

## CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

### Study Session Worksheet

**Presentation Date:** March 10, 2015 **Approx Start Time:** 3:00 p.m. **Approx Length:** 1 hour.

**Presentation Title:** Medical Marijuana Time Place and Manner Ordinance.

**Department:** Admin, Counsel

**Presenters:** Dan Chandler, Nate Boderman

### **WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?**

Direction on the following questions:

1. What are appropriate setbacks between potential medical marijuana dispensaries, and between dispensaries and sensitive uses?
2. Should we amend the "grandfather" provision of the ordinance to include facilities that submitted their applications the first day they were accepted, but did not receive their state approvals until May, 2014. As far as staff can tell, two facilities fall within this timeline.
3. Should medical marijuana dispensaries (MMD facilities) be allowed in certain industrial or rural commercial zones?
4. Should there be restrictions on materials available to minors accompanying card holders into waiting areas? (Minors are not allowed in any area of the premises where marijuana is present.)

### **EXECUTIVE SUMMARY:**

#### **Medical Marijuana**

On March 19, 2014, Governor Kitzhaber signed Senate Bill 1531 into law. The law gave local governments the authority to impose "time, place and manner" regulations on medical marijuana dispensaries, but stops short of authorizing local governments to institute permanent bans on these facilities.

The bill required that the Oregon Health Authority license medical marijuana dispensaries and imposed a number of siting requirements:

1. Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land.
2. May not be located at the same address as a marijuana "grow site."
3. Must not be located within 1,000 feet of a public or private elementary, secondary or

career school attended primarily by minors.

4. Must not be located within 1,000 of another medical marijuana facility.

The bill did, however allow local governments to impose up to a one-year moratorium on medical marijuana dispensaries, provided the moratorium was adopted by May 1, 2014. Most local governments around the state imposed moratoriums, with a few notable exceptions, including the City of Portland. The City of Salem adopted a fairly strict time, place and manner ordinance.

On April 24, 2014, the Board of Commissioners adopted Ordinance 01-2014, imposing a one-year moratorium on medical marijuana facilities in the County. In January 2015, the county "grandfathered" certain facilities. The county lifted the moratorium as to those facilities that had obtained full and final approval from the state prior to the adoption of the moratorium ordinance.

#### **Recreational Marijuana – Measure 91**

On November 4, 2014 voters approved Measure 91, which will legalize recreational marijuana in Oregon. Recreational marijuana would be subject to regulation by the Oregon Liquor Control Commission, or OLCC. Both the OLCC and the 2015 Oregon Legislature are considering issues related to recreational marijuana.

#### **FINANCIAL IMPLICATIONS (current year and ongoing):**

The legalization of recreational marijuana will have a host of impacts. A portion of taxes raised will go to the County. However, enforcement and training costs will increase. For example, K9 units in some jurisdictions are being retrained or retired early due to the changes in marijuana enforcement.

Passage of the recreational marijuana measure will yield some tax revenue to the County, at least initially. However, after the first year, taxes would be distributed in accordance with the number of recreational marijuana facilities in each jurisdiction.

#### **LEGAL/POLICY REQUIREMENTS:**

The current moratorium on medical marijuana dispensaries expires on May 1, 2015. The County will need to adopt a time place and manner ordinance before that time.

There are a number of countervailing concerns at play in regulating medical marijuana dispensaries. A shortage of dispensaries may encourage users to use black market sources, which may be less safe. On the other hand, too many dispensaries may have a real or perceived negative impact on property values, and may be considered objectionable by neighboring communities.

Clearly, prevention of youth access was a common theme and concern between both the regulated community and prevention advocates.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

There was substantial public testimony both for and against, and the time the moratorium was adopted. Staff has solicited feedback from a work group comprised of representatives from the medical marijuana industry, prevention specialists, and community representatives. The work group has met 4 times over the past 5 months.

**OPTIONS AND RECOMMENDATIONS:**

**1. What are appropriate setbacks between medical marijuana dispensaries, and between dispensaries and other sensitive uses?**

Type of Facility	Clackamas County	Washington County	Jackson County (proposed)	Hillsboro
Between dispensaries	2500 feet	2000 feet	2500 feet	2000
Schools	2000 feet	1000 feet (per state law)	1000 feet	1000 feet
Light rail transit stops.	1500 feet	1500 feet	N/A	
Libraries, parks treatment centers, adult foster care, public housing and state liquor stores	1500 feet	None	None (1000 feet from county correctional facility)	1000 feet to parks and public plazas. Also banned in downtown zone.
Licensed child care facilities	500 feet.	None	None	None

**2. Should Medical Marijuana Dispensaries be allowed in Industrial Zones?**

Certain retail uses are currently allowed in business parks and other industrial zones. Such zones are typically located further from sensitive uses than other commercial zones, and thus might provide appropriate locations for medical marijuana dispensaries. The counter-argument is that it may be inappropriate to provide industrial workers with more work- convenient places to obtain marijuana.

