

Court issues stay on vape sales ban

By Sam Stites
Oregon Capital Bureau

SALEM — The Oregon Court of Appeals Thursday granted a temporary stay on Oregon Health Authority rules enforcing a 180-day ban on the sale of flavored nicotine and medical marijuana vaping products.

The temporary ban against the sale of recreational flavored marijuana vaping products, regulated by the Oregon Liquor Control Commission, remains in force.

The ruling came in response to two petitions for injunctions filed with the court against Gov. Kate Brown and the Oregon Health Authority seeking judicial review of the ban.

Brown had previously issued an executive order directing the agencies to implement the ban.

Canby attorney J. Ryan Adams filed one of those petitions Wednesday on behalf of No Moke Daddy LLC, which operates two e-cigarette shops in downtown Portland under the name Division Vapor.

“We believe the governor overstepped her authority by directing (the OHA and OLCC) to enact this ban,” Adams said. “Essentially we asked the court to invalidate the rule.”

According to Adams, his client decided to file for the injunction because they were worried



The Columbus Dispatch

The Oregon Court of Appeals granted a temporary stay blocking the state's 180-day ban on the sales of flavored nicotine and medical marijuana vaping products.

about the employment impacts the temporary ban would have on what they consider a booming industry that employs thousands of Oregonians across the state.

Brown's executive order followed a widespread outbreak of acute lung injuries that are being tracked across the country and linked to the use of both marijuana and nicotine vape products. As of last week, more than 1,300 cases had been reported with 26 deaths, two of those happening in Oregon. Last week the OLCC approved temporary rules that were ordered to take effect this past Tuesday, Oct. 15, that would take all flavored vape products off the shelves of approximately

4,000 retailers across the state.

On their website, Division Vapor had posted a message saying they would be effectively out of business as of Monday, Oct. 14, ahead of the ban that came into place the following day.

“This is their entire business,” Adams said. “One of the requirements to enact an emergency rule is the agency has to state a need for the rule and how the rule meets that need. The OHA stated the need for the rule was based on the governor's executive order, but nowhere in the rule did it say the rule meets the need. That was the basis for us asking the court to stay the rule.”

Adams said that his client is

excited they will get to remain in business.

“The employees of the shop are the biggest winners here today,” he said.

The ruling will essentially force the state via the Oregon Health Authority and Gov. Brown's office to prove that the rule hasn't violated state statute in exceeding their boundaries while the court reviews the rule.

Charles Boyle, Brown's press secretary, said in a statement that “the court's decision to enter a temporary stay today is unfortunate due to the ongoing public health threat posed by vaping-related illness.”

Boyle maintains that in light of the nationwide outbreak of vaping-related injuries, a temporary ban under the state's emergency rulemaking process is the best path forward available to Gov. Brown and state agencies.

“Gov. Brown will continue to work with the Vaping Public Health Workgroup, state agencies, stakeholders, and the Legislature to find long-term solutions that will protect the public health from vaping-related illness,” he said. “Gov. Brown continues to urge Oregonians to heed the public health warning of the Oregon Health Authority and to stop vaping immediately.”

AARP Smart Driver training class Oct. 24

A “new and enhanced” AARP Smart Driver training is scheduled Thursday, Oct. 24, in Baker City.

The class will be from 9 a.m. to 4 p.m. at the Baker City Senior Center, 2810 Cedar St. The schedule includes a one-hour lunch break. Participants will be responsible for their own lunch.

Certified volunteer instructor Frederick Moore will teach the class. Participants may register by calling the Senior Center at 541-523-6591. Early registration is encouraged because class space might be limited.

Participants should arrive no later than 8:45 a.m. in order to complete necessary paperwork. AARP members are asked to bring their membership cards. The cost is \$15 for AARP members and \$20 for nonmembers.

According to organizers, the AARP Smart Driver training is designed to help those attending:

- Learn research-based safety strategies that can reduce the likelihood of having a crash.
- Understand the links between the driver, vehicle and road environment,

and how this awareness encourages safer behavior.

- Learn how aging, medications, alcohol and other health-related issues affect driving ability, and ways to adjust to allow for these changes.
- Increase confidence.
- Know how to drive safely when sharing the road with other road users.
- Learn the newest safety and advanced features in vehicles.
- Learn when driving might no longer be safe.
- Explore other ways to travel.

What's New At The Library

• 2400 Resort St.

FICTION

- “The Guardians,” John Grisham
- “Book of Bones,” John Connolly
- “Stealth,” Stuart Woods
- “The River by Starlight,” Ellen Notbohm
- “Rules for Visiting,” Jessica Frances Kane

NONFICTION

- “Cynthia Ann Parker,” Margaret Schmidt Hacker
- “She Said,” Jodi Kanter & Megan Twohey
- “Blowout,” Rachel Maddow
- “Media Madness,” Howard Kurtz
- “The Power of Eight,” Lynne McTaggart

DVDS

NONFICTION

- “Annabelle Comes Home” (Horror)
- “Deadwood: The Movie” (TV/Western)
- “Mysterious Island” (Family, 1961)
- “Local Hero” (Comedy, 1983)
- “Wonders of Mexico” (Documentary)

CELL TOWER

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In written comments she submitted to the Planning Commission, Mehaffy wrote that “It is unthinkable that we must be dealing with this again; especially after the Planning Commission decided then, in 2015, to not allow a tower to be installed in our neighborhood. After all our collective hard work, for decades, to make Baker City such a unique, livable, and beautiful small town, it is preposterous to think a 70 ft cellphone tower would have any place in our Baker City residential neighborhoods.”

Kristi Hensley told commissioners she is concerned about noise from the emergency back up generator that would be installed with the tower. She said she has had no trouble with her cell service through Verizon.

