

CITY OF TIGARD  
MARIJUANA FACILITIES PROJECT  
DCA2014-00002

PLANNING COMMISSION RECOMMENDATION

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# Staff Commentary

## Introduction

The Tigard Marijuana Facilities Development Code Project is a series of text amendments whose purpose is to bring the City of Tigard into compliance with State law. Proposed changes to the Tigard Development Code include new definitions to be placed within Chapter 18.120 (Definitions); text amendments to Chapter 18.210 (General Administrative Provisions) to remove a requirement that development be consistent with federal law; and creation of a new chapter to be titled 18.735 (Marijuana Facilities) that would establish time, place, and manner restrictions on marijuana facilities within the City of Tigard.

## How to read this report

This document is intended to be read in book format, with proposed text amendments on the right hand page and staff commentary on those amendments on the left. The comments are intended to provide both clarity and future documentation as to legislative intent.

Proposed changes are indicated by the use of ~~strikethroughs~~ to indicate language to be removed, a double underline to indicate language to be inserted, and the use of **red font** to further identify the proposed changes.

## Commentary on Proposed Definitions

Definitions for the terms “marijuana” and “marijuana facility” are based on language used in the recently enacted Marijuana Tax adopted by the Tigard City Council under Ordinance 14-02. Definitions have been crafted to try and address the full range of economic activity associated with the production, processing, distribution, transfer, and consumption of cannabis.

The definition for the term “permanent building” was crafted at the request of the Planning Commission on January 12 and included in their recommendation on February 9, 2015.

CHAPTER 18.120  
DEFINITIONS

18.120 Definitions

18.120.030 Meaning of Specific Words and Terms

“Marijuana” - All parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“Marijuana Facility” – A commercial or public use or structure where marijuana is produced, processed, distributed, transferred, sold, or consumed.

“Permanent Building” – A non-mobile structure with a roof supported by columns or walls, and permanently attached to a permanent foundation or footings.”

## Staff Commentary

Proposed changes to TDC 18.210.030 would remove consistency requirement with Federal law, and thus reduce legal uncertainties presented to the City and applicants where state and federal law conflict on the matter of marijuana. Under existing code and the continued federal classification of marijuana as a Schedule II drug, the city would be required to deny all land use applications for medical marijuana facilities. This could also create legal uncertainty in situations where a facility wants to open in a location and no land use or building permits are necessary (i.e. conversion of an existing retail space to a state licensed dispensary). Another point of uncertainty exists in that Measure 91 requires a petition and election of the voters for a jurisdiction to prohibit recreational marijuana licenses. The proposed changes would remove those conflicts from local land use regulations.

CHAPTER 18.210  
GENERAL ADMINISTRATIVE PROVISIONS

18.210.030 Consistency With Plan and Laws

A. Consistency with comprehensive plan and other local and state laws. Each development and use application and other procedure initiated under this title shall be consistent with the adopted comprehensive plan of the City of Tigard as implemented by this title and with applicable state ~~and federal~~ laws and regulations. All provisions of this title shall be construed in conformity with the adopted comprehensive plan

## Staff Commentary

The proposed text amendments would result in a new chapter of the Tigard Development Code known as TDC 18.735 (Marijuana Facilities) that would establish specific development standards for marijuana related businesses. These standards are being developed as a standalone chapter due to the unique legal status and potential community impacts presented by this new land use.

Section 18.735.010 establishes the purpose of the zone. In addition to the reasons listed, the specific community impacts this code is intended to prevent or mitigate includes the following:

- Diversion of marijuana to unauthorized cardholders, particularly minors, by avoiding the location of facilities near places where children live and congregate;
- Unpleasant odors associated with the 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 facilities not constructed to code;
- Explosions resulting from the use of butane as a processing agent; and/or
- An undue burden placed on City and regional agencies who may be required to respond and address the community impacts listed above.

CHAPTER 18.735  
MARIJUANA FACILITIES

Sections:

- 18.735.010 Purpose
- 18.735.020 Applicability
- 18.735.030 Approval and Enforcement
- 18.735.040 Development Standards

18.735.010 Purpose

The purpose of this chapter is to:

- A. Protect the general health, safety, property, and welfare of the public;
- B. Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby properties that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
- C. Prevent or reduce criminal activity that may result in harm to persons or property;
- D. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
- E. Minimize impacts to the City's public safety services by reducing calls for service.

## Staff Commentary

Section 18.735.020 establishes where the provisions of this chapter would apply. As set forth in this section, this chapter would apply to the whole chain of production and custody in both a medical and recreational context. The threshold for application would be the requirement for a state license or registration of the facility, and would not apply to personal exemptions.

Section 18.735.030 establishes a Type I review process to determine minimum compliance with the development standards set forth elsewhere in this section. The purpose of this review process is to capture all new businesses entering or establishing themselves within the city, even in situations where no other land use or building permits are required. As a Type I process, no public notification will be provided to nearby property owners, with the assumption that the development standards set forth in 18.735.040 will prevent or sufficiently mitigate negative off-site impacts that could occur to sensitive land uses within proximity of the facility

The documentation requirements set forth in 18.735.030.C are similar to requirements set forth in the Durham Facility Plan District (see 18.650.070.G), and are intended to facilitate a meaningful and objective review of facilities that may create a significant and unpleasant odor impact upon the neighborhood. The standard is written broadly to allow flexibility in how the applicant responds to the standard, as well as flexibility to the city as new and unknown business models and building types and activities are presented as this sector of the economy develops.

### 18.735.020 Applicability

- A. Relationship to other standards. The regulations within this Chapter are in addition to base zone standards. Sites with overlay zones, plan districts, inventoried hazards, and/or sensitive lands are subject to additional regulations. Specific uses or development types may also be subject to regulations set forth elsewhere in this title.
- B. When provisions apply. The provisions of this chapter shall apply to all marijuana facilities requiring a state license or registration.

### 18.735.030 Compliance and Enforcement

- A. Procedure: All marijuana facilities requiring a state license or registration, and public places of assembly where marijuana is consumed, shall demonstrate minimal compliance with these standards through a Type I procedure as set forth in 18.390.030 of this Title, using approval criteria set forth in Subsection B of this section.
- B. Approval Criteria: Development subject to the provisions of this chapter shall demonstrate compliance with all standards set forth in Section 18.735.040 of this Chapter.
- C. Documentation: The following provisions shall apply at the time of minimum compliance review or a request for enforcement:
  - 1. When processing a minimum compliance review, the City may accept an evaluation and explanation certified by a registered engineer or architect, as appropriate, that the proposed development will meet the off-site odor impact standard. The evaluation and explanation shall provide a description of the use or activity, equipment, processes and the mechanisms, or equipment used to avoid or mitigate off-site impacts.
  - 2. If the City does not have the equipment or expertise to measure and evaluate a specific complaint regarding off-site impacts, it may request assistance from another agency or may contract with an independent expert to perform the necessary measurements. The City may accept measurements made by an independent expert hired by the controller or operator of the off-site impact source.

## Staff Commentary

State statute authorizes local governments to establish reasonable time, place, and manner restrictions on both medical and recreational marijuana facilities when tied to specific community impacts. In determining what is “reasonable”, staff recommends looking at existing precedents both within Tigard and across the region.

- The Tigard Development Code already includes use and design regulations comparable to those proposed in 18.735.050, including:
  - Restrictions on hours of operation;
  - Restriction on allowed zones;
  - Distance buffers;
  - Limits on size;
  - Design and Security requirements; and
  - Environmental performance standards for odor.
- Restrictions on hours of operation are proposed
  - According to data published by the OLCC, proposed hours of operation in TDC 18.735.050.C are more expansive than those posted by the existing liquor stores in Tigard (11-9 Monday – Friday, 10-7 Saturday, closed on Sunday). Looking at surrounding communities, the proposed hours of operation are identical to (or slightly more expansive) than existing liquor store hours in King City, Beaverton, and Tualatin.
  - An exception to hours of operation for industrial uses has been included in the proposal for industrial uses where the general public is not present.
- Exterior lighting requirements are comparable to those required during normal Site Development Review (see TDC 18.360.090.I).
- There is existing precedent for the use of minimum distance buffers as a reasonable land use control for marijuana related businesses, such as those proposed in 18.735.040.H:
  - The state of Oregon 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.
  - Washington State ballot measure I-502, prohibits the issuance of a licenses for the sale of marijuana 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.
  - The city of Tigard adult entertainment standards (18.330.050.B.1) require a 500 ft. separation between adult entertainment uses and specified land uses which may be negatively impacted by adult entertainments.
  - Other local governments within Oregon have adopted minimum distance requirements from specified land uses, including: Washington County (1,500 – 2,000 feet), City of Salem (100-500 feet), City of McMinnville (1,000 feet), and City of Albany (300 feet). The City of Hillsboro is also considering 1,000 foot minimum distance buffers from residential areas, and the City of Tualatin a 3,000 foot buffer from both residential and park uses, but their public hearing processes have not yet concluded.

