

BEFORE THE BOARD OF COUNTY COMMISSIONERS
 FOR COLUMBIA COUNTY, OREGON

In the Matter of Enacting a Temporary Moratorium)
 on Medical and Recreational Marijuana Facilities) ORDINANCE NO. 2015-3
 within the Jurisdiction of Columbia County and)
 Declaring an Emergency)

The Board of County Commissioners for Columbia County, Oregon ordains as follows:

SECTION 1. TITLE.

This Ordinance shall be known as Ordinance No. 2015-3.

SECTION 2. AUTHORITY.

This Ordinance is adopted pursuant to the powers of Columbia County under ORS 197.520, ORS 203.035, the Oregon Constitution, and the federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*

SECTION 3. PURPOSE.

The purpose of this Ordinance is to impose a temporary moratorium in accordance with ORS 197.520 on the establishment of new and expansion of existing marijuana facilities in any area within the jurisdiction of Columbia County. The purpose of the temporary moratorium is to delay development of County land use regulations for recreational and medical marijuana until the state regulations have been adopted. The moratorium will therefore allow the County to develop comprehensive zoning regulations that are consistent with state regulations for both recreational and medical marijuana. Furthermore, by waiting until the state regulations are adopted, the County seeks to avoid adopting local land use regulations that would have to be immediately revisited to comply with new state regulations.

SECTION 4. HISTORY.

In the coming months, Oregon will gain a second regulatory program for marijuana. The first is an existing program for medical marijuana, which was approved by the voters in 1998 and is governed by the Oregon Medical Marijuana Act (“OMMA”), *codified* at ORS 475.300 *et seq.* The Oregon Health Authority administers the OMMA. In 2013, House Bill 3460 required the Oregon Health Authority to adopt regulations for the registration of medical marijuana dispensaries. Shortly thereafter, Senate Bill 1531-C was enacted, which specifically allowed

local governments to adopt a temporary moratorium on the operation of medical marijuana dispensaries. Columbia County adopted such a moratorium on medical marijuana dispensaries on April 9, 2014 (Ordinance No. 2014-5). That moratorium will expire on May 1, 2015.

Oregon's second marijuana program was approved by the voters in November 2014 through Ballot Measure 91, which legalizes recreational marijuana. The recreational marijuana program will be administered by the Oregon Liquor Control Commission ("OLCC") in accordance with Measure 91. OLCC is currently developing rules to implement the program, which will go into effect initially on July 1, 2015, with the allowance of personal use and possession of recreational marijuana and then on January 4, 2016, when OLCC must begin accepting license applications for the production and sale of recreational marijuana. OLCC's rules will thus likely be adopted by January 4, 2016. In addition to OLCC's rules, the state legislature has proposed several bills, which if adopted may affect state law and regulation for both the recreational and medical marijuana programs as well as local government authority to regulate the programs.

In sum, Oregon's two marijuana programs will be administered by two different state agencies under two separate and distinct regulatory frameworks. The regulations implementing recreational marijuana are not yet developed, and regulations implementing medical marijuana will likely be amended by the current state legislature. However, regulations affecting both programs should be solidified in the coming months.

SECTION 5. MORATORIUM DECLARED

The establishment of new and expansion of existing marijuana facilities shall be prohibited within the unincorporated boundaries of Columbia County. As used in this Ordinance, "marijuana facilities" means:

- A. Outdoor areas used for growing marijuana whether for medical or recreational purposes; and
- B. Any facility that dispenses marijuana pursuant to ORS 475.314 or any other provision of Oregon law.

SECTION 6. DURATION OF MORATORIUM

The moratorium imposed by this Ordinance shall be effective until August 27, 2015. The moratorium may be extended by Board Order in accordance with ORS 197.520(4) following a public hearing. The County anticipates that prior to the expiration of the moratorium, an additional six-month extension will be needed. The County shall provide at least 14 days' notice of any hearing on an extension of this moratorium. Notice shall be sent to the Department of Land Conservation and Development; to those who have testified either orally or in writing at

public hearing on this Ordinance and submitted a mailing address; and to those who have submitted a written request to receive notice. Notice shall be published in newspapers of general circulation in the county as well as on the County's website.

SECTION 7. FINDINGS.

- A. In support of this temporary moratorium, the Board adopts the findings in the Staff Report dated March 20, 2015, which is attached hereto as Exhibit A and incorporated herein by this reference, to the extent that the Staff Report is consistent with this Ordinance.

