

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: April 21, 2015 **Approx Start Time:** 2:30 pm

Approx Length: 1 hour

Presentation Title: Update on Marijuana Issues

Department: Planning and Zoning Division

Presenters: Mike McCallister, Planning Director
Gary Schmidt, Public and Governmental Affairs

Other Invitees: Barb Cartmill, DTD Director
Dan Johnson, Asst. DTD Director
Dan Chandler, County Administration
Stephen Madkour, County Counsel
Nate Boderman, Asst. County Counsel

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD? This is an information session only. No action is requested from the Board.

EXECUTIVE SUMMARY: Oregon Ballot Measure 91 approved by the voters of the State of Oregon in 2014 authorizes and regulates the use of recreational marijuana. The Act is known as the "Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act."

- The "Personal Use Allowances of the Act" become effective on July 1, 2015.
- The remainder of the Act -- to allow commercial production, processing, wholesaling and retailing -- is contingent upon the Oregon Liquor Control Commission (OLCC) completing required rule-making and accepting license applications. That is anticipated to be completed in January 2016.
- The State Legislature is also considering a number of bills related to medical and recreational marijuana.

The purpose of this policy session is to update the Board on a variety of issues associated with marijuana, including legislative action, timing associated with OLCC rulemaking and issuance of licenses, the nature of ongoing inquiries, how the Planning and Zoning Division is responding to actual permit applications for marijuana uses and, finally, a look ahead to the next steps.

FINANCIAL IMPLICATIONS: None. This is an informational session only

LEGAL/POLICY REQUIREMENTS: None. This is an informational session only

PUBLIC/GOVERNMENTAL PARTICIPATION: None. This is an information session only. To the extent amendments to the Zoning and Development Ordinance or the County Code are initiated, an appropriate public outreach plan will be developed.

OPTIONS: No action is requested at this time.

RECOMMENDATION: None. This is an informational session only. However, staff anticipates scheduling another policy session soon after the legislature recesses in July to develop a strategy and work program with the BCC to consider amendments to the County Code / ZDO to address marijuana issues.

ATTACHMENTS:

- 1. *Policy Session - Marijuana Issues* memo from Mike McCallister, April 21, 2014

SUBMITTED BY:

Division Director/Head Approval Mike McCallister

Department Director/Head Approval [Signature]

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Mike McCallister @ 503-742-4522

April 21, 2015

To: Board of County Commissioners

From: Mike McCallister, Planning Director

cc: Don Krupp, County Administrator
Barb Cartmill, DTD Director
Dan Johnson, Asst. DTD Director

RE: **Policy Session - Marijuana Issues**

The land use issues associated with medical and recreational marijuana are very dynamic. There are court opinions, pending litigation, various interpretations of the law, likely State legislation in 2015, existing laws regulating medical marijuana, new laws forthcoming regulating recreational marijuana and policy direction from the County Commission, which may all influence the regulation and implementation of medical and recreational marijuana.

Because of the very fluid nature of this issue, I am confident that information in this memo will change in the future. The information below does not constitute a final decision or interpretation of the Zoning and Development Ordinance related to this issue.

A. The Facts as of April 21, 2015:

1. Marijuana is illegal under the federal Controlled Substances Act (CSA) of 1970.
2. Medical Marijuana: The Oregon Medical Marijuana Act is codified in ORS 475.300. The Oregon Health Authority (OHA) adopted Oregon Administrative Rules (OAR 333, Division 8) necessary for the implementation and administration of the Oregon Medical Marijuana Act. The County is not responsible for administering the OAR's relative to medical marijuana.
 - a. Clackamas County has a moratorium in effect prohibiting medical marijuana facilities until May 1, 2015. The BCC lifted the moratorium on January 8, 2015 for any medical marijuana facility located in the Metro Urban Growth Boundary that had obtained full, unconditional approval by the OHA on or before April 23, 2014 (Ordinance #01-2015). The ordinance further limits hours of operation from 10 a.m. to 9 p.m. and prohibits marijuana from being consumed on the same premises.
 - b. The BCC is scheduled to hear the second reading of an ordinance considering adoption of other time, place and manner regulations for medical marijuana facilities on April 16, 2015.
3. Measure 91, approved by the voters of the State of Oregon in November 2014, is known as the "*Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act.*"
 - a. The purposes of the Act include: "To permit persons licensed, controlled, regulated, and taxed by this state to legally manufacture and sell marijuana to persons 21 year of age and older."

