

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: Sept. 27, 2016 **Approx. Start Time:** 2:30 pm **Approx. Length:** 1 hour

Presentation Title: Follow-up to Code Enforcement Marijuana Policy Recommendations

Department: Transportation & Development

Presenters: Scott Caufield, Dan Johnson and Nate Boderman

Other Invitees: Barbara Cartmill, DTD Director; Matt Ellington, Clackamas County Sherriff's Office

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

The Code Enforcement (CE) Division is seeking additional direction on revised policy recommendations related to the enforcement of marijuana-related CE cases, and commentary on the follow-up information provided below and attached.

EXECUTIVE SUMMARY:

On May 24, 2016, CE staff met with the BCC to seek direction and guidance on eight policy recommendations related to the enforcement of marijuana-related violation cases and to discuss the enforcement of the new zoning rules that became effective Jan. 1, 2016.

The BCC provided clear direction around the eight policy recommendations, but some required further legal review. At the advice of County Counsel, some of those recommendations have been changed. In addition, commissioners asked about enforcement actions the Oregon Health Authority (OHA) and Oregon Liquor Control Commission (OLCC) will take related to registration or licensing violations, respectively. The recommendations and responses to questions are in Attachment A.

Issues and Background:

At the May policy session, we discussed that many of the marijuana issues commissioners hear or receive complaints about from constituents fall outside the County's span of control. Specifically, issues such as illegal grow operations, cardholder violations and the like are enforced by various state agencies or are criminal offenses under state law. Given that CE only has authority to enforce provisions of the Clackamas County Zoning and Development Ordinance (ZDO), enforcement options may be limited or inappropriate in certain cases involving marijuana.

The BCC expressed concern that the County's program would be dependent upon enforcement actions taken by the state, and that the County's ability to deal with marijuana violations aggressively could be influenced by the degree to which the various state agencies would or could take enforcement action. Additionally, the BCC identified staff safety as a prime consideration and expressed concerns regarding CE's ability to address potentially criminal matters that should more appropriately be referred to local law enforcement agencies.

As of Sept. 19, 2016, CE has processed 38 marijuana-related cases -- 20 are pending cases that are actively being worked, 8 are unconfirmed, 7 are nearing resolution and 3 are fully resolved.

SUMMARY OF REVISED RECOMMENDATIONS AND PROCEDURES

Revised Policy Recommendation #1 – Report all alleged marijuana violations that fall outside the county’s scope of authority to the appropriate state agency (OHA or OLCC) using the procedures provided by the agencies. Where criminal activity is suspected, also report the alleged violations to the appropriate law enforcement agency.

Revised Policy Recommendation #3 – County staff report any marijuana-related violations to CE for triage and processing rather than directly to a state agency or law enforcement. CE can then forward the complaint to appropriate agencies per outlined procedures.

Revised Policy Recommendation #6 -- County Counsel recommends against creating a separate citation matrix for marijuana violations; therefore, staff recommends no change to the current citation matrix; the maximum citation would continue to be \$500 for Priority 1 marijuana-related violations as with other health- and life-safety related violations.

Revised Policy Recommendation #7 -- County Counsel advises against creating a separate civil penalty matrix for marijuana violations; therefore, staff recommends leaving the civil penalty matrix as is with a maximum of up to \$3,500 per day for marijuana-related violations as with other violations of the ZDO.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost?

\$240,000 is the amount allocated to the Planning & Zoning Division in the current fiscal year for all zoning-related CE work. \$180,000 is the amount allocated to the Building Codes Division in the current fiscal year for all building code-related CE work. Direction received previously from the BCC regarding CE hearings will increase costs to approximately \$13,000 in the coming fiscal year.

What is the funding source?

Funding is provided to CE through direct billings to Building Codes, Planning & Zoning, and Resource Conservation and Solid Waste programs for services rendered, and also from an \$112,558 contribution from the general fund in the current fiscal year.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department’s Strategic Business Plan goals?

Enforcement of marijuana rules and regulations is important to ensure a safe and livable community. Firm enforcement is needed to foster the public’s trust which was identified as a goal in the BCC’s strategic plan.

- How does this item align with the County’s Performance Clackamas goals?

DTD’s Performance Clackamas Plan identifies the timely enforcement of CE cases as a high priority and recognizes CE as a vital part of creating Livable Communities, one of DTD’s lines of business. CE is now tracking marijuana-related CE cases through a special report and this tracking has been established as one of our performance measures for fiscal year 2016-17.

LEGAL/POLICY REQUIREMENTS:

Effective January 1, 2016, new zoning rules were implemented in the Clackamas County Zoning and Development Ordinance. None of the directives regarding the policy recommendations provided by the

BCC on May 24, 2016 will require modifications to Chapter 2.07 *Code Enforcement* of the Clackamas County Code. Based on legal advice from County Counsel, citations and civil penalties will not be modified; therefore, it will not be necessary to revise the County's current *Fees and Fines Appendix*. Changes in the frequency of the hearings schedule and expenses related to those changes were allowed under the existing contract with Carl Cox, the County's CE Hearings Officer; thus, a contract amendment was not required.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The ZDO rules regulating time, place and manner for marijuana growing, processing and sales were developed with extensive public input.