As a business owner, Hensley said she's always interested in developments that benefit the city's economy, but that in the case of the proposed tower she doesn't “see any benefit at all to how this would help our community.”

Verizon, however, says the tower would improve cell coverage.

From its conditional permit application: “Verizon's customers currently experience a significant gap in coverage

in the area in Baker City, Oregon. The target search area to fulfill this gap is generally north of Campbell Street. The gap is both a coverage issue and capacity issue.”

Sophia Mekkers of Black Rock Consulting, which is working on behalf of Verizon, attended Wednesday's public hearing.

Mekkers told commissioners that according to Verizon engineers, a 50-foot tower, the maximum height allowed without a conditional-use permit, “just was not sufficient.” “The minimum height required to provide the service that we need to provide is 70 feet, which is why we're here this evening,” Mekkers said.

She also said the tower would have space for an additional cell carrier, one of Verizon's competitors, to add its own equipment.

In a letter submitted to the Planning Commission by Hathaway Larson, a Portland law firm representing Verizon, the Commission's 2015 rejection of the company's application for a 100-foot tower is referenced.

“The City's denial of the Application would be particularly problematic because the City already denied Verizon's previous project intended to address the same significant gap in coverage and capacity in 2015,” the letter reads. “The current project is significantly

shorter than the previous project, by 30 feet.”

The law firm also argues in the letter that Baker City's zoning ordinance does not include provisions allowing commissioners to reject the application based on claims about reduced property values.

Commissioners received written statements from several residents opposed to Verizon's application.

Tracy Howard wrote that she recently moved to Baker City to be near her grandchildren. Howard wrote that she would not have bought her home at 2935 Elm St., about one block west of the proposed site, had the cell tower been in place.

“This will hurt our ability to resell it and it will destroy the beauty we currently enjoy,” Howard wrote. “I am a breast cancer survivor and I am very concerned about the RF (radio frequency) my sister and I will be exposed to. We do not want this in our neighborhood.”

Jeana Hitzman, whose family lives on D Street just east of the property, said they bought their home for the view of the Elkhorns from their deck.

“If you allow Verizon to build their tower, we would be looking directly at a 70 foot cell tower instead of the beauty of this year,” Hitzman wrote.

AMBULANCE

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Jason Jacobs, president of the firefighters union, said the Facebook post was intended to provide information to county residents.

“It's just letting everybody know what's going on,” Jacobs, a lieutenant at the Baker City fire station, said in a telephone interview Thursday.

The union represents 12 firefighters. Another four employees are part of the command staff and are not represented by the union, Jacobs said.

The county received three bids for providing ambulance service in an area that includes Baker City and about half of the county. In addition to the Baker City Fire Department, bids were submitted by Med Transport Inc. of North Powder and Metro West Ambulance Inc., a Hillsboro firm.

Jacobs begins his Facebook post with this statement: “Your Baker City Firefighters need your assistance! Baker County Commissioners have decided to place your safety up for bid.”

He details the city fire department's history, dating back to the early 1900s, and continuing to present day. The department provides combined fire and medical service to the 1,600-square-mile Baker Ambulance Service (BSA).

“Not only are your firefighters the paramedics on every ambulance in the Baker ASA, they are also all-hazard first responders, trained specifically for multiple disasters and emergencies,” Jacobs stated. “We provide community education, prevention services, outreach and host community courses.”

Revenue from ambulance runs constitutes about 44% of the fire department's budget, and is vital to keeping the department staffed so it can serve the community, Jacobs wrote.

If county commissioners award the contract to one of the private firms, the Baker City Fire Department would immediately lose up to six of its 16 positions, he wrote.

Jacobs said the well-trained fire department staff believes that while the county might save money by contracting ambulance service, savings would not outweigh the loss of the response capability that is currently provided.

Jacobs asked county residents to consider the other services provided by the Baker City Fire Department staff in addition to transporting patients to and from hospitals as contracted ambulance service workers would do.

“The rest is left up to an unfunded fire department decimated by the political will of a County Commission whose entry into Ambulance system oversight is short-sighted, economically risky and not informed good policy,” Jacobs wrote.

He pointed out that a three-year federal grant, supplemented by a \$99,000 contribution from the county, will continue to pay for three Baker City firefighters hired in 2017 until Jan. 1, 2021.

The city has not yet identified money sources to keep those three fighters on staff beyond the end of 2020.

“That staffing reduction means a potential for increased response times, not enough paramedics to respond to the community's needs in an emergency and the potential for increased fire insurance.”

Jacobs said firefighters are asking residents to make their opinions known to county leaders.

A committee is being formed to work through the contract-award process and will be conducting public meetings in the coming months, Jason Yencopal, the county's emergency service director, said Thursday.

According to the request for proposals, the 10-year-minimum ambulance service contract is expected to be awarded by about June 1, 2020.

The final award date might change as the process continues, Yencopal said.

LOCAL BRIEFING

Baker County Library board changes October meeting to Monday, Oct. 21

The Baker County Library Board has changed its meeting date this month.

The Board will meet on Monday, Oct. 21, rather than the second Monday of the month.

The meeting will be from 6 p.m. to 8 p.m. in the library's Riverside meeting room at 2400 Resort St.

Library Board meetings are open to the public. Public comments are welcomed as one of the first agenda items, a meeting notice stated. Guests are asked to limit their remarks to five minutes if they are speaking as individuals or 10 minutes if they are speaking on behalf of a group or organization.

Trunk or Treat event planned for Halloween at Baker City Christian Church

The Baker City Christian Church, 675 Highway 7, will have a trunk or treat event on Oct. 31 from 4:30 p.m. to 6:30 p.m. There will be free candy and games for everyone, along with chili and hot dogs.

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