- b. The Act does not include any specific land use regulations.
 - c. The Act does not amend or affect the Oregon Medical Marijuana Act.
 - d. "Marijuana" does not include industrial hemp, as defined in ORS 571.300, or industrial hemp commodities or products. The growing of industrial hemp is considered to be an agricultural product / farm use (OAR 571.305(1)). These facilities must be licensed by the Oregon Department of Agriculture (ODA).
4. Recreational Marijuana for Personal Use: Section 6 of the Act identifies "Personal Use Allowances."
- a. Section 6 becomes effective July 1, 2015 and allows a certain amount of useable marijuana, marijuana plants, solid and liquid marijuana products per household. (There has been some discussion about moving the effective date to an earlier time through legislative action.) A "household" means a housing unit, and includes any place in or around the housing unit at which the occupants of the housing unit are producing, processing, keeping, or storing homegrown marijuana or homemade marijuana products. (See Attachment 1 prepared by the Association of Oregon Counties.)
 - b. Outside of their households, the Act allows up to 1 ounce of useable marijuana and delivery of marijuana for noncommercial purposes to another person subject to limits.
 - c. No consumption is allowed in public.
 - d. No person may produce, process, keep, or store homegrown marijuana or homemade marijuana products if the products can be readily seen by normal unaided vision from a public place.
 - e. "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in conjunction with passenger transportation.
 - f. The "Personal Allowances" authorized for recreational marijuana per household is not a land use issue and will not be regulated by the ZDO.
5. Recreational Marijuana Licenses: The Oregon Liquor Control Commission (OLCC) is responsible to adopt laws (Oregon Administrative Rules) for the implementation and administration of Measure 91. The duties of the OLCC include:
- a. To regulate the purchase, sale, production, processing, transportation and delivery of marijuana items.
 - b. On or before **January 1, 2016**, OLCC shall adopt rules and regulations as deemed necessary for the implementation and administration of the Act.
 - c. On or before **January 4, 2016**, OLCC shall begin **receiving** applications for the licensing of persons to produce, process, wholesale and retail marijuana. The Act states that OLCC may not unreasonably delay decisions on a license, but does not specify a time limit.

- d. Four types of licenses are provided for in the Act;
 - “Production license” for the manufacture, planting, cultivation, growing or harvesting of marijuana
 - “Processor license” for the processing, compounding or conversion of marijuana into marijuana products or marijuana extracts
 - “Wholesale license” for any premises at which marijuana items are received, kept, stored or delivered. A "marijuana wholesaler" is defined as a person who purchases marijuana items for resale to a person other than a consumer.
 - “Retail license” to sell marijuana items to a consumer.
- e. The same person may hold one or more production licenses, one or more processor licenses, one or more wholesale licenses, and one or more retail licenses.
- f. Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments *that sell marijuana to consumers* (Section 59 of the Act). The Act does not appear to provide for the establishment of time, place and manner restrictions for producers, processors and wholesalers. It is also unclear what it means to regulated the “nuisance” aspects of marijuana establishments. It is an ambiguous concept that hopefully will be clarified by the Legislature or the OLCC.

B. 2015 Legislation

1. Legislation is anticipated during the 2015 session that may clarify and amend components of medical and recreational use marijuana regulations (time, place, manner, nuisance restrictions, taxation, production, labeling, etc.) The legislative session is scheduled to recess in early July 2015.
2. The scope and nature of the legislation is unknown. The outcome of new legislation is important because it is expected to provide the regulatory sideboards and flexibility of local governments to adopt time, place and manner regulations, and other local ordinances.
3. PGA staff will provide a legislative update at the policy session.

