

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: August 19, 2014 **Approx Start Time:** 2:30 **Approx Length:** 1 hour

Presentation Title: Marijuana Update.

Department: Admin, Counsel

Presenters: Dan Chandler, Nate Boderman

Other Invitees: Mike McCallister

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Direction on the following questions:

1. Should the County lift the current moratorium on medical marijuana dispensaries, and replace it with time, place and manner restrictions, and if so, when?
2. What process should the County follow in obtaining citizen input on time place and manner restrictions?
3. What are the key regulatory issues involved in time, place and manner restrictions for medical marijuana as well as recreational marijuana?
4. Should the County license marijuana facilities, potentially along with other businesses?

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.

Recreational Marijuana – Measure 91

Last month, the Secretary of State directed that Measure 91 be placed on the November ballot. The measure gathered far in excess of the required number of signatures. If it passes, Measure 91 will legalize recreational marijuana in Oregon. Recreational marijuana would be subject to regulation by the Oregon Liquor Control Commission, or OLCC.

Local governments would retain the ability to impose “time place and manner” restrictions within constitutional limits, but cannot impose a tax or fee beyond state tax that would be imposed on growers—\$10 an ounce on leaves and \$35 an ounce on flowers. Some cities believe that there is local authority to impose a sales tax on marijuana, provided it is adopted in advance of the measure.

<http://www.wweek.com/portland/article-22868-dont-bogart-that-tax.html>

What Local Control Remains?

While the question is not beyond dispute, local governments have the authority to further regulate dispensaries through business licenses, zoning laws and development permits, and to enforce violations of those ordinances with civil penalties.

Is there any advantage to passing an ordinance on recreational marijuana prior to passage of the recreational marijuana statute?

Counsel’s review has concluded that there would be no advantage to the County in passing recreational marijuana regulations in advance. However, as noted above, at least some jurisdictions are of the opinion that they may pass a sales tax on recreational marijuana provided they do so before the measure passes.

FINANCIAL IMPLICATIONS (current year and ongoing):

Adoption of a moratorium will require County Counsel staff time and resources to draft an ordinance, solicit feedback and conduct public hearings. However, no new funding is being sought.

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 would 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:

1. The attached memorandum from Nathan Boderman lays out some of the issues in Measure 91, the recreational marijuana measure.
2. The attached memorandum from Mike McCallister addresses time place and manner restrictions from a land use planning perspective.

PUBLIC/GOVERNMENTAL PARTICIPATION:

As I am sure the BCC recalls, there was substantial testimony at the time the moratorium was adopted, both pro and con. When and if the BCC directs, staff anticipates will convene a citizen work group to address and make recommendations as to appropriate time place and manner restrictions.

OPTIONS AND RECOMMENDATIONS:

1. **Should the County lift the current moratorium on medical marijuana dispensaries, and replace it with time, place and manner restrictions, and if so, when?**

Options

There are at least three options available:

- a. Begin the process now to lift the moratorium.
- b. Wait and see whether the recreational measure passes.
- c. Extend the moratorium into next year, potentially to see whether the legislature allows an extension.

Recommendation

Staff recommends Option b. This will allow the County to evaluate marijuana commerce as a whole, and avoid duplication of effort in responding separately to medical and recreational marijuana. Waiting will also allow the County to continue to learn from the experience of other jurisdictions. The countervailing issue is that at least some local entrepreneurs have personal investments at risk as a result of the moratorium

2. **What process should the County follow in obtaining citizen input on time place and manner restrictions?**

Options

- a. Rely on the normal citizen involvement process of business meetings and town halls.
- b. Convene a work group to try to make recommendations.

Recommendation

Staff recommends Option b, recognizing that consensus may be difficult to obtain on an issue as divisive as marijuana use.

3. **What are the key regulatory issues involved in time, place and manner restrictions for medical marijuana as well as recreational marijuana?**

Options

Staff believes the key issues are:

- Spacing
- Which zones are appropriate?
- Hours of operation
- Protection of youth and children.
- Funding
- Screening of operators and potential law enforcement veto.

Recommendation

That the BCC raise any additional issues they wish staff to consider in developing time place and manner regulations.

