. Are you representing a city or county?

☐ City

☒ County

\* 2. Who is submitting this Verification form?

First Name

**Tom**

Last Name

**Anderson**

Title

**County Administrator**

Jurisdiction

n

(City/County)  
Name

**Deschutes County**

Phone

Number

**541-388-6565**

Email

**toma@deschutes.org**

\* 3. Please acknowledge the following





I acknowledge that I have authority to verify the status of my jurisdiction for purposes of marijuana tax distribution.

\* 4. Are you the best point of contact to receive emails related to Marijuana Status Verification in future months?



Yes



No

Next





## November 2019 City / County Marijuana Status Verification

Please answer the following questions based on the time period of **July 1, 2019 to September 30, 2019.**

- \* 5. Did your jurisdiction **prohibit** OLCC Producers for all or any portion of the time period above?

☐ Yes  
☐ No

} see attached letter

- \* 6. Did your jurisdiction **prohibit** OLCC Processors for all or any portion of the time period above?

☐ Yes  
☐ No

} see attached letter

- \* 7. Did your jurisdiction **prohibit** OLCC Wholesalers for all or any portion of the time period above?

☐

☐ Yes  
☒ No

\* 8. Did your jurisdiction prohibit OLCC  
Retailers for all or any portion of the  
time period above?

☐ Yes  
☒ No

Prev

Done

## Tom Anderson

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**From:** Tom Anderson  
**Sent:** Wednesday, November 27, 2019 8:34 AM  
**To:** 'MULBREGHT Michelle \* OLCC'  
**Subject:** RE: Marijuana Status Verification Survey

Michele – Thanks so much for the quick response. Presumably, Kelvin's response that Deschutes County's actions represent a moratorium rather than a ban (we completely agree) means that tax distributions would be unaffected?

Thanks again,

Tom



**Tom Anderson | County Administrator**

1300 NW Wall Street | Bend, Oregon 97703

Tel: (541) 388-6565



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**From:** MULBREGHT Michelle \* OLCC <Michelle.Mulbreght@oregon.gov>

**Sent:** Wednesday, November 27, 2019 7:04 AM

**To:** Tom Anderson <Tom.Anderson@deschutes.org>

**Subject:** FW: Marijuana Status Verification Survey

[EXTERNAL EMAIL]

---

Good Morning Tom,

I forwarded your email to Dept. of Revenue (they handle the distribution of funds)  
Below is Kelvin's response regarding your survey response.

Hope you have a great day

Feel free to contact me, if you have further questions

Michelle Mulbreght  
Oregon Liquor Control Commission  
Financial Services  
Sr Accountant – Tax Reporting  
Team Lead MJ & Privilege Tax  
P O Box 22297  
Milwaukie, Oregon 97269-2297  
503-872-5077 office

503-872-5180 fax

**From:** ADKINS-HELJESON Kelvin \* DOR  
**Sent:** Tuesday, November 26, 2019 4:14 PM  
**To:** MULBREGHT Michelle \* OLCC  
**Subject:** RE: Marijuana Status Verification Survey

Hi Michelle:

Thank you. It sounds like they allow all license types, but only those licenses that currently are operating or approved? It sounds more like a moratorium than a ban to me.

Best,  
Kelvin

**From:** MULBREGHT Michelle \* OLCC  
**Sent:** Tuesday, November 26, 2019 3:32 PM  
**To:** ADKINS-HELJESON Kelvin \* DOR <[Kelvin.ADKINS-HELJESON@oregon.gov](mailto:Kelvin.ADKINS-HELJESON@oregon.gov)>  
**Subject:** FW: Marijuana Status Verification Survey

Good afternoon Kelvin,

While working on the MJ Distribution survey, County of Deschutes supplied the email below for their response.

Please review the email and their attached documentation and let me know how you want to proceed.

Hope you have a great day

Feel free to contact me, if you have further questions

Michelle Mulbreght  
Oregon Liquor Control Commission  
Financial Services  
Sr Accountant – Tax Reporting  
Team Lead MJ & Privilege Tax  
P O Box 22297  
Milwaukie, Oregon 97269-2297  
503-872-5077 office  
503-872-5180 fax

**From:** Tom Anderson [<mailto:Tom.Anderson@deschutes.org>]  
**Sent:** Tuesday, November 26, 2019 1:11 PM  
**To:** MULBREGHT Michelle \* OLCC  
**Subject:** Marijuana Status Verification Survey

Ms. Mulbreght,

Please see the attached regarding the marijuana status verification survey recently sent to Deschutes County.

I am available to respond to any questions you may have.

Respectfully,



**Tom Anderson | County Administrator**

1300 NW Wall Street | Bend, Oregon 97703

Tel: (541) 388-6565



*Enhancing the lives of citizens by delivering quality services in a cost-effective manner.*

## Pauline Word

---

**From:** David Doyle  
**Sent:** Tuesday, January 28, 2020 3:47 PM  
**To:** 'OFallon Shannon'  
**Cc:** Adam Smith  
**Subject:** RE: MJ Tax

Shannon –

Thanks for getting back to us.  
All the best.

DAVID DOYLE  
**Deschutes County Legal Counsel**  
1300 NW Wall Street, Suite 205  
Bend, OR 97703  
Telephone: (541) 388-6625  
Facsimile: (541) 617-4748  
Email: [David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)

The information in this email, including any attachment, is for the sole use of the intended recipient and contains information belonging to Deschutes County, which is confidential and/or legally privileged. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this email information is strictly prohibited. If you have received this email in error, please immediately notify the sender by reply email and destroy all copies of the original message.

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**From:** OFallon Shannon  
**Sent:** Tuesday, January 28, 2020 3:46 PM  
**To:** David Doyle  
**Cc:** Adam Smith  
**Subject:** RE: MJ Tax

[EXTERNAL EMAIL]

---

David – I've been having problems with email delays so I hope this gets to you.

