



## MEMORANDUM

### CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Sherilyn Lombos, City Manager

**DATE:** August 24, 2015

**SUBJECT:** Work Session for August 24, 2015

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**5:00 p.m. (45 min) – Basalt Creek Concept Plan Briefing.** Staff will share the results of the newest boundary option and land use scenario analysis for the Basalt Creek planning area in preparation for the September 8 Tualatin and Wilsonville Joint City Council meeting. Staff seeks Council input about the land use scenario analysis, land use types, key indicators, and potential benefits of the newest draft boundary option.

**5:45 p.m. (20 min) – Election Ordinance Discussion.** On July 27, 2015 the Council had a discussion regarding Ordinance 1381-15. At that meeting it was agreed to add the topic to the August 24<sup>th</sup> work session for further discussion.

**6:05 p.m. (20 min) - Refreshing Tualatin's Image.** Deputy City Manager Sara Singer will brief the Council on a project to refresh Tualatin's look, including new design formats for communication materials, the website, social media, and the newsletter.

**6:35 p.m. (20 min) – Marijuana Update.** Staff will present the latest information available about marijuana resulting from this last legislative session and how it relates to municipalities.

**6:55 p.m. (5 min) – Council Meeting Agenda Review, Communications & Roundtable.** Council will review the agenda for the August 24th City Council meeting and brief the Council on issues of mutual interest.



# MEMORANDUM

## CITY OF TUALATIN

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Sherilyn Lombos, City Manager

**FROM:** Cindy Hahn, Associate Planner  
Aquilla Hurd-Ravich, Planning Manager and Alice Cannon, Assistant City Manager

**DATE:** 08/24/2015

**SUBJECT:** Basalt Creek Concept Plan Project Briefing

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### **ISSUE BEFORE THE COUNCIL:**

Staff will provide Council with an update on the Basalt Creek Concept Plan project in preparation for the next Tualatin and Wilsonville Joint City Council meeting on September 8.

### **EXECUTIVE SUMMARY:**

At tonight's meeting, staff will share the results of the newest boundary option and land use scenario analysis for the Basalt Creek planning area (Attachment A) in preparation for the September 8 Tualatin and Wilsonville Joint City Council meeting. Staff seeks Council input about the land use scenario analysis, land use types, key indicators, and potential benefits of the newest draft boundary option.

At the Joint Council meeting, the Councils will be asked to provide direction to the project team on the land use and boundary option in order to develop a preferred alternative for the concept plan, which will be presented for public input this fall.

### **DISCUSSION:**

#### **Background**

The Basalt Creek Concept Plan will establish a vision and jurisdictional boundary for the 847 acres between the cities of Tualatin and Wilsonville. At the Joint Council meeting in June, the project team presented two boundary and land use alternatives to the base case scenario. At that meeting, the two Councils discussed the land use types, key indicators and potential benefits of the two draft boundary options. The Tualatin City Council favored Option 1 while the Wilsonville City Council favored Option 2.

In particular, Tualatin Councilors expressed significant interest in designating the land south of the future Basalt Creek Parkway, between Boones Ferry Road on the east and the Basalt Creek Canyon on the west, as future City of Tualatin residential land in recognition of the existing

residential community. City of Wilsonville Councilors expressed concern over the disparity in Option 1 with regard to the benefits realized by each city and proposed a modified boundary north of the future Basalt Creek Parkway west of the Basalt Creek Canyon. Both Councils agreed the West Railroad Area is significantly constrained and should be removed from the analysis at this point and its future development discussed further between the Cities as well as Metro in the future. The Councils also discussed the proposed sanitary sewer system, as it differs from the proposed boundary options, and how risks can be ameliorated and financial savings shared. The Joint Council directed staff to develop an alternative addressing these interests and concerns.

### **Boundary Option 3**

Boundary Option 3 responds to Joint Council input in several areas:

- West Railroad area is taken out of the equation for the planning period. No employment or development is assumed due to the significant environmental, transportation and infrastructure cost.
- Natural and sensitive environmental areas are preserved, both in the Basalt Creek Canyon and West Railroad areas.
- A proposed boundary extends south on Boones Ferry Road to include existing residential parcels in Tualatin's jurisdiction, thus recognizing the existing community and ensuring a cohesive residential zone.
- A proposed boundary is shifted on the west side of the Basalt Creek Canyon area to create a more cohesive industrial district in Wilsonville near the intersection of the new Basalt Creek Parkway and Graham's Ferry Road. This ensures compatible employment uses between the cities while considering topography and parcel lines. Additionally Tualatin's southern residential neighborhoods are buffered from industrial land.

Boundary Option 3 also considers jurisdictional equity through the lens of developable acres, phasing and infrastructure costs, and more balanced property tax returns. Due to high market demand for housing, Tualatin realizes a return on investment (through assessed value and property taxes) from this near-term demand more quickly, while Wilsonville includes a little more land to offset the higher overall infrastructure costs and delay in return on investment by fulfilling the employment capacity expectations for the planning area.

A key consideration for Council in assessing the merits of Option 3 is which option creates the most complete cohesive community for Tualatin? Option 3 provides additional residential land within Tualatin, maintains the integrity of the residential area west of Boones Ferry Road, and puts the majority of the Basalt Creek Canyon in one jurisdiction to ensure cohesive regulation of this sensitive natural resource. Employment transition areas provide low-impact employment opportunities, open space and landscape buffers, as well as insulate Tualatin's southern residential neighborhoods from industrial development in Wilsonville. The land use scenario is designed to have robust and efficient infrastructure systems that are not cost prohibitive and generally, development "pays its way."

Performance indicators were reviewed to evaluate Boundary Option 3 using Envision Tomorrow (modeling software). Information on the model outputs will be provided at the Joint Council meeting, but indicators closely related to the project's guiding principles are included in tonight's presentation materials (Attachment B).

The Basalt Creek area is important for the long-term growth of Tualatin's southern neighborhoods, Wilsonville's industrial base, and employment opportunities for residents of both

cities. Conducting a thorough and thoughtful planning process will identify and resolve potential impacts on the community. The Basalt Creek area presents an opportunity to maximize assessed property value, integrate jobs and housing, develop efficient transportation and utility systems, create an attractive residential and business community, incorporate natural resource areas, and provide recreational opportunities as community amenities and assets.

### **Expected Results**

Tonight's presentation is intended to familiarize the Council with the newest land use scenario analysis for Basalt Creek and its impacts for Tualatin, and to prepare the Council for a productive discussion at the Tualatin and Wilsonville Joint City Council meeting on September 8. The project team will be seeking direction on a preferred jurisdictional boundary and land uses at the Joint Council meeting.

### **Next Steps**

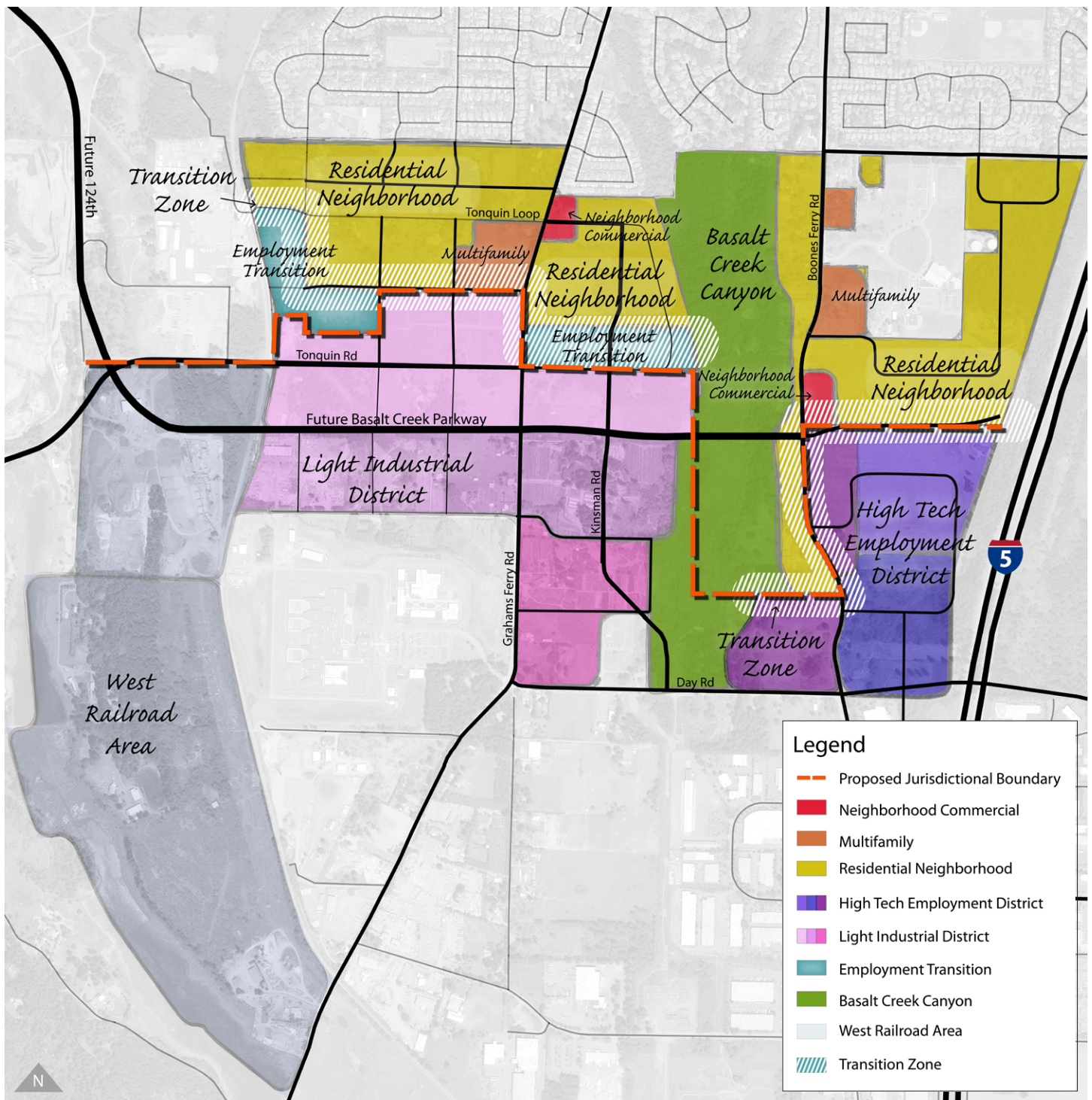
The Joint Council meeting on September 8 will be the fourth Tualatin and Wilsonville Joint City Council meeting for the Basalt Creek Concept Plan. Based on the discussion and guidance received at the upcoming meeting, the project team will refine a preferred land use alternative for the Basalt Creek Concept Plan. That preferred alternative will be presented at a Public Open House this fall and drafting of the Concept Plan will begin with expected completion in early 2016.

