

AGENDA

City of Aurora
PLANNING COMMISSION MEETING
Tuesday, July 01, 2014, 7:00 p.m.
Council Chambers
21420 Main Street N.E., Aurora, Oregon

1. **Call to Order of Planning Commission Meeting:**
2. **City Recorder Calls Roll**

Chairman, Schaefer
Commissioner, Willman,
Commissioner, Gibson
Commissioner, Graham,
Commissioner, Fawcett,
Commissioner, Weidman
Commissioner, Rhoden-Feely

3. **Consent Agenda**

All matters listed within the Consent Agenda have been distributed to each member of the Aurora Planning Commission for reading and study, are considered to be routine, and will be enacted by one motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the consent Agenda and placed on the Regular Agenda by request.

Minutes

- I. Aurora Planning Commission Meeting –June 03, 2014
- II. City Council Minutes – May, 2014
- III. Historic Review Board Minutes – Not ready at this time.

Correspondence

- I. **League of Oregon Cities Legal Overview on Medical Marijuana Article.**

4. **Visitor**

Anyone wishing to address the Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Council could look into the matter and provide some response in the future.

5. **New Business**

- A. **NA**

6. **Old Business**

A. Discussion and or Action regarding Manufacturing in Commercial zone and other Potential Text Amendments to the Code.

7. Commission Action/Discussion

- A. City Planning Activity (not in Your Packets) Status of Development Projects within the City.**
- Memo from City Planner outlining other potential text amendments to the code.

8. Adjourn,

Minutes
Aurora Planning Commission Meeting
Tuesday, June 03, 2014 at 7:00 P.M.
Aurora Commons Room, Aurora City Hall
21420 Main St. NE, Aurora, OR 97002

STAFF PRESENT: Kelly Richardson, City Recorder
Renata Wakeley, City Planner

STAFF ABSENT: NONE

VISITORS PRESENT: Tara McKnight, Aurora
Carl McKnight, Aurora
Cliff Bixler, California
Others were present but did not sign in.

1. Call to Order of Planning Commission Meeting

The meeting was called to order by Planning Chair Joseph Schaefer at 7:01 p.m.

2. City Recorder Did Roll Call

Chairman, Schaefer -	Present
Commissioner, Willman	Present
Commissioner, Gibson	Present
Commissioner, Graham	Present
Commissioner, Fawcett	Present
Commissioner, Weidman	Absent
Commissioner, Rhoden-Feely	Absent

3. Consent Agenda

Minutes

- I. Aurora Planning Commission Meeting –May 06, 2014, no comments.
- II. City Council Minutes – April, 2014
- III. Historic Review Board Minutes – April, 2014

A motion is made by Commissioner Gibson to approve the consent agenda as presented and seconded by Commissioner Fawcett. Motion Approved by all.

Correspondence

- I. NA

4. Visitor

Anyone wishing to address the Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Planning Commission could look into the matter and provide some response in the future.

No one spoke during this section

5. Public Hearing Opens at 7:46 pm

Chair Schaefer asks if anyone has any ex-parte contact to express and no claimed any except himself when following the last HRB meeting he spoke with the applicant and went by the site to look at the steps.

City Planner Wakeley reads her staff report as stated below;

**A. Discussion and or Action on Conditional Use Application 2014-01 & SDR 2014-01
Property Address 21680 Main Street NE Carl and Tara McKnight.**

**CITY OF AURORA
PLANNING
COMMISSION**

STAFF REPORT:	Conditional Use Permit 2014-01 [CUP-14-01] and Site Development Review 2014-01 [SDR -14-01]	
DATE:	May 28, 2014 (for the June 3, 2014 Planning Commission meeting)	
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APPLICANT/OWNER:	Carl and Tara McKnight	
REQUEST:	Conditional Use Permit approval for installation of a food cart and Site Development Review approval for an outdoor garden/eating/retail space.	
SITE LOCATION:	21680 Main Street NE, Aurora OR Map 041.W.12CD, Tax Lot 4400	
SITE SIZE:	4,792 square feet or 0.11 acres	
DESIGNATION:	<u>Zoning:</u> Commercial (C) with Historic Commercial Overlay (HCO) CRITERIA: Aurora Municipal Code (AMC) Chapters 16.22 Historic Commercial Overlay, 16.58 Site Development Review, and 16.60 Conditional Uses	
ENCLOSURES:	Exhibit A:	Assessor Map
	Exhibit B:	Application and site plan
	Exhibit C:	Historic Review Board minutes (May 22, 2014)

I. REQUEST

Conditional Use Permit approval for installation of a food cart and Site Development Review approval for an outdoor garden/eating/retail space

II. PROCEDURE

The application was determined by staff to be subject to Site Development Review (SDR) as the application can be considered new development that will intensify the use of the property. SDR applications are processed as Limited Land Use decisions under AMC 16.78. The application was determined by staff to be subject to a Conditional Use (CU) application as the proposed use is only permitted with conditional use approval. CU applications are processed as Quasi-Judicial Decisions under AMC 16.76. AMC 16.58 provides the criteria for reviewing Site Development Reviews and 16.60 provides the criteria for reviewing Conditional Uses.

The application was received and fees paid on May 12, 2014. The application was determined complete by Staff and notice was mailed to surrounding property owners on May 27, 2014. The City has until **September 8, 2014**, or 120 days from acceptance of the application to approve, modify and approve, or deny this proposal.

III. APPEAL

Appeals are governed by AMC 16.76.260 and 16.78.120. An appeal of the Planning Commission's decision shall be made, in writing, to the City Council within 15 days of the Commission's final written decision.

IV. CRITERIA AND FINDINGS

The applicable review criteria for Site Development Review are found in AMC 16.58.

16.58.100 Approval Standards

The review of a Site Plan shall be based upon consideration of the following:

A. Provisions of all applicable chapters;

FINDINGS: The subject parcel is zoned Commercial (C) with a Historic Commercial Overlay (HCO). AMC 16.22.020 includes eating and drinking establishments and general retail sales as permitted uses. AMC 16.22.030 lists food carts as permitted with conditional use approval. The applicant has submitted a concurrent application for conditional use approval along with site development review approval. Staff finds this criterion is met.

AMC 16.22.040.I. requires all properties, uses, and structures in the HCO to meet the requirements of Title 17, Historic Preservation. Comments from the Historic Review Board are included under Exhibit C. Staff finds this criterion is met.

B. Buildings shall be located to preserve topography and natural drainage and shall be located outside areas subject to ground slumping or sliding;

FINDINGS: Staff finds this criteria does not apply.

C. Privacy and noise;

- 1.*** Buildings shall be oriented in a manner which protects private spaces on adjoining residential properties from view and noise;
- 2.*** On site uses which create noise, lights, or glare shall be buffered from adjoining residential uses;

FINDINGS: No buildings are proposed and the adjacent zones are for commercial uses. The proposed use has street frontage to the north with landscaping and to the west with existing structures. Property to the east is developed with a carpet warehouse and gas station. Property to the south is developed for parking and all adjacent parcels are zoned for commercial uses. Staff finds this criteria is met.

D. Residential private outdoor areas:

FINDINGS: Staff finds this criteria does not apply.

E. Residential shared outdoor recreation areas:

V. APPEAL

Appeals are governed by AMC 16.76.260 and 16.78.120. An appeal of the Planning Commission's decision shall be made, in writing, to the City Council within 15 days of the Commission's final written decision.

VI. CRITERIA AND FINDINGS

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The review of a Site Plan shall be based upon consideration of the following:

A. Provisions of all applicable chapters;

FINDINGS: The subject parcel is zoned Commercial (C) with a Historic Commercial Overlay (HCO). AMC 16.22.020 includes eating and drinking establishments and general retail sales as permitted uses. AMC 16.22.030 lists food carts as permitted with conditional use approval. The applicant has submitted a concurrent application for conditional use approval along with site development review approval. Staff finds this criterion is met.

AMC 16.22.040.I. requires all properties, uses, and structures in the HCO to meet the requirements of Title 17, Historic Preservation. Comments from the Historic Review Board are included under Exhibit C. Staff finds this criterion is met.

B. Buildings shall be located to preserve topography and natural drainage and shall be located outside areas subject to ground slumping or sliding;

FINDINGS: Staff finds this criteria does not apply.

D. Privacy and noise;

- 1.** Buildings shall be oriented in a manner which protects private spaces on adjoining residential properties from view and noise;
- 2.** On site uses which create noise, lights, or glare shall be buffered from adjoining residential uses;

FINDINGS: No buildings are proposed and the adjacent zones are for commercial uses. The proposed use has street frontage to the north with landscaping and to the west with existing structures. Property to the east is developed with a carpet warehouse and gas station. Property to the south is developed for parking and all adjacent parcels are zoned for commercial uses. Staff finds this criteria is met.

F. Residential private outdoor areas:

FINDINGS: Staff finds this criteria does not apply.

G. Residential shared outdoor recreation areas:

FINDINGS: Staff finds this criteria does not apply.

H. Shared outdoor recreation space shall be readily observable for reasons of crime prevention and safety;

FINDINGS: The proposed uses and development of Lot 4400 are proposed to receive access via existing businesses on adjacent lots 4500 and 4600. The site is screened with landscaping and fencing. Staff finds this criteria does not apply.

H. Demarcation of public, semipublic, and private spaces;

FINDINGS: Staff finds this criteria does not apply as the space is private property.

I. Crime prevention and safety:

3. Exterior lighting levels shall be selected and the angles shall be oriented towards areas vulnerable to crime;

4. Light fixtures shall be provided in areas having heavy pedestrian or vehicular traffic and in potentially dangerous areas such as parking lots, stairs, ramps and abrupt grade changes. Fixtures shall be placed at a height so that light patterns overlap at a height of seven feet which is sufficient to illuminate a person.

FINDINGS: Criteria 1 and 2 are related to residential development and found not to apply. A lighting plan for the site was not provided by the applicant. A lighting plan in conformance with the above criteria shall be submitted for City review and approval prior to business license approval. The lighting plan must also show that lighting shall not reflect onto surrounding properties. This is included as a recommended conditional of approval.

J. Access and circulation;

1. The number of allowed access points for a development shall be as determined by the City Engineer in accordance with standard engineering practices for city rights-of-way, as determined by Marion County for county rights-of-way, and as determined by the Oregon Department of Transportation for access to Highway 99E.

2. All circulation patterns within a development shall be design to accommodate emergency vehicles.

FINDINGS: The development of lot 4400 proposes pedestrian access from lots 4500 and 4600 containing existing improvements. Staff finds this criterion does not apply.

K. Public transit;

FINDINGS: Pedestrian access to the property is proposed via adjacent businesses on lots 4500 and 4600 which have existing sidewalks. No transit stops abut or are adjacent to the subject properties. Staff finds this criterion does not apply.

L. All parking and loading requirements shall be design in accordance with the requirements set forth in Chapter 16.42.

FINDINGS: Parking shall be in conformance with the HCO zone and Title 17. Title 17 exempts parking requirements under Title 16 for additions to commercial structures and new commercial uses. Staff finds this criteria is met.

M. All landscaping shall be designed in accordance with the requirements set forth in Chapter 16.38.

FINDINGS: A preliminary landscape plan provided by the applicant is included under Exhibit B. AMC 16.38.030(C) requires the installation of all landscaping requirements prior to issuance of a certificate of occupancy. Prior to business license approval, the applicant shall be required to install all landscaping as shown on the subject application. If landscaping exceeds \$2,500, review and approval by the Historic Review Board (HRB) is also required in conformance with Title 17. This is included as a recommended condition of approval.

The subject property does not abut residential property and additional buffering and screening is not required.

N. All public improvements shall be designed in accordance with the requirements of Chapter 16.34.

FINDINGS: Public improvements and compliance with Chapter 16.34 are discussed under the conditional use review criteria below. Staff finds this criterion can be met, with conditions.

O. All facilities for handicapped shall be designed in accordance with the requirements set forth in the ADA requirements;

FINDINGS: ADA facilities are discussed under the conditional use review criteria below. Staff finds this criterion can be met, with conditions.