I do not have the authority to waive any filing timelines and as I've said I am not aware of any timelines that have been triggered or that would be triggered by my email.

I'm not sure that DOJ is the agency that will be issuing any decisions but I presume you will be getting additional information from DOR.

**Shannon K. O'Fallon**  
Oregon Department of Justice  
971.673.1950  
503-358-2047 (Mobile)

---

**From:** David Doyle <[David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)>  
**Sent:** Tuesday, January 28, 2020 1:07 PM  
**To:** OFallon Shannon <[Shannon.OFallon@doj.state.or.us](mailto:Shannon.OFallon@doj.state.or.us)>  
**Cc:** Adam Smith <[Adam.Smith@deschutes.org](mailto:Adam.Smith@deschutes.org)>  
**Subject:** RE: MJ Tax

Shannon -

So on behalf of OLCC, DOR, and/or DAS is DOJ waiving any filing timeline that might be triggered by the missed payment to Deschutes County as well as any filing timeline that might be triggered by your email below stating that "DOR is withholding distribution for now while it looks into whether Deschutes County is eligible for tax distribution given its opt out ordinance applicable to certain cannabis licenses" ???

If so, we are content to await DOJ's formal (and timely) decision/order and hold off (for now) on our precautionary filing.

DAVID DOYLE  
**Deschutes County Legal Counsel**  
1300 NW Wall Street, Suite 205  
Bend, OR 97703  
Telephone: (541) 388-6625  
Facsimile: (541) 617-4748  
Email: [David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)

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**From:** OFallon Shannon <[Shannon.OFallon@doj.state.or.us](mailto:Shannon.OFallon@doj.state.or.us)>  
**Sent:** Tuesday, January 28, 2020 12:58 PM  
**To:** David Doyle <[David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)>  
**Cc:** Adam Smith <[Adam.Smith@deschutes.org](mailto:Adam.Smith@deschutes.org)>  
**Subject:** RE: MJ Tax

[EXTERNAL EMAIL]

---

David – DOR is withholding distribution for now while it looks into whether Deschutes County is eligible for tax distribution given its opt out ordinance applicable to certain cannabis licenses. That is all the information I can share at this point. It is still not clear to DOJ what deadline the county might be under. I hope that information helps.

**Shannon K. O'Fallon**  
Oregon Department of Justice  
971.673.1950  
503-358-2047 (Mobile)

---

**From:** David Doyle <[David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)>  
**Sent:** Tuesday, January 28, 2020 12:13 PM  
**To:** OFallon Shannon <[Shannon.OFallon@doj.state.or.us](mailto:Shannon.OFallon@doj.state.or.us)>

**Cc:** Adam Smith <[Adam.Smith@deschutes.org](mailto:Adam.Smith@deschutes.org)>

**Subject:** RE: MJ Tax

Shannon -

We aren't sure exactly what timeline might apply nor are we sure what action or inaction by OLCC, DOR, DAS or DOJ suffices to trigger the timeline. However, as a precaution we plan to submit our claim/response/request, etc., within 30 days of the 12/31 "due date" for the missed payment.

DAVID DOYLE  
**Deschutes County Legal Counsel**  
1300 NW Wall Street, Suite 205  
Bend, OR 97703  
Telephone: (541) 388-6625  
Facsimile: (541) 617-4748  
Email: [David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)

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---

**From:** OFallon Shannon <[Shannon.OFallon@doj.state.or.us](mailto:Shannon.OFallon@doj.state.or.us)>

**Sent:** Tuesday, January 28, 2020 12:09 PM

**To:** David Doyle <[David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)>

**Cc:** Adam Smith <[Adam.Smith@deschutes.org](mailto:Adam.Smith@deschutes.org)>

**Subject:** RE: MJ Tax

[EXTERNAL EMAIL]

---

David – can you tell me what APA timelines you are talking about?

**Shannon K. O'Fallon**  
Oregon Department of Justice  
971.673.1950  
503-358-2047 (Mobile)

---

**From:** David Doyle <[David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)>

**Sent:** Monday, January 27, 2020 3:36 PM

**To:** OFallon Shannon <[Shannon.OFallon@doj.state.or.us](mailto:Shannon.OFallon@doj.state.or.us)>

**Cc:** Adam Smith <[Adam.Smith@deschutes.org](mailto:Adam.Smith@deschutes.org)>

**Subject:** MJ Tax

Hi Shannon -

DOR and OLCC have directed Deschutes County to DOJ.  
As you know, DOR did not send Deschutes County its quarterly MJ tax payment (due on 12/31/19).  
To our knowledge, no formal correspondence or order was generated; the payment just didn't show up.

We need to ascertain if the payment will be forthcoming, or if OLCC/DOR/DOJ intends to withhold the payments (in response to the moratorium recently put in place by Deschutes County - pending voter review in November).

Any update you can provide will be greatly appreciated. (Because we are concerned about APA timelines, a response within the next 24 hours is requested.)

Thank you.

DAVID DOYLE  
**Deschutes County Legal Counsel**  
1300 NW Wall Street, Suite 205  
Bend, OR 97703  
Telephone: (541) 388-6625  
Facsimile: (541) 617-4748  
Email: [David.Doyle@deschutes.org](mailto:David.Doyle@deschutes.org)

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\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

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\*\*\*\*\*

Oregon Liquor and Control Commission, Oregon Department of Revenue, and Oregon  
Department of Administrative Services

In the Matter of DESCHUTES COUNTY  
PETITION FOR DECLARATORY RULING

Case No. DR-\_\_\_\_\_

DESCHUTES COUNTY ("County"), through its attorney of record, D. Adam Smith,  
Assistant Legal Counsel, files this *Petition for Declaratory Ruling* pursuant to ORS 183.410 and  
OAR 137-002-0010 through 0060.