OPTIONS:

1. Implement the revised policy recommendations outlined above and acknowledge the procedures outlined the *OHA & OLCC Updates and Reporting Procedures* in Attachment A
2. Modify the revised recommendations and procedures
3. Reject the proposed procedures

RECOMMENDATION:

Staff respectfully recommends that the Board approve Option 1 -- implement the revised policy recommendations outlined above and acknowledge the procedures outlined the *OHA & OLCC Updates and Reporting Procedures* in Attachment A.

ATTACHMENTS:

Attachment A: *Updated Recommendations for Marijuana-Related Code Enforcement Cases*

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Scott Caufield @ 503-742-4747
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Updated Recommendations for Marijuana-Related Code Enforcement Cases September 19, 2016

Policy Recommendation #1: *CE shall focus its efforts and resources on the enforcement of the Clackamas County Zoning and Development Ordinance (ZDO).*

Board Response – Agree, recognizing that CE’s authority extends only to the County’s own zoning rules. For safety and resource reasons, however, BCC directed that complaints extending beyond the ZDO (i.e., alleged Oregon Health Association (OHA) medical marijuana licensing matters and Oregon Liquor Control Commission (OLCC) recreational marijuana registration violations, complaints alleging criminal activity, etc.) be referred to the appropriate state agency and/or law enforcement as appropriate. In addition, staff was asked to response to several questions related to state-level enforcement, complaint procedures and the involvement of law enforcement.

Revised Recommendation – Report all alleged marijuana violations that fall outside the county’s scope of authority to the appropriate state agency (OHA or OLCC) using the procedures provided by the agencies. Where criminal activity is suspected, also report the alleged violations to the appropriate law enforcement agency.

Status -- This recommendation is partially implemented. CE has been informed of the OHA/OLCC resources and has been tentatively instructed to coordinate per the procedures outlined below, while awaiting further direction from the BCC. Staff has also gathered information to respond to the questions; see pages 3-4 for details.

Policy Recommendation #2: *Where complainants request confidentiality in marijuana-related CE cases and there is no other life-safety issue, take enforcement action with only one complaint instead of two as is required by the current CE Complaints Policy.*

Board Response – Agree.

Status -- This recommendation is implemented.

Policy Recommendation #3: *County staff should be directed to report suspected marijuana violations when they are discovered during the course of their regular duties.*

Board Decision – Agree. In addition, staff is instructed to register a complaint with CE so it can be properly investigated and resolved in accordance with the BCC’s policy directives and/or routed through the appropriate agencies.

Revised Recommendation – County staff report any marijuana-related violations to CE for triage and processing rather than directly to a state agency or law enforcement. CE can then forward the complaint to appropriate agencies per outlined procedures.

Status -- This recommendation is partially implemented. Final implementation is dependent upon BCC direction related to item #1 above.

Policy Recommendation #4: *Revise CE procedure to allow referral to hearing after first citation for violations of the ZDO.*

Board Response – Agree.

Status -- This recommendation is implemented.

Policy Recommendation #5: *Revise hearings officer schedule to have hearings weekly instead of twice monthly.*

Board Response – Agree.

Status -- This recommendation is implemented.

Policy Recommendation #6: *Create a special category for marijuana citations in the amount of \$1,000 for first confirmed violation, \$2,500 for second, and \$5,000 for third.*

Board Decision – Agree. Further, the citation amounts should be \$1,000 for first confirmed violation, \$5,000 for second confirmed violation and \$10,000 for third confirmed violation, and shall only apply to violations of Section 841 of the County’s Zoning & Development Ordinance.

Revised Recommendation -- County Counsel recommends against creating a separate citation matrix for marijuana violations; therefore, staff recommends no change to the current citation matrix; the maximum citation would continue to be \$500 for Priority 1 marijuana-related violations as with other health- and life-safety related violations.

Status -- This recommendation has been implemented by default because no change is required in either County Code or the County’s Fees and Fines Schedule.

Policy Recommendation #7: *Retain current practice for the application of civil penalties.*

Board Decision – Agree, but revise the civil penalty for marijuana-related violations (specifically, violations of ZDO Section 841) from the current schedule of up to \$3,500 per day to a maximum of up to \$5,000 per day.

Revised Recommendation -- County Counsel advises against creating a separate civil penalty matrix for marijuana violations; therefore, staff recommends leaving the civil penalty matrix as is with a maximum of up to \$3,500 per day for marijuana-related violations as with other violations of the ZDO.

Status --This recommendation has been implemented by default because no change is required in either County Code or the County’s Fees and Fines Schedule.

