



April 16, 2015

Board of Commissioners
Clackamas County

Members of the Board:

Second Reading of Ordinance No. 04-2015 Amending the Clackamas County Code to add Chapter 8.09 Establishing Time, Place and Manner Regulations for Medical Marijuana Dispensaries and Declaring an Emergency

Purpose/Outcomes	Adoption of ordinance establishing time, place and manner regulations for medical marijuana dispensaries.
Dollar Amount and Fiscal Impact	No direct impacts from this action.
Funding Source	N/A
Safety Impact	N/A
Duration	Ongoing.
Previous Board Action	Study Session March 10, 2015, Moratorium Ordinance, April 24, 2014, First Reading, April 2, 2015
Contact Person	Dan Chandler, Strategic Policy Administrator 503-742-5394

BACKGROUND:

Medical Marijuana

On March 19, 2014, Governor Kitzhaber signed Senate Bill 1531 into law. The law gave local governments the authority to impose "time, place and manner" regulations on medical marijuana dispensaries.

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

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

In addition to the specific authority granted under SGB 1531, the County has plenary authority under ORS 203.035 to legislate on matters of county concern.

Recreational Marijuana – Measure 91

On November 4, 2014 voters approved Measure 91, which will legalize recreational marijuana in Oregon. Measure 91 passed in Clackamas County by approximately 6700 votes. Recreational marijuana would be subject to regulation by the Oregon Liquor Control Commission, or OLCC.

Study Session

At a study session on March 10, 2015, a majority of the Board of County Commissioners directed staff to move forward with an ordinance regulating the time place and manner of medical marijuana dispensaries.

The Board of Commissioners has indicated that there are concerns with the potential proliferation of marijuana vending outlets, including dispensaries, and that there will be negative consequences unless the county adopts setbacks from schools and other sensitive uses, along with spacing between facilities.

Accordingly, the County is proposing additional and increased setbacks beyond those set forth in state law. The proposed ordinance addresses those concerns.

Changes since First Reading:

Since the First Reading on April 2, the following changes have been made:

1. Recitals (“whereas” statements) have been added addressing concerns with allowing medical marijuana dispensaries outside of the Metro Urban Growth Boundary.
2. Definition of “Medical Marijuana” was changed to conform to state statute. *Section 8.09.020(c)*.
3. Language regarding applicability of land use, fire and building codes clarified. *Section 8.09.030(A)*.
4. Language added clarifying that minors may only accompany parent or guardian cardholder into waiting area. *Section 8.09.030(G)*.

RECOMMENDATION:

Staff recommends the Board hold the second reading and adopt the attached ordinance.

Respectfully submitted:

Dan Chandler
Strategic Policy Administrator

Attachments:
Ordinance 04-2015

ORDINANCE NO. 04-2015

An Ordinance amending the Clackamas County Code to add Chapter 8.09 establishing time, place and manner regulations for medical marijuana dispensaries and declaring an emergency

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

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

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

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

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

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

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

WHEREAS, on January 8, 2015, the Board of County Commissioners enacted Ordinance 01-2015 which amended Ordinance 01-2014 to exempt those medical marijuana facilities which obtained full, unconditional approval by the Oregon Health Authority on or before April 23, 2014, and which provided that medical marijuana facilities may only operate between 10:00 a.m. and 9:00 p.m., and that marijuana may not be consumed on the premises; and

WHEREAS, the County Commission of Clackamas County desires to allow operation of Medical Marijuana Facility facilities in the County in ways that protect and benefit the public health, safety and welfare of existing and future residents of the County; and

WHEREAS, the Commission has determined the unique characteristics of Medical Marijuana Facility operations and their potential impacts make it necessary to establish particular time, place, and manner requirements for such operations, the enforcement of which is subject to the general and police powers of that jurisdiction; and

WHEREAS, the Commission finds that the public safety and welfare are best protected where Medical Marijuana Facilities are located in areas that are well served by law enforcement; and