P. All of the provisions and regulations of the underlying zone shall apply.

FINDINGS: Staff finds the applicant meets the zone criteria under the HCO for permitted uses and can meet the criteria for Site Development Review and Conditional Use Permit approval, with recommended conditions of approval. Staff finds this criterion is met.

The applicable review criteria for Conditional Use Permits are found in AMC Chapter 16.60-Conditional Uses.

16.60 Conditional Uses

A. The planning commission may approve a conditional use permit only when the applicant has shown that all of the following conditions exist:

1. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;

FINDING: The property abuts an established permitted use- an eating and drinking establishment. The applicant has provided a site plan for pedestrian access to the site via the existing businesses that front on Main Street (see Exhibit B). Food carts are permitted as a conditional use when located on the same property and accessory to an established eating and drinking establishment. Lot 4400, 4500 and 4600 are under the same ownership and AMC 16.04 for "lot" allows abutting property under the same ownership, whether in a platted lot or property described by metes and bounds, to be considered part of the same lot. Staff finds this criteria is met.

However, the site currently lacks vehicle access to bring food carts to and from lot 4400. Staff finds this criterion is not currently met, but could be met if vehicle access is provided. Applicant must show evidence of a long term access agreement or written permission for installation and/or removal of the food cart from owners of abutting properties prior to

installation of the cart. In addition, written permission for construction, landscaping or other improvement access to lot 4400 must also be documented. This is included as a recommended condition of approval.

If the applicant proposes additional parking or pedestrian access to Lot 4400 from adjacent properties not under their ownership (Lot 3600 or 4000 of Map 041W12CD, for example), evidence of a long term access agreement or recorded easement for parking and pedestrian access to benefit the subject property shall be provided to the City. If pedestrian access or parking from adjacent properties is proposed, expiration of the access agreement or recorded easements for parking and pedestrian access to lot 4400 shall automatically invalidate the conditional use approval for the food cart. This is included as a recommended condition of approval.

2. All required public facilities have adequate capacity to serve the proposal and are improved to the standards in Chapter 16.34;

FINDING: Lot 4400 fronts onto a public street on its north side, which is improved with a sidewalk. However, current topography precludes pedestrian and vehicle access from the northern frontage at this time. The applicant proposes pedestrian access from Main Street via established businesses on Lots 4500 and 4600 currently under their ownership. If the applicant proposes parking or pedestrian access from the properties to the east, the applicant will need to document written permission or agreement from the owner(s) of those lots. This is included as a condition of approval and notice to abutting property owners was provided, as part of the land use review process.

The HCO zone exempts parking under AMC 17.040.020.A.4 and 17.040.020.C.1 "additions to commercial structures are exempt from the parking requirements in Title 16". Staff finds this criterion does not apply. Staff finds evidence of sufficient parking to serve the property does not apply.

Sewer or grey water disposal hookups are not permitted. Restroom facilities shall be provided as part of the existing businesses on lots 4500 and 4600, which are currently under the same ownership. In order to ensure access to restroom facilities related to the conditional use, staff recommends the hours of operation for the food cart be limited to hours of operation of adjacent businesses. This is included as a recommended condition of approval.

Currently, lot 4400, 4500, and 4600 are under the same ownership. If lot 4400 is no longer under the same ownership of lot 4500 or 4600, the location of the food cart on the "same property/lot and accessory to an established indoor eating and drinking establishment" property shall no longer be met and the Conditional Use Permit shall be void. This is included as a condition of approval.

If an established indoor eating or drinking establishment is no longer in use on lot 4500 or 4600, the Conditional Use Permit shall be void as the criteria for a food cart on the same lot as an established eating and drinking establishment shall no longer be met. This is included as a recommended condition of approval for the conditional use permit application.

3. The requirements of the zoning district are met;

FINDING: AMC 16.22.030.C.1 states, "no structures, product display, or storage shall be located within yard setback or buffering and screening areas". The HCO zone has zero side and rear yard setbacks and staff finds this does not apply. Drive through units are prohibited.

A sign permit application was not included. If signage is proposed, the applicant shall be required to submit a sign permit application. This is included as a recommended condition of approval. Drive-through units are prohibited and the applicant is not proposing a drive through. Staff finds the requirements of the HCO zone for lot coverage, size, and uses are met. Additional development on Lot 4400 may be subject to additional land use requirements or applications. Staff finds this criteria is met.

4. *The use is compatible with surrounding properties or will be made compatible by imposing conditions;*

FINDING: Surrounding properties are commercially zoned and the proposed use is not found to be in conflict with other the surrounding properties. Staff finds this criterion is met.

5. *All parking and loading areas are designed and improved in accordance with the requirements set forth in Chapter 16.42;*

FINDING: No additional parking or loading areas are proposed. AMC 17.040.020.A.4 and 17.040.020.C.1 state "additions to commercial structures are exempt from the parking requirements in Title 16". Staff finds this criterion does not apply.

6. *All landscaping is designed and improved in accordance with the requirements set forth in Chapter 16.38;*

FINDING: No additional parking or loading areas are proposed. AMC 16.38.030.C. allows certificates of occupancy to be approved upon completion of landscaping requirements. Staff proposes the business license application be approved upon installation of landscaping, as submitted with the application. This is included as a recommended condition of approval. Staff finds this criteria can be met, with conditions.

AMC 17.44.030.B.1 requires properties up to twenty thousand square feet in the Historic Commercial Overlay to have at least fifteen (15) percent of the total lot area landscaped. Staff finds this criteria is met. Buffering between non-residential and residential uses is found not to apply.

7. *All public improvements are designed and constructed in accordance with the requirements set forth in Chapter 16.34;*

FINDING: No public improvements are requires as part of the proposed application for installation of a food cart and outdoor garden/eating/retail space. AMC 16.22.030.C.7. prohibits sewer or grey water disposal hookups. This is included as a recommended condition of approval.

Lot 4400 is land locked, with access proposed via existing businesses on lots 4500 and 4600. No street, sidewalk, storm, water or sewer improvements are required as part of the subject application. Staff finds this criterion is met.

8. *All facilities for the handicapped are designed in accordance with the requirements set forth in the ADA requirements;*

FINDING: The proposed site plan includes access from existing businesses on lots 4500 and 4600 to lot 4400 via steps. In order to meet this criteria, access must be revised to comply with ADA requirements and/or the property owners must show ADA compatibility via another access. This is included as a recommended condition of approval.

9. *The provisions of all applicable chapters of this title are satisfied; and*

FINDING: Staff finds the applicant meets the zone criteria under the HCO for permitted uses and can meet the criteria for Site Development Review and Conditional Use Permit approval, with conditions. Staff finds this criterion can be met.

10. *Properties located in the historic commercial or historic residential overlay comply with the requirements set forth in Title 17 of the Aurora Municipal Code. A certificate of appropriateness approved by the historic review board shall satisfy this requirement.*

FINDING: The property is located in the historic commercial overlay and is identified as the Aurora State Bank (Secondary Significant, Resource #62, in the Aurora Historic Building Inventory from 1985 and is listed as "eligible/contributing" in the July 2011 inventory completed by SHPO). The Historic Review Board (HRB) reviewed the application and site plan on May 22, 2014. See Exhibit C.

The HRB provided the following comments/concerns: (1) fencing; (2) submission of a landscape plan to HRB for review and approval, if cost exceeds \$2,500; (3) tents/canopies; and (4) review of the food cart(s). Proposed conditions of approval to address HRB comments are summarized below:

The current fencing is not compatible with the historic commercial overlay, 17.40.070. Any replacement of existing fencing on site shall be required to meet AMC 17.40.070. Review and approval by the HRB prior to installation is recommended.

According to AMC 17.04.050.B.2., landscaping not exceeding \$2,500 in cost shall not require HRB review and approval. The applicant shall provide cost estimates for the landscaping proposed in the application to the City in order to determine if a landscape plan requiring HRB approval is required.

Based upon comments from the HRB, staff recommends the Planning Commission limit the number of tents, booths or canopies of any size on site at any time to one (1). If the owner proposes the use of tents, booths or canopies greater than one hundred twenty (120) square feet, a temporary structure permit under AMC 17.32.040 shall also be required. This is included as a condition of approval.

AMC 16.22.050.C includes several requirements for proposed food carts, including size, repair and licensing. At the time of application, no materials were provided regarding the size, condition, operation, etc of the food cart. The applicant simply provided a proposed food cart area and stated that the food cart may change over time. In order to maintain compliance with the criteria under 16.22.050.C and the requirements for review and approval for a conditional use permit, staff recommends two options: (a) continue the hearing to a date and time that the applicant can provide additional information on the proposed food cart for Planning Commission approval or (b) require that review and approval for the proposed food cart, and subsequent replacement or revised food carts, receive review and approval from the Historic Review Board on file with the City in order to maintain a valid conditional use permit. These options are included as a condition of approval.

B. In reviewing an application for a conditional use, the commission shall consider the most appropriate use of the land and the general welfare of the people residing or working in the neighborhood. In addition to the general requirements of this title, the commission may impose any other reasonable conditions deemed necessary. Such conditions may include, but are not limited to:

- 1. Limiting the manner in which the use is to be conducted, including restrictions on the hours of operation;*
- 2. Establishing additional setbacks or open areas;*
- 3. Designating the size, number, location and nature of vehicle access points;*
- 4. Limiting or otherwise designating the number, size, location, height and lighting of signs;*
- 5. Requiring fences, sight-obscuring hedges or other screening and landscaping to protect adjacent properties;*
- 6. Protecting and preserving existing soils, vegetation, wildlife habitat or other natural resources.*

FINDINGS: In order to assure restroom facilities are provided to customers on site as opposed to impacting surrounding properties/uses, staff recommends the hours of operation for the food cart be limited to hours of operation of businesses on lots 4500 and 4600. This is included as a recommended condition of approval.

The proposed uses about commercial properties and uses and staff does not find additional buffering, setbacks or open areas are required.

In order to reduce impacts to abutting uses, the applicant must show evidence of a long term access agreement or written permission for installation and/or removal of the food cart from owners of abutting properties prior to installation of the cart. In addition, written permission for construction, landscaping or other improvements access to lot 4400 must also be documented.

Pedestrian access to the site is proposed via the existing businesses on Lot 4500 and 4600. If the applicant proposes additional parking or pedestrian access from adjacent properties (lot 3600 or 4000 of Map 041W12CD for example), evidence of a long term access agreement or recorded easement to benefit the subject property shall be required. This is included as a recommended condition of approval.

Applicant shall be required to meet sign code requirements of Title 16 and 17. Staff finds criteria 16.60.B

can be met, with conditions.

VII. CONCLUSIONS AND RECOMMENDATIONS

Based on the findings in the staff report, staff recommends that the Planning Commission **approve** the application for Site Development Review (SDR-14-01) based upon the following:

- 1) Develop the subject property in accordance with plans approved by the city.
- 2) Comply with all City of Aurora and State of Oregon development, building and fire codes.
- 3) A lighting plan in conformance with AMC 16.58.100.I. shall be submitted for City review and approval prior to business license approval. The lighting plan shall also show that lighting shall not reflect onto surrounding properties.
- 4) Prior to business license approval, the applicant shall be required to install all landscaping as shown on the subject application. If landscaping exceeds \$2,500, review and approval by the Historic Review Board is also required in compliance with Title 17.

Based on the findings in the staff report, staff recommends that the Planning Commission **approve** the application for Conditional Use Permit (CUP-14-01) based upon the following:

- 1) Applicant must show evidence of a long term access agreement or written permission for installation and/or removal of the food cart from owners of abutting properties prior to installation of the cart. In addition, written permission for construction or landscaping access to lot 4400 must also be documented.

If the applicant proposes additional parking or pedestrian access from adjacent properties (Lot 3600 or 4000 of Map 041W12CD, for example), evidence of a long term access agreement or recorded easement to benefit the subject property shall be provided to the City. If pedestrian access or parking from adjacent properties is proposed, expiration of the access agreement or recorded easement for parking and pedestrian access to lot 4400 shall automatically invalidate the conditional use approval for the food cart.

- 2) If lot 4400 is no longer under the same ownership of lot 4500 or 4600, the location of the food cart on the "same property/lot and accessory to an established indoor eating and drinking establishment" property shall be voided, and the Conditional Use Permit shall be void. This is included as a condition of approval.