**3. Should Medical Marijuana Dispensaries be allowed in rural commercial zones?**

Allowing MMD facilities in rural commercial zones would provide patients with a more convenient venue to meet medical marijuana needs, but would raise additional enforcement concerns.

**4. Minors in waiting areas.**

State law currently allows minors to accompany cardholders into the waiting areas of MMD facilities. Marijuana products are not allowed in the waiting areas. Prevention advocates have raised the question of banning certain promotional materials or products in waiting areas as well.

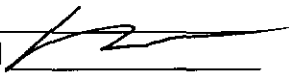
**Recommendation:**

Staff recommends the ordinance as currently drafted, but will be happy to make amendments as requested by the Commission.

**Attachments:**

1. Draft Ordinance.
2. Map showing urban area and effect of setbacks (Map will be revised before the study session to show additional setbacks from light rail stations and state liquor stores.)

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_  
Department Director/Head Approval  \_\_\_\_\_  
County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact Dan Chandler @  
503-742-5394

## Fiscal Impact Form

**RESOURCES:**

Is this item in your current work plan and budget?

- YES  
 NO

**START-UP EXPENSES AND STAFFING (if applicable):**

**ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable):**

**ANTICIPATED RESULTS:**

N/A

**COSTS & BENEFITS:**

<b>Costs:</b>							
	Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	<b>Total Start-up Costs</b>						
	<b>Ongoing Annual Costs</b>						
<b>Benefits/Savings:</b>							
	Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	<b>Total Start-up Benefit/Savings</b>						
	<b>Ongoing Annual Benefit/Savings</b>						

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING THE CLACKAMAS COUNTY CODE  
TO ADD CHAPTER 8.09 ESTABLISHING TIME, PLACE  
AND MANNER REGULATIONS FOR MEDICAL MARIJUANA  
DISPENSARIES**

*WHEREAS*, the Oregon Legislature enacted House Bill 3460 (2013), which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities; and

*WHEREAS*, House Bill 3460 (2013) directed that persons who operate or are employed by a registered medical marijuana facility would enjoy immunity from state prosecution and which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities; and

*WHEREAS*, the Oregon Legislature enacted Senate Bill 1531 (2014) which affirmatively afforded Oregon cities and counties the ability to impose time, place and manner restrictions on medical marijuana dispensaries that locate within their boundaries; and

*WHEREAS*, Senate Bill 1531 (2014) removes immunity from state prosecution for a person who is responsible for or employed by a registered medical marijuana facility located in an area subject to the jurisdiction of a city, or county that enacts a moratorium prohibiting the operation of a medical marijuana facility; and

*WHEREAS*, on April 24, 2014, the Board of County Commissioners enacted Ordinance 01-2014, a moratorium prohibiting the siting and operation of medical marijuana dispensaries within the jurisdictional boundaries of unincorporated Clackamas County. An emergency was declared and the moratorium was effective immediately; and

*WHEREAS*, several applicants within unincorporated Clackamas County had obtained approval from the Oregon Health Authority to operate medical marijuana dispensaries in unincorporated Clackamas County prior to the adoption and effective date of the moratorium; and

*WHEREAS*, on November 4, 2014, the voters of the State of Oregon passed Measure 91 (2014), which will legalize the recreational use of marijuana in the state effective July 2015; and

*WHEREAS*, on January 8, 2015, the Board of County Commissioners enacted Ordinance 01-2015 which amended Ordinance 01-2014 to exempt those medical marijuana facilities which obtained full, unconditional approval by the Oregon Health Authority on or before April 23, 2014, and which provided that medical marijuana

ORDINANCE NO. \_\_\_\_\_



alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

D. "Medical Marijuana Facility" means a facility that is registered by the Oregon Health Authority under ORS 475.300-475.346 and that sells, distributes, transmits, gives, dispenses or otherwise provides medical marijuana to medical marijuana qualifying patients.

E. "Minor" means any person under 21 years of age who is not a medical marijuana card holder.

F. "Marijuana Vending Facility" means a Facility and/or a marijuana facility operating under (Measure 91, Oregon Laws \_\_\_\_\_).

G. "Playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of minors including, but not limited to, sliding boards, swing sets, and teeterboards.

H. "Premises" means a location registered by the State of Oregon as a Medical Marijuana Facility and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, restrooms, storerooms, and including all public and private areas where individuals are permitted to be present. Premises does not include the parking areas or the landscaped areas located outside of the building or buildings which accommodate the primary activities of the Medical Marijuana Facility.

I. "Sensitive Use – Class I" means a public or private elementary, secondary or career school attended primarily by minors, including any parking lot appurtenant thereto and any property used by the school.

