

**CITY OF TIGARD
PLANNING COMMISSION
Meeting Minutes
February 9, 2015**

CALL TO ORDER

President Rogers called the meeting to order at 7:00 p.m. The meeting was held in the Tigard Civic Center, Town Hall, at 13125 SW Hall Blvd.

ROLL CALL

Present: President Rogers
Vice President Fitzgerald
Commissioner Feeney
Commissioner Lieuallen
Commissioner Middaugh
Commissioner Muldoon
Commissioner Ouellette
Commissioner Schmidt
Commissioner Smith

Absent: Alt. Commissioner Enloe; Alt. Commissioner Mooney

Staff Present: Tom McGuire, Assistant Community Development Director; John Floyd, Gary Pagenstecher, Associate Planner; Sean Farrelly, Redevelopment Project Manager; Doreen Laughlin, Executive Assistant

COMMUNICATIONS – Commissioners Fitzgerald, Muldoon, Lieuallen, & Schmidt reported that they'd attended a presentation on traffic & highway safety earlier in the month. They thought it was well worth the time.

CONSIDER MINUTES

February 2 Meeting Minutes: President Rogers asked if there were any additions, deletions, or corrections to the February 2 minutes; there being none, Rogers declared the minutes approved as submitted.

OPEN PUBLIC HEARING (Continued from January 12, 2015)

President Rogers opened the public hearing.

PUBLIC HEARING

MARIJUANA FACILITIES DEVELOPMENT CODE AMENDMENT

Development Code Amendment (DCA) 2014-00002

PROPOSAL: The City of Tigard proposes legislative amendments to the Tigard Development Code (TDC) to establish reasonable time, place, and manner regulations for marijuana facilities. Proposed changes 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 limit hours of operation, establish minimum buffer distances from residential and park zones, require exterior design requirements to enhance security, establish off-site odor standards, and create an associated review procedure. The proposed text and map amendments for the Planning Commission’s review are included in **Attachment 1**, and summarized in Section IV of the staff report. **APPLICANT:** City of Tigard. **ZONES:** Citywide **LOCATION:** Citywide and properties identified in the staff report maps. **APPLICABLE REVIEW CRITERIA:** Statewide Planning Goals 1 (Citizen Involvement), 2 (Land Use Planning), 6 (Air, Water, and Land Resources Quality), and 9 (Economic Development); ORS 475 (Oregon Medical Marijuana Act); Statewide Ballot Measure 91 (Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act); Comprehensive Plan Goals 1.1.2, 2.1.2, 2.1.3, 2.1.6, 2.1.11, 2.1.21, 2.1.23, 2.1.24, 6.1.7, 9.1.3, 9.1.12, 10.2.1 and 10.2.8.; and TDC Chapters 18.380.020 and 18.390.060.G

APPLICANT

The applicant in this case is the City of Tigard. Associate Planner John Floyd introduced himself and noted that this was a continuation of the January 12th public hearing. He reminded the commissioners that at meeting the Planning Commissioners had a list of questions that they’d wanted staff to address. John noted that he’d bundled those into four themes. He went over a PowerPoint to address their concerns (**Exhibit A**).

The four themes he based his presentation on are:

- Mixed Use Zones: Include or Exclude?
- Minimum Buffer Distances: increase or decrease? Exceptions?
- Minimum distances between facilities to reduce concentration/corridor effect?
- Site Security and Facility Design

Staff recommends the Planning Commission find in favor of the proposed development code text amendments (Attachment 1); with any alterations as determined through the public hearing process, and make a final recommendation to the Tigard City Council.

QUESTIONS FROM THE COMMISSIONERS –

What is the definition of a permanent building? “A non-mobile structure with a roof supported by columns or walls, and attached to a permanent foundation or footings.”

Why is this a “cash only” business? My understanding of this, based on my conversations with the City Attorney and others, is that it’s a federalism issue in that marijuana is legal at the state level in Oregon now as well as in some other states, but is not recognized as legal by the federal government – it’s still a schedule 1 drug. So these businesses are operating out of compliance with Federal Law and I believe it has to do with the risk of prosecution by the federal government that a lot of banks are choosing to not participate in this economy.

TESTIMONY IN FAVOR

Lester Brock 25977 SW Meadowbrook Lane in Sherwood was of the opinion that the dispensaries should be in plain view. He thinks 99 and down through Main Street would be a good location. He thinks the grow operations would be better located in industrial parks. As a possible dispensary owner, he would want the public to be able to see it and believes it would be good for law enforcement to be able to see it easily as well. He doesn’t believe it would be safe to

be tucked behind somewhere in an industrial park. He said some banks do allow banking with them and said he thinks it's not only a "cash only" business.