If an established indoor eating or drinking establishment is no longer in use on lot 4500 or 4600, the Conditional Use Permit shall be void as the criteria for a food cart on the same lot as an established eating and drinking establishment will no longer apply. This is included as a recommended condition of approval as part of the conditional use permit application.

- 3) If signage is proposed, the applicant shall be required to submit a sign permit application.
- 4) All conditions of approval must be met prior to business license approval. Prior to business license approval, the applicant shall be required to install all landscaping as shown on the subject application. Evidence of a valid business license for the food cart shall be on file with the city at all times.
- 5) Copies of current Marion County permits related to the food cart food handlers permits and other required Marion County permits shall be filed with the City.
- 6) Hours of operation of the proposed uses on Lot 4400 shall be limited to 10 am to 7 pm.
- 7) The applicant shall provide evidence of ADA access to Lot 4400 prior to business license approval.
- 8) Sewer or grey water disposal hookups are prohibited.
- 9) The number of tents, booths or canopies of any size on site at any time shall be limited to one. If the owner proposes the use of tents, booths or canopies greater than one hundred twenty (120) square feet, a temporary structure permit under AMC 17.32.040 shall also be required.
- 10) Any replacement of existing fencing on site shall be required to meet AMC 17.40.070. Review and approval by the HRB prior to installation is recommended.

- 11) The applicant shall provide cost estimates for the landscaping proposed in the application to the City in order to determine if a landscape plan requiring HRB approval is required.
- 12) At the time of application, no information on the proposed food cart was provided. The Planning Commission may choose to (a) continue the hearing to a date and time that the applicant can provide additional information on the proposed food cart for Planning Commission approval
OR (b) require that review and approval for the proposed food cart, and subsequent replacement or revised food carts, receive review and approval from the Historic Review Board on file with the City in order to maintain a valid conditional use permit.

VIII. PLANNING COMMISSION ACTION

- A. Approve the conditional use permit (CUP-14-01) and site development review (SDR 14-01) application for installation of a food cart and outdoor garden/eating/retail space.
 1. As recommended by staff, or
 2. As determined by the Planning Commission stating how the application satisfies all the required criteria, and any revisions to the recommended conditions of approval, or
- B. Deny the request for a conditional use permit and site development review approval for CUP 14- 01 and SDR 14-01 stating how the application does not meet the applicable approval criteria.
- C. Continue the hearing to a time certain or indefinitely (considering the 120 day limit on applications).

After the staff report is given before the applicant starts a few clarification questions are asked by Commissioners Willman and Fawcett regarding gray water disposal requirements for the food cart and ADA requirements to the lot itself.

Applicant Carl McKnight addresses the Planning Commission regarding his proposal and submits more information as requested.

1. Informs the PC that to date we have spent approximately \$1700.00 do not expect it to go over the \$2500.00 dollar amount that would require HRB approval.
2. He hands out a light plan to each member.
3. Gives each person a copy of a revised site plan showing the requested ADA accesses which shows a ramp instead of the proposed steps on lot 4500.

a few more clarification questions regarding pea gravel and size of ramp along with if this proposal will be seasonal or not.

McKnight, we have been trying to get in touch with the property owners to gain access for the food cart however we have been unsuccessful can't you just give us approval on this and if the property owner comes back and says no you cannot use my property for access then we will stop. Also we are requesting that HRB not have oversight on the food cart itself because we will be having different food vendors and that will just be too much each time. That is why I do not have any pictures or criteria to give you for approval because we don't know yet who will want to come. Our plan is to have revolving food carts. I would also like to know why we would need to obtain approval for signage because the sign criteria is in the code to follow. **Chair Schaefer** explains that there is no way we can just give a blanket approval on this and the food cart along with signage would need to have application made to HRB for approval each time.

One of the areas of concern from HRB was tents. McKnight, we had not really thought about tents however as other businesses in town utilize these I would like to as well.

The Commissioners at this point have a brief discussion regarding tents and ask a few questions regarding hours of operation. They go into code section 16.52.030 #5 anything over 120 square feet would require a temporary use permit.

Chair Schaefer points out that we really didn't have any application regarding tents or canopies or for music/bands before us tonight this keeps growing the more we discuss it.

We simply as stated previously we cannot give a blanket approval on the food cart there are specific criteria and so we need to see it each time to make sure it's within this criteria. Also we cannot approve any of this without having something written to prove accesses. This just isn't going to happen like that it is against the law and just not going to go there. It is up to you the applicant to show us each condition has been met.

There is some questions as to why a business license would be needed for each food cart and City Recorder Richardson informs them that everyone has to have a valid business license operating within the city limits.

Hearing no more testimony the hearing closes at 8:40 pm

Discussion between Commissioners regarding the SDR is to accept with the conditions as stated.

- 1) Develop the subject property in accordance with plans approved by the city.
- 2) Comply with all City of Aurora and State of Oregon development, building and fire codes.
- 3) A lighting plan in conformance with AMC 16.58.100.1. shall be submitted for City review and approval prior to business license approval. The lighting plan shall also show that lighting shall not reflect onto surrounding properties.
- 4) Prior to business license approval, the applicant shall be required to install all landscaping as shown on the subject application. If landscaping exceeds \$2,500, review and approval by the Historic Review Board is also required in compliance with Title 17.
- 5) The applicant shall provide ADA access to Lot 4400 prior to business license approval
- 6) If the applicant proposes access from adjacent properties (Lot 3600 or 4000 of Map 041W12CD, for example), evidence of a long term access agreement or recorded easement to benefit the subject property shall be provided to the City.

A motion is made by Commissioner Fawcett to approve SDR 14-01 with the conditions stated and is seconded by Commissioner Willman.

Discussion Regarding CUP 14-01

- 1) Applicant must provide a long term access agreement or written permission for installation and/or removal of the food cart from owners of abutting properties prior to installation of the cart. In addition, written permission for construction or landscaping access to lot 4400 must also be documented.

If the applicant proposes additional parking or pedestrian access from adjacent properties (Lot 3600 or 4000 of Map 041W 12CD, for example), evidence of a long term access agreement or recorded easement to benefit the subject property shall be provided to the City. If pedestrian access or parking from adjacent properties is proposed, expiration of

the access agreement or recorded easement for parking and pedestrian access to lot 4400 shall automatically invalidate the conditional use approval for the food cart.

- 2) If lot 4400 is no longer under the same ownership of lot 4500 or 4600, the location of the food cart on the same property/lot and accessory to an established indoor eating and drinking establishment" property shall be voided, and the Conditional Use Permit shall be void.

If an established indoor eating or drinking establishment is no longer in use on lot 4500 or 4600, the Conditional Use Permit shall be void as the criteria for a food cart on the same lot as an established eating and drinking establishment will no longer apply.

- 3) If signage is proposed, the applicant shall be required to submit a sign permit application.
- 4) The applicant shall install all landscaping as shown on the subject application.
- 5) Evidence of a valid business license for the food cart shall be on file with the city at all times.
- 6) Copies of current Marion County permits related to the food cart food handlers permits and other required Marion County permits shall be filed with the City.
- 7) Hours of operation of the proposed uses on Lot 4400 shall be limited to the hours of operation of businesses on Lots 4500 and 4600 to ensure availability of restrooms.
- 8) The applicant shall provide ADA access to Lot 4400 prior to business license approval.
- 9) Sewer or grey water disposal hookups are prohibited. Disposal must occur outside of the City of Aurora.
- 10) The number of tents, booths or canopies of any size on site at any time shall be limited to one, for a period not to exceed 72 hours per week. If the owner proposes the use of tents, booths or

Canopies greater than one hundred twenty (120) square feet, a temporary structure permit under AMC 17.32.040 shall also be required. The minimum front setback for tents, booths or canopies shall be fifteen (15) feet.

11. Any replacement of existing fencing on site shall required to meet AMC 17.40.070 review and approval by the HRB prior to installation is required.
12. The applicant shall provide cost estimates for the landscaping proposed in the application to the City in order to determine if a landscape plan requiring HRB approval is required.
13. Proposed food carts, and subsequent replacement or revised food carts, shall receive review and approval from staff as part of the business license applications and be on file with the City in order to maintain a valid conditional use permit.
14. All conditions of approval must be met prior to business license approval.

Motion is made to approve CUP 14-01 as stated and modified is made by Commissioner Graham and is seconded by Commissioner Willman. Passes Unanimously.

6. New Business

A. Discussion and or Action on Request for Extension SUB-09-01 and SDR-09-01for

Mr. Bixler property. Mr. Bixler states I have recorded the subdivision and established easements and so forth, the map has been recorded as well. I am here to request a one year extension. Chair Schaefer my understanding is that the gateway portion of the code has not changed so there is nothing new governing this piece of property.

A motion is made by Commissioner Willman to approve the 1 year extension and is seconded by Commissioner Fawcett. Passed by all.

B. Discussion and Review of Conditional Use Application in 1993 for Property Address

15109 Second Street. Chair Schaefer explains the situation regarding a conditional use permit, in many jurisdictions they would expire after not being in use for a while however our code states if it's been more than 2 years we could revoke the permit. It's not about the applicant it's all about the neighbors.

1 have rules changed, yes they have not sure if they have changed to affect it as a bed and breakfast except for the conditional use permit.

2. Has the impact changed or not.

Chair Schaefer asks the rest of the Commissioners what they think?

Fawcett, it's been a long time. They ask the applicant just how long it's been 9 years or so there is only 4 sweets available.

Willman I think its fine.

Schaefer, we could revoke because of dormancy.

We could issue business license

Or we could hold a public hearing so neighbors would get notified.

After a brief discussion on what is the best way to handle this everyone agrees that the applicant should apply for a conditional use permit and proceed with a public hearing so everyone is notified of what is happening on the property. The applicant agrees as well.

C. Discussion and or Action on Information Regarding Metro Area Boundary Update.

Chair Schaefer is not impressed with the way that it is written however it is of little or no impact to us.

7. Old Business

A. Discussion and or Action regarding Manufacturing in the Commercial Zone.

Everyone agrees that the proposed code language discussed at last month's meeting is fine but do we want to move forward with a text amendment now or wait until we discuss other potential areas of concern such as garages and tents.

Consensus to discuss further changes at the July meeting.

7. Commission Action/Discussion

A. City Planning Activity (in Your Packets)

Status of Development Projects within the City.

- City Planner Wakeley had no discussion items in addition to what has been previously discussed or presented on her report.

8. Adjourn

Chairman Schaefer adjourned the June 3, 2014 meeting at 10:05 pm

Chairman, Schaefer

ATTEST:

Kelly Richardson, City Recorder

Minutes
Aurora City Council Meeting
Tuesday, May 13, 2014, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main St. NE, Aurora, OR 97002

STAFF PRESENT: Kelly Richardson, City Recorder
Pete Marcellais, Marion County Deputy
Mary Lambert, Finance
Darrel Lockard, Public Works Superintendent

STAFF ABSENT: Dennis Koho, City Attorney

VISITORS PRESENT: Eric Anderson, Wilsonville
Matt Cofer, Salem
Tom Schlachter, Woodburn
Pamela Rose, Salem
Ray Phelps, Woodburn
John Burt, Dallas
Bill Simon, Aurora
Derck Godwyn, Salem
Lori Coukoulis

1. Call to Order of the City Council Meeting

The meeting was called to order by Mayor Bill Graupp at 7:02 p.m.

2. City Recorder does roll call

Mayor Graupp – present
Councilor Sallee- present
Councilor Brotherton -present
Councilor Sahlin – absent
Councilor Vlcek – present

3. Consent Agenda

- I. City Council Meeting Minutes** – March 11, 2014, Footer error and on pg 2 referring to (they) please clarify who is speaking.

- II. **Planning Commission Meeting Minutes** – not in packet.
- III. **Historic Review Board Minutes** –not in packet.

Correspondence

I. Marion County Resolution approving 4H Extension 14R-3

John Meredith explains briefly to the council opting in or opting out of the district and participation or not.

Derrick Godwin, Region Administrator for Marion County Extension services explains that the funding goes to the OSU extension office and 3 of the County Commissioners will be the board of directors.

Councilor Brotherton asks if basically you are looking for a funding source and the clarification is yes from the Federal Government.