C. The Unknowns

1. The market need and number of anticipated grow, production, wholesaling and retailing operations in the County
2. How regulations in other nearby counties and cities will affect the number and location of facilities in Clackamas County
3. What oddities will be realized...marijuana farm stands, marijuana mobile vending carts, marijuana events, B&B’s (Buds and Breakfasts)
4. Impacts on staffing resources throughout the County to respond to customer inquiries, issue permits and code enforcement

D. The Planning Director's Best Guess

1. Medical Marijuana: No significant changes in State law.

2. Recreational Marijuana:
 - a. The production, processing, wholesaling and retailing of recreational marijuana in natural resource zoning districts will be treated the same as any other farm use.
 - b. The production, processing, wholesaling and retailing of recreational marijuana will be prohibited -- including the right to conduct a home occupation / business -- in all urban single-family and multi-family residential zoning districts.
 - c. Local governments will have the authority to regulate the production, processing, wholesaling and retailing of recreational marijuana in other urban zoning districts (i.e. commercial and industrial) and in rural residential, rural commercial and rural industrial zoning districts.

E. What's Happening Today

1. The County Planning and Zoning Division, Building Division and other departments routinely receive inquiries regarding marijuana regulations and associated land use regulations and permitting requirements.
2. Clackamas County is responsible for regulating land uses, including medical and recreational marijuana dispensaries and facilities pursuant to the Clackamas County Zoning and Development Ordinance. Marijuana businesses and facilities are no different than any other land use when it comes to administering the zoning ordinance. Like other land uses, the appropriate zoning district(s) to locate these business will be based on characteristics of the business (growing, manufacturing, wholesaling, retailing or a combination thereof). The inherent conflict is that commercial marijuana facilities may be legally permissible under the construct of the County ZDO and yet cannot legally operate until such time as the OLCC issues a license for each facility.
3. If the County receives a land use application and / or building permit for a marijuana use or facility, the proposal will be evaluated to determine consistency with the ZDO. To the extent the proposal complies with the ZDO and is approved, a disclaimer letter will accompany that approval. The disclaimer letter was developed in consultation with County Counsel and states the following:

The above land use / building permit has been reviewed and determined to be in compliance with the Clackamas County Zoning and Development Ordinance (ZDO). This approval does not ensure the facility / business is in compliance with other Federal, State or County regulations. Furthermore new laws may be adopted by the State legislature and the Oregon Liquor Control Commissioner (OLCC) that may restrict the location and operating characteristic of this facility. If so, this location may or may not comply with those regulations. It is the business owner's responsibility to ensure compliance with any other applicable law.

4. Time, place and manner restrictions adopted by the Board for medical marijuana facilities will be administered by the Planning and Zoning Division through the normal permitting process.

F. A Few Land Use Policy Issues: Looking Forward

1. Where should marijuana producers, processors, wholesalers and retailer operations be permitted outright, conditionally or prohibited in the County?
2. Should medical marijuana and recreational marijuana facilities and operations be treated differently?
3. Are the proposed (scheduled to be adopted on April 16, 2015) time, place and manner restrictions for medical marijuana appropriate to the siting of recreational marijuana facilities?
4. Producers (grow operations) are considered farm uses and are allowed outright in natural resource zoning districts. The County may not restrict farm uses and practices in natural resource zones and therefore may not be able to regulate grow, processing, wholesaling and retailing operations in these districts.
5. The County allows farm uses in most rural residential zones. Can or should the growing of marijuana as a farm use in rural residential zones be limited or prohibited and treated differently than other farm uses?
6. Are other general development standards (fencing designs and heights, razor wire, etc.) appropriate or necessary to address the impacts of marijuana facilities and operations?

G. Next Steps

- Continue to monitor 2015 legislation and OLCC rulemaking.
- Continue to participate in legal, educational and informational opportunities.
- Schedule a BCC policy session immediately after recess of the legislature.