Jeremy Audritsh, 1255 SW Pathfinder Court, Tigard wanted a definition of "facilities." Would that be a grow operation? A retail operation? John Floyd gave the definition, per the proposal, as follows: "A marijuana facility is a commercial or public use or structure where marijuana is produced, processed, distributed, transferred, sold, or consumed."

Layton Gorbett, 7110 SW Virginia Avenue, Portland, OR 97219 with the "Oregon Resource Group," said he consults businesses and individuals in the cannabis industry. He passed out some written information and showed the commissioners photos of what he believes are a good representation of what a lot of medical dispensaries look like (**Exhibit B**). He said there's no indication that a 1000 foot buffer around a school creates safety for anybody and that it's political, feeling based, legislation that got the law passed.

QUESTIONS

You talked about medical dispensaries - are you talking about recreational marijuana as well? Absolutely – when the state's figured out what Measure 91's going to look like – then of course, we'll go that route. Right now we're not advising any clients in that area. We don't know what it's going to look like so there's no way of giving any good advice.

TESTIMONY IN OPPOSITION

Art Cornelius, 13398 SW Benchview Terrace, Tigard, OR 97223 – believes that the distances you establish in this particular process will never be able to be expanded. He recommends that they look toward the broader buffer distances. He noted they can always be modified later on but you'll never be able to make them bigger. He recommends starting with the Washington County restriction which is a 2000 ft. buffer zone. Secondly, security is an issue because these are cash only businesses and are a magnet for predatory people to come in and try to rob them. He doesn't believe they should be too close to schools.

PUBLIC HEARING CLOSED

No further testimony or questions from the audience allowed.

DELIBERATION

President Rogers noted that staff had presented a very good proposal and had answered the questions that they'd sent to them at the last hearing. He noted that there'd been good testimony on both sides and that at the end of the day – or sometime in the future – they would need to come to the point of making a motion; this was the time to discuss the subject and come to a conclusion, if possible.

Some of the commissioners didn't see any value in putting minimum or maximum distances between these types of facilities; others disagreed and believe there's a need to have minimum buffer distances, whether medicinal or recreational.

President Rogers went around the table and asked for thoughts from all the commissioners. There were comments and discussion on buffer zones; minimum or maximum distances between the types of facilities; pros and cons of conservative buffer zones; allowing or disallowing in mixed-use areas; restricting to secluded or well lit areas; and the pros and cons of centralizing facilities to certain areas such as the use of a “green light” district.

After much discussion as to coming up with the language of a motion the following motion was made:

MOTION

Commissioner Smith made the following motion regarding DCA2014-00002:

“I propose we adopt the staff recommendation from January for producers, processors, and wholesalers that do not sell to the general public. For retailers and wholesalers that sell to the general public, I move that they only be allowed along Hwy99 and Main Street with 1000 ft buffer between facilities; they need to front face, or ‘see the door’ from Hwy99 or Main Street with that 1000’ buffer and the other staff conditions. That it would be 500’ from schools, 500’ from parks. I also recommend approving staff’s new definition of a building structure adding to it ‘permanently attached to the permanent foundation’.”

President Rogers added to the motion:

“We will forward a recommendation to Council on exploring how to deal with consumption on-site for retail establishments.”

Commissioner Muldoon seconded the motion.

A vote was taken: all in favor - none opposed, none abstained.

MOTION PASSES UNANIMOUSLY

John Floyd noted that this is scheduled to go before the City Council on March 10th.

5 MINUTE RECESS

OPEN PUBLIC HEARING

President Rogers opened the second public hearing.

OMNIBUS CODE AMENDMENT PACKAGE

Development Code Amendment (DCA) 2014-00003:

Proposed text amendments to the Tigard Development Code would result in the following changes to standards and procedures therein:

1. Establishment of design and siting standards for above-ground utility cabinets on private property;
2. Amendment of the “Railroad and Utility Corridor” use classification into “Transportation and Utility Corridors”, for the purpose of including trails; and

- associated amendments to Chapters 18.520 and 18.530 to allow trails as a permitted use in all commercial and industrial zones.
3. Amendment of the sign code to allow electronic message centers in the MUC zone in the Washington Square Plan District, and clarification of existing restrictions on these types of signs.
 4. Amendment of Map 18.610.A of the Downtown Tigard Plan District to expand the “Station Area Overlay” by approximately 17.94 acres to include ten properties near the intersection of Ash Avenue and Burnham Street.