Deschutes County submits this *Petition* because to date the County's fourth quarter 2019  
proportionate share of the Oregon Marijuana Account has not been transferred as required by  
ORS 475B.759(3)(b)(B)(i) and (ii). The transfer should have been received on or about January  
4, 2020. (See Exhibit 1 showing "HB 3400 Distribution" transfers dating back to 2017.) The  
County has not received formal communication, an order, or an explanation for the delayed  
transfer from the Oregon Liquor Control Commission ("OLCC"), Department of Revenue  
("DOR"), and/or Department of Administrative Services ("DAS"), (collectively "the Agencies"),  
nor have those Agencies provided a timeline for when the County will receive such formal  
communication. The County thereby files this *Petition* to promote an expedited resolution of the  
issue, to preserve its administrative and legal rights, and to ensure that the County's arguments  
and interests are appropriately considered by the Agencies. As it is unclear which of the  
aforementioned Agencies is the responsible party, this *Petition* is being served on all three  
Agencies pursuant to OAR 137-002-0020(1). To the extent all three Agencies refuse to issue a  
ruling pursuant to OAR 137-002-0020(2), the County may protect its legal interest through

1 another administrative or legal venue, including an action for declaratory relief in circuit court  
2 under ORS Chapter 28.

### 3 **STATUTES AT ISSUE**

4 ORS 475B.759(3)(b) directs the DOR to make quarterly transfers of the Oregon  
5 Marijuana Account to cities and counties. The aforementioned statute does not contemplate or  
6 provide for the distribution of any left-over funds remaining in the Oregon Marijuana Account,  
7 as the codified distribution formula accounts for 100% of the collected funds.<sup>1</sup> For example,  
8 eighty percent of the Oregon Marijuana Account must be used for enumerated programs such as  
9 the State School Fund, State Policy Account, or mental health or alcohol and drug abuse  
10 prevention programs pursuant to ORS 475B.759(3)(c). Ten percent of the Oregon Marijuana  
11 Account is transferred to “cities of this state” pursuant to a formula dictated by ORS  
12 475B.759(3)(b)(A). And, the remaining ten percent of the Oregon Marijuana Account “must be  
13 transferred to the counties” pursuant to ORS 475B.759(3)(b)(B) based on a specific formula set  
14 forth in subsections (i) and (ii).

15 Subsection (i) concerns marijuana producers licensed pursuant to ORS 475B.070, and the  
16 distribution to counties is based on the “total commercially available area of all grow  
17 canopies...in each county” compared to the “total commercially available area of all grow  
18 canopies ... located in this state.” Subsection (ii) concerns marijuana processors licensed  
19 pursuant to ORS 475B.090, marijuana wholesalers licensed pursuant to ORS 475B.100, and  
20 marijuana retail establishments licensed pursuant to ORS 475B.105. Subsection (ii) further sets  
21 forth the distribution formula based on the “number of licenses ... located in each county”  
22 compared to the “number of licenses ... in this state.”

23 Statutorily, the only mechanism for a county to not receive a distribution from the  
24 Oregon Marijuana Account is pursuant to ORS 475B.759(4)(b), dictating that a county that has

---

25 <sup>1</sup> Notable exceptions include the temporary quarterly distributions to the OLCC and the Oregon Criminal Justice  
26 Commission scheduled to occur until October 1, 2023.

1 an ordinance “prohibiting the establishment” of a marijuana production facility “is not eligible to  
2 receive transfers of moneys under subsection [ORS 475B.759(3)(b)(B)(i)],” discussed above.  
3 ORS 475B.759(4)(c) further dictates that a county that has an ordinance “prohibiting the  
4 establishment” of marijuana processors, marijuana wholesalers, or marijuana retail  
5 establishments “is not eligible to receive transfers of moneys under subsection [ORS  
6 475B.759(3)(b)(B)(ii)],” discussed above.

7 As discussed at length below, the operative questions posed by this *Petition* concern  
8 whether recent ordinances adopted by Deschutes County are appropriately interpreted to  
9 “prohibit the establishment” of certain marijuana business in the context of ORS  
10 475B.759(4)(b)(B)(i) and (ii). Local marijuana businesses entitled the County to a \$112,566.18  
11 third quarter 2019 transfer (See Exhibit 1). Those marijuana business were still legally operating  
12 in Deschutes County during the fourth quarter 2019, and are anticipated to continue legally  
13 operating for the foreseeable future.

#### 14 **RELEVANT FACTS**

15 On June 1 and June 15, 2016, Deschutes County adopted Ordinances No. 2016-013,  
16 2016-014, 2016-015, 2016-016, 2016-017, 2016-018, and 2016-019 implementing  
17 comprehensive land use regulations for the marijuana industry in unincorporated Deschutes  
18 County. Those initial marijuana land use regulations were not appealed. With local regulations  
19 in place, on August 2, 2016, Deschutes County effectively “opted in” by adopting Ordinance No.  
20 2016-012 repealing the County’s previous “opt out” ordinance. (See Exhibit 2).

21 Since August 2, 2016, the County has issued numerous land use permits to marijuana  
22 business and has correspondingly received disbursements from the Oregon Marijuana Account to  
23 help offset the localized impacts from such business. (See Exhibit 1.) Specifically, the County  
24 has issued 49 permits to marijuana producers, 8 permits to marijuana processors, 3 permits to  
25 marijuana wholesalers, and 2 permits to marijuana retail establishments. To our knowledge, the  
26

1 OLCC has in turn issued 21 licenses to marijuana producers, 3 licenses to marijuana processors,  
2 2 licenses to marijuana wholesalers, and 1 license to marijuana retail establishments in Deschutes  
3 County.