4. **Should the County license marijuana facilities, potentially along with other businesses?**

Options

- a. License marijuana facilities only.
- b. Adopt an overall business license program, which could include marijuana facilities.
- c. Adopt an overall business license program, and preclude licenses for activities that are illegal under state or federal law.
- d. Avoid licensing altogether.

Recommendation

Staff recommends options b,c or d. Granting a special license for an activity that violates federal law raises a host of issues, and creates a legal risk for anyone involved.

ATTACHMENTS:

1. Memorandum from Nate Boderman
2. Memorandum from Mike McCallister,
3. News clippings and material from the League of Oregon Cities.

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:

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

July 17, 2014

To: Commissioner Jim Bernard

From: Mike McCallister, Planning Director

cc: Stephen Madkour, County Counsel
Nate Boderman, Assistant County Counsel
Dan Chandler, County Administration
Mary Jo Cartasegna, Policy Coordinator
Matt Ellington, County UnderSheriff
Gary Schmidt, PGA
John Foot, District Attorney

RE: Medical Marijuana Facilities / Moratorium

The following information is being prepared for consideration at the July 21, 2014 meeting to discuss medical marijuana facilities (MMF), the existing moratorium and time, place and manner (TPM) restrictions. I will be out of the office and unable to attend the meeting.

The Moratorium: The BCC adopted a moratorium on medical marijuana facilities effective April 24, 2014. The moratorium is in effect until May 1, 2015. During the proceedings for the moratorium the Board expressed interest in adopting time, place and manner restrictions (TPM) for medical marijuana facilities prior to May 1, 2015.

Current State Regulations: Registration of medical marijuana facilities is authorized by the Oregon Health Authority (OHA) pursuant to recently adopted administrative rules. To qualify for registration, a medical marijuana facility:

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 feet of another medical marijuana facility.

The OHA is responsible to ensure compliance with the siting standards relative to proximity to schools and other medical marijuana facilities.

Other requirements to obtain a registration from OHA for a MMF include:

1. The person responsible for (PRF) a dispensary has not been convicted of certain crimes (i.e

criminal records check).

2. The MMF must include certain safety and security measures (security systems, video security) and a safe.
3. Child resistant safety packaging for infused products

State law authorizes local governments to adopt reasonable time, place and manner restrictions for medical marijuana facilities. "Reasonable regulations" include reasonable limitations on the hours of operation, reasonable limitations on where a medical marijuana facility can be located and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

County Regulations: Medical marijuana facilities are authorized in all commercial and industrial (subject to square footage limitations) zoning districts as a retail use (similar to a pharmacy or drug store). The Zoning and Development Ordinance does not include "time" (hours of operation) or "manner" regulations of other similar retail uses.

Time, Place and Manner Restrictions -- What are they?

1. "Time" restrictions can include limitations on the number of days, days of the week, operations on holiday and hours of operation.
2. "Place" restrictions are much more variable. Restrictions could include limit MMF to certain zoning districts (i.e. only in General Commercial), geographic areas of the county and / or separation distances from schools, parks, public services (libraries, etc.) and other types of uses (i.e. limiting access to children).
3. "Manner" restrictions include regulations on dispensing medical marijuana.

Maritime Café Proposal: I have had two meetings with Mario Mamone who owns Maritime Café. Evidently, this facility (on McLoughlin Blvd) has temporarily ceased operation. Mr. Mamone has asked the County to consider a proposal to adopt TPM restrictions and lift the moratorium for MMF in existence at the time of the moratorium. The concept is a "pilot project" of sorts until the moratorium in May 2015. I have attached a copy of the proposal from Mr. Mamone. Highlights of the proposal include a requirement for a business license, limitations on hours of operation, sign requirements and a right for the county to inspect the business operation.

Other On-Going Considerations:

1. Signatures for a ballot measure have been submitted to the State to legalize recreational use of marijuana for adults. This author believes a ballot measure will pass. If so, adult recreational use of marijuana would be regulated by the OLCC (like liquor). Pursuant to the initiative, administrative rules would be adopted to regulate recreational marijuana. In any case, if recreational marijuana is approved, the number of retail outlets will likely far outnumber medical marijuana facilities (Seems like Washington is authorized to approve over 4,000 retail operations for recreational marijuana).

