BACKGROUND:

The Oregon Legislature passed, and the Governor signed into law, House Bill 3460 in 2013. This law authorized the siting and operation of dispensaries of marijuana for medicinal purposes, and was aligned with the laws already in effect governing medical marijuana. This legislation required the State Health Authority to promulgate administrative rules, which have the effective law for the licensing operation and regulation of these dispensaries. No dispensary could be licensed before March 1, 2014.

As was reported to you and discussed at several Council Meetings, there is a debate, chiefly between the Legislative Council and the League of Oregon Cities and others as to what authority local governments have over the regulation of the dispensaries. Within the last two weeks, newspapers have reported that there is a proposal by at least one Legislator to enter a bill for consideration clarifying this unsettled question.

Since the law has been passed, several Cities have taken action in a variety of ways to try to regulate or even prohibit the siting of the dispensaries within their jurisdiction. Most notably, Medford, has prohibited the siting of them by now allowing the granting of a business license which is otherwise required for any business, to be issued for a dispensary. The basis for this position, in part falls heavenly on the opinion that because Federal Law classifies the possession of marijuana as a crime, and further does not allow dispensaries, but for one small exception does not allow medicinal use of marijuana, Cities that have taken Medford’s approach anchor their justification on not aiding and abetting the violation of Federal Law. This approach, as I have reported to you before, and others have commented as well, seems misguided in that Cities hardly ever get involved in regulating businesses apropos to Federal Law.

There are other issues that surround the ability of local governments to regulate that rest on interpretations on the Supremacy Clause and our individual State Constitution and other aspects of Legislation enactment that can keep scholars and practitioners busy for days.

In the meantime, the State Health Authority has promulgated temporary emergency rules, numbering some 28 pages, that are a template for what is likely to become permanent rules, but were issued in an emergency format because the Health Authority has found not enough time to promulgate the final permanent rules. Many hearings and conferences I gather have been held.
and various opinions from a number of interest groups have been analyzed before these rules were made. The rules pursuant to the Legislation authorize the placement of the facilities in areas zoned by the local governing authority as Commercial, Industrial, Mixed-Use, and Agricultural. To my knowledge, there is no definition of those zones in the Legislation or the Rules. It seems reasonable to interpret the Legislation and the Rules as allowing the facilities in the zones set out, but not requiring that they be allowed in all of those permissible zones. Arguably, it is unclear what “Mixed-Use” means when you have, as in the case of the City of Bandon, controlled development zones that are in fact labeled by the Comprehensive Plan as Mixed-Use, and a combination of residential as well as business related uses. Without those minor points of uncertainty, it would appear then that Cities have to examine where in the respective zones that the facilities are authorized by the State should they be located.

Currently, Bandon’s Zoning Code does not have a provision for these facilities. We certainly do not have any regulations as well. When our zoning is silent on a particular use, the Code gives the Planning Commission authority to identify the zone where the use should be located based on similar uses. That is a stop-gap and very weak method of Legislation, and in particular, in this instance, would mean there would be no regulation, only the placement of the facility in the zone the Planning Commission determined was appropriate.

Recently you may have heard the Cities of Coos Bay and North Bend are considering, or have passed, legislation in the form of a Resolution, in the case of Coos Bay that is attached here, prohibiting the licensing or the acceptance of any application for a facility until the City has time to look at its Code and enact the proper amendments.