4 The County committed to reexamine the aforementioned initial marijuana land use  
5 regulations approximately one year post-implementation after gaining additional experience  
6 regulating the evolving marijuana industry. As such, the County again initiated a robust public  
7 process that was well attended by state agencies (including the OLCC), marijuana industry  
8 representatives, and concerned community members. On October 24, 2018, the County amended  
9 the initial land use regulations by adopting Ordinance No. 2018-012. (See Exhibit 3, exhibits  
10 omitted.) Twelve petitioners appealed that ordinance to the Land Use Board of Appeals. Rather  
11 than challenging the amended regulations, the twelve petitioners levied new constitutional  
12 arguments challenging the County's initial marijuana land use regulations. To force the twelve  
13 petitioners to raise their new arguments locally, and to provide the County an opportunity to  
14 respond and build a record on those arguments, the County withdrew Ordinance No. 2018-012  
15 for additional consideration pursuant to ORS 197.830(13)(b).

16 During subsequent public hearings on the withdrawn ordinance, concerned community  
17 members testified that the arguments raised by the twelve petitioners in essence tasked the  
18 County with defending the constitutionality of Oregon's entire recreational marijuana program.  
19 Further testimony noted that despite initial assurances from the state Legislature, industry  
20 activists repeatedly attempted to strip local government's land use authority with bills introduced  
21 in the 2017, 2018, and 2019 legislative session. Despite extensive County resources expended to  
22 develop reasonable land use regulations demonstrating a compromise between marijuana  
23 proponents and concerned community members, citizens on both sides of the issue vocalized  
24 their dissatisfaction, specifically expressing doubt that the state's classification of marijuana as a  
25 farm crop practically precluded effective land use regulations attempting to harmonize what are  
26

1 otherwise incompatible land uses. As such, a significant portion of the written and oral public  
2 testimony urged the County to allow existing marijuana businesses permitted under the initial  
3 marijuana land use regulations to continue but otherwise preclude new businesses by “opting  
4 out” rather than proceeding with the amendments codified by Ordinance No. 2018-012.

5         Responding to that public testimony, the County adopted Ordinances Nos. 2019-014 and  
6 2019-012 on August 19, 2019, and September 3, 2019, respectively. (See Exhibits 4 and 5.)  
7 Ordinance No. 2019-012 repealed the aforementioned text amendments by repealing Ordinance  
8 No. 2018-012. Although anecdotally referred to as an “opt out,” Ordinance No. 2019-014  
9 effectively operates at this time on par with a temporary moratorium prohibiting the  
10 establishment of new marijuana processing sites registered under ORS 475B.840, new marijuana  
11 producers licensed under ORS 475B.070, and new marijuana processors licensed under ORS  
12 475B.090, until the matter is conclusively resolved by voters countywide at an election on  
13 November 3, 2020. No other classes of marijuana businesses are impacted by Ordinance No.  
14 2019-014. More important to this *Petition*, however, Ordinance No. 2019-014 has no impact on  
15 previously-permitted marijuana business, and specifically includes a statement that the ordinance  
16 “will only impact future recreational production and processing businesses and medical  
17 marijuana processing facilities; existing marijuana business will not be impacted nor will the  
18 [ordinance] impact or prohibit future medical dispensaries or production sites, or future  
19 recreational retail or wholesale.”

20         Despite the County’s intentions as set forth in Ordinance No. 2019-014, the OLCC  
21 stopped processing licensing applications for those class of applicants that had applied for or  
22 received land use permits from the County but had not yet completed OLCC’s lengthy licensing  
23 process. As such, the County adopted Ordinance No. 2019-015 (See Exhibit 6) clarifying the  
24 original Ordinance No. 2019-014. Ordinance No. 2019-015 affirms that “Section 1 of Ordinance  
25 No. 2019-014 does not apply to an applicant who as of [October 16, 2019] has a pending  
26

1 production or processing license application before the OLCC and who applied for County land  
2 use approval/LUCS allowing marijuana production and/or processing prior to August 19, 2019.”  
3 (Collectively, Ordinance Nos. 2019-014 and 2019-015 are referred to as the “Moratorium  
4 Ordinances.”)

5 In response to the Agencies’ quarterly request for information, the County provided  
6 copies of the Moratorium Ordinances along with a cover letter on November 26, 2019. (See  
7 Exhibit 7). To date, the Agencies have neither formally responded to that letter nor otherwise  
8 informally communicated their intentions to the County. More importantly, the County did not  
9 receive its fourth quarter 2019 transfer of the Oregon Marijuana Account as expected on or about  
10 January 4, 2020.

#### 11 **QUESTIONS PRESENTED**

12 (1) Considering that Deschutes County previously “opted in” and issued 49  
13 land use permits to marijuana producers, 19 of which have now also received licenses  
14 from OLCC and thereby may continue legally operating within the County, do the  
15 Moratorium Ordinances “prohibit the establishment” of marijuana production within the  
16 meaning of ORS 475B.759(4)(b)?

17 (2) Considering that Deschutes County initially “opted in” and issued 8 land  
18 use permits to marijuana processors, 7 of which have now also received licenses from  
19 OLCC and thereby may continue legally operating within the County, do the Moratorium  
20 Ordinances “prohibit the establishment” of marijuana processors within the meaning of  
21 ORS 475B.759(4)(c)?

22 (3) Considering that the Moratorium Ordinances only defer the matter to  
23 Deschutes County voters during the general election to be held on November 3, 2020,  
24 have the aforementioned ordinances “prohibit[ed] the establishment” of marijuana  
25 production or processing within the meaning of ORS 475B.759(4)(b) or (c)?  
26

1 (4) To the extent questions 2 and 3 are affirmatively answered, does ORS  
2 475B.759(4)(c) preclude Deschutes County from receiving all disbursements pursuant to  
3 ORS 475B.759(3)(b)(B)(ii) even though marijuana wholesalers (pursuant to ORS  
4 475B.100) and marijuana retail establishments (pursuant to 475B.105) were not impacted  
5 by the Moratorium Ordinances?