The initiative grants authority to OLCC to regulate licensure of recreational marijuana establishments. Section 25-30 of the initiative sets forth the procedures generally associated with the grant or denial of establishment licenses, as well as extensions, cancellations, or suspensions of licenses.

Sections 58-62 of the initiative provide local jurisdictions the right to adopt time, place and manner regulations on the nuisance aspects of these establishments (much like taverns, etc.). It also provides the local jurisdiction the option to entirely prohibiting recreational marijuana facilities where the question is put to the electors in a general election.

2. Marijuana is still subject to the Federal CSA.

3. The establishment and siting of medical marijuana facilities generally continues to be litigated throughout the State, which means the issue will continue to be dynamic. The City of Cave Junction has sued the State of Oregon over the question of whether the medical marijuana dispensary program directly conflicts with the Federal CSA.

Public Participation:

During the proceedings for the moratorium the Board expressed an interest in establishing a focus group of interested parties to participate in a discussion of TPM restrictions. That issue should be vetted appropriately. At the same time, there are a number of resources available, including work being completed by other cities and counties identifying TPM restrictions that the County could use to identify a list and range of restrictions.

Moratorium Options:

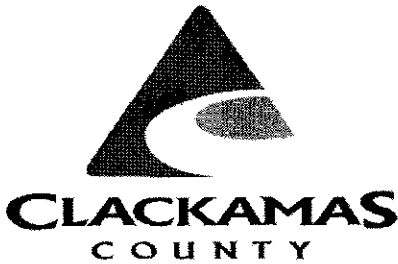
1. No action alternative. Moratorium expires May 1, 2015. MMF would be allowed to upon approval of a registration from the OHA.
2. Relax moratorium prior to May 1, 2015 and allow medical marijuana facilities which existed at the time of the moratorium to operate subject to TPM restrictions adopted by the County.
3. Adopt TPM restrictions for medical marijuana facilities to become effective upon adoption or May 1, 2015 whichever comes first.

Time, Place and Manner Restrictions Options:

1. Do not adopt TPM restrictions. Siting of MMF would be subject to approval of OHA, County zoning ordinances and building code requirements.
2. Adopt TPM restrictions into the County Code. This could include an option to require a "Business License" for MMF.
3. Adopt "time and place" restrictions, but not "manner" restrictions. I do not believe the County should attempt to codify "manner" restrictions because the OHA has regulations in place and the County does not have the expertise (or staffing resources) to enforce such regulations.

Policy Considerations (I am sure there is many more....)

1. Are TPM regulations appropriate for medical marijuana facilities when other similar retail uses are not subject to the same regulations?
2. Are the existing TPM restrictions adopted by the OHA sufficient to appropriately regulate MMF? Will County TPM restrictions add value to regulating the appropriate location and operation of MMF?
3. What is the appropriate time to consider TPM restrictions? Now, or this fall after the outcome of the ballot measure?
4. Should the County adopt TPM restrictions for medical marijuana facilities when in fact retail outlets for recreational marijuana (if approved) may far outnumber medical marijuana facilities and not be subject to TPM restrictions? Or said another way, if the County adopts TPM restrictions should they apply to both MMF and facilities selling recreational marijuana?
5. What resources are required to enforce TPM restrictions, if adopted?
6. What level of public outreach is appropriate prior to consideration of TPM restrictions?



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

MEMORANDUM

Stephen L. Madkour
County Counsel

TO: Commissioner Jim Bernard

FROM: Nate Boderman, Assistant County Counsel

CC: Stephen Madkour, County Counsel
Mike McCallister, Planning Director
Dan Chandler, County Administration
Mary Jo Cartasegna, Policy Coordinator
Matt Ellington, County UnderSheriff
Gary Schmidt, PGA
John Foot, District Attorney

DATE: July 17, 2014

RE: Recreational Marijuana Initiative

Kimberley Ybarra
Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Assistants

The following is a summary of the recreational marijuana initiative referenced in Mike McCallister's memo dated July 17, 2014. While a comprehensive look at the initiative is not particularly germane to our core task of looking at possible time, place and manner regulation of medical marijuana facilities, this memo will at least provide some context on the related issue of recreational marijuana regulation, which may become an issue this committee is eventually asked to address.

