## Title
FIRST READING: Consider an ordinance revising and updating Marion County Code, Chapter 8.40 relating to Smoke-Free and Tobacco-Free County Property.

## Issue, Description & Background
In June 2015, the Marion County Board of Commissioners approved Ordinance #1350 to amend Marion County Code Chapter 8.40 relating to smoking on properties owned or leased by Marion County. The new ordinance allowed the Marion County Fair Board to designate smoking areas during its 2015 fair - but only for the 2015 fair. Since this ordinance was approved, the Oregon State Fair Council approved its own policy for the fairgrounds, which approved smoking in designated areas: "During the Oregon State Fair, smoking, including the use of electronic cigarettes, vaporizers and oil/wax pens, will be limited to areas designated by the CEO or his/her designee." The Marion County Fair Board leases the Oregon State Fairgrounds for the Marion County Fair, which is held annually Thursday through Sunday over the second weekend in July.

The Marion County Fair Board, seeks the board’s approval to revise and update Marion County Code Chapter 8.40 relating to smoking, in order to allow designated smoking areas on the property leased for the Marion County Fair, annually. This change would align the Marion County Fair’s policy with the Oregon State Fair Council’s policy.

This is the first reading of the proposed ordinance. The board will conduct a second reading, and will consider the ordinance for adoption at an upcoming board session that is at least 13 days after the first reading of the ordinance.

## Financial Impacts:
Minimal: Production of signs

## Impacts to Department & External Agencies
None.

## Options for Consideration:
First reading.

## Recommendation:
First reading.

## List of Attachments:
- Draft of Fair Board Administrative Policy
- Fair Council Policy Excerpts
- Ordinance for consideration and redline
- Marion County Code, Chapter 8.40
- Board Order
MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Presenter: Marion County Fair Board Members: Dylan Wells and Joel Conder
Tamra Goetttsch, Community Services Director
Bruce Armstrong, Legal Counsel

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Denise Clark - declark@co.marion.or.us
Bruce Armstrong - barmstrong@co.marion.or.us
SUBJECT: Designated smoking areas for use of tobacco products and electronic smoking devices on the fairgrounds; and use of marijuana and marijuana byproducts.

1.0 Purpose

The purpose of this policy is to develop guidelines for Marion County fairgoers, staff, vendors and other participants regarding the use of marijuana, tobacco products, and electronic smoking devices at the Marion County Fair (MCF).

2.0 Definitions

Attendee- the public; citizens who have paid for entrance to the fair.
MC Fair Officials- Fair Board members, Fair Staff, and Event Coordinators
Fair Partners- Event participants providing an activity; vendors; sponsors; volunteers; demonstrators, etc.
Marijuana – refers to hemp and hemp byproducts (oils, etc.) used for inhalants or ingestion as a narcotic or hallucinogen.
Smoking device- Tools such as pipes and electronic vaping units.

3.0 General Policy

Per Marion County Code 8.75.020 “possession or use of marijuana on property owned or leased by Marion County is prohibited, except where lawfully required as part of the job duties for law enforcement or criminal justice personnel.”

The Marion County Fair will not allow smoking, except in designated outdoor smoking areas. This policy applies at all times and to everyone, including:

   a. all Marion County Fair Board members, officers, employees, volunteers and agents;
   b. all vendor employees, volunteers or agents;
   c. event exhibitors and their employees, volunteers or agents;
   d. independent contractors working at the event site;
   e. event performers, participants, or contributors; and
   f. all event attendees.

Designated Outdoor Smoking Areas: The Marion County Fair will permit smoking of tobacco products and vapors that do not contain marijuana or marijuana byproducts, at the following six (6) designated locations within the Marion County Fair. All other areas shall be smoke free. These areas may be relocated or eliminated upon the determination of the Marion County Fair Board; permitted locations will be clearly marked.
a. Near the 4-H and FFA camping area (1)
b. Near the fairgrounds sculpture (1)
c. North-west corner near the staff trailers (1)
d. Near the beer garden area (when applicable) (1)
e. South end of the Jackman-long building (1)
f. Near the LB Day Amphitheater (1)

4.0 Policy Guidelines/Procedures

The Marion County Fair will communicate this Smoking Policy as widely as possible through press releases, website announcements, public service announcements, event materials and instructions, event maps, and all other forms of communication (both internal and external). The Marion County Fair will include notice of the Smoking Policy in the general Rules Governing documents given to the various participation areas (Commercial Exhibitors, Authors Table, Rescue Row, etc.) at the beginning of each fair year. Fair partners will relay this information on to their associates.