### **RECOMMENDATION:**

Staff recommends City Council discuss Boundary Option 3 and provide direction to staff in preparation for the Tualatin and Wilsonville Joint City Council meeting on September 8.

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**Attachments:**    A. Boundary Option 3  
                          B. Presentation



## Boundary Option 3 Land Use Scenario

### Basalt Creek Concept Plan







# **City Council Briefing Boundary Option 3 for Basalt Creek**

Tualatin City Council  
Work Session  
August 24, 2015



# Purpose of Tonight's Meeting

- Present Boundary Option 3 and share preliminary analysis results
- Seek Council direction:
  - Is the boundary in the right place based on Joint Council direction in June?
  - Are the land uses appropriately sized and in the right place?

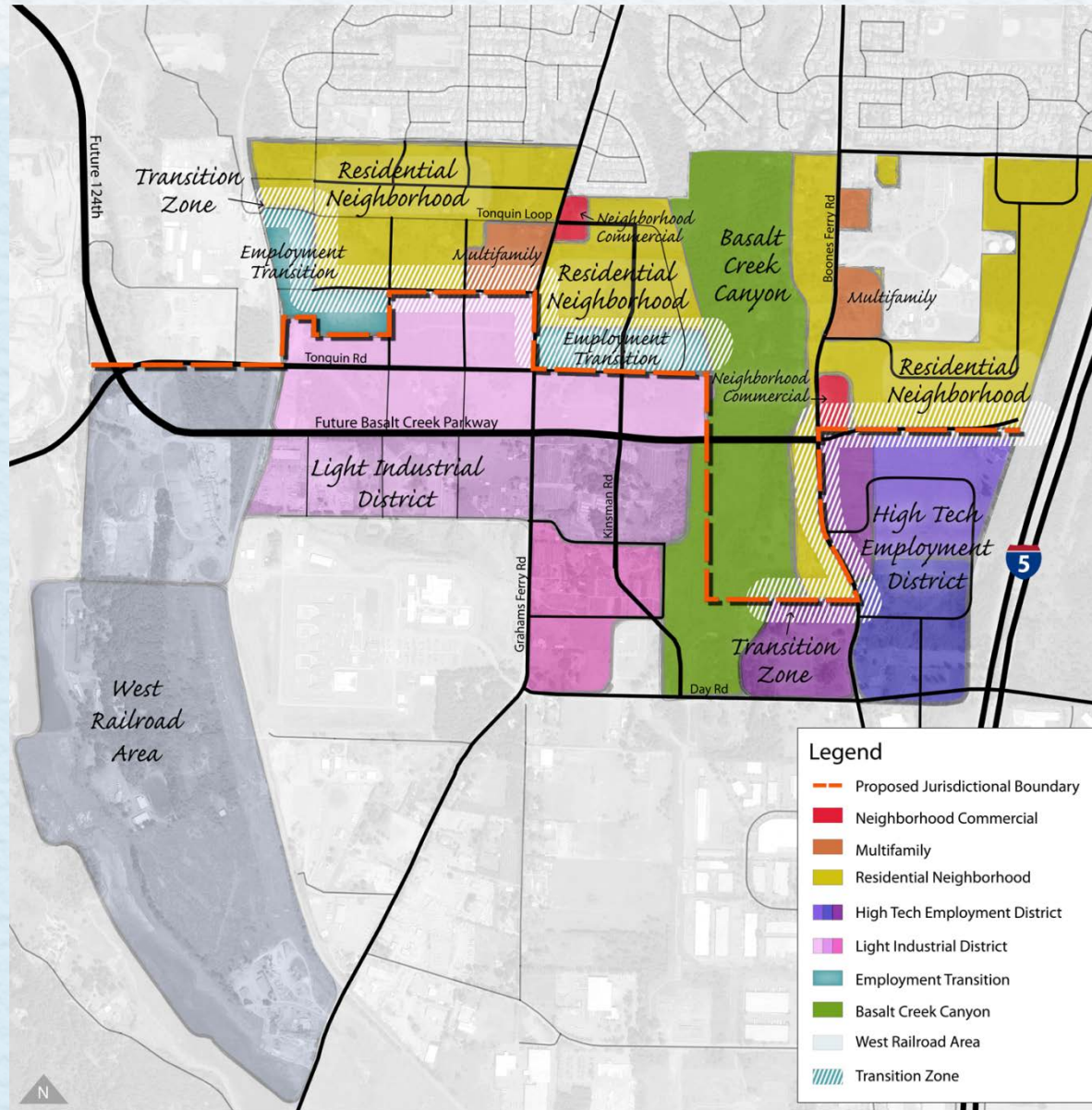


# Key Points from Joint Council for Tualatin

- Consensus reached on:
  - Provide buffering around Greenhill Lane
  - Maintain continuity of residential neighborhood west of Boones Ferry Road next to Basalt Creek canyon
  - Protect Basalt Creek canyon
  - Remove West Railroad from Tualatin's jurisdiction
  - Provide buffering for existing residential neighborhoods
  - Maximize gravity sewer and minimize pump stations
- Conversation around:
  - Place jurisdictional boundary along property lines rather than roads west of Basalt Creek canyon



# Boundary Option 3







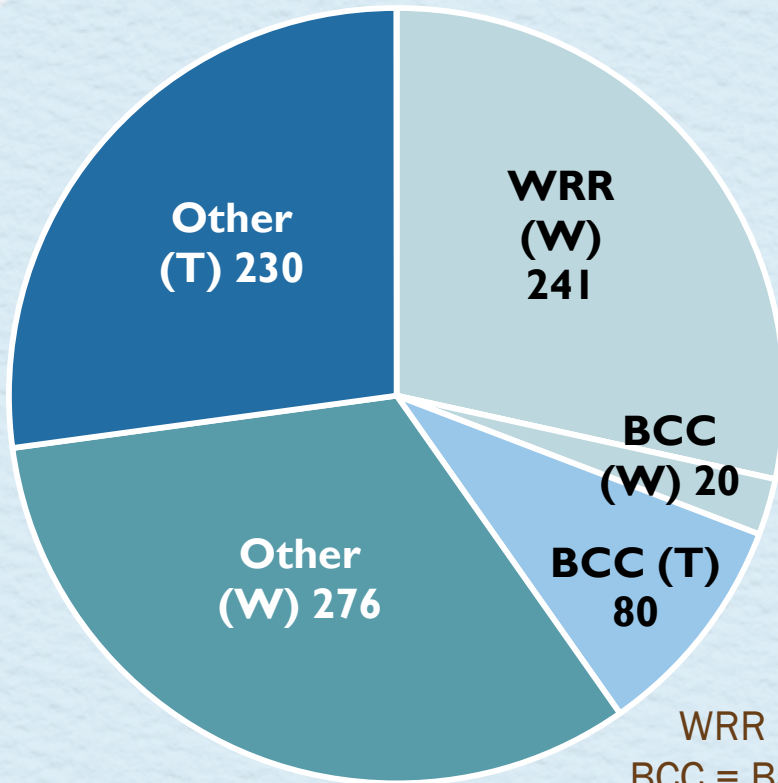
# Next Steps

- September 8: Joint Tualatin and Wilsonville City Council Meeting
- Fall:
  - Refine Preferred Land Use Alternative
  - Hold Public Open House
  - Prepare Draft Basalt Creek Concept Plan



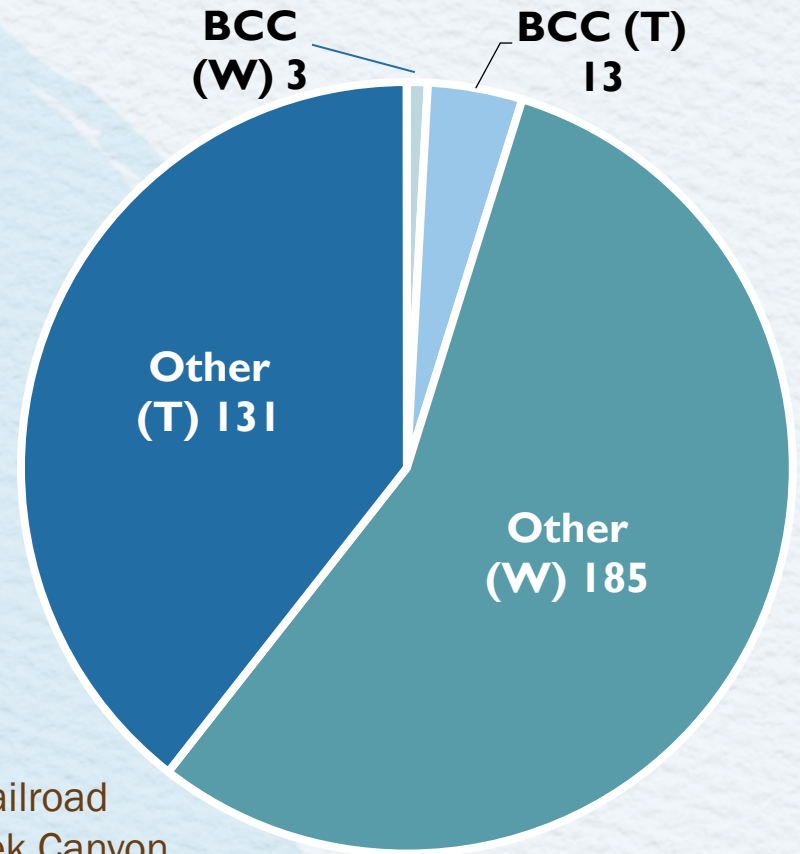
# **Additional Information to be Provided at September 8 Joint Council Meeting**