I view this act as what is know under the Stare Law as a Moratorium. However, the City of Coos Bay did not view this as a Moratorium (despite as you will see language in the Resolution the use of the very word). From what I gather form my very brief contact with the City of Coos Bay is that they were aware of other Cities around the Portland area that have enacted similar legislation and found this a useful method to use. However, the example that was quoted in the paper in Tualatin and Hillsboro are represented by a firm that I did contact and discussed the intricacies of this and their legislation did not use the word Moratorium and was for a significantly shorter period -up until March 3, 2014. At that time the City of Hillsboro expects to pass legislation for their own City, amending the Code in several ways to provide for the dispensaries. They were trying to avoid their stop-gap prohibition legislation as being interpreted as a Moratorium.
Moratoriums are allowed under Oregon law through the procedures set out in ORS 197.505 at et seq. The City of Bandon has actually used the Moratorium procedure at least twice, in the early 1990s concerning Coquille Point, and later because of the sewer capacity issue that prevented any more hookups to the sewer system. Moratoriums are not looked at favorably by the State, DLCD. As in the case of the City of Bandon, the view by LUBA and Court of Appeals is fairly rigorous. In one version in our Coquille Point Moratorium failed and the other was upheld by the skin of our teeth.

A Moratorium for infrastructure shortcomings, like the sewer situation, are fairly straightforward - in that case the governmental authority wouldn’t allow any more hookups to the sewer, and therefore we could not give anyone a building permit for a new structure. A Moratorium, while authorized under State Statute for compelling needs because of shortcomings, as we are suggesting here, exist with the lack of regulations over the marijuana dispensaries, calls for a fairly detailed set of findings that have to essentially demonstrate the following:

1. Existing regulations are inadequate to prevent “irrevocable public harm,”
2. Alternatives to a moratorium would be inadequate,
3. The moratorium is limited in scope and duration,
4. Public harm resulting from not imposing a moratorium would outweigh adverse effects of the moratorium, and
5. The city has the resources to develop permanent regulations within the timeframe of the proposed moratorium.

A Moratorium is only allowed for 120 days and may be extended once upon a further set of findings. In order to go through the process, DLCD has to be notified, much like they have to notify when Legislation is being proposed to amend the Zoning Code. DLCD has to have that Notice delivered to them 45 days before a Moratorium can be enacted. There has to be a hearing at the Council level regarding the Moratorium. The Moratorium process is separate from the Land Use hearing procedures and is governed by an entirely separate set of laws as I have pointed out.

Staff recommends discussion at this meeting about this process, and if the Council is favorable to hold a hearing about the Moratorium, then set a hearing not less than 45 days after the date the Notice has been mailed to DCLD. This week, staff is preparing, and on its own initiating a Notice to DCLD with language similar to what Coos Bay has done to start the clock. If the Council did not want to proceed with a Moratorium, rescission of that Notice is easily accomplished. The financial impact would be normal staff time for this project with the attendant Notice and publication costs for the hearing.
RECOMMENDATION:
The recommended action if the Council wants to hold a hearing on a Moratorium is to have the Motion move staff to develop findings in support of a Moratorium, prohibiting the siting or granting of any permits associated with a medical marijuana facility application, to allow the City to review and pass legislation if necessary for the location for the facilities in the proper zone or zones authorized and available under State Law, and for any other regulations or criteria for allowing these facilities in the City of Bandon.

SUBMITTED BY:

/s/ Frederick J. Carleton

Signature: Frederick J. Carleton
City of Coos Bay

Resolution 14__

A RESOLUTION OF THE CITY OF COOS BAY, COOS COUNTY, OREGON IMPOSING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF APPLICATIONS FOR THE ISSUANCE OF PERMITS RELATED TO BUSINESSES THAT SEEK TO DISPENSE MEDICAL MARIJUANA AND ON THE ESTABLISHMENT OR OPERATION OF ANY SUCH BUSINESS IN THE CITY

WHEREAS, the citizens of the State of Oregon passed an state proposition in 2013, which permits, within certain parameters, the operation of medical marijuana dispensaries within the State of Oregon; and

WHEREAS, the State of Oregon has not as yet finalized administrative rules governing the process by which medical marijuana dispensary businesses can operate within the State; and

WHEREAS, over recent weeks, City staff have received a number of inquiries from persons interested in opening medical marijuana dispensaries within the City, and it is anticipated that such inquiries will continue to be made from persons interested in opening such businesses in the City; and