Motion to approve the consent agenda with the corrections stated was made by Councilor Sallee and is seconded by Councilor Brotherton. Motion Approved by all.

4. Visitors

Anyone wishing to address the City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the City Council could look into the matter and provide some response in the future.

Annie Kirk, asks council if the parade form is on the agenda? Yes it is there is a brief discussion regarding the route proceeding down 3rd street or not.

No one else spoke....

5. Mayor's Report,

A. Mayor Graupp Most of the items that I want to address is already on the agenda so I really don't have anything at this time. We are wrapping up budget items and apparently there was some vandalism over the weekend.

6. Discussion with Parks Committee, Councilor Sahlin Councilor Sahlin is absent so no update is available. Annie Kirk asks council who is doing the islands and triangles around town and informs council that the RFP is being modified to fit what we need.

There is a brief discussion regarding the various uses of Revenue Sharing money.

7. **Discussion with Traffic Safety Commission**, Deputy Marcellais informs council that Ehlen Rd will be receiving new lines and signs. Also inform them that a letter from ODOT is on its way regarding the STIP and that 2nd and 3rd street proposals has been removed.

8. **Reports**

A. Marion County Deputy Report – (included in your packet)

- Vlcek asks about the body that was found, it was a suicide and the person was from Portland.
- We apprehended 3 suspects from the surrounding area which were minors they basically went around and vandalized and broke into cars. We have approximately 23 victims so far.
- Councilor Sallee states I like the reports.
- We have apprehended the suspect in the Main Street Mercantile theft.
- We have also apprehended the suspect in both of the store thefts.
- Waiting on fingerprints regarding the canvas theft.
- Yearend report will be at the June meeting.

No more questions at this time.

B. Finance Officer's Report – Financials (included in your packets)

1. Revenue & Expense Report

- Finance Officer Mary Lambert reads her report as included in the packet.
- The Council would like to see the % spent report each month.

C. Public Works Department's Report – (not included in your packet)

1. Monthly Status Report (Storm Water)
2. Monthly Status Report (Water)
3. Parks Report, OSU Tree Report

Superintendent Lockard reads his report as presented.

- Sink hole on Main Street appears to be a back fill issue.
- Routine Operations are going well.
- Well 5 is back online currently we are at around 100 to 110 previously we were at 90 so it is an improvement.
- Councilor Vlcek ask what is the recovery time of water are we behind on the static level at this point? Darrell no not really it seems to be fine. What I really want to know is there going to be a problem this summer Darrel I cannot answer that with the data I have available right now. Is there a report that shows our usage levels yes but it doesn't show static levels and recovery rate. Vlcek have you been flushing lines because I have noticed and increase of brown lately Darrel yes we have.
- We will be graveling Filbert and Sayre Drive in the near future.
- I met with TTT regarding their park maintenance contract because currently I have not been happy with the way the park has been looking.

- Councilor Sallee asks if it would be possible to get a one year projection list of the top 5 priorities.

No more questions,

D. City Recorder's Report (included in your packet) reads her report.

Discussion items were,

Asks Council to look at the property schedule regarding the park structures it seems very low to me and it doesn't include the Amphitheater from 2010. What does the council feel comfortable increasing the values from 114,000? I propose increasing another 100,000. At this point the council would like to see what the premiums are now and what they would be with that amount of increase.

No more questions.

E. City Attorney's Report – (not Included in your packet)

- Mayor Graupp informs Council that Dennis is the Keizer's budget chair and that is why he is absent this evening. He is currently working on acceptable conditions regarding a recent bid on the Eddy property.

10. Ordinances and Resolutions

A. Discussion and or Action on Ordinance Number 476 an Ordinance Proposed to Increase Permit and Inspection Fees. Second Reading.

Motion to approve ORD 476 is made by Councilor Brotherton and seconded by Councilor Vlcek. All passed. 4-0

B. Discussion and or Action on Resolution Number 682 a Resolution to Initiate Formation of Marion County 4H Extension.

A motion to approve Resolution Number 682 is made by Councilor Sallee and seconded by Councilor Vlcek. Passed by all.

C. Discussion and or Action on Resolution Number 683 a Resolution to Renew Contract with SEDCOR

A motion to approve the SEDCOR renewal is made by Councilor Brotherton and is seconded by Councilor Vlcek. Passed by all.

D. Discussion and or Action on Resolution Number 684 a Resolution for The 2015 Special City Allotment Grant.

A motion to approve Resolution Number 684 the SCA grant in the amount of 50,000 is made by Councilor Vlcek and is seconded by Councilor Sallee. All passed.

E. Discussion and or Action on Resolution Number 685 for Republic Services.

A Motion to approve Resolution Number 685 is made by Councilor Vlcek and seconded by Councilor Sallee and Councilor Brotherton abstains because he interacts with the business in another forum. All yes. 1 abstains.

11. New Business

A. Discussion and or Action on Republic Services Proposal for Rate Increase. (Discussion occurred prior during the visitors section.)

Matt Cofer, presents Toni Schlachter, Ray Phelps, I will answer questions if you have any. The proposal is for 8% the 35 gallon group is the largest impacted. Primary reasons for the increase are costs from fuel and employees. New equipment coming in and how does this help our costs because less time in the shop really. Larger trucks don't work very well on the small roads.

Talk to me about sustainability and how the money works for that first the fuel the trucks all have particulate filter we have to purchase trucks with those on it. Recycling really is the consumer and the volume is increasing.

How does this affect other cities they explain the break down amongst the other cities on PG 7.

it really is based on density and volume so it's not 8% across the board in other cities no because they are on a different schedule.

B. Discussion and or Action on Verizon Proposal and Preliminary Sketches. Council wants clarification on term of years as 5 years and 5 year increments.

Consensus of the council is to move forward with the proposal if the terms are met.

Councilor Vlcek asks what the health risk of surrounding property owners is. What are the industry standards I would like to know both of these?

C. Discussion and or Action on Audit Proposal and Renewal with Grove Mueller and Swank for the 2013/2014 Audit Services.

A motion to is made to approve the Grove Mueller and Swank Proposal for 2013/2014 Audit Services is made by Councilor Brotherton and is seconded by Councilor Sallee. Motion passes by all.

D. Discussion and or Action on Letter of Resignation from Aurora Municipal Court Judge Zyryanoff.

Motion to accept letter of resignation is made by Councilor Sallee and is seconded by Councilor Vlcek. Motion passed by all.

E. Discussion and or Action on Letter of Interest and Recommendation for Lori Coukoulis as New Judge Candidate.

A motion to accept this candidate as the Aurora Municipal Court Judge is made by Councilor Sallee and is seconded by Councilor Brotherton. And move forward with a contract. Motion passed by all.

F. Discussion and or Action on OLCC License Renewal and Special Events License.

Motion to approve OLCC licenses Special Events for Pheasant Run Winery is made by Councilor Brotherton and is seconded by Councilor Sallee. Motion passed by all.

G. Discussion and or Action on the 2014 Colony Day Parade Form and Parade Route.

Consensus of Council is to move forward with the proposed Parade Form with the route change to go down 3rd street instead of 99E.

H. Discussion and or Action on Revenue Share Request for Aurora Colony Days 2014/2015 Budget Year.

A motion to approve the Revenue Share request made from Colony Days is made by Councilor Brotherton and is seconded by Councilor Vlcek in the amount of \$2,500. Motion passed by all.

12. Old Business

- A. Discussion and or Action on approval of ACVA Draft Letter to Citizens Regarding Weed Control.** As long as the letter is signed by the ACVA the council is fine with it being sent out.
- B. Discussion and or Action on ACVA Grant Fund Request for Island Maintenance.** Tabled

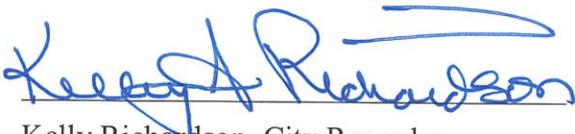
Any other topics for tonight's meeting hearing none Mayor Graupp

13. Adjourn at 9:20 pm.



Bill Graupp, Mayor

ATTEST:



Kelly Richardson, City Recorder

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

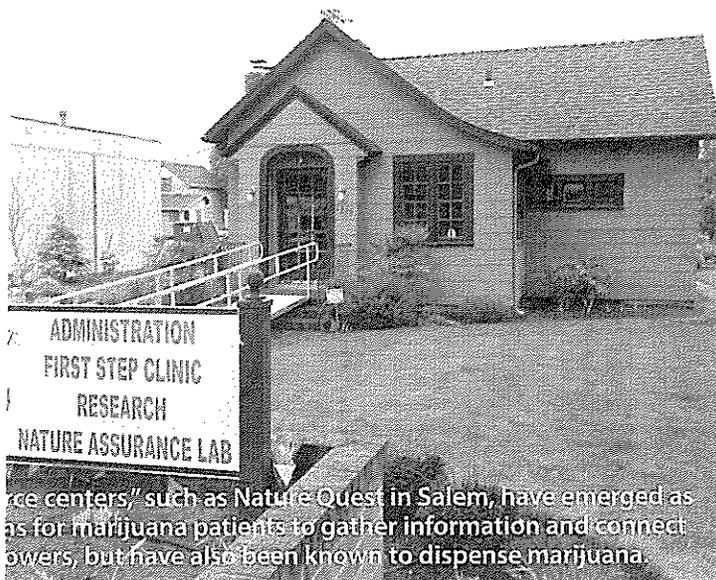
their growers. The OMMA exempts individuals holding a registry identification card from state criminal penalties, so long as the individuals act in accordance with the limits set out in the act. Individuals need not be a cardholder in order to enjoy the benefits of the act, however. The OMMA also provides 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.

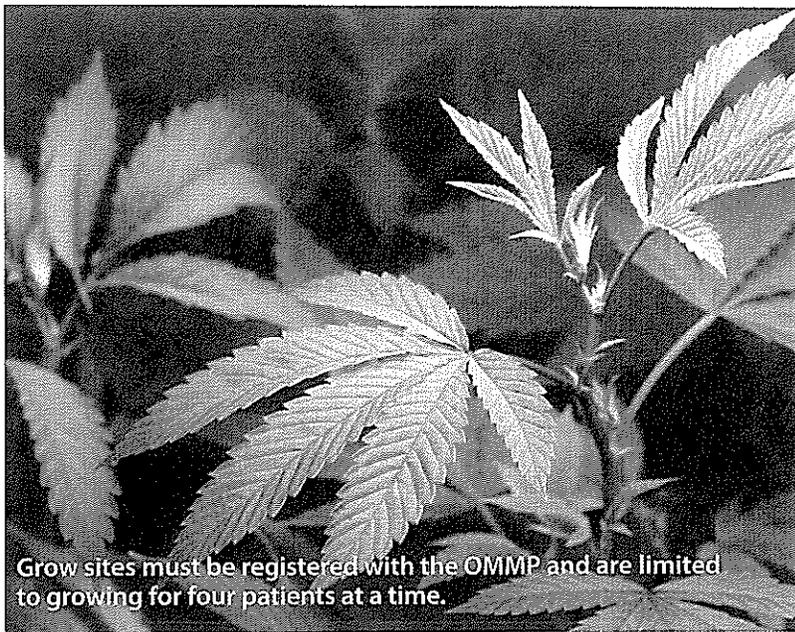
Once registered, patients are issued a medical marijuana card. Patients are required to carry with them their current OMMP Registry ID cards when possessing medical marijuana away from home or their grow site. Patients are not allowed to cultivate or consume medical marijuana in public view, drive under 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.



“Resource centers,” such as Nature Quest in Salem, have emerged as places for marijuana patients to gather information and connect with growers, but have also been known to dispense marijuana.



Grow sites must be registered with the OMMP and are limited to growing for four patients at a time.

The OMMA legalizes the possession and delivery of medical marijuana for a registered patient, the patient’s primary caregiver, and/or an individual designated by the patient to grow medical marijuana for the patient. There are, however, limits on how many plants and how much usable medical marijuana each patient is allowed. The OMMA places the following limitations on possession:

- **Patient:** Six mature marijuana plants, 18 seedlings and 24 ounces of usable marijuana.
- **Registered grow site:** Six mature marijuana plants and 24 ounces of usable marijuana for each patient or caregiver for whom the marijuana is being produced. Limited to growing for four patients at any given time.