6 (5) Considering that ORS 475B.759(B)(i) and (ii) still require accounting for  
7 Deschutes County marijuana producers and processors when determining shares  
8 transferred to other counties, how and to whom will the funds in the Oregon Marijuana  
9 Account attributable to those existing Deschutes County marijuana producers and  
10 processors be distributed?

#### 11 **CONTENTIONS ASSERTED BY THE COUNTY**

12 Deschutes County asserts ORS 475B.759(4)(b) and (c) only apply to those circumstances  
13 wherein the timing of a county “opt out” ordinance adopted pursuant to ORS 475B.968 entirely  
14 precludes the establishment of specified marijuana businesses such that no such businesses  
15 legally operate within the county. In the alternative, Deschutes County asserts that ORS  
16 475B.759(4)(b) and (c) only apply after an “opt out” ordinance is upheld by county voters  
17 because, prior to the next general election, such an ordinance is best understood as a temporary  
18 moratorium. Finally, Deschutes County asserts that because ORS 475B.759(c) conjoins three  
19 classes of marijuana business - marijuana processors licensed pursuant to ORS 475B.090,  
20 marijuana wholesalers licensed pursuant to ORS 475B.100, and marijuana retail establishments  
21 licensed pursuant to ORS 475B.105 - an “opt out” ordinance applicable to only one such class of  
22 marijuana businesses does not preclude a county from receiving shares of the Oregon Marijuana  
23 Account attributable to the other classes.

24 ORS 174.010 directs that “In the construction of a statute, the office of the judge is  
25 simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert  
26

1 what has been omitted, or to omit what has been inserted; and where there are several provisions  
2 or particulars such construction is, if possible, to be adopted as will give effect to all” (emphasis  
3 added). That statutory mandate applies equally to an administrative agency. *Gouge v. David*,  
4 185 Or 437, 454, 202 P2d 489, 496 (1949); *Duron v. Filings of National Council on*  
5 *Compensation Insurance*, 111 Or App 571, 574, 826 P2d 107, 109 (1992) (“An administrative  
6 agency is not at liberty to limit or restrict the terms of a statute.”)

7 The Agencies in this matter cannot interpret ORS 475B.759(4)(b) and (c) in isolation,  
8 and must give equal weight to the distribution formulas set forth in ORS 475B.759(3)(b)(B)(i)  
9 and (ii). Those distribution formulas dictate that the existing marijuana businesses located in  
10 Deschutes County that pre-date the Moratorium Ordinances and thereby may continue to legally  
11 operate into perpetuity must be accounted for as they are still clearly “located in this state.” And,  
12 those distribution formulas preclude the shares of the Oregon Marijuana Account attributable to  
13 those Deschutes County marijuana businesses being transferred to any other counties as those  
14 marijuana businesses are clearly not “located in [those] count[ies].”

15 There is no doubt or dispute that the original drafters did not write ORS 475B.759(4)(b)  
16 and (c) with a mind towards the circumstances that have come to fruition in Deschutes County.  
17 Prior to the most recent legislative session, the County was not aware of any marijuana statutes  
18 that contemplated the impact to existing legal marijuana business if a jurisdiction “opted out”  
19 after first having “opting in.” Existing legal doctrines such as “nonconforming uses” and “vested  
20 rights” arguably are sufficient to protect the legal interests of such existing marijuana business.  
21 At least with regard to marijuana production, the Legislature in essence codified those existing  
22 legal doctrines when passing SB 365 in the 2019 session. That bill, in part, clarifies the legal  
23 nonconforming status of marijuana production facilities after an “opt out:” “A premises for  
24 which a marijuana producer holds a production license issued under ORS 475B.070 and that is  
25 located in an area subject to the jurisdiction of a ... county that has adopted a prohibition under  
26

1 ORS 475B.968 on marijuana production ... since the date on which the production license was  
2 first issued may continue to be used to produce marijuana.” Since SB 365 removed all  
3 ambiguity that existing Deschutes County marijuana producers may continue to legally operate,  
4 there should likewise be no ambiguity that Deschutes County is entitled to its share of the  
5 Oregon Marijuana Account attributable to those marijuana producers pursuant ORS  
6 475B.759(3)(b)(B)(i). And, that same rational should be applied to all other marijuana  
7 businesses covered by ORS 475B.759(3)(b)(B)(ii).

8 Erroneously interpreting ORS 475B.759(4)(b) and (c) to include Deschutes County’s  
9 Moratorium Ordinances will lead to the absurd result of the County’s shares being left to waste  
10 in the Oregon Marijuana Account indefinitely. Such an outcome is unnecessarily punitive  
11 considering that our local community will face the same impacts going forward as we have every  
12 previous quarter that we received our share of the Oregon Marijuana Account.

### 13 RELIEF REQUESTED

14 The County requests that its shares of the Oregon Marijuana Account be immediately  
15 transferred consistent with ORS 475B.759(3)(b)(B)(i) and (ii). In the alternative, the County  
16 requests that a hearing be scheduled on this *Petition* pursuant to OAR 137-002-0030.

### 17 NAMES AND ADDRESSED OF KNOWN INTERESTED PARTIES

18 No issue raised in this *Petition* should alter or amend transfers pursuant to ORS  
19 475B.759(3)(b) of the Oregon Marijuana Account to any other recipients. Even if the Agencies  
20 determine that Deschutes County is not entitled to its share of the Oregon Marijuana Account,  
21 the disbursement formulas set forth in ORS 475B.759(3)(b) do not contemplate reallocating the  
22 County’s share. As such, the only known interested parties are Deschutes County and the  
23 aforementioned Agencies, each of which will be served a copy of this *Petition*.