## Option 3: Total Acres Added



WRR = West Railroad  
BCC = Basalt Creek Canyon  
Other = All other land

## Option 3: Total Developable Acres

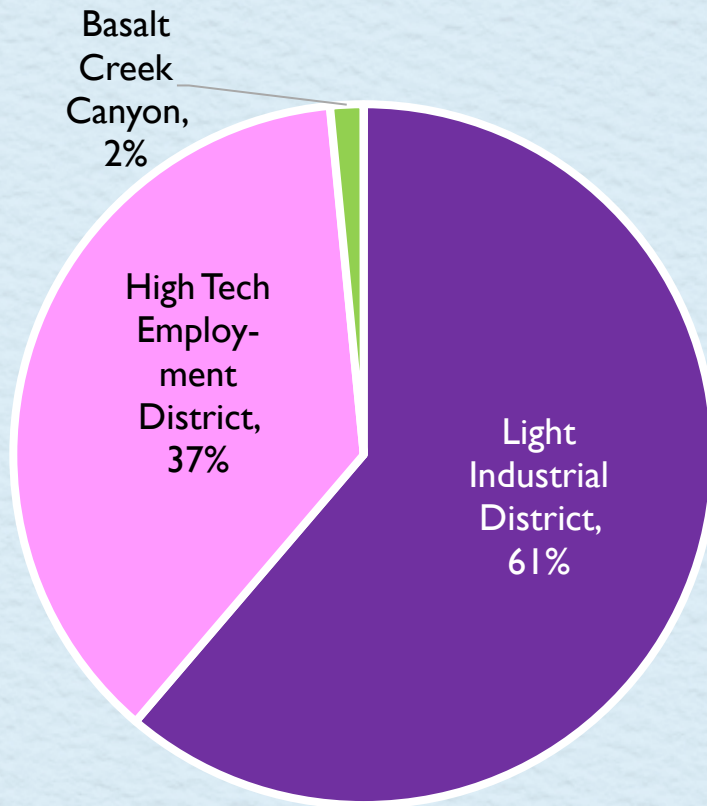


Total land in full study area – 847 acres

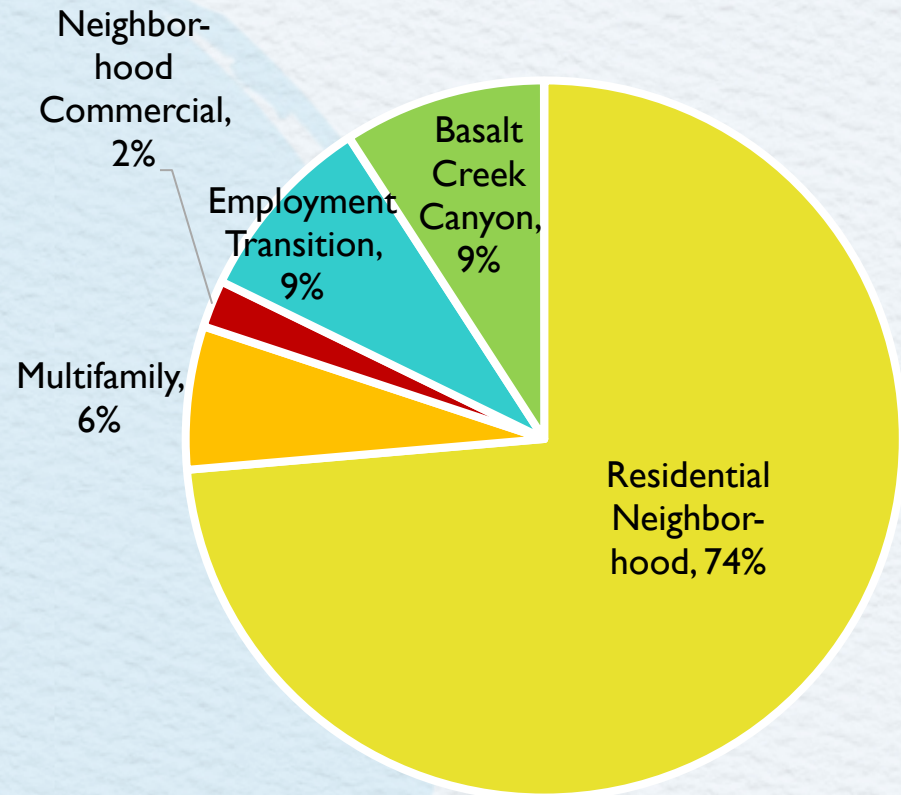
8 Total Vacant Developable land (excluding West Railroad) – 331 acres