J. "Sensitive Use – Class II" means a public park or public playground, a public library, recreational center, licensed treatment center, light rail transit station, adult foster care facility or a housing facility owned by a public housing authority.

K. "Sensitive Use – Class III" means a licensed day care facility or licensed preschool including any parking lot appurtenant thereto and any property used by the facility or preschool.

### **SECTION 8.09.030 Rules and Regulations**

Any Medical Marijuana Facility must comply with the following requirements, in addition to any other state or local requirements:

A. The Medical Marijuana Facility must meet applicable land-use, building and fire codes.

ORDINANCE NO. \_\_\_\_\_



B. There shall be no manufacture or production of any extracts, oils, resins or similar derivatives of marijuana on the Premises of a Medical Marijuana Facility and no open flames shall be used in the preparation of any products.

C. Marijuana and tobacco products must not be smoked, ingested or otherwise consumed on the Premises of the Medical Marijuana Facility.

D. Operating hours for a Medical Marijuana Facility must be no earlier than 10:00 a.m. or later than 9:00 p.m. on the same day.

E. The Medical Marijuana Facility must not be co-located on the same property or within the same building with any marijuana social club or smoking club.

F. The Medical Marijuana Facility must utilize an approved air filtration and ventilation system that confines all odors associated with the Facility to the Facility Premises.

G. The Medical Marijuana Facility must not permit any minor to be present anywhere on the Premises, unless accompanying a cardholder to the waiting area as allowed by state law.

**SECTION 8.09.040 Standards**

(a) A Medical Marijuana Facility may only operate where retail uses are permitted by the Clackamas County Zoning and Development Ordinance.

(b) A facility shall not be located:

(1) In any industrial or residential zoning District or outside of any Urban Growth Boundary.

(2) Within a residence.

(3) Within:

(A) 2500 feet of another licensed Marijuana Vending Facility.

(B) 2000 feet from a Sensitive Use – Class I.

(C) 1500 feet from a Sensitive Use – Class II.

(D) 500 feet from a Sensitive Use – Class III.

(E) 100 feet of a residentially-zoned property, however, this provision shall not apply to any parcel which fronts on a state highway or major arterial.

ORDINANCE NO. \_\_\_\_\_

(c) For purposes of subsection (b), all distances shall be measured from the property line of the affected property, (for example; a school) to the closest point of the space occupied by the facility.

(d) A change in use (including a rezone) to a neighboring property to a use identified in this section after a license has been issued for a facility shall not result in the facility being in violation of this section.

(e) The provisions of Section 8.09.040(b) shall not apply to any Medical Marijuana Facility which applied for a registration with the Oregon Health Authority on or before March 3, 2014, and which subsequently obtained full, unconditional approval on or before May 31, 2014.

(f) A Medical Marijuana Facility which falls under Section 8.09.040(b) may relocate to another location in the same building.

### **SECTION 8.09.050 Remedy for Noncompliance and Administrative Appeals**

A. A building or structure established, operated, or maintained contrary to this chapter is a public nuisance and may be abated as provided for in Chapter 6.08.

B. The remedy provided in this section is not exclusive and shall not prevent the County from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the County or other appropriate prosecutor from pursuing criminal charges under state law or County ordinance.

### **SECTION 2. Severability.**

If any section, subsection, paragraph, sentence or word in this ordinance is deemed to be invalid or beyond the authority of the County, either on its face or is applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this ordinance, and the application thereof; and to that end sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

### **SECTION 3. Codification.**

Provisions of this ordinance shall be incorporated in the County Code and the word "ordinance" may be changed to "code", "article", "section", or another word, and the sections of this ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions, and text descriptions of amendments (i.e. Sections 1-3) need not be codified and the County Counsel is authorized to correct any cross-references and any typographical errors.

ORDINANCE NO. \_\_\_\_\_

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015 .

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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

ORDINANCE NO. \_\_\_\_\_



# MM T-P-M Study Map 6

**DRAFT**

## Legend

- Child Care Locations
- Medical Cannabis Dispensaries
- Possible Areas for Marijuana Retail Stores
- 2000' Buffer around Schools
- 500' Buffer around Childcare
- 2500' Buffer around Medical Marijuana Dispensaries
- 1000' Buffer around North Clackamas Aquatic Park
- Restricted Areas
- School Properties

## Commercial Zoning

- C2
- C3
- CC
- NC
- OA
- OC
- PMU1
- PMU2
- PMU3
- RC
- RCC
- RCO
- RTL
- VCS
- VO

## Places

- Child Care Locations
- Schools
- County Courthouse
- City Hall
- Hospital
- Airport
- Parks (Public)
- Parks (Other)
- Golf Course
- Boat Launch
- Winter Recreation
- Cemetery
- Library
- Ferry Crossing
- Swimming
- Viewing Area