WHEREAS, those areas in unincorporated Clackamas County that are located outside of Metro Urban Growth Boundary are not sufficiently served by law enforcement to allow a Medical Marijuana Facility to operate in a manner that protects public safety and welfare; and,

WHEREAS, this ordinance and the restrictions contained herein are intended to impose general restrictions on the operation of Medical Marijuana Facilities and are not intended to be land use regulations; and

WHEREAS, the Commission conducted duly advertised public hearings on the above-referenced amendment on April 2, 2015 and on April 16, 2015:

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Title 8 Business Regulations of the Clackamas County Code is hereby amended to add as a new Chapter 8.09 with the following provisions concerning Medical Marijuana Facility:

Section 8.09.010 Purpose.

The purpose of this chapter is to minimize any adverse public safety and public health impacts that may result from allowing Medical Marijuana Facility in the County by adopting particular time, place and manner requirements.

Section 8.09.020 Definitions.

A. "Facility" means a medical marijuana facility.

B. "Marijuana" means all parts of the plant of the Cannabis Moraceae, whether growing or not, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes or as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or predation of the mature stalks (except the resin extracted there from), fiber oil, or cake, or the sterilized seed of the plant which is incapable of germination.

C. "Medical Marijuana" refers to marijuana dried, produced, kept, stored, delivered, transferred, dispensed or otherwise provided for the exclusive benefit of and use by a person to mitigate the symptoms or effects of a person's debilitating medical condition as defined in ORS 475.302.

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

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

F. "Marijuana Vending Facility" means a marijuana facility selling cannabis products and operating under the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act or a Medical Marijuana Facility."

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

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

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

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

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

Section 8.09.030 Rules and Regulations.

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

- A. The Medical Marijuana Facility may not operate in violation of applicable land-use, building and fire codes.
- B. There shall be no manufacture or production of any extracts, oils, resins or similar derivatives of marijuana on the Premises of a Medical Marijuana Facility and no open flames shall be used in the preparation of any products.
- C. Marijuana and tobacco products must not be smoked, ingested or otherwise consumed on the Premises of the Medical Marijuana Facility.
- D. Operating hours for a Medical Marijuana Facility must be no earlier than 10:00 a.m. or later than 9:00 p.m. on the same day.
- E. The Medical Marijuana Facility must not be co-located on the same property or within the same building with any marijuana social club or smoking club.
- F. The Medical Marijuana Facility must utilize an air filtration and ventilation system that confines all objectionable odors associated with the Facility to the Facility Premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
- G. The Medical Marijuana Facility must not permit any minor to be present anywhere on the Premises, unless accompanying a parent or guardian who is a cardholder to the waiting area as allowed by state law.
- H.. Registration and Compliance with Oregon Health Authority Rules. The facility's registration as a medical marijuana facility under ORS 475.314 must be in good standing with the Oregon Health Authority, and the facility must comply with all applicable laws and regulations administered by the Oregon Health Authority for facilities.
- I. Secure Disposal. The facility must provide for secure disposal of marijuana remnants or byproducts; marijuana remnants or by-products shall not be placed within the facility's exterior refuse containers.

Section 8.09.040 Standards.

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

(b) A Marijuana Vending Facility shall not be located:

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

(2) Within a residence.

(3) Within:

(A) 2500 feet of another Marijuana Vending Facility.

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

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

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

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

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

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

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

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

(g) In case of a conflict under Section 8.09.040(b)(3)(A), any person who has submitted a complete building permit application after first obtaining final approval from the relevant state licensing agency, shall be deemed to have established a facility at the licensed location, so long as the facility begins operation within 180 days of submittal of the building permit application.

(h) Home Occupation. A facility may not be operated as a home occupation, may not have a walk-up window or drive through, and may not operate from a non-fixed location.

Section 8.09.050 Remedy for Noncompliance and Administrative Appeals.

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

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

Section 2. Severability.

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

Section 3. Codification.

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

Section 4. Emergency Clause

The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the peace, health and welfare of the residents of the County. Accordingly, this Ordinance shall be effective upon its adoption.

ADOPTED this 16th day of April, 2015.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary