

AN ORDINANCE OF THE CITY OF OREGON CITY)	
DECLARING A MORATORIUM ON MEDICAL)	Ordinance 14-1005
MARIJUANA FACILITIES,)	FINDINGS OF FACT
AND DECLARING AN EMERGENCY)	

Background

In 2013, the Oregon Legislature passed House Bill 3460, the Oregon Medical Marijuana Act, authorizing the location of marijuana dispensaries in zones that allow commercial uses throughout the state. However, because of the way the bill was written and because of the federal prohibition on the possession and sale of marijuana, it is unclear if cities are allowed to ban or otherwise regulate the location of medical marijuana dispensaries. The League of Oregon Cities' Legislative Alert states: "The Oregon Supreme Court has already noted a preemption of the Oregon Medical Marijuana Act in a previous ruling and it is unlikely that a court would find that cities must allow or participate in a violation of the federal Controlled Substance Act." Many cities and counties across the state are taking various actions to ban or regulate medical marijuana facilities given the current legal uncertainties at the state and federal levels. Because of this uncertainty, the Oregon Legislature recently passed Senate Bill 1531, which explicitly grants cities and counties the authority to declare a moratorium over the operation of such facilities so long as it notifies the Oregon Health Authority of such moratorium by May 1, 2014.

Authority

Although SB 1531 authorizes a moratorium on "the operation of registered medical marijuana facilities until May 1, 2015 . . . ,", some have suggested that ORS 197.520 governing a moratorium on "construction or land development" is also implicated. Like most land use matters, a moratorium enacted pursuant to ORS 197.520 *et seq.* carries with it a host of procedural guarantees including providing 45-day notice to the Department of Land Conservation and Development (DLCD) in advance of a hearing which may, in turn trigger, local code notice procedures including 20-day published and mailed notice of a hearing along with the holding of a hearing.

First, this moratorium is akin to a pollution or police power regulation, not a land use regulation. The proposed moratorium prohibits the operation of a medical marijuana dispensary allowing time for the state to create, accept and place the facility on a state registry. Second, the plain language authorization for a moratorium in SB 1531 suggests that it was intended to displace the general provisions of ORS 197.520. Finally, SB 1531 took effect less than 45 days before the May 1, 2014 deadline to take action to adopt a moratorium and this made providing 45 day notice to DLCD as required by ORS 197.520(a) an impossibility. The City Commission finds that the legislature did not intend to authorize a moratorium and also subject it to procedural standards that would make compliance impossible.

For these reasons, the City Commission finds that adoption of this moratorium is not subject to ORS 197.520. However, in an abundance of caution, the City has taken steps to comply with ORS 197.520 *et seq.* including providing notice to DLCD, using an emergency provision of OAR 660-018-0022(2) along with 20 days mailed notice to all neighborhood associations and published notice 20-days in advance of the second hearing scheduled on this matter.

Compelling Need

Although the City Commission finds that this is not a land use moratorium subject to ORS 197.520, in the event that adoption of Ordinance 14-1005 is subject to ORS 197.520, accomplishing such a task requires the adoption of findings demonstrating a “compelling need” for the moratorium. ORS 197.520(3).

One issue of concern with regard to medical marijuana is that, while medical marijuana may be legal to possess, grow and distribute under state law, it is illegal to possess, grow or distribute under any circumstances under federal law. The federal Controlled Substances Act prohibits the manufacture, dispensation, distribution and possession of various drugs, including marijuana. The statute reflects Congress's determination that marijuana has no medical benefits (outside the confines of a government-approved research project). Whereas some other drugs can be dispensed and prescribed for medical use, the same is not true for marijuana. Indeed, for purposes of the Controlled Substances Act, marijuana has “no currently accepted medical use.”

The Controlled Substances Act is one reason why the recently adopted Oregon Administrative Rules relating to the registration of medical marijuana facilities caution that “registration of a facility does not protect a person [responsible for a medical marijuana facility] or employees from possible criminal prosecution under federal law.” Decriminalization and regulation of medical marijuana at the state or local level notwithstanding, federal courts have ruled that the unambiguous federal prohibitions on medical marijuana use set forth in the Controlled Substance Act continue to apply in all jurisdictions. The lack of regulation surrounding medical marijuana cultivation, distribution, and use in the state has led to an intertwined mess of legal and illegal activity within Oregon City.

Regardless of one's views on the merits of medical marijuana, it is an immutable fact that the Controlled Substances Act currently prohibits the manufacture and distribution of marijuana. This fact affects how marijuana facilities operate. For example, banks, credit card companies and other financial institutions reportedly are reluctant to provide traditional financial services to marijuana businesses. The financial industry fears that if they provide services to marijuana businesses they may be found to have aided and abetted a criminal enterprise, possibly subjecting themselves to civil or criminal sanctions for violating prohibitions on money laundering, among other federal laws and regulations. This raises significant public safety concerns about businesses having large amounts of money in retail marijuana facilities with no ability to deposit it.

Anecdotal evidence suggests these public safety concerns are valid. In a substantial number of cases, criminal acts against medical marijuana dispensary owners and employees appear to be motivated by the presence of cash and/or marijuana on the dispensary premises. This has resulted in serious crimes in our recent history in Oregon City, including two armed, home invasion robberies of supposed legal medical marijuana growers.

Further anecdotal evidence suggests that the existence of medical marijuana facilities throughout cities has contributed to increased use and accessibility of marijuana to middle and high school children.

Therefore, because of the current contradictory nature of the federal and state laws surrounding medical marijuana and the increased safety risks resulting from the unregulated operation of

medical marijuana facilities, the City Commission finds there is a compelling need for the moratorium.

Emergency Declared

The ability to establish a marijuana dispensing facility per HB 3460 became effective March 1, 2014 and such uses are not specifically listed in the Oregon City Municipal Code. In order to address this omission and also to take advantage of the moratorium authorization under SB 1531, the Commission's action must take effect no later than May 1, 2014. For these reasons, the City Commission finds that adoption of this ordinance is necessary for the preservation of the public peace, health and safety, and as such, an emergency is declared to exist. This ordinance shall take effect upon adoption.