The Emergence of Dispensaries and HB 3460

With the growth in participation, over time facilities began to emerge where medical marijuana patients gathered to obtain information and connect with potential growers. Often termed “resource centers,” these facilities also were known to dispense marijuana. Because the original act did not contemplate these types of facilities, the legality of their operations was suspect. Wanting to develop a program that would identify where these types of facilities were and could be located, and to ensure safe access, in 2013 the Legislature adopted HB 3460 (codified at ORS 475.314).

Among its provisions, HB 3460 directed the Oregon Health Authority to establish a registration system for medical marijuana facilities (commonly referred to as dispensaries). HB 3460 grants criminal immunity to persons working for a registered medical marijuana facility. The bill also restricts the location of a medical marijuana facility to property that is zoned either commercial, industrial, mixed use or agricultural, and provides that a facility cannot be at the same location as a grow site, or within 1,000 feet of a school (elementary, secondary or career attended primarily by minors) or within 1,000 feet of another medical marijuana facility.

Unlike the original OMMA, which prevented the purchase of marijuana beyond the reimbursement of certain expenses, HB 3460 allows a dispensary operator to reimburse a grower for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage. Similarly, a dispensary is permitted to seek reimbursement for immature plants and medical marijuana products based on its normal and customary costs of doing business.

The Role of the Federal Government

The use of medical marijuana is still illegal under federal law. The Controlled Substances Act (CSA) classifies marijuana as a Schedule I drug, making it illegal under federal law to manufacture, distribute or dispense. The Schedule I classification means the federal government has concluded that the drug has a high potential for abuse (undefined term in the act), has no currently accepted medical use in treatment, and lacks accepted safety protocols for use of the drug under medical supervision. Thus, the OMMA neither protects marijuana plants from seizure nor individuals from prosecution if the federal government chooses to take action against patients, primary caregivers or growers under the Controlled Substances Act.

Notwithstanding the federal ban, as of the date of this article, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of those developments, U.S. Department of Justice (DOJ) Deputy Attorney General James M. Cole issued a memorandum (the “Cole Memo”) to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA. The Cole Memo guidance applies to all of DOJ’s federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

(continued on page 18)

Medical Marijuana Overview

continued from page 17

The guidance makes it clear that DOJ is committed to prosecuting enforcement of the CSA, but that, as a general matter, federal resources in states with medical marijuana laws should not be focused on individuals who are “in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.” The memo further states, however, that federal resources should be focused on:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

The Role of Local Government

Local governments interact with the OMMA in three general capacities: as an employer; as law enforcement; and as a regulatory body.

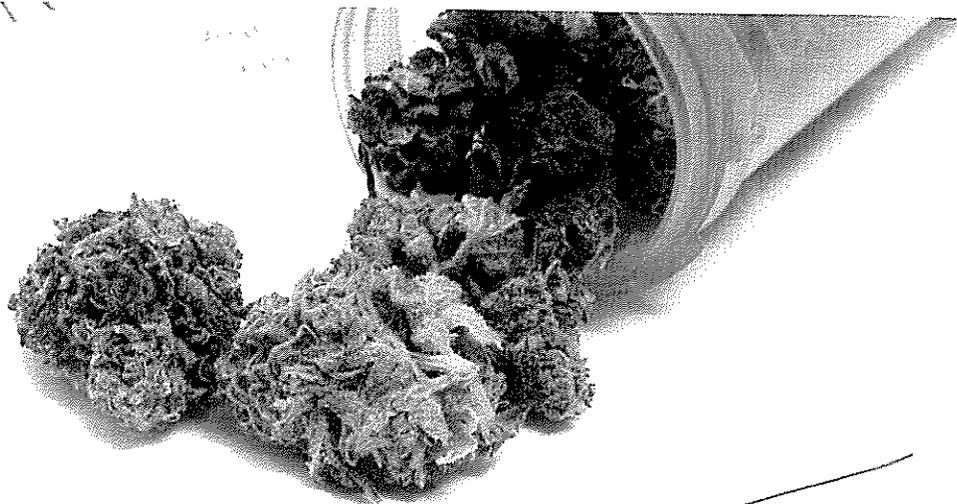
As an employer, a local government might have employees who are patients registered with the OMMP. There are a myriad of issues that might arise if an employee is a registered OMMP patient. As such, cities should consult their attorney before inquiring whether an employee is an OMMP patient or taking any other action related to an employee’s use of medical marijuana. Nonetheless, cities should understand that the OMMA expressly provides that nothing in the law shall be construed to require an employer to accommodate the medical use of marijuana in any workplace. In addition, the Oregon Supreme Court held in the case *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries* that Oregon employers do not have to accommodate an employee’s use of medical marijuana under Oregon’s disability and discrimination laws.

A local government also interacts with the OMMA in its capacity as a law enforcement body. Local law enforcement personnel may take any action they believe is necessary to enforce the criminal laws of the state, including violations of the OMMA or the state’s criminal laws relating to use and possession of marijuana. As part of this process, local law enforcement personnel may verify with the Oregon Health Authority at any time whether a particular patient, designated primary caregiver, person responsible for a grow site, or grow site location is registered with OMMP by calling the 24-hour LEADS (Law Enforcement Data System). In addition, the OMMA expressly states that possession of a medical marijuana identification card or a primary caregiver card does not alone constitute probable cause to search the person or property of the cardholder.

Further, the OMMA provides that usable marijuana and paraphernalia used to administer marijuana that is seized shall be returned immediately upon a determination by the district attorney in whose county the property was seized that the person from whom the property was seized is entitled to the protections found in the OMMA. However, law

Family Medicine
12345
Address

Rx



Marijuana 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.

enforcement officials who return usable marijuana are at risk of prosecution under the CSA. In the case of *State v. Ehrensing*, the Oregon Court of Appeals concluded that seized marijuana need not be returned to a cardholder whose case was dismissed for lack of speedy trial because: the OMMA's provision did not allow return under that type of circumstance, and return would have violated federal law. Similarly, in a publicly shared opinion, the attorney general has advised the Oregon State Police to seek an appeal of any court order requiring the return of seized marijuana to a cardholder on the grounds that the return provisions of the OMMA are preempted by federal law. It stands to reason that such advice is equally applicable to local law enforcement.

Finally, local governments interact with the OMMA as a regulatory body. While some jurisdictions are allowing dispensaries and grow sites to operate under the terms of HB 3460 (2013), others are considering or have imposed additional regulations up to and including a ban on such activities. Medical marijuana advocates have taken issue with such regulations and argue that HB 3460 (2013) prevents local governments from enacting restrictions on medical marijuana facilities. In addition, they argue that SB 863, passed in the 2013 special session and intended to preempt local regulation of genetically-modified organisms, also preempts local regulation of medical marijuana.

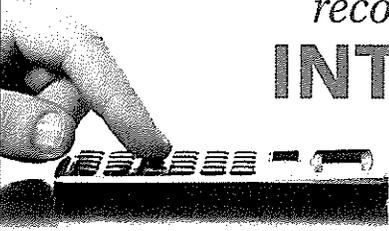
Partially to address those arguments and to provide time to study these issues, the Legislature adopted SB 1531 during the 2014 short session. This bill does essentially two things. First, it reaffirms a city's authority to adopt reasonable time, place and manner restrictions on medical marijuana activities. Second, SB 1531 removes criminal immunity from any person operating a medical marijuana facility in a jurisdiction that has adopted a moratorium on medical marijuana facilities, provided the moratorium was adopted prior to May 1, 2014 (with an end date not to exceed May 1, 2015).

Applying home rule principles, the League believes that in addition to the options set out in SB 1531, cities 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. Nonetheless, medical marijuana advocates maintain that cities are preempted from doing so. Consequently, cities should work closely with their attorneys to fully understand the extent the city may regulate issues related to medical marijuana and to assess the risk of having to defend its authority to adopt local regulations.

Editor's Note: *Because of the complexities and nuances of the OMMA and its interaction with federal law and other state laws, this article is necessarily general and is not intended to provide legal advice. This article should not serve as a substitute for competent legal counsel. City officials should consult with their city attorney in accordance with their city's policies for doing so, to ensure that you fully understand these laws.* ■

Marijuana Tourism





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Enforcement Options: A Roadmap for Cities

SB 1531 established a May 1 deadline to adopt a one-year moratorium on medical marijuana dispensaries, and 145 cities have officially done so. Even though the moratorium period has begun, there are still several actions any city can take with regard to the dispensaries. At the League's Marijuana Workshop last month in Portland, Eugene City Attorney Glenn Klein outlined five current options that arguably exist for cities. Not all attorneys agree that these options are available, and the city charters or city codes in some cities would not authorize some of these options. Consequently, it is critical that a city discuss with its city attorney whether an option may be available and what the potential legal risks are of proceeding with that option.

Ban

Cities can simply take formal action to ban the existence of medical marijuana dispensaries. According to Klein, SB 1531 "did not preempt a city's home rule power to enact a ban." However, he also noted that there are "many out there who disagree" with his interpretation of the bill, and as a result, a city enacting a ban is risking a legal challenge and the potential for substantial costs.

"If someone sues the city over a ban and succeeds, then the city might have to pick up their legal costs too," Klein noted.

There is a banning option that carries slightly less risk, Klein says. "A city could ban any business which necessarily violates federal or state law," he said. In addition, cities with a business license program can adopt an ordinance stating it will not issue a license to any business that operates in violation of federal or state law.

License

Most cities have the ability to license or adopt a licensing program. Therefore, as part of an existing licensure program, a city could require a license for a medical marijuana dispensary. Alternatively, cities that do not have a formal licensing program could adopt a business license requirement specifically for dispensaries. By adopting a license

requirement, a city can more easily employ certain regulations such as background checks.

On the other hand, this option does carry its share of risk for cities.

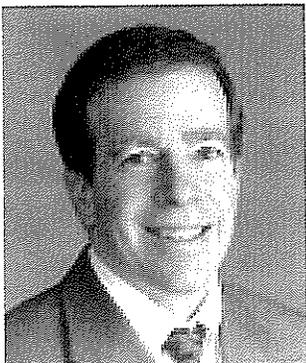
Klein says that by granting a license, a city would "give a business permission to conduct an operation that violates federal law." Could this potentially lead to federal prosecution? Klein says that's unknown, but not out of the realm of possibility. Another consideration is that in just two years a new president will occupy the White House, and federal policies could change. Still further risk involves the potential loss of federal funding for grants. Klein notes that many federal grants typically have several pages of conditions that must be met, including the requirement that a recipient is compliant with federal law.

Regulate

Klein says it is "absolutely clear" that cities are not preempted from adopting "reasonable regulations" with regard to medical marijuana dispensaries. "Some tried to argue that SB 1531 only allows cities to adopt regulations by May 1, but the bill is clear; the May 1 deadline only applies to outright bans."

But what are reasonable regulations? Klein says eventually this could be decided in the courts. But in the meantime, there are statewide examples of cities adopting analogous regulations such as geographic limits, specific hours of operation, and prohibition on the types of products dispensaries can sell.

In addition, a city has the option to exclude dispensaries in certain zones as defined by its zoning code. According to Klein, the city of Eugene's code treats a dispensary as a "specialty retail" business, which is authorized only in commercial zones, and not in industrial zones. So in this case, even though state law would allow a dispensary in an industrial zone, local zoning code would not. Eugene also requires a conditional use permit in some of its commercial zones.



"The worst thing a city can do in this case is adopt regulations without having first figured how they will be enforced."

– Glenn Klein, Eugene City Attorney

Another option would be for a city to expand the existing 1,000-foot buffer that further defines where a dispensary can locate. "A city could apply the buffer to include areas where children may congregate, such as a day care center, a library or a transit center," Klein said.

A city can also enforce regulations on the dispensaries' hours of operation. Klein cites the example of jurisdictions which have copied the Oregon Liquor Control Commission's guidelines for liquor store operations: 10:00 a.m. to 7:00 p.m. "These jurisdictions decided, 'If it's reasonable for liquor stores, it's reasonable for dispensaries,' so they adopted that limitation."