APPLICANT

As the applicant, City of Tigard Associate Planner, John Floyd, explained that the omnibus package is a group of four different development code amendments and, for efficiency sake, they are being presented together, as a package:

Combined Development Code Amendments

1. Utility Cabinets: Development Standards on Private Property
2. Transportation and Utility Corridor Use Classification
3. Electronic Message Center Amendments
4. Expand Station Area Overlay in Downtown Plan District Chapter

With regard to the first amendment - utility cabinet standards – he explained that this is in response to anticipated changes in technology and utility service delivery to the city. New providers coming into the city may potentially have an interest in locating large utility boxes and structures on private property and some could be substantially larger than what we traditionally see in the city. The development regulations would come into play when a new utility cabinet is proposed on private property. It’s a conditional use and would be reviewed as such. There would be additional standards in that the equipment would have to be located underground. If it cannot be located underground, there are regulations where it’d have to be located in the most inconspicuous part of the property possible. This is because we’ve had a cabinet request for things 10’ wide by 30’ long – and this is a substantial change from what we typically see. It’s basically to reduce visual clutter in the city. It’s a rule change – not a specific proposal for a specific property in the city.

The second major change is a reclassification of multi-use trails. Presently, trails are included under the community recreation land use classification - so the zoning code treats them as recreational uses only. In fact, trails are becoming more of a primary transportation facility for a lot of people. We have a new strategic plan which calls for greater connectivity in the city. The idea behind this code amendment is to reclassify trails in a transportation and utility corridor classification which are longer than a year sort of facilities - and typically with people around. They would move from a conditional use to a permanent use in commercial and industrial zones but still be considered through a conditional use processing in residential zones. There’s potentially lower impact and more things to consider when placing trails in a residential zone.

The third change is two different sets of amendments to our sign code – both revolve around electronic message centers. Right now electronic message centers are allowed in two zones – plus there’s an exception. They’re basically allowed in the CG, general commercial zone in the MU-CBD zone. They’re also allowed at public or private schools under certain circumstances.

Electronic message centers are basically anything with a changeable message. They could be LED lights, or the old fashioned light bulbs; everything from a time and temperature sign, up to that large digital billboard you might have seen across from Washington Square Mall. There was a request to expand the allowed zones to Washington Square. A property owner there wanted a time and temperature sign so, on council direction, staff has prepared a code amendment to allow electronic message centers in the MUC zone around Washington Square Mall - but only as a freestanding sign, not as a wall sign – because wall signs are regulated. There was a recent LUBA case in Tigard regarding electronic message centers and nonconforming sign regulations. The city prevailed but LUBA noted that our language could have been clearer – so this code amendment also clarifies and strengthens our current restrictions on electronic message centers. That pertains to the billboard across from Washington Square Mall – which should be removed in a couple of weeks.

The fourth proposed code change is the proposed expansion of the station area overlay. As a background – the Downtown Tigard Planned District is broken up into sub-areas. Overlaying them is a station area overlay. It allows higher densities for properties in its overlay. It's meant to incentivize higher density near the Transit Center. Right now it doesn't cross Burnham Street and the idea would be to bring those additional properties in. The affected properties are within a roughly five minute walk from the station. So this would basically put people who are likely to use transit near the Transit Center.

QUESTIONS OF STAFF

Looking at this from an electrical, safety, and reliability point of view – is there anything that you reviewed having any impact? Secondly, as for general safety – will there be any risk of flooded vaults out of this as you're going underground? Thirdly, is there any impact on Certificates of Public Convenience & Necessity or CPCN's? Gary Pagenstecher answered no to all three of the questions. The standards are designed for “visual clutter” that John Floyd mentioned. The default that these standards propose is underground vaults – so there is no issue after that. If it's above ground because it's demonstrated that it has to be the type of cabinet it is, without cost being a factor, then these regulations would come into play and the effect of them would be to minimize the visual presence of the vault. First, you site it somewhere it's not visible. If it has to be visible then it needs to be dark and non-reflective – and it would also have to be screened from view. In that order, because we know screening is not reliable over time and dark paint and non-reflective materials have great effect in terms of not drawing your eye to them. They tend to minimize the size. So it's “avoid, minimize, and mitigate.” The same thing you'd use in a natural resource protection.

I know for a fact that there's a stainless steel signal light control cabinet at the corner of Durham and 99W. Does that mean that, since they're above ground, they have to be dark? Are the cabinets going to be replaced and retrofitted or is it geared towards new? It's geared towards new and this is not going to apply retroactively – and we're talking about larger cabinets than those. What size cabinet is subject to this regulation? I don't think we've determined that. Does this give Google the right to put a 4 ft. x 2 ft. x 2 ft. cabinet in someone's front yard now that they couldn't have done before? I think you've said that with existing rules they would have had to work out something with the property owner... now they're going to have the right to do it? We don't have a size requirement that triggers the applicability of the standards and that may be a problem for these regulations. What

we said is larger cabinet types greater than these control cabinets that we see now. Anything larger than that, they would apply to. President Rogers asked **“So is it too restrictive if the commission, during this hearing process, came up with a size standard?”** You could do that, yes.