- B. The Board also finds that the temporary moratorium under this Ordinance neither establishes nor sets the foundation for establishing a permanent prohibition on legal marijuana uses in the unincorporated areas of Columbia. The Board is committed to developing zoning regulations to allow for marijuana facilities. Those regulations may restrict where marijuana facilities are located and may establish standards, such as setbacks and screening, that will apply to marijuana-related development. This temporary moratorium will give the County time to develop such regulations in light of pending state laws and regulations. In accordance with ORS 197.520(3)(b)(D), County Staff has prepared a tentative work plan to develop zoning regulations for marijuana facilities over the next eight months. Under the work plan, Staff will identify concerns of industry, community groups and neighbors through a citizen advisory group. Staff will then prepare a draft ordinance to present at a public hearing before the Columbia County Planning Commission in the fall of 2015. The Planning Commission's recommendation will then be presented to the Board of Commissioners at a public hearing. Staff's work plan targets adoption of the final ordinance in early 2016.

SECTION 8. ENFORCEMENT

This Ordinance shall be enforceable under the Columbia County Enforcement Ordinance. Violators of this Ordinance are subject to the penalties provided in the Columbia County Enforcement Ordinance. Pursuant to Section 11 of the Enforcement Ordinance, the Columbia County Sheriff and any other person that the Board of Commissioners specifically approves are authorized to issue citations under this Ordinance.

SECTION 9. REMEDIES NOT EXCLUSIVE

The remedies available under the Columbia County Enforcement for a violation of the moratorium imposed by this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law. The County may, in its discretion, seek cumulative remedies for a violation of the moratorium imposed by this Ordinance.

SECTION 10. SEVERABILITY.

If for any reason any court of competent jurisdiction holds any portion of this Ordinance to be invalid, and such holding is upheld on any appeal, such portion shall be deemed a separate, distinct and independent portion. Any such holding shall not affect the validity of the remaining portions.

SECTION 11. SCRIVENER'S ERRORS.

Any scrivener's errors in this Ordinance may be corrected by order of the Board of County Commissioners.

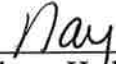
SECTION 12. EMERGENCY

This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance shall take effect immediately upon adoption.

DATED this 29th day of April, 2015.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 
Henry Heimuller , Chair

By: 
Anthony Hyde, Commissioner

By: 
Earl Fisher, Commissioner

Approved as to form
By: 
Office of County Counsel

Attest
By: 
Recording Secretary

First Reading: 04.29.15
Second Reading: 04.29.15
Effective Date: 04.29.15

EXHIBIT A

COLUMBIA COUNTY BOARD OF COMMISSIONERS
Staff Report
 March 20, 2015

Adoption of a Moratorium
for
Medical and Recreational Marijuana Facilities

HEARING DATE: April 8, 2015

AUTHORIZATION: Public Hearing is required, ORS 197.520 (1)(c)

BACKGROUND:

Presently, the Columbia County Zoning Ordinance neither references nor specifically regulates marijuana growing, processing or dispensing facilities. However, marijuana-related land uses have impacts, and the County must decide how it will proceed with siting of medical marijuana facilities, initiated and regulated by the State, before the present moratorium expires on May 1, 2015. In addition to medical marijuana, the State will be adopting regulations on recreational marijuana by January 2016. The County has the following options for dealing with medical and recreational marijuana facilities: (1) do nothing; (2) adopt a moratorium under land-use statutes; (3) adopt land use regulations for medical marijuana facilities by May 1, 2015 and a few months later, adopt regulations for recreational marijuana. The Board has considered the options and has directed staff to proceed with option (2).

Accordingly, at the direction of the Board of Commissioners, staff has initiated Ordinance No. 2015-3 to provide for a temporary moratorium pursuant to ORS 192.520 on the establishment of new and expansion of existing medical marijuana facilities and recreational marijuana facilities. For the purposes of Ordinance No. 2015-3, "marijuana facilities" means areas indoors or outdoors used for growing, cultivating, dispensing, selling, processing, producing, or wholesaling marijuana whether for medical or recreational purposes. In accordance with ORS 197.520, the moratorium would be effective for 120 days but could later be extended for an additional six months following a public hearing.

The intent of the moratorium is to allow the County additional time to develop land use regulations to govern the siting and development of marijuana facilities and to seek public input in doing so. Additional time is needed in light of the staggered effective dates of state regulations affecting medical and recreational marijuana and the County's desire to adopt one comprehensive zoning ordinance for both medical and recreational marijuana land uses.