At last check, the organizers of the effort had submitted over 145,000 signatures, far exceeding the 87,000 needed to qualify for the ballot.

The initiative is roughly organized into seven main components, which are as follows:

- General Introductory Provisions

- Powers and Duties of the OLCC
- Purchaser's Qualifications
- Licensing and license procedures
- Taxes and Distribution of Revenue
- General Prohibitions
- Local regulation
- Enforcement and Penalties

What follows is a brief summary of certain provisions of the initiative, which is formally referred to as the "Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act". This is not intended to be a comprehensive look at the Act, but rather a summary of the more relevant, and interesting provisions of this particular initiative.

General Introductory Provisions

The most noteworthy portion of this section clarifies that the Act does not exempt a person from federal law. Additionally, the Act specifically does not affect the medical marijuana program.

Powers and Duties of the OLCC

The powers and duties imposed on the OLCC through this Act roughly tracks with the responsibilities the OLCC already has in its oversight of liquor.

OLCC will be responsible for purchase, sale, processing, transportation and delivery of marijuana. OLCC will also be responsible for licensing the sale, processing and production of retail marijuana. OLCC will be responsible for collecting taxes and duties, as well as regulating the advertising of marijuana. Finally, OLCC will be responsible to investigate and to assist in prosecution of violations.

Purchaser's Qualifications

As with alcoholic beverages, the Act sets specific restrictions on the minimum age a purchaser's must be to buy marijuana (21 years old), and has authority to limit the amount that any person may purchase at any one time.

Licensing and license procedures

OLCC must begin accepting applications for licenses by January 4, 2016. Licenses are related to either:

- production (growing, cultivating)
- processing (conversion of marijuana to products or extracts), or
- sale (separate licenses for retail and wholesale activities).

The Act sets forth comprehensive procedures associated with evaluating license requests and appeals of those decisions. It appears many of the same factors used to consider liquor licenses will be used for the marijuana licenses. This group may find it particularly interesting that the OLCC may refuse to issue a license if they deem there are sufficient licensed facilities in the locality.

Taxes and Distribution of Revenue

Marijuana producers are taxed as follows:

- \$35/oz for marijuana flowers
- \$10/oz for marijuana leaves, and
- \$5 per immature marijuana plant.

Counties and cities are specifically prohibited from imposing taxes on marijuana.

The taxes, after withholding for certain expenses, are distributed as follows:

- 40% to the common school fund
- 20% to the Mental Health Alcoholism and Drug Account
- 15% to the State Police Account
- 5% to the Oregon Health Authority to establish and drug and alcohol prevention and treatment program
- 10% to Oregon cities to assist with law enforcement, and
- 10% to Oregon counties to assist with law enforcement.

Each 10% share to local government is allocated amongst the cities and counties based on relative population until July 1, 2017, at which time the methodology for distributing the revenue shall be based on the relative number of licenses issued for each jurisdiction.

General Prohibitions (no prizes, can't possess plants, etc.)

This section discusses the wide range of prohibitions against the selling and acquisition of marijuana. This section prohibits activities such as use of marijuana in a public place, growing in plain view, and purchase of marijuana by a person under 21 years of age.

Local regulation

As discussed in Mike's memo, the Act grants local jurisdictions the right to adopt time, place and manner regulations on the nuisance aspects of these establishments. While OLCC could adopt certain siting restrictions (much like the Oregon Health Authority did with medical marijuana facilities), the Act nevertheless explicitly provides the ability for local jurisdictions to regulate the operation of these facilities as they see fit (within constitutional limitations, of course).

The Act also provides the local jurisdiction the option to entirely prohibit recreational marijuana facilities where the question is put to the electors in a general election. While local jurisdictions cannot ban the possession or use of marijuana, they can ban the licensed facilities from operating within their jurisdiction.