TESTIMONY IN FAVOR – None.

TESTIMONY IN OPPOSITION

Mark Schnetzky – 11860 SW 91st Ave. Tigard 97223 – said he is opposed mostly because he doesn’t fully understand what it means in terms of the Tigard grange. The grange is looking at bringing in a type of shipping container. Would that be defined as a utility cabinet? President Rogers answered that a shipping container would not be defined as a utility cabinet. It’s more of a storage type facility. Mr. Schnetzky asked what this would mean so far as posting a sign outside of the Tigard Grange. John Floyd said the Tigard Grange is zoned General Commercial. You could install an electronic message center on the grange if the sign met all of the current sign requirements. For example there’s a 15% sign area limit so – proportional to the size of the building – but the grange could install one if it wanted to. Mr. Schnetzky said it wouldn’t be an electronic sign. It would more likely be 4 x 8 sheets of quilt squares to possibly put on the building. Vice President Fitzgerald suggested that Mr. Schnetzky visit the Permit Center to ask for more specific direction on what can and can’t be put on the outside of the grange. He agreed to do that.

Julia Good, 11865 SW 95th Ave., Tigard is concerned about utility cabinets being placed in her yard. She said it’s very important to keep control of where these types of things are placed. She’s concerned about the overlay expansion and high density. She said she’s disappointed in the WES system and the lack of service on the weekends and other times of the day on weekdays. She was also concerned about building height on Main Street, Scoffins, and Commercial. She’s concerned about density and whether Main Street or Hall Blvd can handle that.

James Good 11865 SW 95th Ave., Tigard – was astounded by the size of the “cabinets.” Thinks they’re more like a shed. He told a story about someone in Portland who came home and found a large cabinet on his property. He doesn’t understand the size of cabinets getting bigger.

PUBLIC HEARING – CLOSED

No further testimony or questions from the audience allowed.

DELIBERATION

President Rogers and the commission decided to go through the amendments one at a time to make any comments and bring up any possible issues.

With regard to:

Number 1: Utility Cabinets on Private Property

Commissioner Muldoon thinks this is a good attempt to ensure that if the cabinets end up above ground that they are not going to be reflective and will at least somewhat be screened or

minimally intrusive. It looks like an attempt without all the pieces that can't really be anticipated yet. Commissioner Feeney clarified that this is actually the City helping to control these types of things; it's a safeguard.

There was some discussion on stainless steel cabinets and their visual impact. Gary Pagenstecher said he wasn't sure how it would play out, but the idea is to bury it or use a product that is dark or non-reflective. Commissioner Smith was concerned about utilities possibly putting in very dark cabinets.

Number 2: Streamlined Permitting for Multiuse Trails

President Rogers said "This is about funding for trails – it's a long time coming in my opinion. With the new definition it frees up the ability to go get funding - because it's now transportation funding. Where before we'd have to apply for parks or open space permits for trails because it was defined as community space. This opens it up to transportation. This helps the city to complete the vision, that is, making the City of Tigard more walkable and a place that we can commute."

Number 3: Electronic Message Centers in Washington Square Plan District

There were some questions and discussion on what types of signs would be allowed... there are so many different kinds of signs... fade-outs, animated, etc. John Floyd clarified that a sign's message would have to be static for two seconds before it changes. So animation is prohibited in our current regulations. The distraction risk is out.

Number 4: Expand Station Area Overlay in Downtown Plan District Chapter

No one commented on this other than President Rogers. He said, "This is a long term vision. The Washington Square Master Plan has been in existence for a very long time but it doesn't look anything like what that Master Plan was thought to look like. The beauty of this vision is we're driving towards that but it doesn't mean tomorrow we're going to see 80' tall buildings."

MOTION

Commissioner Muldoon made the following motion - seconded by Commissioner Fitzgerald:

"I move the Planning Commission forward a recommendation of approval to the City Council of application Omnibus Code Amendment package - Development Code Amendment DCA2014-00003 and adoption of the findings and conditions of approval contained in the staff report."

A vote was taken, all in favor, none opposed; no one abstained.

MOTION PASSES UNANIMOUSLY

OTHER BUSINESS

President Rogers will be attending the City Council meeting on March 10th and will report back to the commissioners. He invited any of the other commissioners to feel free to join him.

ADJOURNMENT

President Rogers adjourned the meeting at 10:02 p.m.

Doreen Laughlin, Planning Commission Secretary

ATTEST: President Rogers