## Proposed Text Amendments

### 18.735.040 Development Standards – Staff Recommendation of January 12, 2015

Development subject to the provisions of this chapter shall demonstrate compliance with all of the following standards:

- A. The proposed development complies with all applicable State requirements.
- B. The proposed use is allowed in the underlying zone and complies with all applicable requirements of this title.
- C. Hours of commercial operation shall be limited to the hours between 10:00 am and 8:00 pm. General industrial uses with no on-site retail activity are exempt from this restriction.
- D. Primary entrances shall be located on street-facing facades and clearly visible from a public or private street.
- E. The proposed development shall be located inside a permanent building and may not be located within a trailer, shipping container, cargo container, tent, or motor vehicle. Outdoor storage of merchandise, plants, or other materials is not allowed.
- F. Parking lots, primary entrances, and exterior walkways shall be illuminated with downward facing security lighting to provide after-dark visibility to employees and patrons. Fixtures shall be located so that light patterns overlap at a height of seven feet.
- G. Drive-through marijuana facilities are prohibited.

## Staff Commentary

On January 12, 2015 and February 9, 2015 the Tigard Planning Commission considered the staff recommendation after receiving public testimony from both opponents and proponents of marijuana facilities being allowed to operate within the City. Three issues arose

- The Commission was concerned that the staff recommendation only provided a buffer from residential zones, and not mixed-use zones where children and other members of the population are expected to reside. The Commission found some level of protection necessary for mixed use zones as well as residential zones. This concern was greater for marijuana facilities open to the public.
- The commission was also concerned about an overconcentration of retail facilities along Pacific Highway or Main Street. There was a similar concern about their overconcentration in the City's industrial zones.
- Within the public testimony were requests from retail marijuana facility operators who desired to locate on Pacific Highway or Main Street as preferred locations, citing their function as primary retail destinations within the City.

In consideration of these and other issues, the Planning Commission unanimously adopted differential location standards for marijuana facilities open to the public, and facilities not open to the public. These changes are reflected in paragraph "H" on the opposite page, and reflect staff's interpretation of the general direction provided in the Planning Commission's motion.

## Proposed Text Amendments

- ~~H. The proposed site is not be located within 500 feet of any parcel or tract of land within the City of Tigard and containing one or more of the following characteristics, as measured at the closest property lines:~~
- ~~a. Residential Zone~~
  - ~~b. Parks and Recreation Zone~~
  - ~~c. Public Library~~
- H. The proposed marijuana facility meets the following site location restrictions. All distances shall be measured at the closest property lines between the proposed site and nearest parcel or tract of land containing the specified use or characteristic.
1. Retailers and wholesalers selling directly to the public shall be restricted to parcels with frontage on Pacific Highway or Main Street; shall not be located not within 1,000 feet of another retail or wholesale marijuana facility; and not within 500 feet of a Public Library or Parks and Recreation Zone.
  2. Non-retail uses and wholesalers not selling to the public shall not be located within 500 feet of a parcel or tract within the City of Tigard containing one or more of the following:
    - a. Residential Zone
    - b. Parks and Recreation Zone
    - c. Public Library
- I. The proposed site is not located within 1,000 feet of any parcel or tract of land within the City of Tigard containing a public or private elementary school, or career school attended primarily by minors, as measured at the closest property lines.
- J. The proposed development shall confine all marijuana odors and other objectionable odors to levels undetectable at the property line.