4.1 The following notice will be placed at all fairground entry gates:

“By entering the Marion County Fair and participating in the activities held herein, you consent to no smoking except in designated areas; marijuana is strictly prohibited in all areas.”

4.2 The Marion County Fair will ensure that numerous easy-to-read posters or signs are posted prominently (including at entrances, exits, and other appropriate areas) to inform all attendees of the policy. The signs will indicate that Smoking is not permitted at the Marion County Fair, except for designated outdoor smoking areas. Signs will be posted to indicate permissible smoking areas.

4.3 Marion County Fair will communicate the Smoking Policy to anyone found smoking in a non-smoking area during set-up, fair time, and break down of the fair. If the person continues to smoke, he or she will be warned that they are no longer welcome on the fairgrounds. It is the responsibility of Marion County Fair officials and volunteers to inform security of individuals who refuse to comply with the Smoking Policy. Vendors will be asked to inform a fair official when witnessing non-compliance to the smoking policy. Failure of a fair partner to take reasonable action when observing non-compliance within their own organization may be taken into consideration when approving future participation requests.

4.4 Comments or concerns regarding the enforcement of the Smoking Policy may be directed to the Marion County Fair Board.

Drafted: 12/21/15

Adopted:
f. Proposed smoking policy during the 2015 Oregon State Fair.

   Mr. Hillman explained that at the April 2015 meeting, when the Oregon State Fair Council adopted “Oregon State Fair Rules and Policies” for the upcoming 2015 Oregon State Fair that the rules and policies did not refer to a smoking policy. He would like to clarify and include language regarding smoking. These policies are consistent with other state & county fairs policies. Council Member Cameron asked if we should have “No Smoking Except in Designated Areas” policy vs. “No Smoking.”

   A motion was made by Council Member Jennings and seconded by Vice Chair Smith that we amend the proposed policy to state that there will be no smoking anywhere on the fairgrounds except in designated areas. Council Members Chandler and Berger oppose the amended policy. Mr. Paluszak suggested that the first two paragraphs be deleted in the proposed policy to only state that “Smoking, including the use of electronic cigarettes, vaporizers and oil/wax pens, will be limited to areas designated by the CEO or designee,” if that was sufficient in terms of policy language. The motion then carried unanimously.

XI. Public Comments on Non-Agenda Items:

   Judy Skinner commented that Garten will be providing services for Marion County Fair for litter patrol, clearing tables, garbage/recycle collection and sorting. She would like to invite State Fair Council Members to stop by during Marion County Fair and she would like to show members the services Garten provides.

XII. Council Members’ Comments: Council Member Chandler would like to mention that he has written Legislative Counsel Dexter Johnson asking for clarification of what we are in regards to being a quasi public-private entity.

XIII. Executive Session:

   At this point in the meeting the Council went into closed session pursuant to ORS 192.660(2)(e) Real Estate Negotiations and ORS 192.660(2)(f) Attorney/Client Privilege.

XIV. Adjourn: Upon reconvening into public session, there being no further business the meeting was adjourned.

Meeting Materials:
Agenda

Financial Statement 1/1/15 – 5/31/15

Report and contracts regarding insurance covering the Oregon State Fair Council/Oregon State Fair and Exposition Center beginning 7/1/15

Contracts with Oregon State Police and Falck Northwest

Proposed policies for Vehicle, Motorized Carts, Heavy Equipment and Bicycles

Proposed policy for smoking
Oregon State Fair Council Meeting – June 18, 2015

Agenda Item: X.f. [For Action]
Proposed Smoking Policy during the 2015 Oregon State Fair

Background:

At the April 2015 meeting, the Oregon State Fair Council adopted “Oregon State Fair Rules and Policies” for the upcoming 2015 Oregon State Fair, August 28-September 7, 2015. The rules and policies did not refer to a smoking policy.

