

**Minutes of the Veneta City Council
Work Session
March 24, 2014**

Present: Sandra Larson, Brittany Boothe, Thomas Cotter, Victoria Hedenstrom, and Thomas Laing

Others: Ric Ingham, City Administrator; Kay Bork, Community Development Director; Kyle Schauer, Public Works Director; Carrie Connelly, Legal Counsel; Darci Henneman, Assistant City Recorder; Sgt. Doug Osborne, LCSO; and Michelle Ossowski, Fern Ridge Review

1. CALL TO ORDER

Mayor Sandra Larson called the Veneta City Council Work Session to order at 6:01 p.m. She said because of the newness of the issue she suggested Councilors stay focused on the key issue of whether or not the moratorium should go through and Councilors should not necessarily get caught up in the details and/or specifics of future regulations.

Bork introduced legal counsel, Carrie Connelly again. Ms. Connelly attended tonight's meeting to provide the Councilors with more clarification of Senate Bill 1531; more specifically, what it allows cities to regulate in terms of time, place and manner.

Bork said staff presented information as to what is already regulated from Oregon Health Authority (OHA) and specifically regulations pertaining to time, place and manner. Staff will also present options for further regulating Medical Marijuana Dispensaries (MMD) under SB 1531, including the moratorium as well as other options the City can consider. Staff is hopeful the Council has a better understanding of what it can regulate and the process to amend the City code (ordinances) and the time frame to do that. She said the Council will not take action at the Work Session but will take further action at the regular Council meeting immediately following the Work Session. Bork reviewed each section of the materials provided in the packet.

2. REVIEW BACKGROUND INFORMATION AND APPROVED SENATE BILL 1531

Ms. Connelly said the most important thing to realize is there was a lot of confusion and discussion about what a City can and cannot do based on the 2013 legislative session. She said Senate Bill 1531 was introduced in the current legislative session by the League of Oregon Cities (LOC) and the Association of Oregon Counties. In its original form, SB 1531 allowed cities and counties to regulate and/or outright prohibit MMDs from locating within the city or county. On February 13, 2014 the bill was amended to remove cities' and counties' ability to prohibit dispensaries and to clarify the types of regulations that cities and counties may impose on MMDs. The bill now provides that cities and counties may adopt ordinances that impose reasonable regulations on the operation of MMDs located within the city or county. "Reasonable regulations" include: 1) reasonable limitations on hours of operation; 2) reasonable limitations on where a dispensary may locate within an industrial, commercial, or mixed-use zone; and 3) reasonable conditions on the manner in which MMDs dispense medical marijuana. On February 18, 2014 the amended bill was unanimously approved by the Senate. On February 24, 2014 the bill was amended again to reinsert language allowing cities to outright prohibit dispensaries within their jurisdictions. The bill was amended one more time to remove language to outright prohibit dispensaries. On March 5, 2014 SB 1531 was approved by the House and Senate but included cities and counties may pass a one year moratorium on MMDs to give them time to figure out what they wanted to do.

In response to questions from Brittany Boothe, Ms. Connelly said tonight's meeting is focused on considering if the Council wants the moratorium and not time, place manner regulations the Council wants to put into place. She said some cities may want to eliminate dispensaries completely (prohibition) beyond the confines of the moratorium and then likely some court decisions will determine what constitutes reasonable time, place and manner restrictions. As an example, in the allowed zones, can a city chose which of those three zones to allow MMDs or must they allow MMDs in all three zones and

then regulate them in certain ways. She said those are the kinds of questions she anticipates the Courts will be weighing in on. She said the outcome of those decisions during the moratorium will override any previous time, place, and manner restrictions that are overly restrictive. She said we will see how those play out in the courts or a city may chose, if you adopt a moratorium tonight, to wait until after the election season to see what we want to consider enacting before the end of the moratorium.

WHAT DOES SB 1531 ALLOW CITIES TO REGULATE IN TERMS OF TIME, PLACE AND MANNER?

Bork reviewed the summary of what OHA currently regulates. The regular dispensaries in those zones restricts a MMD from locating within 1000 feet of school or from one another. She referenced the map that also shows the dispensary locations based on Veneta zoning and state regulations. She said manner was more difficult to define – as some manner regulations require MMDs to do things like label and test products, and specify who can enter the facility.

Mayor Larson said some cities or counties are prohibiting any ingestible forms which would be an additional matter.