To further explain the time lines, on May 1, 2015, Columbia County's moratorium on medical

marijuana dispensaries will expire. That moratorium was adopted through Ordinance No. 2014-5, pursuant to Oregon Medical Marijuana Act (OMMA), as amended by House Bill 3460 and Senate Bill 1531. Medical marijuana is governed by the OMMA and regulated by the Oregon Health Authority (OHA). Although OHA regulations provide for the registration of dispensaries and set some restrictions on the location of dispensaries, the ultimate authorization for the siting of a dispensary rests with local government. The OMMA restricts marijuana dispensaries to areas zoned for commercial, industrial or mixed use agricultural land and more than 1000 feet from a school, but OHA does not substantially review this; and, its rules clearly state that registration is not a guarantee that the dispensary will be permitted by the local government. Consequently, even if a dispensary is registered with OHA, the dispensary will seek a siting permit from the County. In addition to dispensaries, the OMMA provides for medical marijuana grow sites. However, the OMMA provides little restriction on the location of grow sites, which can be located in residential areas and near schools.

Recreational marijuana, on the other hand, was recently approved by Oregon voters through Measure 91 in November 2014. Generally speaking, Measure 91 will go into effect in two stages: (1) in July 2015 for personal use and growing; and (2) on January 4, 2016 for licensing to produce and sell. The OLCC is currently developing rules to implement Measure 91, and those rules will likely be adopted before January 4, 2016.

Through a new moratorium – a temporary delay – the County seeks to avoid duplication of efforts. The County considered adopting zoning regulations by May 1, 2015 for medical marijuana land uses. However, with OLCC’s adoption of recreational marijuana regulations a few months later in January 2016, the County would be adopting new regulations for recreational marijuana and likely revising its recently established regulations on medical marijuana. In addition, the state legislature is currently considering several bills, which may further affect the implementation of both medical and recreational marijuana programs. Thus, although the two programs currently operate under different statutes and under different state agencies, their land use impacts will be similar, and it makes sense to consider them together. The County’s goal is to adopt one comprehensive ordinance for both medical and recreational marijuana, which is consistent with state law and regulations, and to do it at one time.

APPLICABLE REVIEW CRITERIA:

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Oregon Revised Statute (ORS)

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ORS 215.503 Notice of Legislative Act by Ordinance (Measure 56 Notice)	8

Columbia County Zoning Ordinance

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REVIEW CRITERIA:**Oregon Revised statute ORS 197.520**

197.520 Manner of declaring moratorium. (1) No city, county or special district may adopt a moratorium on construction or land development unless it first:

(a) Provides written notice to the Department of Land Conservation and Development at least 45 days prior to the final public hearing to be held to consider the adoption of the moratorium;

(b) Makes written findings justifying the need for the moratorium in the manner provided for in this section; and

(c) Holds a public hearing on the adoption of the moratorium and the findings which support the moratorium.

Finding 1: The County mailed a 45 day written notice pertaining to this Moratorium to the Department of Land Development Services on February 19, 2015. Findings justifying the need for the moratorium are set out below under each criteria. A public hearing is scheduled for April 8, 2015.

Continuing with ORS 197.520(3)(a)

(3) A moratorium not based on a shortage of public facilities under subsection (2) of this section may be justified only by a demonstration of compelling need. Such a demonstration shall be based upon reasonably available information and shall include, but need not be limited to, findings:

(a) For urban or urbanizable land:

(A) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;

(B) That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city, county or special district are not unreasonably restricted by the adoption of the moratorium;

(C) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;

(D) That the city, county or special district has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse

effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and

(E) That the city, county or special district proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.

(b) For rural land:

(A) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;

(B) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;

(C) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium; and

(D) That the city, county or special district proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

Finding 2: Compelling Need for Moratorium

Note: The criteria for urban/urbanizable and rural land are very similar. To avoid repetition, staff addresses them together in the findings.

ORS 197.520(3)(a)(A) [Urban or Urbanizable Land]:

“(A) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;”

ORS 197.520(3)(b)(A) [Rural Land]:

“(A) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;”

Finding 2A: The proposed temporary moratorium is based on a compelling need. All zoned lands in Columbia County’s jurisdiction are affected by this moratorium. Most of the jurisdictional lands

are rural; however, the County has some urbanizable lands, which are designated as Urban Growth Areas of incorporated cities. The County does not have jurisdiction over lands that are within the boundaries of incorporated cities, and those areas are not subject to the proposed moratorium.