# Option 3: Land Use Mix

## Wilsonville



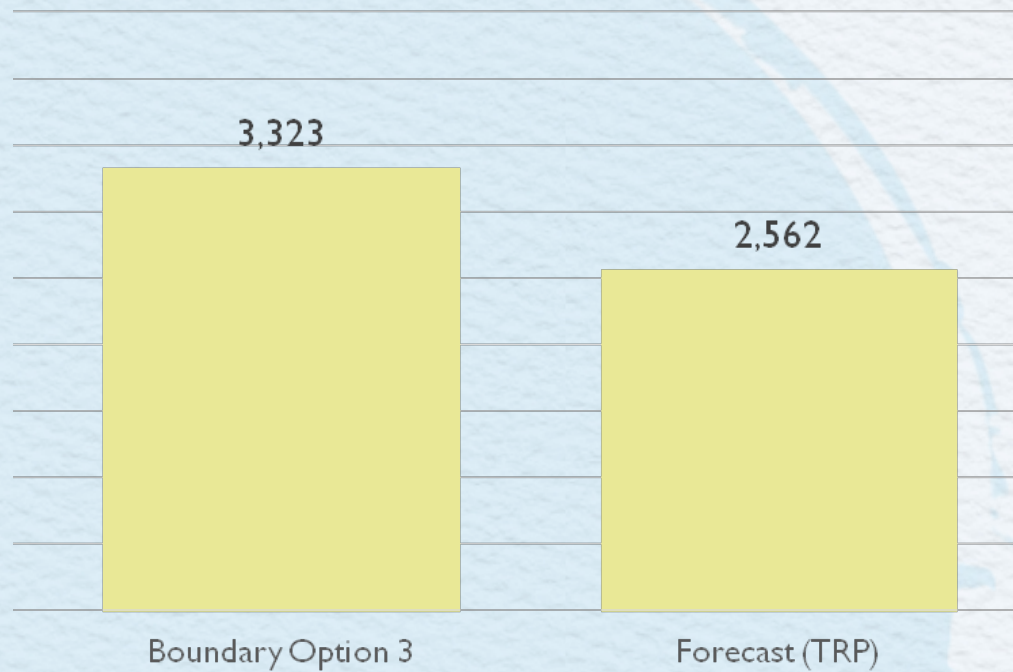
## Tualatin



% of developable acres excluding West Railroad

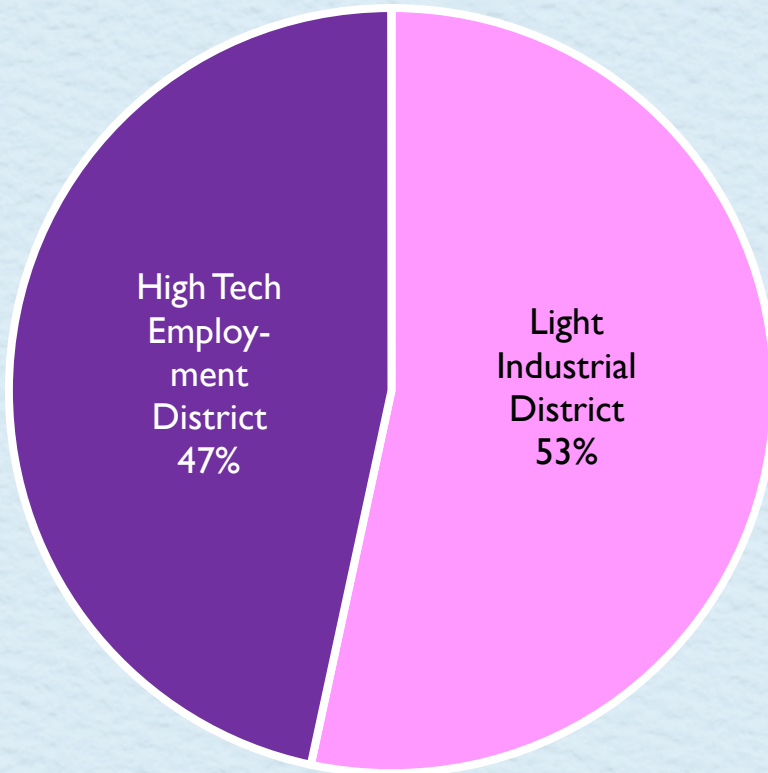


# Option 3: Number of Jobs



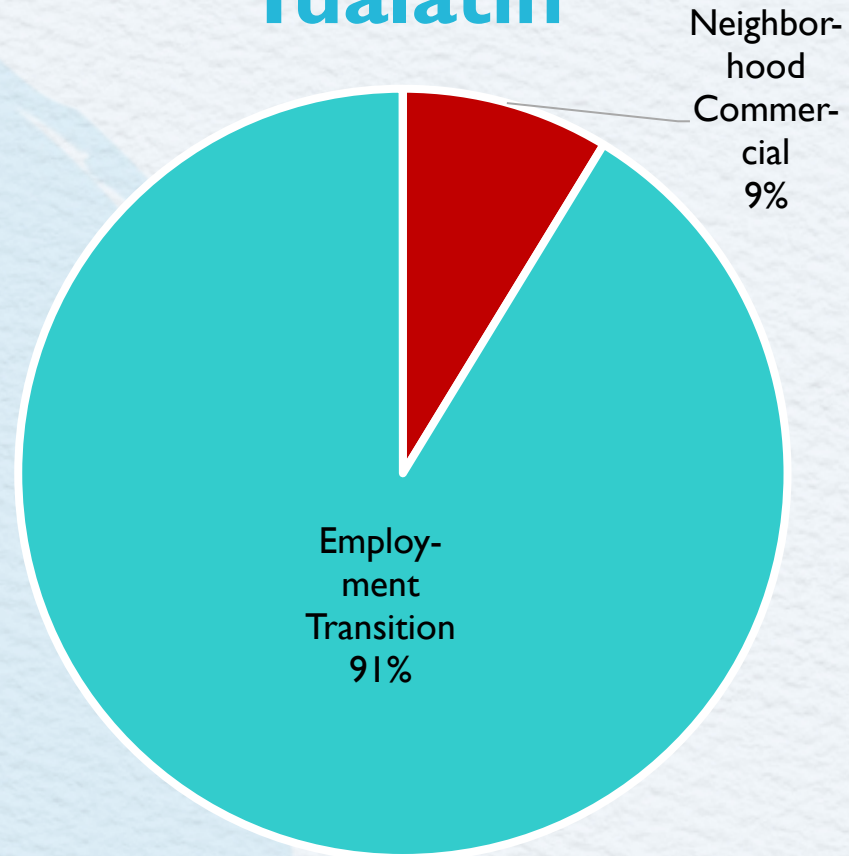
# Option 3: Number of Jobs

## Wilsonville



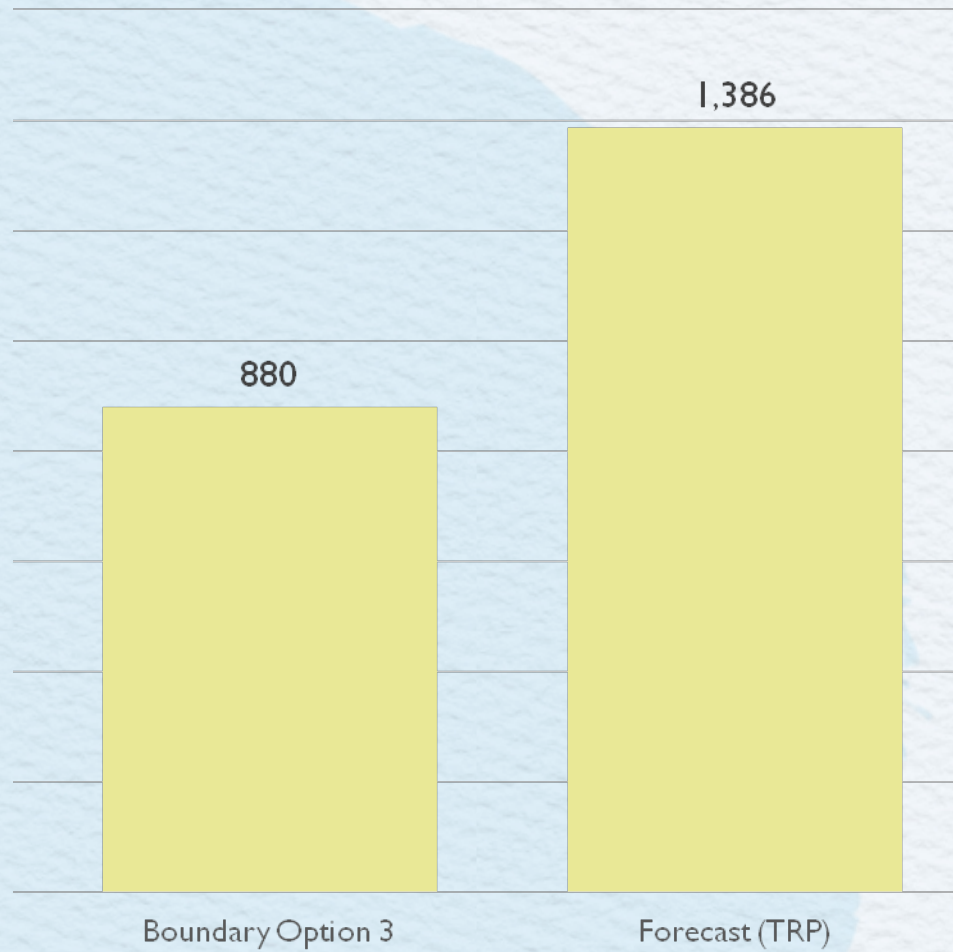
Total Jobs: 2,922

## Tualatin



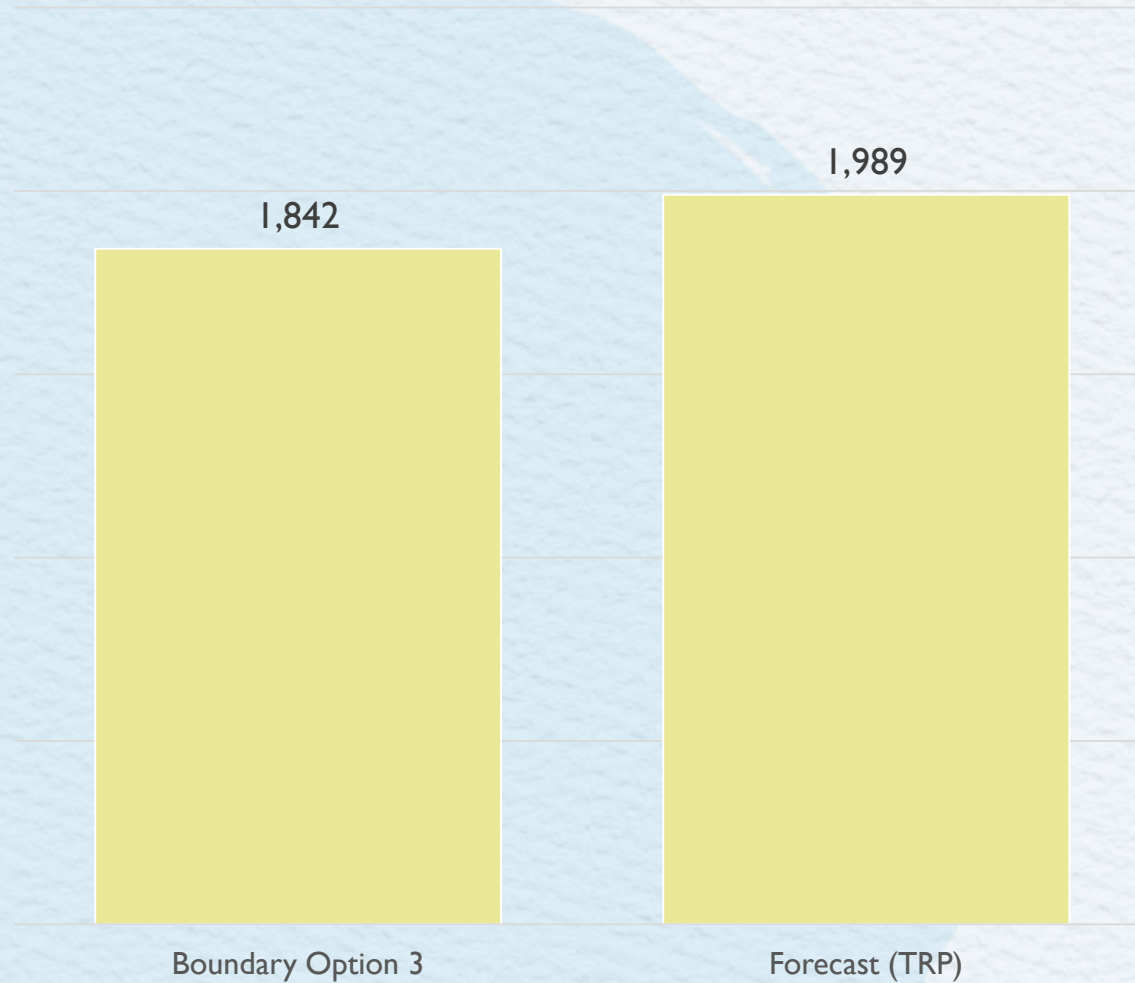
Total Jobs: 400

# Option 3: Households



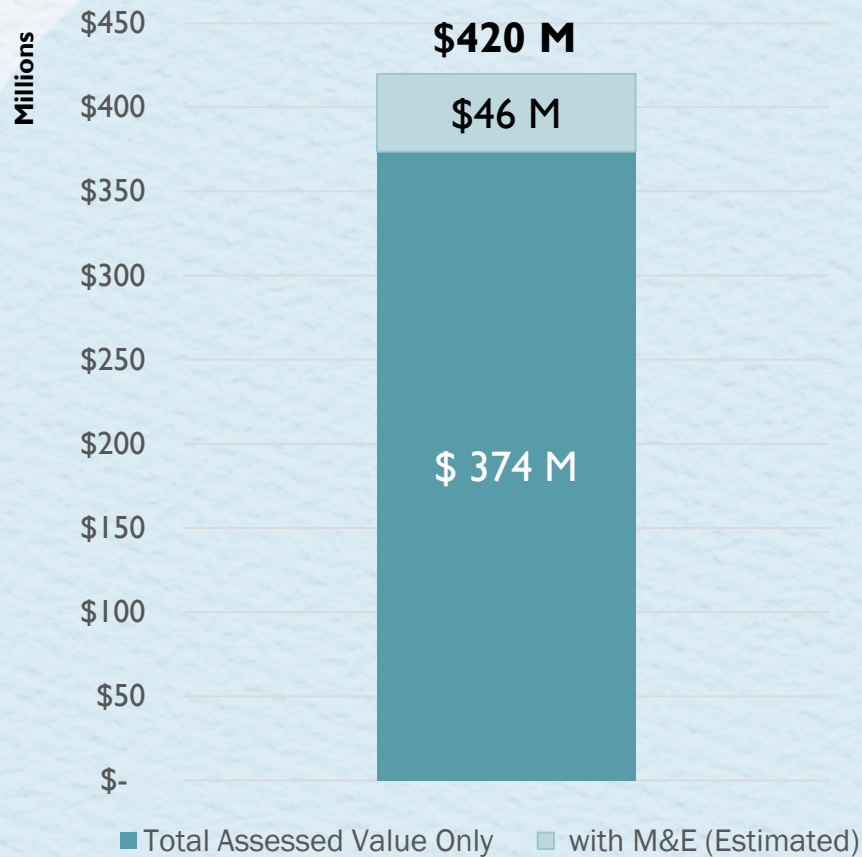


# Option 3: Total Trips

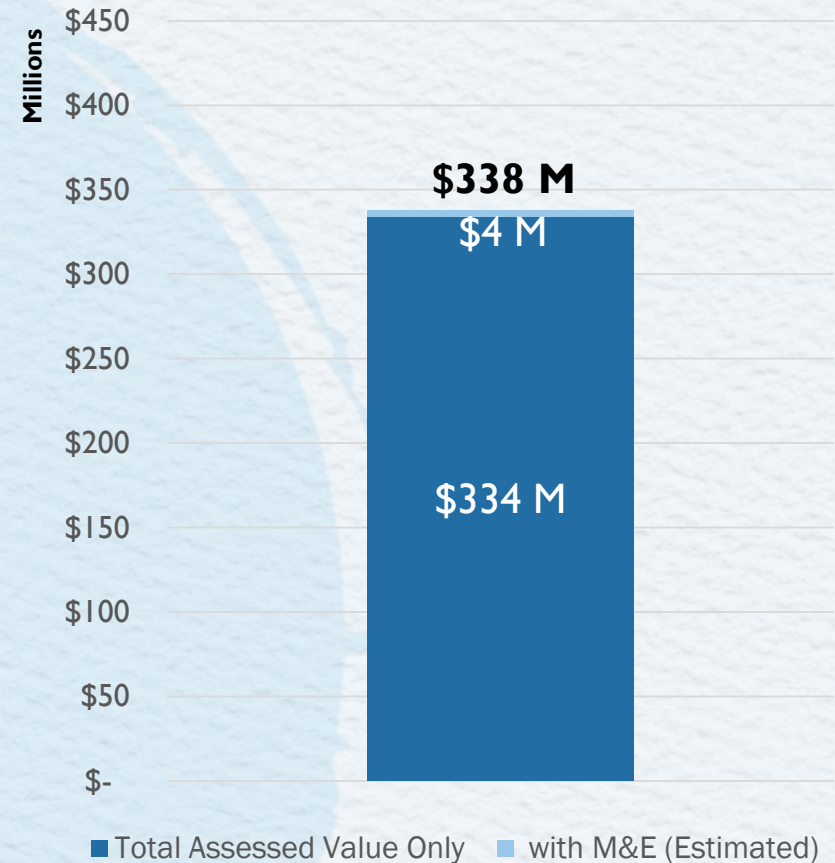


# Option 3: Assessed Value at Buildout

## Wilsonville



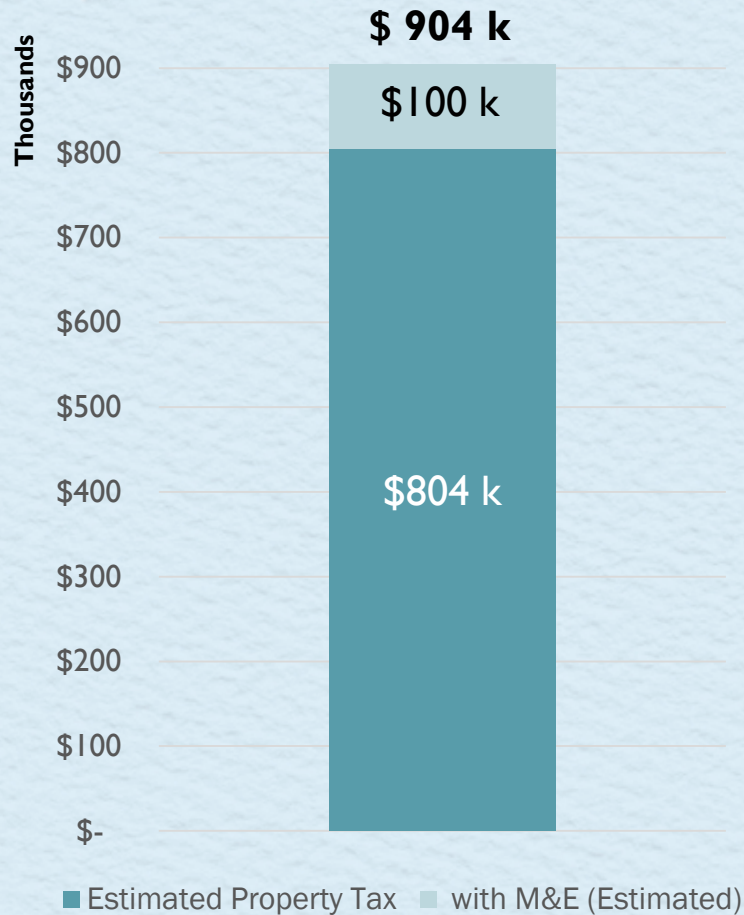
## Tualatin



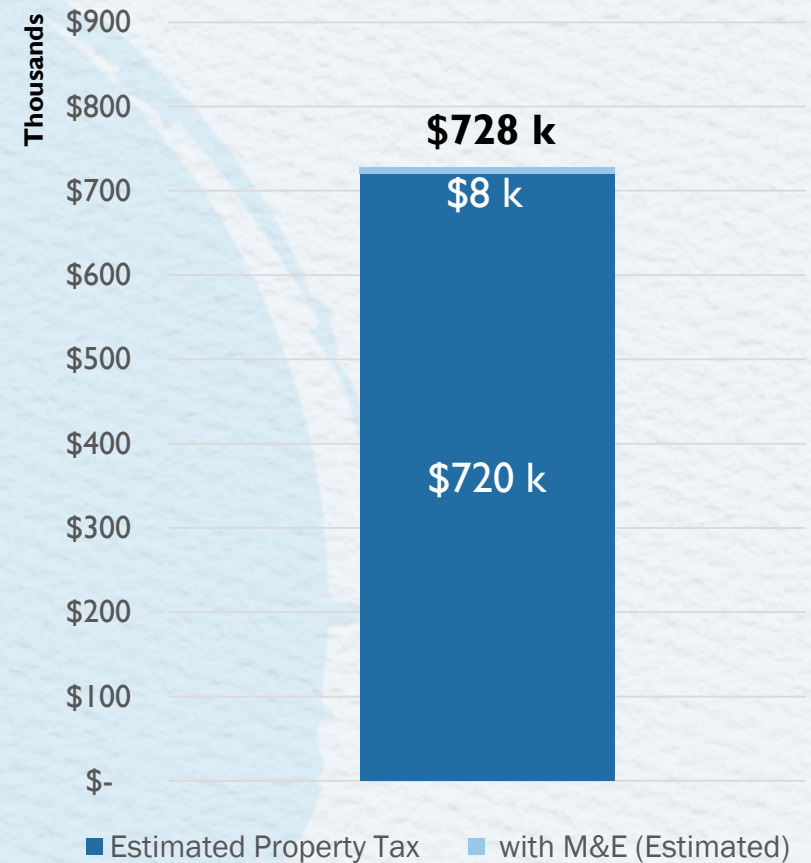


# Option 3: Annual Property Tax at Buildout

## Wilsonville



## Tualatin





# Boundary Comparison

Indicators all dollar values shown in millions	Tualatin Option 1	Wilsonville Option 1	Tualatin Option 2	Wilsonville Option 2	Tualatin Option 3	Wilsonville Option 3
<b>Developable Acres</b>	201 ac	190 ac	155 ac	236 ac	144 ac	188 ac
WRR & BCC Acres*	10 ac	63 ac	12 ac	61 ac	13 ac	3 ac
Unconstrained Dev Acres	191 ac	127 ac	143 ac	175 ac	131 ac	185 ac
<b>Households</b>	906	36	755	75	800	80
<b>Jobs</b>	1,600	2,000	1,000	2,800	400	2,900
<b>Assessed Value</b>	\$483 M	\$305 M	\$371 M	\$423 M	\$338 M	\$420 M
<b>City Property Tax</b>	\$1.0 M	\$0.7 M	\$0.8 M	\$1.0 M	\$0.7 M	\$0.9 M

\*highly constrained areas

# How the Boundary Responds to Joint Council Input (Consultant Team Summary)

- Equity viewed through lens of developable acres, phasing, infrastructure costs, and more balanced property tax return.
  - Tualatin with overall higher ROI and a near-term ROI from residential development.
  - Wilsonville with a little more land to offset higher overall infrastructure costs, longer term ROI, and responsibility for most of jobs.
  - Property tax revenue more balanced.
- More cohesive industrial district for Wilsonville. Employment uses are compatible between cities and will be cohesive in design.
- Transition zones will include higher level of design and landscaping to buffer residential areas from employment uses.
- Preservation of natural and sensitive environmental areas – Tualatin with majority of Basalt Creek canyon adjacent to residential uses.
- Tualatin jurisdiction includes existing residential community on Boones Ferry Road to ensure cohesive residential zone.
- West Railroad taken out of equation. No employment or development assumed due to significant environmental, transportation and infrastructure cost. Plan will enable property owners to develop if they pay for infrastructure.