1  
2  
3 DATED: January 30, 2020



4 D. ADAM SMITH, OSB #170317  
5 Deschutes County Assistant Legal Counsel  
6 (541) 388-6593  
7 [adam.smith@deschutes.org](mailto:adam.smith@deschutes.org)

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Of Attorneys for Deschutes County

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date listed below, I caused true and correct copies of the  
3 foregoing **DESCHUTES COUNTY'S PETITION FOR DECLARATORY RULING** to be  
4 served upon the following listed parties by certified first-class U.S. mail:

5 Oregon Liquor Control Commission  
6 Steven Marks  
9079 SE McLoughlin Blvd.  
7 Portland, OR 97222-7355  
and  
8 PO Box 22297  
9 Milwaukie, OR 97269-2297

10 Oregon Department of Administrative Services  
11 George Naughton  
155 Cottage St. NE U10  
12 Salem, OR 97301-3965

13 Oregon Department of Revenue  
14 Nia Ray  
955 Center St. NE  
15 Salem, OR 97301-2555

16 Oregon Department of Justice  
17 Renee Stineman, chief counsel  
1162 Court St. NE  
18 Salem, OR 97301-4096

19  
20 DATED: January 30, 2020



21 D. ADAM SMITH, OSB #170317  
22 Deschutes County Assistant Legal Counsel  
(541) 388-6593  
23 [adam.smith@deschutes.org](mailto:adam.smith@deschutes.org)

24 Of Attorneys for Deschutes County  
25  
26

Transcript 2/19/20 voicemail to Tom Anderson from Kelvin Adkins-Heljeson

K: Hi Tom this is Kelvin Adkins-Heljeson with the Oregon Department of Revenue. Um, sorry I missed you. Um, I wanted to uh, touch base. Um, we got a request for a declaratory ruling, um, from the County. I wanted to let you know that we are working on a response. Um, it may be back to you by the time, uh, you're back in the office. But I just wanted to, uh, let you know that we are working on that response. Um, so thank you. Bye.



# Oregon

Kate Brown, Governor

## Liquor Control Commission

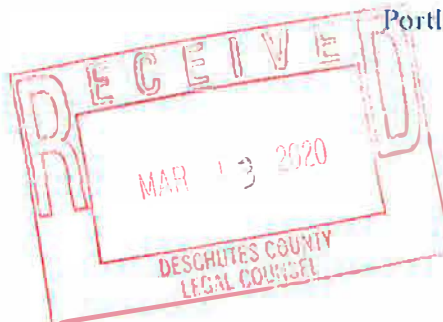
9079 SE McLoughlin Blvd.

Portland, Oregon 97222-7355

503-872-5000

800-452-6522

[www.oregon.gov/olcc](http://www.oregon.gov/olcc)



March 10, 2020

D. Adam Smith  
Deschutes County Legal Counsel  
1300 NW Wall St Suite 205  
Bend, OR 97703

RE: Petition for Declaratory Ruling

VIA FIRST CLASS MAIL

Dear Mr. Smith:

The Oregon Liquor Control Commission (OLCC) received the Deschutes County Petition for Declaratory Ruling signed on January 30, 2020. In the petition, the County requests that its share of taxes from the Oregon Marijuana Account be transferred to it, for the fourth quarter of 2019.

It is OLCC's understanding that the Oregon Department of Revenue has determined that the County's current opt-out ordinances adopted under ORS 475B.968 make it ineligible to receive its share of marijuana taxes.

It is not within OLCC's authority to grant the County the relief it seeks and therefore OLCC does not intend to take any action with regard to the petition.

Sincerely,

Steve Marks  
Executive Director



## LEGAL COUNSEL

David Doyle, Legal Counsel  
Christopher Bell, Sr. Assistant Legal Counsel  
John E. Laherty, Sr. Assistant Legal Counsel  
D. Adam Smith, Assistant Legal Counsel  
Amy Heverly, Assistant Legal Counsel

March 19, 2020

Re: Deschutes County Declaratory Ruling (DR-\_\_\_), filed 1/30/20

Oregon Liquor Control Commission  
Steven Marks  
9079 SE McLoughlin Blvd.  
Portland, OR 97222-7355  
and  
PO Box 22297  
Milwaukie, OR 97269-2297

Oregon Department of Administrative Services  
George Naughton  
155 Cottage St. NE U10  
Salem, OR 97301-3965

Oregon Department of Revenue  
Nia Ray  
955 Center St. NE  
Salem, OR 97301-2555

Oregon Department of Justice  
Renee Stineman, chief counsel  
1162 Court St. NE  
Salem, OR 97301-4096

Dear Sirs/Madams:

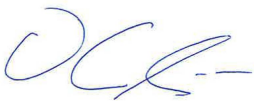
Deschutes County is in receipt of the March 10, 2020 letter (attached) from the Oregon Liquor Control Commission (“OLCC”) regarding the County’s *Petition for Declaratory Ruling*. The County disputes whether this letter is an allowable response under OAR 137-002-0020. The rule specifies that an agency may either notify a petitioner that it will issue a ruling under subpart (2), or decline to issue a ruling under subpart (3). Either aforementioned option would provide the County an avenue for further relief through a declaratory judgment action filed in circuit court (*See Oregonians Against Trapping v. Oregon State Dep’t of Agriculture*, 56 Or App 78, 81, 641 P2d 72 (1982)) or through an appeal filed with the Court of Appeals (*See ORS 183.410*). OLCC’s March 10 letter could be interpreted as intentionally denying the County an avenue for further relief. The County trusts that is not the case, and that OLCC’s letter is an unfortunate oversight.