WHEREAS, under the general zoning laws of the City, these medical marijuana dispensaries ("MMDs"), likely constitute retail sales operations which are permitted uses in a wide variety of zones, including those that are primarily intended for residential use; and

WHEREAS, the City currently has no land use or business regulation concerning the operation of MMDs; and

WHEREAS, the unregulated operation of MMDs in the City presents serious health and safety concerns to the citizens of the City of Coos Bay; and

WHEREAS, municipalities throughout Oregon are struggling to gain control over the proliferation of MMDs, and have enacted various kinds of local regulations in an attempt to curtail abuses under the current medical marijuana laws of the State of Oregon; and

WHEREAS, a significant period of time, which may be up to one year, will be required in order for the City Manager and his staff, including the City Attorney, to clarify the evolving state of the law with regard to MMDs, and to formulate recommended amendments to the Municipal Code for the City to deal with this subject; and

WHEREAS, with the anticipated influx of MMDs into the City, the City Council is concerned about its ability to protect the public welfare and preserve the character of the City's neighborhoods and commercial areas where MMDs might be located; and
WHEREAS, the imposition of a moratorium for a reasonable period of time on the acceptance, consideration and approval of all applications for City licenses, permits and development proposals related to the operation of MMDs, and the establishment of MMDs in the City, will allow City Staff and the City Council to investigate the City’s ability to regulate such businesses and develop and implement appropriate regulations; and

WHEREAS, twelve months is a reasonable period of time, and no longer than is necessary for the City to determine the extent to which MMDs will be regulated on a statewide basis and to properly investigate, develop, and, if appropriate, adopt and implement any local regulations related to MMDs.

NOW, THEREFORE, BE IT RESOLVED:

1. That the recitals contained in this Resolution are hereby adopted and incorporated as findings of fact of the City Council.

2. That the proliferation of unregulated MMDs in the City warrants the imposition of a moratorium because of the serious health and safety concerns presented by such unregulated MMDs;

3. That it is necessary for the preservation of the public health, safety and welfare to delay the acceptance and processing of applications for City licenses, permits and development proposals related to the establishment and operation of MMDs in the City, until the City has had a reasonable opportunity to determine the extent of the City’s regulatory authority over such businesses and to further determine what regulations, if any, should be imposed by the City upon these businesses.

4. That a moratorium is hereby imposed, as of the effective date of this Resolution (the “Effective Date”), on the acceptance and processing of any applications to the city for the approval of licenses, permits or development proposals related to the establishment or operation of MMDs.

5. That this moratorium shall continue in effect until January 1, 2015, or such earlier date as may be determined by the City Council.

6. That no MMDs shall be established or shall operate within the City after the effective date of this moratorium.

7. That during the term of this moratorium, the City Manager and his Staff, including the City Attorney, and the Planning Commission, are hereby directed to analyze the issues pertaining to the operation of MMDs within the City and develop for City Council consideration of regulations as they may deem necessary and appropriate to address such issues, including, but not limited to:

a. The State rules and regulations applicable to the operation of MMDs;
b. The impact of MMDs on the character of residential neighborhoods and commercial areas where they might be located; and

c. Any increase that will likely occur in vehicular traffic or in nuisance or criminal activities in areas where MMDs are located.

8. That on or before the first City Council meeting of January of 2015, the City Manager is directed to present for the City Council’s formal consideration such laws and regulations relating to MMDs in the City as the City Manager considers necessary and appropriate for the preservation of the health, safety and welfare of the residents of the City.

9. That nothing herein shall be construed as decriminalizing or making lawful in the city any MMD or other business involved in the acquisition, possession, manufacture, production, use, sale, distribution, dispensing, or transportation of marijuana or related paraphernalia that is not lawful under state criminal laws.

The foregoing resolution was duly adopted by the City Council of the City of Coos Bay, Coos County, Oregon this 21st day of January 2014.

__________________________
Crystal Shoji, Mayor

ATTEST:

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Susanne Baker, City Recorder