The County's present Zoning Ordinance provides no guidance or regulation for the siting of either medical or recreational marijuana facilities. Yet, the impacts of marijuana facilities on neighboring properties can be significant. For instance, the strong odor associated with mature plants is offensive to many people and causes respiratory problems among other health concerns. The OMMA's regulations do nothing to mitigate the nuisance impact of grow sites. Under the OMMA, a grower may produce marijuana for up to four patients and may grow as many as six mature plants and 18 seedlings per patient at a grow site. In July 2015, Measure 91 will allow up to four marijuana plants per household for personal use. Mature plants can grow to the size of car. With the OMMA's allowance of up to 24 mature plants at one location, impacts such as odor can be significant. Although the impacts of grow sites can be mitigated through zoning regulations, the County's current regulations provide no standards. Thus, the County's current regulations are inadequate to prevent irrevocable public harm from the impacts from the establishment of new grow sites or the expansion of existing grow sites whether for medical or recreational use.

Another potential impact is the increased risk to public safety from the presence of high-value plants/products. When marijuana plants are visible or when the location of large amounts of marijuana is known, there is an increased threat of criminal activity, such as break-ins, robbery and theft. Moreover, children are particularly vulnerable, and while the OMMA currently prohibits dispensaries from locating within 1000 feet of schools, there are other locations that children frequent – such as day care centers and public parks – that would also benefit from a buffer. Moreover, the OMMA does little to regulate the permissible locations of grow sites. Thus, grow sites can be in residential areas and within 1000 feet of schools. Without zoning regulations, dispensaries and other marijuana facilities could be sited in locations that put children at risk thus causing irrevocable public harm.

For the reasons stated, current regulations are inadequate to prevent irrevocable public harm from new and expansion of existing marijuana facilities.

ORS 197.520(3)(a)(B) [For Urban or Urbanizable Land]:

“(B) That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city, county or special district are not unreasonably restricted by the adoption of the moratorium;”

ORS 197.520(3)(b)(C) [For Rural Land]:

“(C) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium; and”

Finding 2(B): This moratorium is narrowly limited to the establishment of new and expansion of existing marijuana facilities. Because of its narrow application, the moratorium will not affect the supply of housing, commercial or industrial facilities in existence or planned for urbanizable lands nor will the moratorium impact parcels outside of the affected geographical area for rural lands.

ORS 197.520(3)(a)(C)[For Urban or Urbanizable Land]:

“(C) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;”

ORS 197.520(3)(b)(B) [For Rural Land]:

“(B) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;”

Finding 2(C): As described, above, the County’s alternatives are to: (1) do nothing (i.e., apply current regulations); (2) adopt a temporary moratorium; or (3) adopt zoning regulations for medical marijuana by May 1, 2015, then adopt zoning regulations for recreational marijuana eight months later once OLCC’s rules are known.

As explained in Finding 2(A), above, Option 1 is unsatisfactory because the current zoning regulations are inadequate to address the impacts of marijuana facilities and prevent irrevocable public harm.

Option 3 is unsatisfactory because it will require a duplication of efforts within a relatively short time frame. As explained in the Background section, above, Oregon’s two marijuana programs have staggered time lines for implementation. To comply with the OMMA, the County would have to adopt regulations for medical marijuana dispensaries by May 1, 2015. The County would then be revisiting those regulations around January 2016 when it implements regulations for recreational marijuana. The County’s resources are too limited to duplicate the significant effort that legislative land use actions require, which includes the costly notice pursuant to ORS 215.503.

ORS 197.520(3)(a)(D) [For Urban or Urbanizable Land]:

“(D) That the city, county or special district has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands, and

the overall impact of the moratorium on population distribution; and”

[No corresponding criterion for rural land]

Finding 2(D): The adverse effects of the moratorium on other affected local governments is minimal, if any. The moratorium is very narrowly limited to marijuana facilities. Demand for housing, commercial, industrial, and community service space in the County and in adjacent communities will be unaffected. Because this is such a small segment of the vast array of uses allowed, it is debatable that the moratorium will have any impact on other communities. Even if other communities see a slight increase in demand for marijuana facilities, the County’s moratorium is temporary and that increase will be short lived. The public harm from failing to impose the moratorium, as addressed above, far outweighs the slight increase in demand in other communities for what is a very narrow use.

ORS 197.520(3)(a)(E) [For Urban or Urbanizable Land]:

“(E) That the city, county or special district proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.”