Policy Recommendation #8: *Use appropriate collection techniques to collect fines, civil penalties and other moneys owed the County where such penalties have been ordered by the Hearings Officer.*

Board Decision – Agree, and explore using judgements and similar tools to increase collections.

Status -- This recommendation has been partially implemented while CE discusses this in depth with County Counsel.

- Counsel is exploring the possibility of using judgements, and also looking at other collection tools to use in egregious CE cases such as foreclosure procedures. This would strengthen CE's marijuana-related enforcement and collection efforts, and also benefit our regular CE efforts.
- Additionally, Counsel is guiding CE staff so that during the earliest stages of a case, notifications and other communications are structured to provide the County with more options later if we need to take collection action.
- Last, since our presentation in May, DTD administration has executed agreements to enable us to utilize the services of a collection agency, and we are working to implement standardized collection procedures department-wide. The agency we have contracted with -- Professional Credit Service -- has a long history and high success rate in the collection of moneys owed public agencies.

Policy Recommendation #1:

OHA & OLCC Marijuana Enforcement Updates and Reporting Procedures

The Oregon Health Authority (OHA) and the Oregon Liquor Control Commission (OLCC) are charged with the administration and enforcement of the State's medical and recreational marijuana programs, respectively. Each agency is additionally tasked with the development of policies and related administrative rule-writing associated with their respective programs.

Both agencies have dedicated staff to address code enforcement matters related to medical and recreational marijuana, though they are structured differently. Currently, code enforcement matters are handled separately by the appropriate agency; however, agency representatives from both the OHA and OLCC acknowledge that there is considerable overlap in the marijuana regulations and have set up procedures for coordination behind the scenes.

OHA has been regulating and dealing with medical marijuana card registrations, dispensaries and related grow operations for more than two years through the Oregon Medical Marijuana Program (OMMP). OHA is prepared to receive complaints and take necessary enforcement action related to any matter falling under its authority and encourages local agencies to report suspected violations. OHA has been working in cooperation with the OLCC in anticipation of recreational marijuana sales in stand-alone facilities becoming legal effective October 1, 2016.

OLCC has been primarily dealing with recreational marijuana grow operations. Beginning Oct. 1, 2016, when sales of recreational marijuana will be allowed in stand-alone facilities in Oregon, OLCC will begin to address matters related to these sales including monitoring and enforcement. OLCC is prepared to receive complaints and take necessary enforcement action related to sales, as well as to continue to address complaints related to grow operations as they arise.

OHA and OLCC representatives explicitly expressed a desire and willingness to assist the county where enforcement matters arise and some common themes emerge. Both agencies:

- Expressed a genuine interest in hearing about issues and complaints from the county;

- Expressed a willingness to assist the county in its enforcement efforts insofar as their authority extends to registration, licensing and other related rule violations;
- Have the ability to coordinate internally on issues between OHA and OLCC, especially where it might be unclear under whose authority the issue falls, and
- Have the ability to coordinate with law enforcement, as necessary.

Questions from May 2016 Policy Session

1. *What are the OHA's and OLCC's enforcement priorities for marijuana-related violations?*
 - a. OHA – primary focus on illegal distribution and preventing distribution to children/youth
 - b. OLCC -- primary focus on sales of recreational marijuana, and preventing diversion and sales to minors

2. *What resources do these agencies have related to enforcing rules for marijuana?*
 - a. OHA – A medical marijuana team of 58-60 staff with dedicated units for general enforcement, law enforcement coordination, statistics and tracking, etc.
 - b. OLCC – An enforcement team that is an integrated unit, including staff dedicated solely to marijuana and others who handle both liquor and marijuana issues. OLCC may adjust the number of staff depending on needs and outcomes of recreational sales in stand-alone facilities.

3. *What procedures are there to report violations and coordinate with state and local agencies?*
 - a. Both agencies use the following procedure, with medical marijuana (registrations, dispensaries, cardholder issues, grow issues, etc.) applicable to OHA and recreational marijuana (licensing, sales, grow issues, etc.) applicable to OLCC
 - i. Report *all* complaints
 - ii. Email complaints/issues directly to enforcement division manager
 - iii. Copy all complaints to the agency's general marijuana email inbox
 - iv. If unsure whether to send a complaint/issue, send anyway and coordination will be handled behind the scenes for proper routing
 - b. For OHA, because of confidentiality requirements, specific inquiries related to grow sites and growers *must come from a law enforcement agency* and be routed directly to OHA's Law Enforcement Unit.

4. *What procedures are there to report potential criminal activity to appropriate law enforcement agencies?*
 - a. Both agencies have the ability to coordinate with law enforcement, as necessary
 - b. For OHA, information about growers, grow sites, cardholder names and addresses, and the like are privileged and can only be released to law enforcement personnel, and even information provided to law enforcement personnel may be protected to a degree. Once the limited information is released to law enforcement, it is no longer considered confidential and may be distributed to CE and others as needed.