Klein says cities face two main risks if they choose to pursue regulations on dispensaries, one legal and the other operational. "The first is litigation over whether they are reasonable," he said. The bigger risk, depending on the nature of regulations adopted, is that enforcement may be an "administrative nightmare."

"I've seen city councils elsewhere in the state adopt regulations that sounded really good, but were nearly impossible to enforce. The worst thing a city can do in this case is adopt regulations without having first figured how they will be enforced."

Tax

Klein says he's not aware of any jurisdiction that has adopted a gross receipts tax on dollars received by a medical marijuana dispensary. "But nothing I'm aware of prohibits a jurisdiction from doing this," he notes. "Cities have home rule authority, and I think they can."



Wait and See

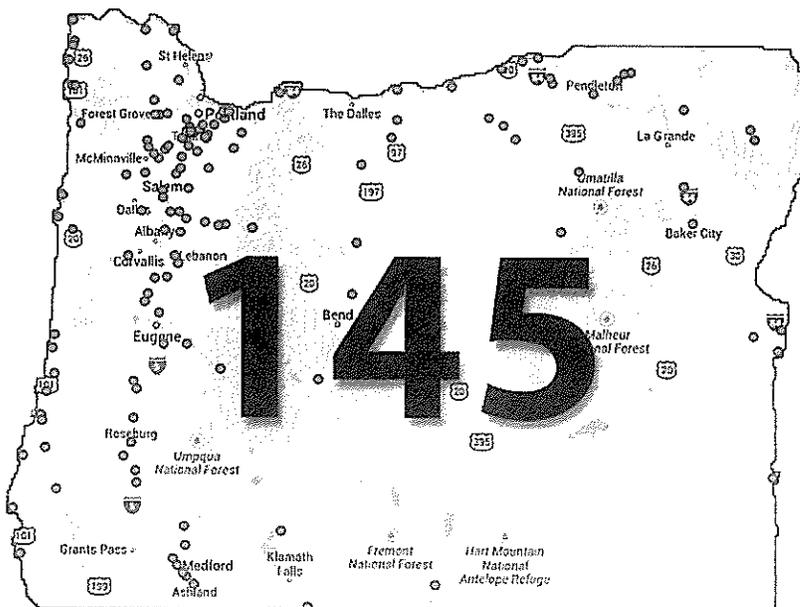
For cities like Eugene, which did not formally adopt a ban, Klein says this option boils down to waiting to see if problems develop, then presenting those problems to the city council, along with some options for how to resolve them.

He says that for cities taking this approach, the best course of action for city councils is to have staff "monitor the situation for problems and know its okay to come to you with potential solutions."

Final Caution – Consult City Attorney

During his remarks at the League workshop, Klein implored cities to talk to their city attorney before pursuing any course of action. He cited two very important reasons:

"First, there are a lot of grey areas here, and you as policy makers need to be aware of the risks. Your city attorney can help you assess those risks and decide whether to move forward. The other reason is that your charters are different, and therefore your city codes may be different. One city may be able to do something that another city can't."



SB 1531 allowed cities and counties to adopt a one-year moratorium on medical marijuana dispensaries and 145 cities have done so. In addition, five cities have instituted a ban on moratoriums:

- Jacksonville
- Hermiston
- Medford
- Oakridge
- Tualatin

For a list of cities with moratoriums, visit the League's medical marijuana webpage at www.orcities.org/marijuana.

Marijuana Q & A

What advice would you have for Oregon local governments as they are looking at various trends going forward, with respect to medical marijuana, and if it comes to pass, recreational?



Chris McKenzie, Executive Director, League of California Cities

My most cogent advice is that you want to get the medical marijuana part done right. Doing that, you will learn a lot in the event retail or recreational use comes along. That means if you haven't taken the steps to do the moratorium,

invest time in thinking about what local regulations you want to have. The experience you have there is going to be helpful if your voters approve full retail activity.



Kevin Bommer, Deputy Director, Colorado Municipal League

Oregon is a strong local control state. That has to be enshrined in anything you do going forward. You have to get the house in order regarding medical marijuana, especially if you are going to link medical and recreational together like we did here in Colorado.

Medical might be the logical ones to apply. That helps on the regulatory side because these are known entities, to state and local regulatory and law enforcement agencies. They know who these operators and employees are. To the extent that medical works, if retail is going to happen it has a better chance if medical is not a mess.

What are the impacts on cities regarding marijuana tourism?

Bommer – If you Google “Colorado Marijuana Tourism” you’ll be surprised at what you see. It’s not surprising that it happened, just that more people weren’t aware of it. There are entrepreneurs who have opened businesses since Colorado doesn’t exclude out-of-state residents from purchasing, only limiting the amount they can purchase (.25 ounces) at a retail store.

Here in Colorado, there are companies that will pick up tourists at the airport, take them on a tour of retail centers and grow facilities, and along the way the tourists can purchase the product if they like. The buses are pretty fancy, and they all have blacked-out windows. This is a growing economy with no particular regulation, other than having to abide by the existing laws and regulations that apply to businesses and individuals.

What does the League see happening next with the Legislature?



Scott Winkels, Intergovernmental Relations Associate, League of Oregon Cities

With regard to the dispensaries and where I think the Legislature will go in 2015, there’s some enthusiasm behind cleaning up the land use regulation language in HB 3460, ultimately making it something that resembles the

land use code. The Legislature has said they don’t want dispensaries in residential areas, and I think that’s certainly achievable. I also think the Legislature is going to look at the federal (Cole) memo regarding a robust and vigorous enforcement and regulatory structure. One thing they may do there is require background checks for people who work in the dispensaries.

Another issue is to make sure that police officers have access to a dispensary. This would be the same as we have with a liquor establishment: a police officer would be able to enter a dispensary and conduct an inspection. This is currently not in the state statutes.

Also, the Legislature is going to have to address the conflict between federal law and language in HB 3460 that prevents a dispensary within 1,000 feet of a school. There is a federal law against locating a dispensary within 1,000 feet of “places where minors congregate.” This is a significant language discrepancy, and it’s my understanding that U.S. attorneys in other states have forced dispensaries to move, even those that are sanctioned, if they were located in proximity to a preschool. For the applicant, local governments, kids and schools, truing up that requirement needs to happen.

How do cities participate in conversations about legalization of marijuana without appearing to be in support of approving legalization?

McKenzie – As we’ve been working on legislation, we’ve actually begun to build relationships with people in the marijuana industry. The people we could probably cut a deal with are those who would like to have a well-regulated, responsible business. But there’s another dynamic. There’s nothing as valuable as having an idea that the public is passionate about. I’ve been telling my board we need to do some polling about the viability of retaining our local authority, specifically to decide whether to opt-in or to add on regulations. If Californians find out there is a stealth retail measure that preempts local control, and we can get that

message out, then we can take some of the ground away from the other side. If we do our polling early enough and it verifies what we think it will say, we can start having some advanced public dialogue with the other side. Not because we want to help draft their measure. I want to send the message that we're open to that conversation, but if they cross the local control line we will do everything we can to obstruct their success. So you have to do it from a collaborative position, but also one of strength, so that you can be a much better non-opponent. Their goal is to keep us out of that election. They'll do that by making sure our members get to decide if the activity happens in their city.



Candice Bock, Government Relations Advocate, Association of Washington Cities

This has been a big challenge, and it prompted us to actually create a legislative policy position we called "actively neutral." With 281 cities, we had representation on both sides of the issue. Some cities were feeling like they should be able to

say they wanted nothing to do with marijuana, while some said the system only works if everyone is allowed their fair share. So we worked with our board and legislative committee on a policy direction that preserved our number one goal: maintain local control and existing regulatory authority over anything, not just marijuana.

As an association of cities, we don't get involved in initiatives or political campaigns, so we don't typically engage with groups that are putting together initiatives. We couldn't be involved in a formal fashion, but we wanted to have input on how these groups can work best with local governments.

In terms of long-term effects of marijuana – THC levels are going up. Do you see issues with potency of the product?



Tom Burns, Director of Pharmaceutical Purchasing, Oregon Health Authority

Certainly the potency has gone up over the years. But this is not an OHA issue. We will label it, and the patient will know the potency. But that's something the market will develop and bear. Unfortunately, there's been no testing, so

we don't know if a THC of 51 or 21 produces effects the same way the product affects a disease in the body. This might be something the FDA takes up someday.

(continued on page 24)

Illegal? Yes.

Scott Kerin leads the drug unit in the U.S. Attorney's office in Oregon. He says he regularly fields questions from Oregon local governments regarding the legality of medical marijuana dispensaries.

"I have been asked repeatedly: 'If we allow dispensaries to set up, are we aiding and abetting a federal crime?'" Kerin noted during his presentation at the League's Marijuana Workshop.

"Technically, yes."

Kerin added that what he wanted local governments to take away from his remarks was that marijuana is "still illegal under federal law." He said cities need to know if they engage in any activity that is in violation of federal law, there could be consequences.

"There's a risk that a district attorney's office or the federal government will take an interest, and someone will be subject to prosecution," he said.

To provide some guidance for local governments as they make decisions about dispensaries, Kerin outlined the "enforcement priorities" of the U.S. Department of Justice, which help determine how his office allocates resources for enforcement and prosecution. Specifically, he cited eight priorities that are outlined in a memorandum issued by the Department of Justice on August 29, 2013, commonly referred to as the Cole Memo (*see OMMA article, page 16*). These priorities are where the department is currently focusing its efforts.

Kerin noted that there is always the possibility these priorities and related policies could be subject to change "as elections occur and new administrations take office."

He encouraged attendees to not only consider the Cole Memo, but to make sure any regulatory structure enacted is robust and vigorous, and that it has an enforcement mechanism behind it.

"If that happens, you're less likely to draw the attention of law enforcement," he said.



Scott Kerin from the U.S. Attorney's office speaks at the League's Marijuana Workshop.

Marijuana Q&A

continued from page 23

Looking at reasonable limitations, what about 1,000 feet within a park? Is this reasonable under time, place and manner restrictions?

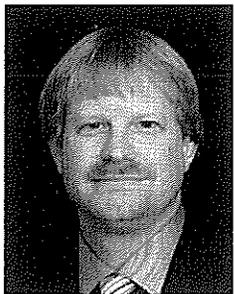


Sean O'Day, General Counsel, League of Oregon Cities

Given children congregate in a park, that's a reasonable regulation. Keep in mind, however, that's something you'd be adopting at the local level and you'd be using civil enforcement as your way of enforcing that should a dispensary get a license and begin operating. If that, coupled with

the existing 1,000-foot rules in state law, result in effectively a ban, then you have two types of legal issues. First, is this reasonable? The second is preemption, and do you have the authority to impose this ban? Understand that a dispensary which violates these 1,000-foot rules loses its criminal immunity. So you have different types of enforcement depending on the rules you enforce locally and how the dispensary complies with state law.

No public consumption, including growing, is allowed in public. Is a backyard considered public? What about a greenhouse?



Rob Bovett, Legal Counsel, Association of Oregon Counties

Oregon law says it can't be seen from a public vantage point. Someone could be growing or using marijuana in their backyard as long as where they're doing it is not visible from a public vantage point. In that way Oregon is different from other states.

With respect to dispensaries, why not just do it through pharmacies?

Bovett – The federal Controlled Substances Act. Oregon, like other medical marijuana programs, doesn't provide for physicians to prescribe marijuana. They only issue recommendations. The reason is the federal Controlled Substances Act. Every prescriber is licensed by the Drug Enforcement Agency (DEA) to prescribe. If they actually issued a prescription for marijuana, which is a Schedule 1 controlled substance, they would have their ticket pulled and they would no longer be able to prescribe anything. The same is true for pharmacies—all are DEA-licensed facilities. If they dispense a Schedule 1 controlled substance, they would lose their license. That's not to say using pharmacies wouldn't be a good model. If we could get the feds to change their policy, it makes practical sense to have pharmacies dispense Schedule 2 or 3 controlled substances, but until Congress approves that statutory change we can't go there.

As the OHA is sending inspectors out, how are you going to deal with the vastness with respect to population?

Burns – We'll go where the dispensaries are. If a local jurisdiction has a large number of dispensaries, we'll have a lot of inspectors there. It has nothing to do with population. It has everything to do with where the dispensaries are located.