In response to a question from Victoria Hedenstrom, Bork said according to the Oregon Administrative Rules (OARs) smoking is only allowed in the facility by an employee who holds a medical marijuana card.

Victoria Hedenstrom said we could make it a non-smoking facility. She said we could say we don't want smoking of any kind in a shared ventilation space but there are other options available.

Ms. Connelly said that is one of those manner regulations to be considered in this next year. She said the question is going to be is that reasonable.

In response to a question from Brittany Boothe, Victoria Hedenstrom said a strip mall would be considered a shared ventilation system.

In response to a question from Thomas Laing, Ingham said there is a fair amount of detail associated with installing a minimum security system. He said things like how the information is stored, and for how long, door security, audio and video recordings. He said the OARs have that spelled out fairly well. Ingham said the fully operational system requirements are on page 9.

Thomas Cotter said the video recordings are required to be kept for 30 days.

Ms. Connelly said pages 10 and 11 document the type of surveillance system that is required and that it be installed by a licensed installer. She reviewed the criteria required by OHA.

In response to a question from Mayor Larson, Ms. Connelly said she's not sure what the definition of "temporary rules" is but it's what we're operating under. She said it might mean the Courts reserve the right to amend the rules. She will follow up on this and get back to staff.

In response to questions from Thomas Laing, Ms. Connelly said "authority" is defined in the second rule and authority is OHA. She said they may contract with various enforcement agencies to complete inspections but OHA is the final authority. Ms. Connelly said the City wouldn't enforce something that is operating legally within the City but as an example, if the City adopts a temporary moratorium that takes away that criminal law protection. If a MMD is operating outside the confines of what's allowed then law enforcement can come in and enforce criminal laws at the state level and not at a federal level. She said all MMD will be required to be licensed through the OHA. If any regulations are violated, the criminal law will apply, and your enforcement agency or OHA can inspect the facility to determine whether or not to revoke the permit.

Victoria Hedenstrom said all dispensaries must be inspected in the first six months of operation and then once a year after that.

Ms. Connelly said one possible regulation for consideration is the business licenses would be predicated on the OHA permit, so at the time the OHA license is revoked the city business license would also be revoked.

In response to a question from Thomas Cotter, Ms. Connelly said MMDs would have the same business license but different criteria would apply to maintain that license.

Thomas Cotter said if we're going to apply a law to MMDs, then the same law should apply to all businesses.

In response to a question from Brittany Boothe, Ms. Connelly said City code provisions state businesses will comply with all local, state, and federal regulations. She said the types of businesses we're talking about, the business itself, doesn't have a state license, the individual is licensed to practice a profession. She said that's something to think about when crafting that type of revocation language.

Ingham said 99% of the other businesses in the City don't really have enforcement issues that make us think they will be engaged in illegal activity. He said whether we apply certain regulations to all businesses or a different application for MMDs when they come to do business in the City.

Thomas Cotter said there's not much difference between a pharmacy and a dispensary; they both deal with controlled substances and they both have to follow the same rules and regulations. He said there's fraud and illegal activity in both. He said sometimes we step toward paranoia and fear and not logic.

Ingham said the gray area seems to be enforcement related. He said we know what we can do and it might start with the business registration process. He said LCSO and the City will need better clarity of what is legal and illegal or what does or does not meet the compliance of their license and if the OHA isn't responding we need to know what's in the toolkit and how we can respond.

Victoria Hedenstrom said marijuana has been used recreationally for so many years but a pharmacy doesn't have that recreational use moniker. She said there are other difference too but that's a big one.

Ms. Connelly suggested as individual legislators, Councilors should ask themselves "what in the OARs isn't regulated here that I might be concerned about?" She said this applies to a temporary moratorium because if you don't put one in place, these regulations will be governing any MMD that wants to locate here so what additional regulations do you want in place to augment these.

In response to a question from Mayor Larson, Ms. Connelly said if the City did not pass the moratorium additional regulations could still be imposed. But it depends on what kind of regulations you're talking about. For instance new zoning regulations would not apply but something tied to business registration or business licensing, that MMD would need to comply but any land use will be grandfathered in and nonconforming use status would apply to the MMD.

In response to a question from Victoria Hedenstrom, Ms. Connelly said SB 1531 doesn't allow a "test run". She said if one interested applicant receives the permit from OHA and the City adopts a temporary moratorium, it would lift the criminal law protection so after the moratorium is adopted, they would be operating outside the law even with the OHA permit. She said different cities are trying to limit the number of MMD's in their communities or where exactly they will be operating.

