

Hi Mayor.

I have been talking with several of our cities on these issues. Your list of regulatory subjects is pretty similar to what I have put together and what I have seen councils wanting.

As you probably know, your list will want to be segregated into two categories: land use regulations and business regulations. The land use regulations will need to proceed through your legislative land use procedures (with Form 1 notice to DLCD). The business regulations can be constructed as amendments to your existing business regulations in your Code.

On the land use side of things, for a couple cities I have suggested a conditional use permit process for a new category of use defined as "medical marijuana facilities." Setting them out as a separate conditionally permitted use will allow your planning commission a little more control over how they locate and the impacts the "use" will have on neighboring uses.

You have a distance from public property restriction. You'll want to clarify that regulation as you move forward -- all public property would include roadways and most sidewalks.

On the business regulation side of things, the biggest concern that I have with some of the proposals I have seen floating around is the subjective nature of any future enforcement. A good business regulation is one that is clear to the business (not vague), capable of being monitored, and capable of objective enforcement. (I believe the costs to monitor and enforce are key elements in this calculus.) On your list, the odor containment regulation could be tough on the businesses, and also very tough on your code enforcement. Most regulations I have seen use phrases like "offensive to a reasonable person." That is a tough standard to enforce. It could also be expensive and the City might be required to hire an expert to determine what is offensive.

On criminal background checks, you will need to explore the procedures the businesses will use to get the checks complete. Are you just concerned about Oregon criminal history, or nationwide? I believe the Lincoln County Sheriff will not be able to perform a national search for you under the terms of its LEDS agreement. As a result, for a national search the applicants may have to submit requests to the OSP and direct that results be sent to the City. You will want to set out what crimes will be disqualifying and determine what time period to search for disqualifying crimes.

I also think you need to be very careful with any signage regulations.

Restricting a particular business to signage "without illustration" is either already in violation of Article 1, Section 8 (Oregon's free speech clause) or is very close to the line. As you know, Oregon's speech regulation is more strict for governments than the First Amendment. I suspect it would be hard to make a constitutionally valid argument to distinguish a medical marijuana dispensary from other businesses in town in terms of regulating drawings on signage.

I also note that some folks that take marijuana as a medicine are only able (or willing) to use marijuana if they can ingest it rather than smoke it.

As a result, the regulation against edible products could inhibit the medicinal benefits to many folks.

Finally, while the Cave Junction case appears to provide at least a temporary win for city regulation of dispensaries, the judge appears to not like the idea of "back door" bans on these businesses. It was not a direct question to the judge, but the judge did not seem to dislike the notion that a city would regulate dispensaries out of existence. My take-away from that would be the City should evaluate its regulations and make sure that there is at least some possible locations that meet all the proposed requirements.

If, after you evaluate all the requirements, there is no property within the City that could support a dispensary, the City should step back and reconfigure the regulations until at least some locations open up.

A couple regulations that I have suggested that I do not see on your list are: regulation of outdoor lighting and means of ingress to the store (require overhead lights on the one public entrance and have that one public entrance face a public street); no free samples or give-aways of usable marijuana; and a dispensary use must be in its own stand-alone structure (no co-location with another use).

Those are my quick thoughts after looking over your list. Please let me know if you want any more from me on this project.

Ross

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Time, Place, and Manner Restriction Options

Limited Commercial zone

Hwy 101 only

Recognizes the somewhat residential nature of numbered streets in Yachats that are zoned commercial. Ignores the few residential properties along Hwy 101.

Requirements on business management

Require all employees to be over 18

Require all employees to have background checks.

Facility requirements

Must be permanent structure, not trailers, cargo containers, vans or motor vehicle .

No drive-up, or drive through.

All transactions to take place indoors.

Odor containment

No marijuana or paraphernalia on display

Signage without illustration

Ancillary effects

Proper disposal of residue and bi-products (not in outside garbage)

Must be licensed by Oregon Health Authority

Sales facility only

No manufacture or refinement or oil extract on site.

No product consumption on site.

Child proof packaging.

Specify hours of operation

Distance restriction from public property

No minors on the premises.

No one convicted of a felony may participate in the business.

No edible marijuana products.