ORS 197.520(3)(b)(D) [For Rural Land]:

“(D) That the city, county or special district proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.”

Finding 2(E): This moratorium is only for a short period of time, until the State has adopted final rules and statute for the marijuana programs. The Legislative Session will be over in a few months and OLCC is in the rule making process now. Once State regulation is finalized, the County will draft ordinance amendments compatible with the state regulations and begin the citizen review stage, followed by Planning Commission hearing, and Board of Commissioner public hearing and decision.

Columbia County has the resources and Planning Staff on board to implement the state marijuana programs by amending the Zoning Ordinance when clear and objective state rules become available.

Continuing with ORS 197.520

- (4) No moratorium adopted under subsection (3)(a) of this section shall be effective for a period longer than 120 days, but such a moratorium may be extended provided

the city, county or special district adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:

- (a) Verify the problem giving rise to the need for a moratorium still exists;
 - (b) Demonstrate that reasonable progress is being made to alleviate the problem giving rise to the moratorium; and
 - (c) Set a specific duration for the renewal of the moratorium. No extension may be for a period longer than six months.
- (5) Any city, county or special district considering an extension of a moratorium shall give the department at least 14 days' notice of the time and date of the public hearing on the extension.

Finding 3: This moratorium will only be effective for 120 days. The ordinance will allow for an extension only in accordance with the above rules.

Continuing with ORS 215.503(4)

215.503 Legislative act by ordinance; mailed notice to individual property owners required by county for land use actions.

* * * * *

(4) In addition to the notice required by ORS 215.223 (1), at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, the governing body of a county shall cause a written individual notice of land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

Finding 4: Notice was sent in accordance with ORS 215.503 by green postcard to individual property owners on March 9, 2015.

Following with the Columbia County Zoning Ordinance:

Section 1606 Legislative Hearing: Requests to amend the text of the Zoning Ordinance or to change a large area of the Zoning Map of Columbia County in order to bring it into compliance with the Comprehensive Plan are legislative hearings. Legislative hearings shall be conducted in accordance with the following procedures.

- .1 A legislative amendment to the Zoning Ordinance Text or Map may be initiated at the request of the Board of Commissioners, a majority of the Commission, or the Director, or any citizen of the County may petition the Commission for such a change.
- .2 Notice of a Legislative Hearing shall be published at least twice, one week apart in newspapers of general circulation in Columbia County. The last of these notices shall be published no less than 10 calendar days prior to the Legislative Hearing. The mailing of notice to individual property owners is not required but shall be done if ordered by the Board of Commissioners.

Finding 5: Even though the County is not amending the text of the Zoning Ordinance at this time, the moratorium hearing is similar to a legislative hearing, i.e. there is no applicant, the area affected is large and the review is not quasi-judicial. This request for a temporary moratorium would allow the county to refrain from approving siting of marijuana facilities until permanent ordinance guidelines can be adopted into the Zoning Ordinance. This ordinance was initiated by the County by the Board of Commissioners. Notice of the Board of Commissioners' hearing was published twice in newspapers of general circulation in the county during the week of March 16, 2015 and the week of March 23, 2015.

Continuing with Columbia County Zoning Ordinance

1611 Notice of Legislative Hearing: The notice of a legislative hearing shall contain the following items:

- .1 Date, time and place of the hearing;
- .2 A description of the area to be rezoned or the changes to the text;
- .3 Copies of the statement for the proposed changes are available in the Planning Department. These proposed changes may be amended at the public hearing;
- .4 Interested parties may appear and be heard;
- .5 Hearings will be held in accordance with the provisions of the Zoning Ordinance.

Finding 6: The above information was included and mailed to the Daily News, The Spotlight, the Chronicle, and the Vernonia Voice to be published twice. Notices were mailed to all property owners in County jurisdiction in compliance with Measure 56 notice per ORS.503(4) above, and were published in the local news media on week of March 16, 2015 and March 23, 2015. Staff finds that the criterion is met.

COMMENTS:

Oregon Department of Land Conservation and Development (DLCD): No Comment received.

Land Development Services has responded to approximately 65 telephone inquires and concerns from property owners that received an individual Notice of the Moratorium hearing. (As of March 20, 2015)

STAFF COMMENTS, CONCLUSIONS AND RECOMMENDATIONS:

Based on the findings of this report in support of a moratorium pursuant to ORS 197.520 on the establishment of new and expansion of existing marijuana facilities, the Planning Director **RECOMMENDS ADOPTION** of the Ordinance 2015-3.