Enforcement and Penalties

This section includes a number of revisions of definitions, primarily to remove marijuana as a controlled substance and to revise current laws with regards to penalties associated with marijuana production, sale and possession. This section also sets forth the enforcement and the penalties associated with unlawful possession, production, processing and sale of marijuana.

MARIJUANA

Is Local Control Possible?



An Overview of Oregon's Medical Marijuana Program

By Sean O'Day, LOC General Counsel

On November 3, 1998, Oregon voters approved Ballot Measure 67 allowing the medical use of marijuana in Oregon within specified limits. Codified at ORS 475.300-475.346 and known as the Oregon Medical Marijuana Act (OMMA), the law protects medical marijuana users who comply with its requirements from state criminal prosecution. Although the Oregon Legislature has made some modifications to the act, the program remains largely the same as it did when the voters adopted it almost 15 years ago.

In the beginning, the program existed in relative obscurity. During its first year, from May 1, 1999, to May 1, 2000, the program served approximately 600 registered patients. By July 2010, it reached more than 45,000 registered patients. Today, there are nearly 60,000 registered patients, and more than 30,000 registered caregivers. The increase in the number of people participating in the program, along with the emergence of medical marijuana dispensaries, has brought the program and related issues to the forefront of public policy discussions in city halls all across the state.

To aid local elected officials in those discussions, this article provides an overview of the Oregon Medical Marijuana Program (OMMP), including the development and recent enactment of legislation relating to dispensaries. The article also explores the roles and functions of local government with respect to the OMMP, including that of a regulator and discusses the current state of the law with respect to local control.

The Purpose and Evolution of the Oregon Medical Marijuana Program

The Oregon Medical Marijuana Program began with the adoption of the OMMA by the voters in 1998. Since that time, the Legislature amended the OMMA in 1999, 2005, 2007, and most recently in 2013. Other than the development of a dispensary program, the basic structure and purpose of the OMMA has largely remained the same since its initial adoption. The goal of the OMMA is to permit, without fear of prosecution, small amounts of marijuana for patients with debilitating medical conditions when a doctor has concluded that the use of marijuana can help with those conditions.

The Contours of the OMMA

To accomplish its goals, the OMMA requires the Oregon Health Authority to establish a registration process for medical marijuana patients, their primary caregivers and

their growers. The OMMA exempts individuals holding a registry identification card from state criminal penalties, so long as the individuals act in accordance with the limits set out in the act. Individuals need not be a cardholder in order to enjoy the benefits of the act, however. The OMMA also provides as a defense to a criminal charge of possession or production of marijuana that the person is engaging in the medical use of marijuana with the limits set out in the act under the recommendation of a physician.

To either obtain a registry card, or be eligible to assert an affirmative defense, patients must have a "qualifying medical condition" diagnosed by an Oregon licensed physician who agrees that the use of medical marijuana could help mitigate the patient's symptoms after conducting a thorough physical exam and reviewing the patient's medical records. The Oregon Health Authority maintains the list of qualifying medical conditions.

Once registered, patients are issued a medical marijuana card. Patients are required to carry with them their current OMMP Registry ID cards when possessing medical marijuana away from home or their grow site. Patients are not allowed to cultivate or consume medical marijuana in public view, drive under the influence of medical marijuana, share medical marijuana with anyone who is not currently registered with the OMMP, sell medical marijuana or give it to a minor.

When they register, patients may also register a primary caregiver. Patients may have only one primary caregiver at any time. A primary caregiver may possess marijuana for his or her patient and assist the patient with the use of the medical marijuana.

Patients registered with the OMMP are allowed to create a grow site at only one address. Patients may grow for themselves or designate a grower. A patient's grow site must be registered with the OMMP. The registration must include the address of the site and the name of the person responsible for the site. If patients elect to have someone other than themselves grow marijuana, the patients or their designated primary caregivers may reimburse the person responsible for their grow sites for the costs of supplies and utilities associated with the production of marijuana. No other costs associated with the production of marijuana, including the cost of labor, may be reimbursed. A person responsible for a grow site may produce marijuana for no more than four patients at a time. All grow sites must display a grow site registration card for each patient for whom marijuana is being produced.