



# City of Tigard Memorandum

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To: Mayor Cook and Tigard City Council  
From: John Floyd, Associate Planner  
Re: Medical Marijuana Regulatory Update and Options  
Date: July 2, 2014

## Purpose and Goals

At Council request, staff has been researching local regulatory options for state licensed medical marijuana dispensaries within the city. Results are summarized below, accompanied by an update of the legal landscape and planned outreach tools to solicit public input. Related documents are attached.

Following the July 22 Council update, staff will incorporate Council feedback and present the same information to the Planning Commission at a workshop to be held on August 4, 2014. Following this workshop, staff will begin the public outreach efforts and the drafting of regulatory amendments for consideration by the Planning Commission.

To facilitate future deliberations, Council may wish to consider and provide direction on the following questions:

1. Are there specific community impacts that Council is concerned about?
2. What does Council consider to be the most appropriate location(s) or type of locations for dispensaries?
3. Is there specific information or research that Council would find helpful in making future decisions?
4. Are there specific or general questions that Council would like to place before Tigard residents and businesses during public outreach efforts?
5. Does Council wish to provide any specific direction to staff or the Planning Commission before they begin deliberations later this summer?

## Legal Landscape

The legal landscape for medical marijuana remains dynamic and uncertain. Changes effected under Senate Bill 1531 are still playing out as medical marijuana dispensary licenses are issued across the state, and local governments begin work on “reasonable restrictions” to these types of land uses. As previously reported, the Oregon Legislature is expected to take up the matter of medical marijuana once again during the 2015 session. In addition, there is a strong likelihood of a retail (non-medical) cannabis legalization measure being placed on ballots this November.

A recent check of the Oregon Secretary of State website revealed three measures pertaining to recreational marijuana (non-medical) legalization. Media reports indicate that the sponsor of two of these is no longer gathering signatures, leaving just Measure 53 to be placed before the ballot. Measure 53, formally known as the “Control, Regulation and Taxation of Marijuana and Industrial Hemp Act” sponsored by New Approach Oregon. As of June 26 it appears the measure has sufficient signatures to be placed on the fall ballot (145,030 submitted / 87,213 required). The effect of this measure would be the legalization of recreational marijuana, subject to State oversight and taxation through the OLCC. No change to existing medical marijuana laws would result. While the full ramifications of this measure are unknown at this time, some preliminary conclusions can be made. Of note is Section 59, which would authorize local governments to adopt reasonable time, place and manner regulations to address nuisance aspects of retail sales operations. While the act does not define the term “reasonable”, the language does provide some continuity of the status quo by mirroring language contained in ORS 475, which authorizes local adoption of “reasonable regulations” on medical marijuana facilities.

At the regional level, the City of Hillsboro has done substantial work on the development of draft dispensary regulations and is presently in the middle of the public hearings process. In addition, conversations with staff at the jurisdictions of Portland, Washington County, Beaverton, and Tualatin revealed that they too are examining time, place, and manner restrictions as part of their work plans. As a result of this regional activity and in the interest of consistency across jurisdictional borders, Tigard staff will continue to monitor and coordinate with surrounding cities, and update Council as necessary.

## Public Nuisances and Policy Options

While the state legislature has affirmed the right to possess and use marijuana in a medical capacity, it does not allow users or dispensary owners to create a public nuisance when exercising that right. As a result, staff believes the City of Tigard has an interest in adopting community specific regulations to prevent or mitigate known issues associated with medical marijuana facilities. The following represents a list of potential issues associated with medical or retail marijuana:

- Diversion of marijuana to unauthorized cardholders, particularly minors;

- Unpleasant odors resulting from growing, processing, and consumption of marijuana;
- Unwanted noise generated by visiting customers during early or late hours, and/or the constant hum of electrical generators and fans;
- Crime such as theft, burglary, armed robbery, and kidnapping that can result due to the presence of large amounts of cash, a product that can be resold for significant amounts of money on the black market, and potentially vulnerable users visiting the facilities;
- Threats to health, life and property resulting from grow facilities or processing facilities not constructed to code; and/or
- Explosions resulting from the use of butane as a processing agent.

To address these potential issues, staff has identified a range of policy options and summary comments on each option. Each of these only represents a conceptual approach for discussion purposes only, and does not represent a formal recommendation from staff. Council could choose to consider one, a blend of several, or none of these approaches.

#### I. No Action.

Council could opt to take no action, and implement existing code when presented with an application for a medical marijuana dispensary. This course presents uncertainty due to conflicting local, state, and federal requirements.

- Tigard Development Code (TDC) Subsection 18.210.030.A requires all development applications to be consistent with federal law.
- Continued federal classification of marijuana as a Schedule II drug may require the city to deny all land use applications for medical marijuana facilities as not being consistent with Federal law.
- Uncertainty will remain as some facilities may be able to open if no land use permits are required from the city (i.e. conversion of an existing retail space to a state licensed dispensary).

#### II. Remove Federal Consistency Requirement from TDC.

Council could choose to take a wait and see approach, while making minor changes to the TDC to comply with state law, and reduce the risk of litigation.