Recommendation:

Review and adopt the proposed Oregon State Fair Smoking Policy for the 2015 Oregon State Fair.

Proposed Policy:

“By state law and in the interest of public health, smoking shall not be permitted in any State of Oregon building, including the L.B. Day Amphitheatre, or within 10 feet of any entrance, exit, window or air intake vent.

During the Oregon State Fair, smoking shall not be permitted in the Garden Area, Familyville or any bleacher seating areas. This policy includes the use of electronic cigarettes, vaporizers and oil/wax pens.

Smoking, including the use of electronic cigarettes, vaporizers and oil/wax pens, will be limited to areas designated by the CEO or designee.”
Code amendment redline

Allowing designated smoking areas at Marion County Fair

MCC 8.40.060 E.

Notwithstanding subsections (A) through (D) of this section, designated smoking areas that comply with the Oregon Indoor Clear Air Act are allowed:

1. From July 6, 2015, through July 14, 2015, on the leased space where the Marion County Fair is held, and only in accordance with Marion County Fair Policies and Procedures on designated smoking areas.

2. On property owned by the county and Salem Area Mass Transit in a condominium form of ownership and only as approved by the Courthouse Square Condominium Association Board of Directors.
Chapter 8.40
SMOKE-FREE AND TOBACCO-FREE COUNTY PROPERTY

Sections:
8.40.010 Title.
8.40.020 Purpose.
8.40.030 Definitions.
8.40.040 Prohibitions.
8.40.050 Exemptions.
8.40.060 Designated smoking areas.
8.40.070 Enforcement and penalties.

8.40.010 Title.
This chapter shall be known as the smoke-free and tobacco-free county property ordinance and shall be so cited and pleaded. [Ord. 1350 § 1, 2015.]

8.40.020 Purpose.
The purpose of this chapter is to promote the long-term health and safety of Marion County employees and the public by prohibiting the use of all tobacco products in Marion County buildings, on Marion County property and grounds, and in county vehicles. [Ord. 1350 § 2, 2015.]

8.40.030 Definitions.
For the purposes of this chapter, the following words shall have the following meanings:

"Electronic smoking device" means an electronic or battery-operated device that delivers nicotine or other substances in vapor form and which may simulate smoking. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar or cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor.

"Enclosed area" means all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways that extend from floor to ceiling.

"Marion County property" or "county property" means all interior and exterior areas owned or leased by the county; the interior of any building, structure, or facility that is owned or leased by the county; any parking area or parking facility owned or leased by the county; all outdoor property or grounds owned or leased by the county; and any vehicle that is owned or leased by the county. "Marion County property" or "county property" includes any plaza owned or leased by the county in common with another owner or lessee that has also prohibited the use of tobacco products. The term "Marion County property" does not include any county road.

"Tobacco product" means cigarettes, cigars, pipes, and any other smoking product; dip, chew, snuff, snus, and any other smokeless product; and electronic smoking devices.

"Use of tobacco product" means to inhale, exhale, burn, carry, ingest or use any tobacco product or tobacco-like product; or to carry any lighted or heated product. "Use of tobacco product" includes the use or the carrying of any electronic smoking device that is turned on or producing vapor. The term "use of tobacco product" includes anything that is done by the use or carrying of such device.
product" does not include the use of any product specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product if the product is marketed and sold solely for the approved purpose.

"Vehicle" means any machine owned or leased by the county in, upon or by which any person or property is or may be transported or drawn upon a public road or public waterway and includes vehicles that are propelled or powered by any means. [Ord. 1350 § 3, 2015.]

8.40.040 Prohibitions.
A. The use of tobacco products is prohibited at any time on Marion County property.
B. Without limiting the foregoing, this prohibition applies to the use of tobacco products:
   1. Within the interior of any county property that is a building or structure;
   2. On any county grounds or facility;
   3. On any county property that constitutes a parking area;
   4. In any county vehicle; and
   5. In any private vehicle while on Marion County property. [Ord. 1350 § 4, 2015.]

8.40.050 Exemptions.
A person shall not be considered to have violated the provisions of this chapter if that person uses tobacco products on a designated smoking area established through the provisions of MCC 8.40.060. Except as provided in MCC 8.40.060(E), the exemption provided by this section shall have no legal effect on or after July 1, 2016. [Ord. 1354 § 2, 2015; Ord. 1350 § 5, 2015.]