# STAFF REPORT

## CITY OF TUALATIN

### **City Council Work Session**

**Meeting Date:** 08/24/2015

**Subject:** Refreshing Tualatin's Image

**Through:** Sherilyn Lombos, Administration

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PowerPoint

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# **City Communications Update**

**City Council Work Session  
August 24, 2015**

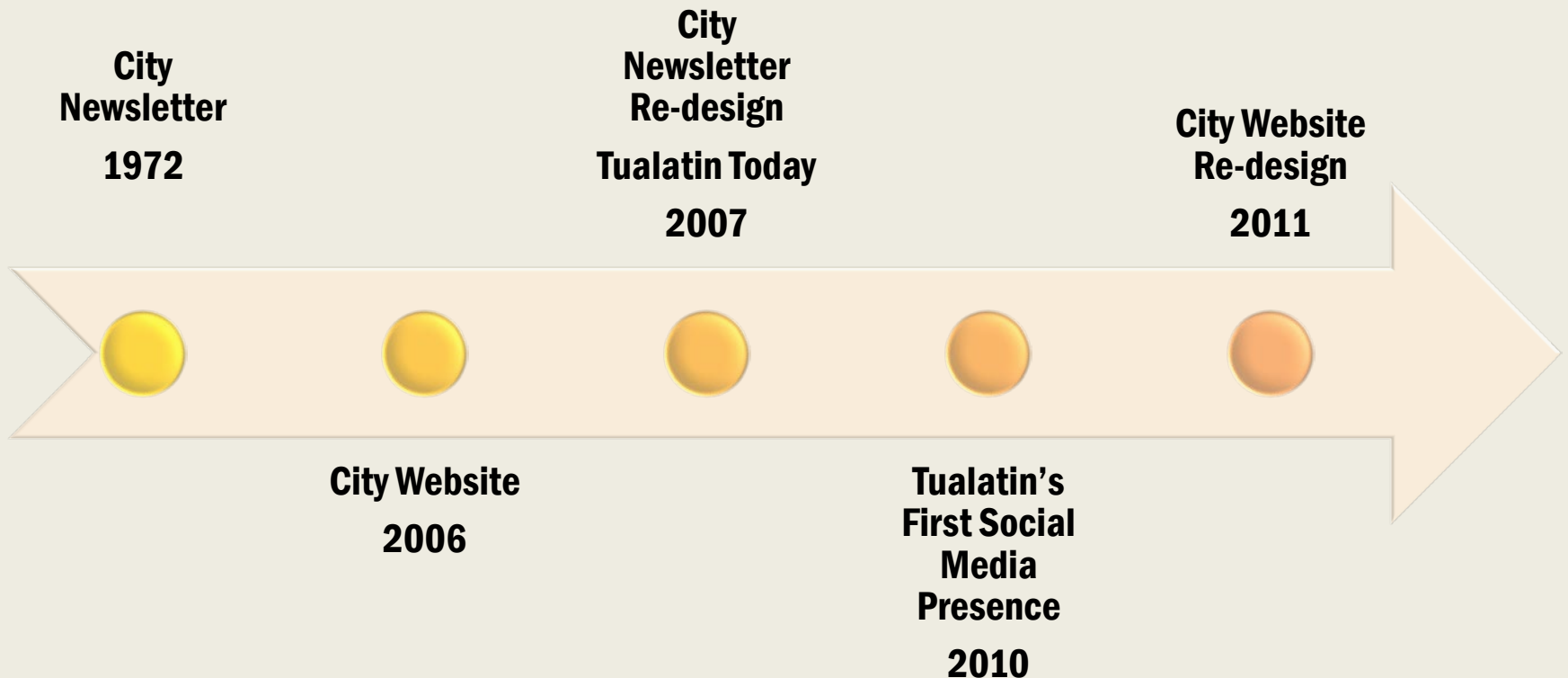




# Overview

- **Timeline of City Communications**
- **City Website Improvements & Updates**
- **Enhancing the Tualatin Brand**
- **Engaging the Community Online**
- **Continued Improvements for the Future**

# Communications Over the Years





# Newsletter Design

- **Tualatin Today is mailed to over 13,000 households and businesses 11x per year**
- **In the 2013 Community Survey, 95% of people said they read the *Tualatin Today Newsletter* in the past year**
- **Through an internal process, the organization shared information about the message which we are trying to convey to the community to help inform the design process**
- **Here is what we came up with...**

# Mood Board

This mood board was developed to help set the tone for the future newsletter design.

The feelings to be conveyed include:

- Warm, friendly, engaging and playful
- Focused on nature, the river and the outdoors
- Viewers connect with the city by virtue of recognizing familiar sights
- Vibrant earth tones of yellows, greens and blues create a rich and fun chemistry



# Website Improvements

- **Tualatin's website platform is in need of updates to improve its performance**
- **This is an opportunity to review the data on how people use the site and make a few improvements**
- **This is NOT a total website redesign**
- **Key Issues Being Addressed:**
  - **Site performance improvements**
  - **Site aesthetics and layout**
  - **Consistent Branding with other City Communications**
  - **Clean Up of Content throughout the Site**



# Website Improvements

- **Technical Improvements:**
  - **Upgraded content management system**
  - **Mobile-Friendly, Responsive Graphic Re-design**



# Overall Brand for Print Materials

- **Consistency in our brand and messaging isn't just important for our newsletter and website, but for all of our print materials**
- **Guidelines are currently being developed to assist staff in implementing the brand for our other print materials:**
  - **Get Out Guide**
  - **Flyers**
  - **Postcards**
  - **Brochures**
  - **Door Hangers**
  - **Fact Sheets**
  - **And more!**



# Online Engagement

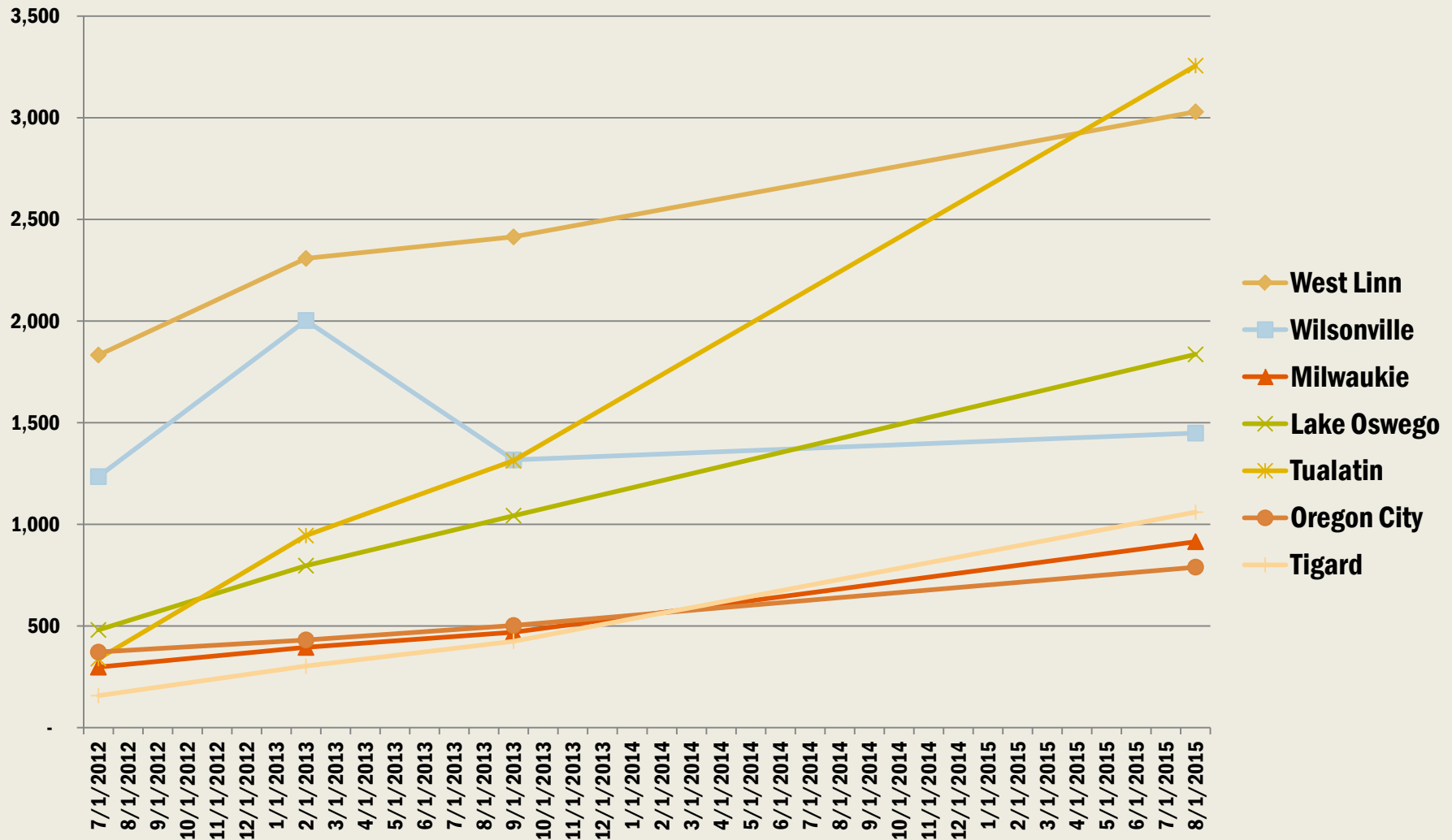
- **Tualatin is a very social City!**
  - Facebook
  - Twitter @CityofTualatin
  - YouTube
  - New Instagram Account @cityoftualatin
  - New Police App





