

MEDICAL MARIJUANA DISPENSARIES

GENERAL INFORMATION SHEET

Background Overview

Brief Legislative History of the Oregon Medical Marijuana Act (OMMA):

- 1998 OMMA passed by ballot vote
- 2013 HB 3460 passed to provide the OMMA with registration system for dispensaries & grants criminal immunity to persons owning or working in a medical marijuana facility¹
- 2014 SB 1531 passed with 2 major provisions: 1) give local jurisdictions the ability to adopt reasonable 'time, place & manner' restrictions on medical marijuana activities and 2) to remove criminal immunity from any person operating a medical marijuana facility in a jurisdiction that has adopted a moratorium prior to May 1, 2014 with a moratorium end date not to exceed May 1, 2015

In defining 'time, place and manner', local jurisdictions have 5 potential options:**

- Banning the existence of dispensaries within the city limits
- Licensing the dispensaries with a specific set of licensing requirements
- Regulating the dispensaries with "reasonable, locally adopted regulations"
- Adoption of a gross receipts tax on dollars received by the dispensaries
- Taking a 'wait & see' approach to see if problems develop

Evaluating the Federal CSA risks for local area Medical Marijuana Dispensaries:

Technically, under the letter of the federal law called the Controlled Substance Act, marijuana is classified as a Schedule 1 drug making it illegal to manufacture, distribute, or dispense marijuana. However, to date, 20 states & the District of Columbia have legalized some form of marijuana activity within their states. Consequently, the U.S. Dept. of Justice has issued a memorandum by Deputy Attorney General James Cole providing guidance for local jurisdictions to gauge their level of risk. The Cole Memo, as it is called by the DOJ, sites 8 criteria they are using in the area of federal enforcement activity:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal gangs, enterprises and cartels;
- Preventing the diversion of marijuana from legal states to illegal states;
- Preventing legal state marijuana activity from being a cover for the sale of other illegal drugs or other illegal activities;
- Preventing violence and the use of firearms in the cultivation & distribution of marijuana;
- Preventing drugged driving and the exacerbation of public safety/health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands;
- Preventing marijuana possession on federal property.

**Source was from the League of Oregon Cities Marijuana Workshop held in Portland, May 2014 as outlined by Eugene's City Attorney, Glenn Klein

¹ HB 3460 empowers the Oregon Health Authority (OHA) to regulate dispensaries and adopted a set of temporary rules to start the licensing process. These rules are currently being worked on to become permanent rules for licensing dispensaries. It is expected that this process will be completed by July 31, 2014.

Proposed Criteria for Local Licensing, Zoning & Code Enforcement

Licensing:

- Minimum of 1,000 feet from schools or another dispensary (OHA requirement)
- Dispensary must be in areas zoned for commercial, industrial, agriculture or mixed use (OHA requirement)
- Dispensary must have a security system (OHA requirement)
- Dispensary must show proof of testing for health hazards (OHA requirement)
- No on-site growing of marijuana (OHA requirement)
- Owner of dispensary must complete background check with positive outcome (OHA requirement)
- Consider adding background check requirement for employees of dispensary, as well
- Extend 1,000 feet buffer zone to include day care facilities, library and post office
- Hours of operation to be same as liquor stores
- Show proof of registration of dispensary with OHA
- Require licensee to keep documented records of purchaser's Medical Marijuana Registration card (copies on premises available for spot inspections)
- Packing and merchandising of marijuana not of a pleasing nature to children
- Require licensee to keep copies of the physician's original prescription
- Establish maximum number of employees per dispensary
- Establish maximum number of licenses issued within city limits
- Maximum single purchase: 2 oz.

Zoning:

- Require dispensaries to be located in Commercial zones with Hwy 101 frontage only (discuss legalities and zoning classification with City Attorney, i.e. conditional use?)

Code Enforcement:

- Require unannounced spot inspections (in addition to annual inspection by OHA)
- Initial building and property inspection, i.e. parking, visual appearance, proper entrance & egress, fire code compliance, etc.
- Establish license revocation procedure
- Inspecting for proper documentation of MM cards & prescription copies
- Inspecting for properly functioning security system & access to video tapes
- Assure code enforcement officer is properly trained and has established working relationship with county sheriff's office and area state patrol officers.
- Confirm dispensaries are testing for health hazards under OHA guidelines

Issues for legal consideration by the Yachats City Attorney:

- Evaluate risk factor under SB 1531 for possible loss of Federal grant money if city grants dispensary licenses
- Legality & procedure for zoning requirement of allowing dispensaries in Zone C-1 with Hwy 101 frontage only, i.e. conditional use?
- Legality of limiting the number of dispensary licenses within the city limits
- Legality & procedure for implementing a local gross receipts tax on dispensaries if deemed a possibility by the city

This information was researched and compiled by Councilor Sandy Dunn and Councilor Claudia Price for distribution to the Yachats City Council. June/July 2014.