8.40.060 Designated smoking areas.
A. The Marion County business services director may establish designated smoking areas on county property outside of county buildings and enclosed areas if the designated area complies with the Oregon Indoor Clean Air Act. Unless established pursuant to subsection (E) of this section, or established on the Marion County Jail campus, Juvenile Detention Facility campus or Public Works campus through the process outlined in subsections (B) through (D) of this section, designated smoking areas will cease to be allowed after June 30, 2015.
B. The following Marion County property locations are identified as having facilities where county employees perform job functions for 24 hours of every day:
   1. Marion County Jail campus – Jail and Work Center;
   2. Marion County Juvenile campus – Detention Facility; and

The department head overseeing the operations at a campus identified in this subsection may request that the business services director establish a designated smoking area at that campus location. After consulting with the chief administrative officer, department head, and risk manager, the business services director may establish one designated smoking area at a campus location identified above. The business services director may not establish a designated smoking area in a location that fails to comply with the Oregon Indoor Clean Air Act. The business services director shall not establish a designated smoking area at any of the three locations identified in this subsection after June 30, 2016.
C. The use of tobacco products is only permitted in an area that has been designated by the business services director as a smoking area and only if an authorized sign or marking identifies the location of the designated smoking area.

D. The business services director may cancel the establishment of a designated smoking area at any time with immediate effect. Designated smoking areas on the Marion County Jail campus, Juvenile Detention Facility campus or Public Works campus will not be authorized to continue after June 30, 2016. All signs or markings identifying smoking areas shall be removed at that time.

E. Notwithstanding subsections (A) through (D) of this section, designated smoking areas that comply with the Oregon Indoor Clean Air Act are allowed:

1. From July 6, 2015, through July 14, 2015, on the leased space where the Marion County Fair is held, and only in accordance with Marion County Fair Policies and Procedures on designated smoking areas.

2. On property owned by the county and Salem Area Mass Transit in a condominium form of ownership and only as approved by the Courthouse Square Condominium Association Board of Directors. [Ord. 1354 §§ 3, 4, 2015; Ord. 1350 § 6, 2015.]

8.40.070 Enforcement and penalties.
A. This chapter shall be enforced by the Marion County sheriff’s office or Marion County code enforcement.

B. Violations of this chapter shall be subject to a civil penalty in an amount to be established by the board of commissioners. Enforcement of violations of this chapter shall be accomplished pursuant to Chapter 1.25 MCC.

C. The failure or omission to comply with any section of this chapter shall be deemed a violation and may be so prosecuted, subject to the penalty provided in subsection (B) of this section.

D. If the person who knowingly violates a provision of this chapter is a Marion County employee who is acting in the course and scope of employment, then that employee may be subject to discipline.

E. The provisions of this chapter are in addition to, and not in lieu of, any other procedures and remedies provided by law, including equitable relief and damages. [Ord. 1350 § 7, 2015.]
BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

An ordinance revising and updating the Marion County Code Chapter 8.40 relating to designated smoking areas at the Marion County Fair, and declaring an emergency.

ORDINANCE NO. _______

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. PURPOSE

The purpose of this ordinance is to amend code provisions relating to designated smoking areas on county property.

SECTION 2. AMENDMENTS TO MCC 8.40.060 E

Marion County Code 8.40.060 E is amended to read as follows:

E. Notwithstanding MCC 8.40.060 A-D, designated smoking areas that comply with the Oregon Indoor Clear Air Act are allowed:

1. On the leased space where the Marion County Fair is held, and only in accordance with Marion County Fair Policies and Procedures on designated smoking areas.

2. On property owned by the county and Salem Area Mass Transit in a condominium form of ownership and only as approved by the Courthouse Square Condominium Association Board of Directors.

SECTION 3. SEVERABILITY

Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction that decision shall apply only to the specific
section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

SECTION 4. EFFECTIVE DATE

This ordinance shall take effect on the 90th day after the date of its adoption.

Adopted this ______ day of January 2016.

MARION COUNTY BOARD OF COMMISSIONERS

__________________________________________
Chair

__________________________________________
Recording Secretary