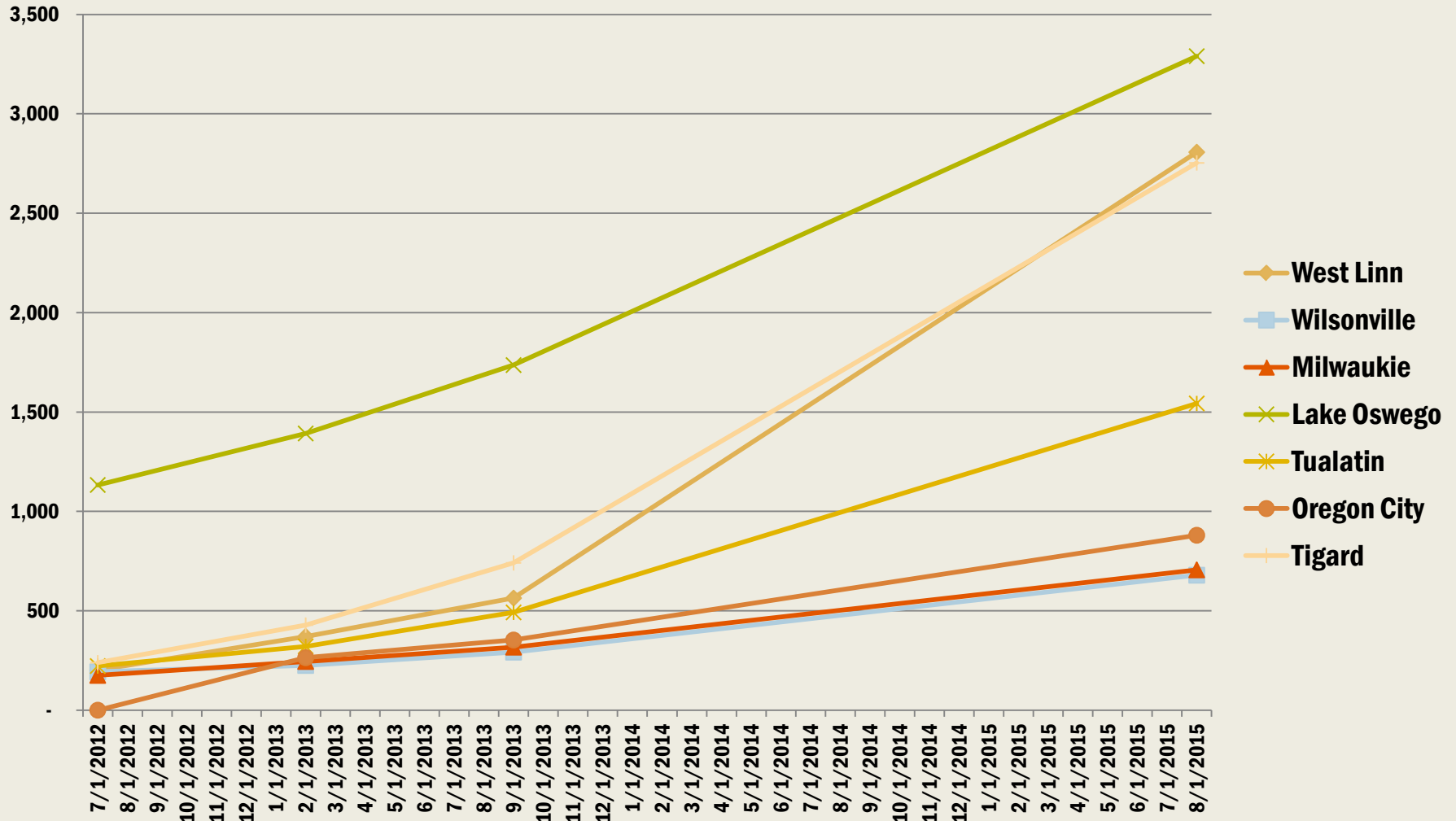
# How We're Trending on #Facebook

## Facebook "Likes"



# How We're Trending on #Twitter

## Twitter "Followers"



# Looking Towards the Future

- **Tualatin Town Hall**
- **Citywide App**
- **Increasing our Social Media Audience and Engagement**
- **E-Newsletter**





# **QUESTIONS & DISCUSSION**



# STAFF REPORT

## CITY OF TUALATIN

### **City Council Work Session**

**Meeting Date:** 08/24/2015

**Subject:** Marijuana Update

**Through:** Sherilyn Lombos, Administration

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FAQ

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# Frequently Asked Questions About Local Regulation of Marijuana

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July 31, 2015

During the 2015 legislative session, the Legislature passed four laws relating to medical and recreational marijuana:

- **HB 3400**, the omnibus bill that amends the Oregon Medical Marijuana Act (OMMA) and Measure 91, which the voters passed in November 2014 legalizing recreational marijuana use in Oregon;
- **HB 2041**, which revises the state tax structure for recreational marijuana;
- **SB 460**, which authorizes early sales of recreational marijuana by medical marijuana dispensaries; and
- **SB 844**, which contains miscellaneous provisions.

Below are answers to some of the most commonly asked questions about the new legislation and its impact on local governments.

## HOME RULE AND FEDERAL LAW

### **I've heard that cities did not need this legislation to regulate marijuana because Oregon is a home rule state. What is home rule?**

Home rule is the power of a local government to set up its own system of governance and gives that local government the authority to adopt ordinances without having to obtain permission from the state. City governments in Oregon derive home rule authority through the voters' adoption of a home rule charter as provided for in the Oregon Constitution. All 242 cities in Oregon have adopted a home rule charter. A charter operates like a state constitution in that it vests all government power in the governing body of a municipality, except as expressly stated in that charter or preempted by state or federal law.

### **So how does home rule relate to a city's authority to regulate marijuana?**

Home rule authority allows local governments to enact ordinances regulating marijuana unless preempted by state law. The state Legislature can limit local government authority if it passes legislation that clearly and unambiguously preempts that authority. Because the Legislature recently passed four bills relating to marijuana, it is important to understand how state and local authority interact because that relationship will impact what cities can and cannot do when it comes to regulating marijuana. Specifically, unless clearly preempted, cities can impose regulations in addition to those authorized under HB 3400 under their home rule authority.

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

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



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

### **Can we as a city council use our home rule authority and vote to re-criminalize marijuana within our city?**

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

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

## **BANS**

### **Can my city ban the growing, processing, and sale or transfer of marijuana?**

HB 3400 provides a process, explained below, for cities to ban six of the seven types of marijuana activities registered or licensed by the state. Specifically, the six types of marijuana activities that cities can ban under HB 3400 are:

- Medical marijuana processors (preparing edibles, skin and hair products, concentrates and extracts);
- Medical marijuana dispensaries;
- Recreational marijuana producers (growers);
- Recreational marijuana processors (preparing edibles, skin and hair products, concentrates and extracts);
- Recreational marijuana wholesalers; and
- Recreational marijuana retailers.

The seventh marijuana activity registered by the state is the growing of medical marijuana. The bills the Legislature enacted in 2015 are silent on whether a city can ban medical marijuana growers from operating. (State law does expressly place limits on the number of plants and the amount of marijuana that can be located at any particular grow site.) As noted below, the statutes do not indicate that the process in HB 3400 for banning marijuana activities is the exclusive means to do so. Cities considering banning medical marijuana grow sites should talk to their city attorney about whether they can do so under either home rule, federal preemption, or both legal theories.

## **What process does the city need to go through under HB 3400 to impose a ban on the growing, processing, or sale or transfer of marijuana?**

The process that the city needs to go through under HB 3400 will depend on when the city imposes the ban, and whether the city is located in a county that voted against Measure 91 by 55 percent or more.

Before December 24, 2015, cities located in counties that voted against Measure 91 by 55 percent or more (Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler Counties) can enact a ban through council adoption of an ordinance prohibiting any of the six activities listed above. After that time, and for cities not located in those counties, the city council may adopt an ordinance banning any of the six activities listed above, but that ordinance must be referred to the voters at a statewide general election, meaning an election in November of an even-numbered year.

Under either procedure, as soon as the council adopts the ordinance, it must submit it to the Oregon Health Authority (OHA) for medical bans and the Oregon Liquor Control Commission (OLCC) for recreational bans, and those agencies will stop registering and licensing the banned facilities. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election occurs.

## **Can my city ban the personal use and growing of marijuana?**

HB 3400 does not provide an avenue for cities to ban the personal use and growing of marijuana. As a result, cities interested in enacting such a ban should consult with the city attorney to discuss whether the city can do so under either home rule, federal preemption, or both legal theories.

## **If the city adopts a ban under HB 3400, are existing marijuana activities grandfathered (allowed to remain open)?**

The answer depends upon the type of activity. Medical marijuana dispensaries and medical marijuana processors that have registered with the state by the time their city adopts a prohibition ordinance are not subject to the ban if they have successfully completed a city or county land use application process.

However, HB 3400 does not provide similar protection to any of the other marijuana activities that a city can ban under that legislation. Consequently, recreational marijuana growers, processors, wholesalers and retailers are subject to a ban under HB 3400, even if those businesses are already operating at the time the ban was enacted.

Although some businesses may argue that they have a due process right to continue operating, the status of marijuana as an illegal drug under federal law makes it unlikely that a court would recognize a due process right for a marijuana business owner. However, cities will want to work closely with their city attorney on enforcement of a ban against existing businesses.

## **If my city adopts a ban under HB 3400, will it still get a share of state marijuana tax revenues?**

No. A city that adopts an ordinance prohibiting the establishment of medical or recreational marijuana businesses is not eligible to receive a distribution of state marijuana tax revenues.

**My city requires businesses to obtain a license to operate, and city ordinance provides that the city will not issue a business license if a business operates in violation of local, state or federal law, creating an effective ban on marijuana businesses. Can we continue to enforce that ordinance instead of adopting a ban using the procedure described in HB 3400?**

Yes. The League has taken the position that cities may still adopt and enforce their business license ordinances. However, a city should be prepared to defend its authority to do so.

HB 3400 does not contain a broad express preemption on local government authority.<sup>1</sup> Nothing in HB 3400 makes the ban procedures in the law the exclusive means for prohibiting marijuana businesses. Consequently, the League has taken the position that HB 3400 does not prevent a city from banning marijuana activities through other means, such as adopting or enforcing a business license ordinance that prohibits issuance of a business license to a business operating in violation of local, state or federal law.

However, cities that decide to enforce a business license ordinance instead of adopting a ban under HB 3400 should consult their city attorney about the case of *City of Cave Junction v. State of Oregon*, Josephine County Circuit Court Case #14CV0588, which is currently on appeal before the Oregon Court of Appeals. At issue in that case is whether the city of Cave Junction may enforce its business license ordinance, which prohibits issuance of a business license to a business operating in violation of local, state or federal law.

## **LOCAL TAX**

### **Can my city tax recreational marijuana?**

Yes, as long as the city has not adopted an ordinance under HB 3400 prohibiting marijuana activities in the city.

Under HB 3400, cities may impose up to a 3 percent tax on sales of marijuana items made by those with recreational retail licenses by referring an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year.