In response to a question from Brittany Boothe, Ms. Connelly said she's not sure if any cities are trying to allow just one but it's along the lines of "our town needs no more than two MMDs". She said if you wanted to pursue that, you would not adopt a moratorium and allow the interested applicants to establish a business. Then the City would move forward with its own regulations (excluding land use restrictions) to apply to future MMDs. She said it depends on what kind of regulations the City adopts.

In response to a question from Mayor Larson, Ms. Connelly said if the City decides not to pass a moratorium and a MMD comes into the City, whatever existing codes are in place at that time will follow the business. If code changes are made after the moratorium, that MMD is grandfathered to the code as it was the day they opened.

Brittany Boothe said she is uncomfortable allowing MMDs to come in and get a better deal and she's concerned they wouldn't be impacted like the future ones down the road.

In response to a question, Ms. Connelly said it's any regulation, business code, land use, etc. She said for example, if the City wanted to require a certain type of ventilation system, we wouldn't be able to require an established MMD to stop operating or update its ventilation system to meet future standards.

Ingham said the Council needs to focus on our concern and what exactly we trying to address. He said are we concerned about numbers, enforcement, regulation or location – are they near a park or library? He said it's important to make sure that we identify the concern first to assist us with determining reasonable regulations. He said we know that the uncertainty will continue through the November election with one or maybe two initiatives on the ballot. We may be talking about recreational dispensaries as well.

Ms. Connelly said based on the map in the Council packet, there may be potential for four MMDs to operate in Veneta based on OHA regulations.

Mayor Larson said our main concern is we want to make sure MMDs aren't near the library or park. She said if it's not a good idea to have them near schools, MMDs shouldn't be placed where children gather, the library, park, etc.

Ingham said south of the Oregon Forestry Dept. near the Farm Store, is an area where a MMD could locate. He said what would keep a MMD from locating near the library is the Central Little School on the corner of Bolton Hill Rd. and Territorial Rd.

In response to a question from Mayor Larson, Ms. Connelly said MMDs cannot locate within 1000 feet from a primary or secondary school only and does not include pre-school or day care centers.

Bork said daycares are allowed in all Residential zones. She said MMDs are not allowed in Residential zones but they are allowed in the Broadway/Commercial, Community/Commercial, Highway/Commercial, and Industrial/Commercial.

In response to a question from Victoria Hedenstrom, Ingham said the two circles on Jeans Rd., near the Lane County Public works yard, are either day care facilities or preschools.

Bork said those circles should not be there if it is just a daycare.

Ms. Connelly said that could be one of those reasonable manner restrictions; to include preschools in the zoning exclusions.

Ingham said the OAR's may have a regulation or language that if it's accredited by the state and the credits can be used for graduation, then it would be in the exclusion zone.

In response to a question from Brittany Boothe, Ms. Connelly said from the outreach she conducted, the uniform response is there are no loopholes for clubs and co-ops. She said they would have to be operating legally as a dispensary. She read the language as follows: "It's either registered or its operating illegally. Perhaps if everyone involved were a cardholder or grower but then it is supposed to be for a specific patient – only up to four so it wouldn't be open to the general card holding public. The only way you are supposed to be able to provide marijuana to someone who is not your patient is by operating as a registered dispensary.

In response to a question from Thomas Cotter, Ms. Connelly said a co-op would need to operate as a dispensary and if they're trying to be something other than a dispensary or an individual grower under the law, they're carving out some new title that isn't contemplated and would likely be subject to criminal laws.

In response to a question from Ingham, Ms. Connelly said the dispensary outside City limits could only dispense to four card holding individuals that they are registered to provide to.

In response to a question from Brittany Boothe, Ms. Connelly said the original prediction was that OHA would be able to start issuing permits within four to six weeks after the March 1st acceptance date. But on Friday, March 21st they issued their first permits so the process is moving faster than contemplated.

Ingham said the current MMD located east of Veneta City limits had their sign on March 3rd so obviously they could not have secured their license by then.

In response to a question from Victoria Hedenstrom, Ingham said it has been brought to the attention of Lane County officials and we'll see if they act on that.

In response to a question from Ingham, Sgt. Osborne said he hasn't received any direction from LCSO but he told his supervisor about it and he anticipates action will be taken.

Ingham said we can send something to OHA that we're a little confused that a dispensary outside City limits was up and operational on March 3rd. He said hopefully it would help clarify who can and cannot operate.

