

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CITY MANAGER

RE: ORDINANCE PROHIBITING MARIJUANA BUSINESSES AND REFERRAL OF ORDINANCE FOR VOTER APPROVAL

DATE: JULY 6, 2015

RECOMMENDED ACTION:

Move to read "*AN ORDINANCE PROHIBITING COMMERCIAL PRODUCTION, PROCESSING, WHOLESALE AND RETAIL SALE OF MARIJUANA WITHIN THE CITY LIMITS OF MANZANITA AND DECLARING AN EMERGENCY*" by title only for its first reading and to tentatively approve said Ordinance as of its first reading.

BACKGROUND INFORMATION:

In November of 1998, Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana Act (OMMA). The original OMMA did not envision a dispensary system and was built on the assumption the patients would grow marijuana for themselves or designate someone to grow for them. The practical result of the provisions of the OMMA was that more marijuana was grown than was needed to meet specific patient needs. Dispensaries grew out of the demands to connect other patients with the growers of "excess marijuana".

In 2013 and 2014 the Oregon Legislature passed Senate Bill 1531 and other bills which set up rules for dispensaries. Cities were given the opportunity to have moratoriums on dispensaries until May 1, 2015 in order to consider time, place and manner restrictions as permitted by the legislation. However, it is not clear as to whether cities and counties were preempted from other actions by this legislation. Some would argue that Oregon's Home Rule provisions would allow a city or county to restrict or ban these facilities if desired.

In April of 2014, the Manzanita City Council adopted Ordinance 14-03 which placed a moratorium on the establishment of medical marijuana dispensaries until May 1, 2015. In November of 2014, Oregon voters approved Ballot Measure 91, and many questions were raised as to the relationship of medical marijuana sales and the voter approved recreational marijuana sales and what local options were available. Due to the uncertainties of the regulatory environment and given that the Oregon Legislature was considering legislation to clarify some of these uncertainties, the Council adopted Resolution 15-04 on May 13, 2015 which extended the moratorium until January 31, 2016.

In November of 2014, Oregon voters approved Ballot Measure 91. The City of Manzanita is wholly within the Pine Grove precinct for purposes of State elections. For City elections, Manzanita voters can be separated out, but then the ballots are combined with other Pine Grove precinct ballots for tallying any county or statewide elections. We know that the vote on Measure 91 in the Pine Grove precinct was 637 Yes to 361 No (An additional 12 voters eligible to vote on the Measure turned in ballots but did not vote on this measure.) In the same election, 367 Manzanita voters turned in ballots, although only 279 voted for Council candidates in this uncontested election. The County Clerk advises that there is no way to go back and determine what the vote was on Measure 91 within the City of Manzanita. It is possible that the measure was defeated within the City but was approved when mixed in with the other Pine Grove precinct voters. The measure might have passed in Manzanita, but we don't know for sure.

The 2015 Oregon Legislature recently passed House Bill 3400, which in part provides a means for local governments to prohibit the sale and processing of marijuana within the City limits with approval of its voters. If such a prohibition is proposed, voters would consider the matter at the November 2016 General Election. By proposing such an Ordinance, Manzanita voters would get the opportunity of deciding whether allowing the sale and processing of marijuana products within the City was acceptable.

Staff observes that the community appears to be conflicted on this issue. Some persons see no harm in allowing marijuana facilities within the City. Others would argue that it is not right to allow stores selling a product that is still considered illegal by the federal government. There are good arguments on both sides of this issue. But the bottom line is that this is an issue that calls for resolution by a city vote. Staff recommends adoption of the Ordinance.

ORDINANCE 15-_____**AN ORDINANCE PROHIBITING COMMERCIAL PRODUCTION, PROCESSING, WHOLESALE AND RETAIL SALE OF MARIJUANA WITHIN THE CITY LIMITS OF MANZANITA AND DECLARING AN EMERGENCY**

WHEREAS, in November of 1998, Oregon voters approved Measure 67, known as the Oregon Medical Marijuana Act; and,

WHEREAS, in November of 2014, Oregon voters approved Measure 91 which provides for the personal growing, possession and use of limited amounts of non-medical marijuana and directs the Oregon Liquor Control Commission (OLCC) to administer a licensing system for the production, processing, wholesale and retail sale of non-medical marijuana; and,

WHEREAS, the City limits of Manzanita are within the Pine Grove precinct and registered voters within the Pine Grove precinct approved Measure 91 by a vote of 637(Yes) to 361(No), although only a maximum of 367 of these voters lived within the City limits of Manzanita; and,

WHEREAS, even with the passage of Measure 91, possession and use of marijuana continues to be illegal under federal law; and,

WHEREAS, House Bill 3400 adopted by the Oregon Legislature allows a City to refer a measure to City voters to prohibit the production, processing, wholesale and retail sale of marijuana within the City limits; and,

WHEREAS, the City Council finds that it is appropriate to provide Manzanita voters the opportunity to approve or disapprove the establishment within the City limits of stores and facilities involving marijuana; now, therefore

THE CITY OF MANZANITA DOES ORDAIN AS FOLLOWS:

Section 1. The following operations and uses may not be established or conducted within the city limits of Manzanita:

- A. Marijuana processing sites registered under Section 85 of House Bill 3400
- B. Medical marijuana dispensaries registered under ORS 475.314
- C. Marijuana producers licensed under section 19, chapter 1, Oregon Laws 2015
- D. Marijuana processors licensed under section 20, chapter 1, Oregon Laws 2015
- E. Marijuana wholesalers licensed under section 21, chapter 1, Oregon Laws 2015
- F. Marijuana retailers licensed under section 22, chapter 1, Oregon Laws 2015
- G. Any combination of the entities described in this Section.

Section 2. Enforcement.

The Oregon Liquor Control Commission and Oregon Health Authority will refrain from registering all persons or entities performing operations or uses identified in Section 1 unless the registered voters residing within the City of Manzanita elect to nullify Section 1 by popular vote on November 8, 2016.

Section 3. Emergency Ordinance.

The City Council of Manzanita declares that an emergency exists to protect the health and welfare of the public and, therefore, this ordinance shall be in full force and effect immediately after its passage and approval.

PASSED FIRST READING by the Council this 8th day of July, 2015.

PASSED SECOND READING by the Council this ____ day of _____, 2015.

APPROVED by the Mayor this _____ day of _____, 2015.

Garry R. Bullard, Mayor

ATTEST:

Jerald P. Taylor, City Manager/Recorder