



City of Tigard Memorandum

To: Mayor John Cook and Tigard City Council

From: John Floyd, Associate Planner

Re: Impact of Senate Bill 1531: Medical Marijuana Facilities & Options for Moving Forward

Date: April 7, 2014

The purpose of Senate Bill 1531 is to create some legal certainty for local governments seeking to regulate medical marijuana facilities within their jurisdiction. To do this, SB1531 creates two “safe harbor” options. It does not, however, authorize a local jurisdiction to adopt an outright ban.

The first option authorizes a city to adopt “reasonable regulations” on the operation of medical marijuana facilities registered, or applying for registration, with the state. Such regulations may include reasonable restrictions on hours of operation, where they may be located; and conditions on how a facility may dispense.¹

The second option authorizes a local government to adopt a moratorium on medical marijuana facilities, subject to time restrictions. SB1531 states a moratorium must be adopted by May 1, 2014 and must end by May 1, 2015. The City Attorney’s office has advised that Council may want to consider re-passing its ordinance to extend the moratorium until May 1, 2015 as it is unclear whether the City would be allowed to extend its moratorium after May 1, 2014. If the legal landscape is still unclear in December and the City wishes to extend its moratorium, it may not be allowed to do that. The types of zoning restrictions on these facilities also may not be sorted out by then and there could be a challenge if the City takes action. By contrast, the moratorium authorized by SB 1531 is a safe harbor option that has little to no risk of any legal challenges.

Unfortunately a third option to allow outright prohibitions was stripped by the Senate and amendments to reinsert the option failed in the house despite vigorous lobbying by local governments. The failure of this amendment may be attributed to members of the senate and legislature not wanting to deny patient access to a drug recognized by the state of Oregon as

¹ ORS475.314(3)(a) states a medical marijuana facility may only be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site.

legal and legitimate under state law. This leaves the legal questions of state pre-emption and local government authority unanswered, and which may have to be resolved through litigation unless additional clarifying legislation is passed. An interim workgroup is expected to ex

Looking forward, SB1531 may be seen as a compromise measure and may be intended as a bridge until further refinements can be made in the 2015 legislative session. In anticipation of further refinements, lawmakers will be convening a workgroup to monitor dispensaries and recommend possible changes during the 2015 session. In addition, there is a likelihood of another ballot measure for legalization passes during the fall elections, which may change the regulatory requirements still further.

That said, with a self-imposed deadline of December 31, 2014 and a state deadline of May 1, 2015 the city must choose a course of action. To help move this forward, it would helpful for staff to know what sort of information Council would find useful in future decision making on whether and how to regulate dispensaries. Already the Mayor and several staff members have made plans to attend a League of Oregon Cities workshop on Medical Marijuana on May 1st to better understand what other cities are experiencing and what options may be available as we move forward. Staff suggests the following additional tasks and tools to help bring more information before the Council, and welcomes additional input and direction on how the City could move forward.

1. Establish what a non-interventionist (state rules only) approach would look like.
 - a. Developing a map of properties within City limits that would meet location restrictions set forth in existing state regulations, in order to determine where and how many dispensaries could potentially locate within City limits.
 - b. Identifying potential conflicts and likely community impacts that could result from such facilities.
2. Establishing regulatory options and associated legal risks for the City.
 - a. Identifying effective time, place, and manner restrictions; or
 - b. Adoption of a permanent prohibition.
3. Facilitating a community dialogue.
 - a. Providing information through Cityscape, website, and other established tools.
 - b. Commission surveys of citizens and businesses.
 - c. Use of online software such as "Consider.It" to facilitate civil and meaningful dialogue.
 - d. Town Hall Meeting