In response to a question from Thomas Laing, Ms. Connelly said a MMD cannot grow on site. She said there's limits to what they can have stock piled on site and the growers also need to be licensed.

Victoria Hedenstrom said there are different varieties and strengths of marijuana and MMDs can regulate the strength.

Bork said all MMDs are required to test for many things including mold, pesticides, and strengths.

In response to a question from Brittany Boothe, Ms. Connelly said we won't know until we see what the legislature proposes and she hasn't heard anything about what's being considered as far as recreational use. She said she advises her clients that just thinking about MMDs now will put the City in a better position to be prepared and ready to do whatever it is you want to do with regard to recreational use after having considered the medical use aspect.

Ingham said there was hope that the legislators would pass legislative language in this recent short session to be put on the ballot as oppose to a group or groups from outside the state drafting the ballot title and legislative language. He said depending on what's included in that and what eventually gets voted on is what the regulators will try to work through.

Ms. Connelly said the argument in favor of the legislature putting it together is that then they could make it far more cohesive with what they're creating with regard to medical marijuana.

In response to questions from Mayor Larson, Ms. Connelly said they could have included timelines and had it segway with what's already adopted. She said usually initiative type laws are stand-alone but it doesn't fit with what's already in place. Ms. Connelly said if there's more than one initiative on the ballot, it's hard to tell what will or will not pass. She said hopefully they're contingent but it depends on how they're drafted.

In response to a question from Victoria Hedenstrom, Ms. Connelly said under one statutory scheme was an issue that the legislature didn't think of – what are cities allowed to do. She said once they found the gap, they needed to find a way to resolve it. She said it just took a while to figure it out but we're only talking about January to March which is a short time frame.

Bork said OHA regulations were already in place but were not effective until March. She said Senate Bill 1531 passed March 7th which put cities and counties in this unknown zone. She said anyone involved in the system were in a holding pattern until SB 1531 passed.

3. WHAT IS CURRENTLY REGULATED (TIME, PLACE, AND MANNER) BY OREGON HEALTH AUTHORITY RULES

Ingham asked the Council to review this material and think about the options

In response to a question from Brittany Boothe, Ms. Connelly said the moratorium is written in a way that if the City chooses it can end prior to May 1, 2015 should the Council resolve all issues, questions, etc.

In response to questions from Victoria Hedenstrom, Sgt. Osborne said LCSO are so short staffed as it is, it's difficult to say how much more activity MMD's will create. He said several years ago there were resident members of LCSO on the interagency narcotics team. He said he can't speak about the enforcement capability outside City limits but if there's a violation within City limits; then the local agency will be invited to enforce it. He said currently if a call comes in about a growing operation, deputies do a knock and talk or issue a search warrant. He said they take everything except for what the grower is allowed to have, and charge appropriately. He said the DA's office is kind of hands off. He said they pick and choose what they want to prosecute or take to the grand jury. He said he is concerned about potential criminal activity associated with MMDs. He said the drinking establishments are regulated by the OLCC and have problems from time to time because customers are over served, drunk driving, disputes, people getting hurt, and assault calls. He said he's not saying that may happen at a MMD but similar problems may arise. He said what he's most concerned about is a MMD getting broken into in the middle of the night. He said unless there is someone on site or the security requirements are extremely thorough, from a physical security standpoint, that's an issue for LCSO.

Brittany Boothe said from a legal standpoint, if there's already a MMD operating outside the City that is a concern to her because she felt there's already criminal activity happening.

4. OPTIONS FOR REGULATING MEDICAL MARIJUANA DISPENSARIES (MMD)

This topic was not discussed because the meeting ran after 7:00 p.m.

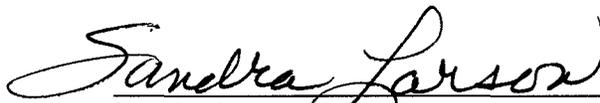
5. ADDITIONAL INFORMATION ON MEDICAL MARIJUANA DISPENSARIES

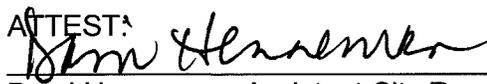
This topic was also not discussed.

6. OTHER

7. ADJOURN

Mayor Larson adjourned the Veneta City Council Work Session at 7:10 p.m.


Sandra Larson, Mayor

ATTEST:

Darci Henneman, Assistant City Recorder
(Minutes prepared by Dhenneman)