The County also disputes the claim asserted in the letter that “the Oregon Department of Revenue has determined that the County’s current opt-out ordinances adopted under ORS 475B.968 make it ineligible to receive its share of marijuana taxes.” To date, Deschutes County has not received confirmation of such a determination. In fact, the last correspondence received by the County from the Department of Revenue was a voice mail left on February 10, 2020, by Kelvin Adkins-Heljeson for Tom Anderson, Deschutes County Administrator (transcript attached). That voicemail indicated that the Department of Revenue was “working on a response.” The voicemail further implied the County would receive the Department’s formal response in short order. To date, the County has received no further communication from the Department of Revenue or any other state agency prior to receiving the aforementioned OLCC letter.

To the extent that the aforementioned OLCC letter is correct and the Department of Revenue in fact determined that the County is not entitled to “its share of marijuana taxes,” the County expects written confirmation of that determination to be sent posthaste. That written confirmation should also specify the County’s appeal rights under the Oregon Administrative Procedure Act or other applicable statute. To the extent such a determination has not yet been made, the County looks forward to the OLCC, Department of Administrative Services, Department of Revenue, and/or the Department of Justice formally responding to the County’s *Petition for Declaratory Ruling* in a manner consistent with OAR 137-002-0020 within the applicable 60-day timeframe.

Your attention to this matter is greatly appreciated. Thank you.

Respectfully,

A handwritten signature in blue ink, appearing to read 'D. Adam Smith', with a stylized flourish at the end.

D. ADAM SMITH, OSB #170317  
Deschutes County Assistant Legal Counsel  
Of Attorneys for Respondent



# Oregon

Kate Brown, Governor

Department of Revenue  
955 Center St NE  
Salem, OR 97301-2555  
[www.oregon.gov/dor](http://www.oregon.gov/dor)

March 26, 2020

D. Adam Smith, Deschutes County Assistant Legal Counsel  
Attn: Deschutes County Legal Counsel  
1300 NW Wall Street, 2<sup>nd</sup> Floor  
Bend, OR 97701  
541-388-6593  
[adam.smith@deschutes.org](mailto:adam.smith@deschutes.org)

cc: Deschutes County  
Attn: Tom Anderson, Deschutes County Administrator  
PO Box 6005  
Bend, OR 97708

## **Marijuana State Shared Revenue – Deschutes County**

Dear Mr. Smith:

The Department of Revenue (department) received a “Petition for Declaratory Ruling” (petition) dated January 30, 2020, that you submitted on behalf of Deschutes County (county). In that petition, the county raises several arguments as to why it believes it is entitled to distributions from the Oregon Marijuana Account under ORS 475B.759(3)(b)(B) and requests that the department make that distribution or provide the county with a hearing under the rules applicable to declaratory rulings under the Oregon Administrative Procedures Act (APA). For the reasons below, the department declines to issue a declaratory ruling on this matter, declines to grant a hearing, and declines to transfer any further amounts to the county from the Oregon Marijuana Account while Deschutes County Ordinance 2019–014 (ordinance) remains in effect.

### **Declaratory Ruling Authority**

As an initial matter, pursuant to ORS 183.315 and 183.410, the department is not subject to the declaratory ruling (or contested case) provisions of the APA, and it consequently lacks authority to issue any ruling under those statutes and associated rules. Likewise, it is not bound by the APA hearing provisions nor obligated to grant the county the hearing it has requested under the APA. The department does have discretionary authority under ORS 305.105 to issue declaratory rulings. However, after consideration



the department also declines to issue to the county a declaratory ruling under its discretionary authority granted by ORS 305.105.

## Distribution Authority

Due to the enactment by the county of the ordinance in August 2019, the department was prohibited from distributing state-shared marijuana tax revenue to the county in December 2019, or subsequently, in accordance with ORS 475B.759(3)(b)(B)(i) and (ii) and ORS 475B.759(4)(b) and (c) as they are currently codified.

As you have noted in the petition, ORS 475B.759 creates the Oregon Marijuana Account (account) and dictates how money allocated to the account is distributed to eligible recipients.

Subject to the eligibility provisions in ORS 475B.759(4), twenty percent of the money in the account certified as available by the department is distributed quarterly, split evenly between the eligible cities of the state and the eligible counties of the state. *See* ORS 475B.759(3)(b). Distributions to counties are calculated under ORS 475B.759(3)(b)(B)(i) and (ii).

ORS 475B.759(4)(b) provides that a county that “has an ordinance prohibiting the establishment of a premises for which issuance of a license under ORS 475B.070 is required is *not eligible* to receive transfers of money under [ORS 475B.759(3)(b)(B)(i)].” (emphasis added). Similarly, ORS 475B.759(4)(c) provides that a county that “has an ordinance prohibiting the establishment of a premises for which issuance of a license under ORS 475B.090...is required is *not eligible* to receive transfers of money under [ORS 475B.759(3)(b)(B)(ii)].” (emphasis added). As a result, a county that has an ordinance prohibiting the establishment of any of the referenced marijuana businesses within the unincorporated portion of the county is ineligible to receive any state-shared marijuana tax revenue from the account.

On or around August 19, 2019, the county enacted an ordinance entitled “An Ordinance Prohibiting the Establishment of Certain Marijuana Businesses Within Unincorporated Deschutes County; Referral to the Electors and Declaring an Emergency.” Deschutes County Ordinance 2019–014. This ordinance provides that both marijuana producers licensed under ORS 475B.070 and marijuana processors licensed under ORS 475B.090



are prohibited in the unincorporated area of Deschutes County.<sup>1</sup> See Ordinance 2019-014, Section 1(b), (c). The ordinance states it was enacted in accordance with ORS 475B.968 and became effective upon passage. See Ordinance 2019-014, Sections 1, 4.