### **Can my city tax medical marijuana?**

It is unclear whether a city can tax medical marijuana. HB 3400 provides that authority to “impose a tax or fee on the production, processing or sale of marijuana items in this state is vested solely in the Legislative Assembly,” and a city may not adopt or enact ordinances imposing a tax or fee on those activities except for the 3 percent tax on recreational activities discussed above. The legal question is whether that section applies to medical marijuana. Cities interested in taxing medical marijuana should work closely with their city attorney.

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<sup>1</sup> Section 57 of HB 3400 does provide that Measure 91 supersedes any “inconsistent” local enactments. Although some people have suggested that Section 57 is a broad preemption of local authority, the League disagrees. The liquor control act contains similar wording and the Oregon appellate courts have not interpreted that section to be a broad preemption. For more information and analysis of the inconsistency provision in Measure 91, as amended by HB 3400, see the memorandum on the League’s A-Z Marijuana Resources webpage entitled, “Measure 91 and Local Control.”



### **My city enacted a tax on medical and recreational marijuana before HB 3400 was enacted. Can we continue to impose that tax now?**

The status of taxes enacted prior to HB 3400 is an open question. HB 3400 provides that, except as provided by law, the authority to “impose” a tax or fee on the production, processing or sale of marijuana items is vested solely in the Legislative Assembly, and a city may not “adopt or enact” ordinances imposing a tax or a fee on those activities. Arguably, cities that have already adopted or enacted a tax prior to the effective date of HB 3400 are grandfathered in. However, the issue is not free from doubt, and cities that decide to collect on pre-HB 3400 taxes should be prepared to defend their ability to do so against legal challenge. Consequently, cities that plan to continue to collect taxes imposed prior to the passage of HB 3400 should work closely with their city attorney to discuss the implications and risks of that approach.

### **My city requires all businesses to obtain a license and pay a fee. Does that fee count as part of the 3 percent tax or fee that the city can impose under HB 3400?**

HB 3400 limits a local tax on “the sale of marijuana items” to 3 percent and provides that a city may not otherwise adopt or enact an ordinance imposing a tax or fee on “the production, processing or sale of marijuana items.” Although HB 3400 preempts certain local taxes and fees, a city may be able to continue to impose taxes and fees of general applicability, which are not specific and limited to marijuana businesses, without being subject to the 3 percent limit. Cities considering imposing such a tax or fee should obtain their city attorney’s advice before doing so.

### **If my city adopts a ban for some—but not all—marijuana activities, can it still impose a local tax on those activities not banned?**

Probably not. HB 3400 broadly provides that a city that adopts a ban under HB 3400 prohibiting one or more marijuana activities within its jurisdiction “may not impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated.”

## **STATE TAX**

### **What is the state going to tax and in what amount?**

Under HB 2041, the state will impose a 17 percent tax on the retail sale of marijuana items, including marijuana leaves and flowers; immature marijuana plants; marijuana concentrates and extracts; marijuana skin and hair products; and other marijuana products.

Early sales of recreational marijuana from medical marijuana dispensaries, however, will be taxed at a higher rate. Starting January 4, 2016, early sales of recreational marijuana from a medical marijuana dispensary will be taxed at a rate of 25 percent.

### **How much of the state tax revenues will go to cities?**

Ten percent of the state marijuana tax revenues will be distributed to cities that do not adopt ordinances prohibiting the establishment of marijuana facilities registered and licensed by the state.<sup>2</sup> The revenue will be distributed to cities “[t]o assist local law enforcement in performing its duties” under Measure 91.

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<sup>2</sup> The remaining revenues will be distributed as follows: 40 percent to the Common School Fund; 20 percent to the Mental Health Alcoholism and Drug Services Account; 15 percent to the State Police Account; 10 percent to counties; and 5 percent to the Oregon Health Authority.

The state's Legislative Revenue Office has estimated that the total distribution for cities in the 2015-2017 biennium will be \$440,000, jumping to \$5.92 million in the 2017-2019 biennium.

### **How will the state tax revenues be distributed to cities?**

Until July 1, 2017, the state tax revenue dedicated to cities will be distributed proportionately based on population to those cities that do not adopt prohibiting ordinances. After July 1, 2017, those revenues will be distributed proportionately based on the number of recreational licenses issued for premises located in each city. Fifty percent of the revenue for cities will be distributed based on the number of recreational grower, processor and wholesale licenses issued for a premises in the city. The other 50 percent will be distributed based on the number of recreational retail licenses issued for premises in the city.

## **TIME, PLACE AND MANNER RESTRICTIONS**

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

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

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

- Neither can locate within 1,000 feet of certain public and private schools, unless the school is established after the marijuana facility.
- Medical marijuana dispensaries cannot locate within 1,000 feet of another dispensary.
- Medical marijuana dispensaries cannot locate at a grow site.

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

- If the use is an outright permitted use, 21 days from receipt of the request; or
- If the use is a conditional use, 21 days from the final local permit approval.

### **I have heard that the new legislation ends "card stacking" and puts limits on the amount of marijuana at a medical marijuana grow site. What are those limits?**

Generally, a medical marijuana grow site may have up to 12 mature plants if it is located in a residential zone, and up to 48 mature plants if it is located in any other zone. However, there are exceptions for certain existing grow sites. If all growers at a site had registered with the state by January 1, 2015, the grow site is limited to the number of plants that were at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in a residential zone and 96 mature plants per grow site in all other zones. A grower loses the right to claim those exceptions, however, if the grower's registration is suspended or revoked.

In addition to possessing mature marijuana plants, a medical marijuana grower may possess the amount of usable marijuana that the person harvests from the mature plants, not to exceed 12

pounds of usable marijuana per mature plant for outdoor grow sites and 6 pounds of usable marijuana per mature plant for indoor grow sites.

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

Although the League takes the position that the Legislature has not foreclosed other regulatory options, HB 3400 expressly provides that cities may impose reasonable regulations on the following:

- The hours of operation of retail licensees and medical marijuana grow sites, processing sites and dispensaries;
- The location of all four types of recreational licensees, as well as medical marijuana grow sites, processing sites and dispensaries, except that a city may not impose more than a 1,000-foot buffer between retail licensees;
- The manner of operation of all four types of recreational licensees, as well as medical marijuana processors and dispensaries; and
- The public’s access to the premises of all four types of recreational licenses, as well as medical marijuana grow sites, processing sites and dispensaries.

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

## **EARLY SALES OF RECREATIONAL MARIJUANA**

### **What are “early sales” of recreational marijuana?**

As of July 1, 2015, people 21 years of age and older can possess limited amounts of recreational marijuana under state law. However, the OLCC has not yet issued licenses for the retail sale of recreational marijuana, and does not expect to do so until sometime in 2016. To allow the OLCC time to implement its licensing system, while also providing an avenue for people to purchase recreational marijuana, the Legislature authorized medical marijuana dispensaries to sell limited quantities of recreational marijuana.

In particular, medical marijuana dispensaries will be able to sell the following to a person who is 21 or older and presents proof of age:

- One quarter of one ounce of dried marijuana leaves and flowers per person per day;
- Four marijuana plants that are not flowering; and
- Marijuana seeds.

### **When will early sales start?**

Medical marijuana dispensaries may begin selling limited quantities of recreational marijuana on October 1, 2015. Sales of recreational marijuana from medical dispensaries currently are set to end on December 31, 2016. At that time, recreational retail facilities likely will be operating and selling recreational marijuana.

### **Can my city opt out of early sales?**

Yes. Under SB 460, a city may adopt an ordinance prohibiting the early sales described above. The city council may adopt the ordinance without referring it to the voters.

### **If my city opts out of early sales, is the city still eligible to receive state marijuana tax revenues?**

Probably. HB 2041 provides that a city that adopts an ordinance “prohibiting the establishment” of marijuana businesses registered or licensed by the state is not eligible to receive state marijuana tax revenues. An ordinance prohibiting early sales under SB 460, however, would not prohibit the establishment of a state-registered or licensed facility. Rather, such an ordinance would merely limit the activities at an existing medical marijuana dispensary. As a result, a city prohibiting early sales should remain eligible to receive state marijuana tax revenues.

### **Can my city impose a local tax on early sales?**

Probably not. Under HB 3400, cities may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items, except as provided in that legislation. HB 3400 further stipulates that cities may refer an ordinance to the voters imposing a tax of up to 3 percent on sales by a person that holds a retail license issued by the OLCC. Because early sales of recreational marijuana will be made by medical marijuana dispensaries, and not by a retail licensee, a city likely is preempted from imposing a tax on early sales of recreational marijuana. However, cities interested in imposing a local tax on early sales should consult their city attorney.

## **TIMELINE**

The following is a summary of key dates that local government officials need to be aware of regarding the effective date and implementation of Oregon’s new marijuana laws:

- **June 30, 2015** – HB 3400 becomes effective. However, many provisions of the law do not go into effect immediately.
- **July 1, 2015** – Personal possession of limited amounts of recreational marijuana is allowed for those 21 or older.
- **October 1, 2015** – Sales of recreational marijuana from medical marijuana dispensaries begin, unless a city has enacted an ordinance prohibiting early sales pursuant to SB 460 § 2(3).
- **December 24, 2015** – City councils that are eligible to adopt a prohibition on marijuana activities without a voter referral must have adopted the prohibition by this date.
- **January 1, 2016** – Most amendments to Measure 91 go into effect. In addition, after this date, medical marijuana growers may apply for an OLCC license to grow recreational marijuana at the same site.
- **January 4, 2016** – The OLCC must approve or deny recreational license applications as soon as practicable after this date (HB 3400 § 171). In addition, medical marijuana dispensaries engaging in early sales of recreational marijuana must begin collecting a 25 percent state tax on those sales.
- **March 1, 2016** – Most amendments to the OMMA go into effect.



- **November 8, 2016** – Next statewide general election. Cities may refer measures on prohibition of marijuana activities and measures on local taxes at this election.
- **December 31, 2016** – Early sales of recreational marijuana from medical marijuana dispensaries end.