- Amend TDC 18.210.030 to remove consistency requirement with federal law.
- Medical Marijuana facilities would be regulated in the same manner as other retail uses within the city through the TDC. Existing regulations, both city and state,

would result in the following time, place, and manner restrictions on medical marijuana dispensaries:

- 1,000 foot separation from a primary or secondary school (State);
- 1,000 foot separation from another dispensary (State);
- Prohibited in all Residential zones (State and TDC);
- Allowed in all commercial zones (State and TDC);
- Size-restricted within the Industrial-Park zone (TDC);
- Prohibited outright in the Light and Heavy Industrial Zones (TDC); and
- Existing standards regarding landscaping and screening, parking, and environmental performance standards for light noise, and odors will apply (TDC)

### III. Adopt land use regulations to prevent or mitigate anticipated nuisance issues.

State statute authorizes local governments to establish reasonable time, place, and manner restrictions on medical marijuana facilities. The city may craft reasonable restrictions in a manner that anticipates future legalization of retail cannabis. In determining what is “reasonable”, staff recommends looking at existing precedents both within Tigard and across the region.

- Reasonable regulations could include one or more of the following:
  - Restrictions on hours of operation;
  - Restriction on allowed zones;
  - Distance buffers in excess of current state law;
  - Limits on size;
  - Security requirements (i.e. security lighting, camera locations, etc.);
  - Entrance location requirements;
  - Environmental performance standards for noise, odors, and light; and/or
  - Regulate as a conditional use in some or all circumstances.
- The state has already set a precedent for the use of 1,000 foot distance buffers as a reasonable method to avoid diversion of marijuana and minimizing public nuisances that may affect minors attending a primary or secondary school.

- Distance buffers for dispensaries are being discussed in other communities within Washington County, and there is precedent in the City’s regulation of adult entertainment (18.330.050.B.1) which requires a 500 ft. separation between adult entertainment uses and specified land uses which may be negatively impacted by adult entertainments.
- Given local precedent, regional trends, and existing state statutes, Council may wish to consider the establishment of minimum distances from residential zones or places where children are likely to congregate.
  - A 500 ft. buffer from all Residential and Parks and Recreation zones would be comparable to those required for adult entertainment uses as set forth in the TDC.
  - A 1,000 ft. buffer matches distances required by state statute (schools) and Washington Statute (The voter approved Washington ballot measure I-502, prohibits sales within 1,000 feet of playgrounds, public parks, recreational facilities, child care centers, elementary or secondary schools, transit centers, libraries, or game arcades not restricted to 21 and older).
- A preliminary analysis of available land after state rules and a possible 500 foot buffer from residential and park zones revealed the following differences in land availability:
  - Under existing state rules and Tigard zoning, approximately 929 commercial and industrial parcels could potentially meet location criteria for the opening of a medical marijuana dispensary.
  - Under a conceptual scenario involving a 500 foot buffer from all residential and park zones, the number of available parcels drops to approximately 462 parcels.
  - The geographic distribution of the buffer areas and potentially eligible parcels are demonstrated on two maps included as Attachments “C” and “D” of this memorandum.

#### IV. Prohibition.

Council could try to outright prohibit medical or retail marijuana dispensaries within the City in conformance with federal law.

- Would most effectively prohibit unique nuisance or compatibility issues created by dispensaries.
- Likely to result in litigation. May be prohibited by Measure 53 if it passes.

## V. Amend Municipal Code to address nuisance and increased cost-of-service-delivery.

Council could opt to address dispensary issues in a non-land use manner through the nuisance code, business license requirements, or other public safety measures.

- Could be implemented independently or in coordination with land use amendments.

### Public Outreach

At present, staff is planning a public outreach program ahead of the public hearings process to solicit input from Tigard citizens and business owners regarding their concerns and desired outcomes. These efforts will begin immediately after the Planning Commission workshop on August 4 so that their input may also be incorporated. These efforts will include the following:

- An article in Cityscape summarizing the project and including a link to the project website, critical dates, and staff contact information.
- A city website presence to provide centralized information regarding the project, links to information, and portals to two interactive tools:
  - An online forum hosted by ConsiderIt, similar to the one being used for River Terrace. This is a hosted website that provides not only an avenue for submitting commentary, but is structured to foster dialogue between users and identify areas of common ground between polarized parties.
  - An interactive web map that will let users activate multiple buffer scenarios (i.e. state rules only, 500 foot buffers from residential zones and parks, 1000 foot buffers from residential zones and parks) and how that may affect specific areas of the city down to a parcel level.
- Active solicitation of input from potential dispensary operators.
- A survey of the Tigard business community regarding medical and retail marijuana, in partnership with the City's Economic Development Coordinator.

Attachments: A. Secretary of State Submission Log  
B. Proposed Initiative Petition #53  
C. Prohibited Dispensary Locations Under ORS 475.314  
D. Prohibited Dispensary Locations Under ORS 475.314 & Local Buffers