Can a jurisdiction adopt local taxes on sales of marijuana?

O'Day – I think so. Cities should consult with their city attorney though. Right now there's no preemption on that, as we heard earlier from Glenn Klein.

What about a city's ability to cap the number of dispensaries within a jurisdiction, say as low as one or two?

O'Day – Applying a home rule/preemption analysis, I think you can cap it down to zero. Whether or not a cap is reasonable under SB 1531, I think you're probably looking at having to litigate. If a city sets a low cap, and someone thinks it's unreasonable, a city could face a lawsuit. That's why it's so important for city leaders to talk to their city attorney. When you are considering these issues and any form of restriction or regulation you might look at putting out there, it's important to have a candid conversation with your city attorney. Even though they may not be able to give you a clear yes or no about what a court might rule, they can at least help you assess the legal risk and the cost of defending that decision. ■

Online Resources

Visit www.orcities.org/marijuana for:

- Presentations from the League's Marijuana Workshop
- A list of cities with moratoriums on medical marijuana dispensaries
- Information on the Oregon Medical Marijuana Act
- OHA rules set out in SB 1531
- Federal guidance regarding marijuana enforcement

Working with the Oregon Health Authority



Tom Burns, Director of Pharmaceutical Purchasing, Oregon Health Authority

The Oregon Health Authority (OHA) was tasked by the Legislature to provide regulatory oversight of the state's medical marijuana dispensary licensing program. OHA Director of Pharmaceutical Purchasing Tom Burns will oversee the dispensary licensing and oversight program, and presented an overview at the League's Marijuana Workshop of the OHA's role and how local governments can work with the OHA in dealing with dispensaries.

Dispensary Oversight

OHA's ability to regulate dispensaries was narrowly written in HB 3460 and requires OHA to provide a license to any applicant who can meet specific basic criteria. However, Governor Kitzhaber also included three guidelines for OHA's regulations in a signing letter: assure public safety, assure patient safety, and enforce rules vigorously. As a result, OHA worked with a rules advisory committee, held over 17 hours of meetings, and published temporary rules to start the licensing program.

Currently, the OHA must grant a license if an application shows a proposed dispensary:

- Is not within 1,000 feet of a school or another dispensary;
- Is in an area zoned for industrial, commercial, agricultural or mixed use;
- Has a security system; and
- Is testing for health hazards.

However, the OHA cannot reject an application if local ordinances ban dispensaries or if zoning codes prevent locating a dispensary at the designated site. As Burns stated: "I may well, as the health authority, issue a license. It's up to you guys to decide if that license is any good in your jurisdiction."

OHA and Your City

In addition to licensing, the OHA is required to inspect dispensaries yearly, and is planning on conducting sting operations when they hear of facilities that are operating improperly. So they need local officials and enforcement agencies to inform them of sites that are violating the licensing rule. For example, if the police notice that the security system is not operational, citizens notice that marijuana is packaged in a way that is enticing to children, or if there is evidence of on-site use of the marijuana, OHA needs cities to inform them.

But, OHA cannot ensure shops are shut down if their license is revoked. OHA may only impose civil penalties; they cannot bring criminal charges. So, they need assistance from local law

enforcement and prosecutors. OHA was not given authority to shut the physical doors at a facility that loses its license and, therefore, must work with law enforcement agencies to shut these facilities down. Burns recommended that local governments remain in contact with his office to monitor the dispensaries within your city saying, "We want desperately to work with local law enforcement. We cannot do this ourselves."

Future Rulemaking

Currently, OHA is working on making permanent rules regarding dispensary licensing under HB 3460. They intend to complete this process by July 31. In addition, they are working on finalizing rules relating to edible marijuana products and marketing restrictions required under SB 1531. Copies of all these proposed rules and schedules for submitting testimony can be found at www.oregon.gov/oha/mmj. Burns also pointed out that as the program moves forward, the OHA will likely revisit these rules.

As cities look at the various tools available to regulate dispensaries within city limits, working as a partner to OHA in insuring the facility is following the licensing rules should be top of the list. As Burns said: "If they are not following these rules, we will close them down." ■

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Memorandum

MID-WILLAMETTE VALLEY COUNCIL OF GOVERNMENTS

105 HIGH STREET S. E. SALEM, OREGON 97301-3667

TELEPHONE: (503)588-6177

FAX: (503)588-6094

TO: Aurora Planning Commission
FROM: Renata Wakeley, City Planner
DATE: June 26, 2014

REQUEST

Discussion on potential code updates based upon recent land use applications and legislation.

BACKGROUND

I. Sidewalks

AMC 16.34.030.A.2 states that *subject to approval by the Planning Commission*, the City may accept and record a non-remonstrance agreement in lieu of street improvements.

AMC 16.34.060.C. states the City may accept and record a non-remonstrance agreement for the required sidewalks from the applicant for a building permit for a single-family residence when the *Public Works Director* determines the construction of the sidewalks is impractical... See attached.

a. Staff has historically presented the Planning Commission with requests for non-remonstrance agreements on sidewalks. Does the Planning Commission want to continue the process of approving non-remonstrance agreements themselves or direct the Public Works Director to do so, as permitted by code?

II. Carports and garages (AMC 16.10.040.H.; 16.12.040.J.; and 16.36.030.7. are attached)

Based upon a recent application for variance from the code requirement to install a carport or garage on all replacement or new construction, Staff requests the Planning Commission continue their discussion on this requirement.

- a. Is a Variance application the preferred means in which to determine when a garage or carport can/should be waived?
- b. Does the Planning Commission want to continue to require this or amend to code to not require and allow owners, building permit process, homeowner insurance requirements, etc. to determine need?

III. Medical Marijuana Dispensaries (MMDs)

On April 30, 2014, the City adopted Ordinance #457 in response to Senate Bill 3460 allowing MMD's in commercial and industrial zones but 1,000 feet from schools and 1,000 feet from other

MMD's and Senate Bill 1531 allowing a one year moratorium. The City's adopted moratorium will expire on May 1, 2015.

- a. The Planning Commission is not required to take action at this time but may want to continue their discussion on potential code updates if they like.
- b. The City of Dayton intends to adopt the attached sample text regarding MMD's in the commercial and industrial zones.

IV. Tents in the Historic Residential and Historic Commercial Overlay zone

AMC 17.08.030 defines "Tent" as means a protective exterior cover consisting of roof and walls typically made of cloth, plastic or other flexible material and having a supporting structure. AMC 17.32 discusses permitting of special uses and structures including 16.32.030.A.6. which states, "Temporary use of tents, booths or canopies less than one hundred twenty (120) square feet are permitted under this section without a temporary structure permit under Section 17.32.040. For temporary uses of tents, booths and canopies greater than one hundred twenty (120) square feet, a temporary structure permit under Section 17.32.040 is required.

- a. Staff is asking for confirmation from the Planning Commission that tents under 120 sq. ft. shall not be limited in number or length of time by the City nor the Historic Review Board.
- b. Does the Planning Commission wish to amend portions of 17.32 to further address temporary uses and structures over 120 square feet such as by allowing them for more than two weeks in a year as AMC 17.32.030.A.3 currently limits?

Street Design Standards⁽¹⁾

Classification	Pavement Width (ft)	Sidewalks Width (ft)	Planting Strips (ft)	Bikeway Width (ft)	Parking	ROW (ft) ⁽²⁾
Local Residential ⁽³⁾⁽⁴⁾	32	5	5	None	2 sides	54
Collector ⁽⁴⁾	36	6	7.5	None ⁽⁴⁾	2 sides ⁽⁴⁾	65
Minor Arterial (County) ⁽⁴⁾⁽⁶⁾⁽⁷⁾	36	6	8	6	None	68
Principal Arterial (County) ⁽⁷⁾⁽⁸⁾	50	6	9.5	6	None	84
Principal Arterial (State) ⁽⁹⁾	48-50	8	6	6	None	84
Alleys	16	None	None	None	None	16

Notes:

- (1) Street Design Standards for roadways within the National Historic District are subject to historic review board approval on a case-by-case basis.
- (2) Additional right-of-way and roadway improvements may be required at major intersections to provide for turn lanes and for corner radii.
- (3) Planter strips are required unless approved otherwise by the City. Planting strips should be at least 4 feet wide to accommodate tree plantings. In commercially zoned areas, the City may require wider sidewalks which encroach into the planting strip area.
- (4) Collectors serving residential areas and historic commercial areas can accommodate on-street parking and shared use of road space by bicyclists and motor vehicles. These shared roadways will be designated with "sharrows." "Sharrows" are markings painted directly onto the road to promote the awareness that the road is a shared traffic lane to be used by both motorists and bicyclists. Collector Streets which serve primarily a mix of commercial and industrial properties will have bike lanes in lieu of on-street parking.
- (5) On an interim basis, two 6-8 foot protected shoulders may be installed adjacent to two 12-foot travel lanes, on a case-by-case basis as approved by the County.
- (6) City standards are advisory to Marion County on Marion County-owned roadways
- (7) On an interim basis, a multi-use path, separated from the roadway, and on-street bike lanes may be allowed instead of sidewalks and planting strips on a case-by-case basis as approved by the County.
- (8) City standards are advisory on ODOT managed roadways

2. Subject to AMC 16.78 and approval of the Planning Commission, the City may accept and record a non-remonstrance agreement in lieu of street improvements if the following conditions exist:

- a. A partial improvement creates a potential safety hazard to motorists or pedestrians; or
- b. Due to the nature of existing development on adjacent properties it is unlikely that street improvements would

be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide a significant improvement to street safety or capacity.

3. Subject to AMC 16.78 and approval of the Planning Commission, the City may accept a payment in lieu of street improvements. To propose a payment in lieu of street improvements, the applicant shall prepare an engineering estimate for the costs of engineer, design and construction of the required

I. SIDEWALKS

frontage improvements. City staff will review and approve the engineering cost estimate and calculate the payment in lieu of street improvements. The payment in lieu of street improvements will generally be set at two-thirds of the estimated cost. Payment in lieu of street improvement funds collected by the City will be used to pay for improvements within public rights of way within the Aurora city limits.

4. New structures that are proposed to be constructed on lots abutting an existing public street that does not meet the minimum standards for right of way width shall provide setbacks sufficient to allow for the future widening of the right of way. Building permits shall not be issued unless yard setbacks equal to the minimum yard requirements of the zoning district plus the required minimum additional right of way width is provided.

B. Rights-of-way shall normally be created through the approval of a final partition or subdivision plat.

1. The Council may approve the creation of a street by deed of dedication if any establishment of a street is initiated by the council and is found to be essential for the purpose of general traffic circulation, and partitioning of subdivision of land has an incidental effect rather than being the primary objective in establishing the road or street for public use.

2. All deeds of dedication shall be in a form prescribed by the City and shall name "the City of Aurora, Oregon" or "the public," whichever the City may require, as grantee.

3. All instruments dedicating land to public use shall bear the approval by the mayor accepting the dedication prior to recording.

4. No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the city.

C. Subject to AMC 16.78, the Planning Commission may approve a private street established by deed for a subdivision containing no more than five total lots or for a partition provided such an approval is the only reasonable method by which a lot large enough to develop can develop when all of the following criteria are satisfied:

1. Private streets shall serve no more than five dwellings and the city shall require legal assurances for the continued access and maintenance of private streets, such as a reciprocal access and maintenance agreement recorded with Marion County.

2. Private streets which exceed one hundred fifty (150) feet shall be improved in accordance with the Uniform Fire Code.

3. Private streets shall be improved in accordance with the public works design standards, and shall be a minimum of twenty (20) feet in width with a paved width of eighteen (18) feet.

4. If the establishment of a building site requires the creation of a private street for access, the total area of the street will not be applicable to the square footage requirements of the lot.

D. When location is not shown in the Aurora transportation system plan, the arrangement of the streets shall either:

1. Provide for the continuation or appropriate projection of existing streets in the surrounding areas, or conform to a plan for the neighborhood approved by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing street

property line and the driveway for each flag lot is constructed immediately adjacent to the common property line and functions as a shared driveway with a recorded reciprocal access and maintenance agreement; and

5. The flag access shall have a minimum width of twenty (20) feet and a maximum width of twenty five (25) feet (Ord. 419)

6. The flag driveway shall have a minimum paved width of twelve (12) feet; and

7. In no instance shall flag lots constitute more than two lots in a partition or a subdivision; and

8. The lot area for a flag lot shall comply with the lot area requirements of the applicable zoning district and shall be provided entirely within the building site area exclusive of any accessway.