The preamble to the ordinance provides further that “the public testimony received \* \* \* requested that the board prohibit the establishment of new marijuana businesses (“Opt Out”) in unincorporated Deschutes County.” Also in the preamble, the county cited its authority under ORS 475B.968 to adopt an ordinance prohibiting the establishment of any one or more of the six categories of licensed marijuana related businesses, and noted the board’s preference to adopt an ordinance that *prohibited the establishment of new recreational marijuana production and processing businesses* within the unincorporated area subject to the county’s jurisdiction.<sup>2</sup>

The county’s ordinance was in effect during the period included in the OLCC’s City/County Marijuana Status Verification for the time period of July 1, 2019 to September 30, 2019, and the county failed to certify in its response to the OLCC that the county did not prohibit OLCC licensed producers and processors, as required by ORS 475B.759(6)(a). Instead, the county said in a letter to OLCC that it was unable to respond singularly to the questions regarding whether the county had or had not prohibited recreational marijuana producers or processors. Ex. 7 at 1. However, the county acknowledged that it “has temporarily opted out of receiving and processing new marijuana production and processing applications.” Ex. 7 at 2.

ORS 475B.759(4)(b) and (c) preclude the department from distributing any amount of state shared marijuana tax funds under ORS 475B.759(3)(b)(B)(i) and (ii) if a county has an ordinance prohibiting the establishment of a premises for which a license is required under ORS 475B.070 or 475B.090, respectively. The department also acknowledges that an act by the legislature could address this issue and will comply with future legislative direction pertaining to the matter at hand. But, because of Oregon law as it is currently written, and, because the county enacted its ordinance prohibiting the establishment of a premises for which a marijuana producer’s license is required and further prohibiting the establishment of a premises for which a marijuana

<sup>1</sup> The ordinance also prohibits medical marijuana processing sites registered under ORS 475B.840. See Ordinance 2019-014, Section 1(a).

<sup>2</sup> As a result of the county having adopted the ordinance, the Oregon Liquor Control Commission (OLCC) appears to have understood the ordinance to preclude OLCC from issuing a license to a premises for which a license is required under ORS 475B.090 or ORS 475B.070, even if the potential licensee had been issued local land use permits prior to the adoption of the Opt-Out ordinance. The county subsequently adopted Deschutes County Ordinance 2019-015, clarifying that the original ordinance prohibiting the establishment of marijuana producers and processors would not apply to applicants who had a pending application submitted to OLCC and who applied for county land use approval allowing the production or processing prior to August 2019. (Ordinance 2019-015).



# Oregon

Kate Brown, Governor

Department of Revenue  
955 Center St NE  
Salem, OR 97301-2555  
[www.oregon.gov/dor](http://www.oregon.gov/dor)

processor's license is required, the county is ineligible to receive any distribution of state-shared marijuana tax revenue.

Respectfully,

Nia Ray, Director  
Oregon Department of Revenue



# Oregon

Kate Brown, Governor

## Liquor Control Commission

9079 SE McLoughlin Blvd.

Portland, Oregon 97222-7355

503-872-5000

800-452-6522

[www.oregon.gov/olcc](http://www.oregon.gov/olcc)

April 21, 2020

Adam Smith  
Deschutes County Legal Counsel  
1300 NW Wall St Suite 205  
Bend, OR 97703



RE: Petition for Declaratory Ruling

Dear Mr. Smith:

The Oregon Liquor Control Commission (OLCC) received your letter dated March 19, 2020 requesting clarification regarding OLCC's response to Deschutes County's "Petition for Declaratory Ruling."

OLCC provided a written response dated March 10, 2020 (OLCC Response). OLCC's Response stated that OLCC "does not intend to take any action" regarding the county's petition. The OLCC Response is the written notice to Deschutes County that it will not issue a ruling in accordance with notification requirements in OAR 137-002-0020(2).

We understand that Deschutes County has now received additional correspondence from the Department of Revenue dated March 26, 2020. We apologize for any confusion the OLCC Response's citation to the then yet-to-be-issued response from Department of Revenue may have caused.

Sincerely,

Steve Marks  
Executive Director

**IN THE OREGON TAX COURT  
REGULAR DIVISION**

<b>DESCHUTES COUNTY,</b>	)	
a political subdivision of the	)	TC No. _____
State of Oregon,	)	
Plaintiff,	)	
	)	
v.	)	
	)	
<b>DEPARTMENT OF REVENUE,</b>	)	<b>SUMMONS</b>
<b>DEPARTMENT OF ADMINISTRATIVE</b>	)	
<b>SERVICES, and</b>	)	
<b>OREGON LIQUOR CONTROL</b>	)	
<b>COMMISSION,</b>	)	
State of Oregon,	)	
Defendants.	)	

TO: All Defendants

**NOTICE TO DEFENDANT:  
READ THESE PAPERS CAREFULLY!**

You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal document called a “motion” or “answer.” The “motion” or “answer” must be given to the tax court clerk within 30 days. It must be in proper form and have proof of service on the plaintiff’s attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at [www.oregonstatebar.org](http://www.oregonstatebar.org) or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

This action is a claim for declaratory judgment pursuant to Oregon’s Uniform Declaratory Judgment Act, ORS 28.010 *et seq.* (“UDJA”), specifically concerning the taxation of marijuana and marijuana products pursuant to ORS 475B.700 *et seq.*

Dated: December 11, 2020

s/ D. Adam Smith  
D. ADAM SMITH, OSB #170317  
Deschutes County Assistant Legal Counsel  
(541) 388-6593  
[adam.smith@deschutes.org](mailto:adam.smith@deschutes.org)  
Of Attorneys for Deschutes County

I hereby certify that on the date listed below, I caused true and correct copies of the foregoing **SUMMONS** to be served upon the parties by certified first-class U.S. mail:

Dated: December 11, 2020

s/ D. Adam Smith

D. ADAM SMITH, OSB #170317

Deschutes County Assistant Legal Counsel

(541) 388-6593

adam.smith@deschutes.org

Of Attorneys for Deschutes County