16.34.050 Easements.

Easements for sewers, drainage, water mains, electric lines or other public utilities shall be granted wherever necessary. The easements shall be at least twelve (12) feet wide and centered on lot or parcel lines, except for utility pole tieback easements which may be reduced to six feet in width. The property owner proposing a development shall make arrangements with the City, the applicable district and each utility franchise for the provision and dedication of utility easements necessary to provide full services to the development.

B. If a tract is traversed by a watercourse, such as a drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse and such further width as

will be adequate for the purpose. Streets or parkways parallel to the major water courses may be required.

C. When desirable for public convenience, a pedestrian or bicycle way may be required to connect a cul-de-sac or to pass through an unusually long or oddly shaped block or otherwise provided appropriate circulation.

16.34.060 Sidewalks.

A. On public streets, sidewalks are required except as exempted by the Aurora transportation system plan and shall be constructed, replaced or repaired in accordance with the City's public works design standards, Appendix A Illustrations 10, 11 and 12 set out at the end of this title. If properties are located in the historic commercial or historic residential overlay, sidewalks shall be constructed in accordance with the Aurora downtown improvement plan and the City of Aurora Design Guidelines for Historic Properties, set out in the Appendix to this code.

B. Maintenance of sidewalks and curbs is the continuing obligation of the adjacent property owner.

C. The City may accept and record a non-remonstrance agreement for the required sidewalks from the applicant for a building permit for a single-family residence when the Public Works Director determines the construction of the sidewalk is impractical for one or more of the following reasons:

1. The residence is an in-fill property in an existing neighborhood and adjacent residences do not have sidewalks;

2. Topography or elevation of the sidewalk base area makes construction of a sidewalk impractical.

1610.040 (cont'd)

and depth may be reduced by up to ten (10) percent when:

a. The resulting density will not exceed 5.8 dwelling units per gross acre,

b. The average lot size for the subdivision is at least seven thousand five hundred (7,500) square feet with a minimum of fifty (50) percent of the lots meeting the minimum lot size of seven thousand five hundred (7,500) square feet, and

c. A deed restriction limiting use of all lots to single-family detached residences is recorded with the final plat. For subdivision proposals containing a mixture of single-family residential lots and lots intended for other uses, this analysis shall be based only on the sub-area containing single-family residential lots, which must comply with all the eligibility requirements of this subsection.

B. The minimum lot width shall be seventy (70) feet, except where reduced under subsection (A)(1) of this section.

C. The minimum lot depth shall be ninety (90) feet, except where reduced under subsection (A)(1) of this section.

D. The minimum setback requirements are as follows:

1. The front setback shall be a minimum of twenty (20) feet except no more than two adjacent buildings shall have the same front setback from the right-of-way. The front setbacks shall vary at least four feet in depth between adjacent lots. (See Illustration 13, Appendix A set out at the end of this title.)

a. Front setback may be reduced to fifteen (15) feet when the garage is located in the rear yard and access is provided from the front property line.

b. Front setback may be reduced to ten (10) feet when the garage is located in the rear yard and access is provided from a rear alley only. No front drive access shall be permitted.

2. The side setbacks shall be a minimum of eight (8) feet. Any street side setback shall be a minimum of ten (10) feet.

3. The rear setback shall be a minimum of ten (10) feet for single stories and twenty (20) feet for two stories.

4. The setback for a garage door approach (the point where the vehicle accesses the garage) shall be a minimum of twenty (20) feet from its access drive.

E. No building in an R-1 zoning district shall exceed two and one-half stories or thirty-five (35) feet in height. All structures, including accessory dwelling units and accessory buildings, shall utilize at least two of the following design features to provide visual relief along the street frontage:

1. Dormers;
2. Recessed entries;
3. Cupolas;
4. Bay or bow windows;
5. Gables;
6. Covered porch entries;
7. Pillars or posts;
8. Eaves (minimum six inches projection); or
9. Off-sets on building face or roof (minimum sixteen (16) inches).

F. One principal building per lot or parcel.

G. Impervious surfaces shall not cover more than fifty (50) percent of the lot or parcel.

H. Parking requirements shall be in accordance with Chapter 16.42. Parking requirements for residential dwelling

units, including manufactured homes, require the construction of a garage or carport. Manufactured dwellings located in manufactured dwelling parks are required to install either a garage or carport.

I. Landscaping requirements shall be in accordance with Chapter 16.38.

J. All properties located outside the designated historic commercial overlay and the historic residential overlay and adjacent to Highway 99 or Ehlen Road shall be collectively referenced as "gateway properties." The standards of Chapter 16.56 shall apply to all aspects of the site including, but not limited to, structural facade, yard and landscaping that are immediately adjacent to and visible from Highway 99 or Ehlen Road.

K. Additional requirements shall include any applicable section of this title. (Ord. 419 §§ 1, 2, 2002; Ord. 415 § 7.40.040, 2002)

16.12.040 (cont'd)

I. Impervious surfaces shall not cover more than sixty (60) percent of the lot or parcel.

J. Parking requirements shall be in accordance with Chapter 16.42. Parking requirements for residential units, including manufactured homes, require the construction of a garage or carport. Manufactured dwellings located in manufactured dwelling parks are required to install either a garage or carport.

K. Landscaping requirements shall be in accordance with Chapter 16.38.

L. All properties located outside the designated historic commercial overlay and the historic residential overlay and adjacent to Highway 99 or Ehlen Road shall be collectively referenced as "gateway properties." The standards of Chapter 16.56 shall apply to all aspects of the site including, but not limited to, structural facade, yard and landscaping that are immediately adjacent to and visible from Highway 99 or Ehlen Road.

M. Additional requirements shall include any applicable section of this title. (Ord. 419 §§ 3, 4, 2002; Ord. 415 § 7.50.040, 2002)

"Permanent foundation" means a structure system approved by the city and following the standards set by the Oregon Department of Commerce, for transposing loads from a structure to the earth. Standards subject to additional conditions set in each manufactured home classification.

"Section" means a unit of a manufactured home at least ten (10) body feet in width and thirty (30) body feet in length.

"Support system" means a pad or a combination of footings piers, caps, plates and shims, which, when properly installed, support the manufactured home.

"Vehicular way" means an unobstructed way of specified width containing a drive or roadway which provides vehicular access within a manufactured home park and connects to a public street. (Ord. 415 § 7.94.020, 2002)

16.36.030 Manufactured homes outside manufactured home parks.

A. It is unlawful to be occupy, live in, use as an accessory structure, or store any manufactured home within the city, unless it is complies with subsection B of this section.

B. The siting of manufactured homes outside of manufactured home parks shall comply with the following regulations:

1. Dimensions. The manufactured home shall be assembled from not less than two major structural sections, and shall contain a liveable floor area of not less than one thousand (1,000) square feet.

2. Hauling Mechanisms. Hauling mechanisms including wheels, axles, hitch and lights assembly shall be removed in conjunction with installation.

3. Foundation. The manufactured home shall be permanently affixed to an excavated and backfilled foundation and enclosed at the perimeter with cement, concrete block or other materials as approved by the building inspector, such that the manufactured home is not more than twelve (12) inches above grade; if the lot is a sloping lot, then the uphill side of the foundation shall be not more than twelve (12) inches above grade.

4. Roof. The manufactured home shall have a minimum nominal roof pitch of at least three feet in height for each twelve (12) feet in width, as measured from the ridge line. The roof shall be covered with shingles, shakes, or tile similar to that found on immediately surrounding single-family dwellings. Eaves from the roof shall extend at least six inches from the intersection of the roof and the exterior walls. The determination of roof covering compara-bility shall be made by the building inspector.

5. Exterior Finish. The manufactured home shall have exterior siding which in color, material and appearance is comparable to the predominant exterior siding materials found on surrounding dwellings. The determination of comparability shall be made by the building inspector.

6. Weatherization. The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting the performance standards required of single-family dwelling construction under the Oregon Building Code, as defined in ORS 455.010.

7. Off-Street Parking. A garage or carport constructed of like materials consistent with the predominate construction of immediately surrounding dwellings and sided, roofed and finished to match the exterior of the manufactured home is required.

ORDINANCE NUMBER 475

A BILL FOR AN ORDINANCE ESTABLISHING A
MORATORIUM ON MEDICAL MARIJUANA FACILITIES
WITHIN THE CITY OF AURORA.

WHEREAS, in the 2013 Special Session, the Oregon Legislature approved House Bill 3460 which creates a medical marijuana facilities registration system and allows for medical marijuana facilities to be located in areas zoned for commercial, industrial, or mixed use;

WHEREAS, House Bill 3460 also includes further specific restrictions on the location of medical marijuana facilities related to proximity to schools attended by minors and to other medical marijuana facilities;

WHEREAS, House Bill 3460 also includes the right of any local government to impose a moratorium on the establishment of any such facilities for a period of one year;

WHEREAS, this use and these restrictions are not specifically included in the Aurora Development Code;

WHEREAS, the Aurora City Council believes medical marijuana facilities should be allowed, but also believes that siting medical marijuana facilities within the City absent appropriate regulations endangers the health, peace, and welfare of the City of Aurora;

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Ordinance 475
A Bill for an Ordinance Establishing a Moratorium on Medical Marijuana Facilities
City Council Meeting
April 30, 2014

III MMOS

NOW, THEREFORE,

The City of Aurora ordains as follows:

Section 1. A prohibition on the siting of medical marijuana facilities in the City of Aurora shall be in effect for a year from the effective date of this Ordinance, or until the effective date of regulations for such facilities adopted by the City of Aurora, whichever occurs first.

Section 2. This ordinance being necessary for the immediate preservation of the public health, safety, and welfare, an emergency is declared to exist and this ordinance shall take effect immediately upon its passage.

ADOPTED by the Aurora City Council at a City Council meeting held on April 30, 2014. This Ordinance is effective upon adoption.

Dated this 20 day of April, 2014.



Bill Graupp, Mayor

ATTEST:



Kelly Richardson, City Recorder

APPROVED AS TO FORM:

Dennis Koho, City Attorney

Ordinance 475
A Bill for an Ordinance Establishing a Moratorium on Medical Marijuana Facilities
City Council Meeting
April __, 2014

III, MMS

CONDITIONAL USES (cont'd)

H. Lumber yard and contracting supplies for lumber, stone, masonry or metal.

I. Special trade contracting facilities such as; floor laying, building equipment, masonry and stone, plumbing, electrical, metal work or painting.

J. Cabinet shop where activities are conducted wholly within a building.

K. Welding and blacksmith shop.

L. Mortuary

M. Small-scale manufacturing businesses conforming to requirements in Section 7.2.411.

N. Park and Ride Lot: Parking spaces cannot count as required parking or be used for vehicle storage.

O. Wireless Communication Facility, subject to the provisions in Section 7.2.412.

P. Medical marijuana facilities or dispensary as defined in Chapter 7.1.200, located more than 1000 feet from properties where minors congregate, including but not limited to public or private daycares, elementary, or secondary schools attended primarily by minors, public library, public park, recreation center or facility, playgrounds and athletic fields, and public transit centers. The distance shall be measured in a straight line from the closest edge of each property.

7.2.106.05 Dimensional Standards

AS A CONDITIONAL USE

A. Lot Dimension and Height Requirements

1. Lot Size. The parcel size shall be adequate to comply with setback requirements and applicable development standards.

2. Maximum Height. The maximum height shall be 35 feet.

B. Minimum Yard Setback Requirements

1. Front: None.

2. Side, Rear Yard: None, provided the setback shall be no less than the minimum rear yard setback of the zone on the adjacent property.

7.2.106.06 Development Standards

A. Development Exemptions: Commercial property located in the Central Business Area shall be subject to the requirements in Section 7.2.111.

B. Use Restrictions. The following use restrictions shall apply:

1. No permitted, special permitted or conditionally permitted use shall in any way involve any of the slaughter, rendering or processing of animals. The processing of