



City of Tigard Memorandum

To: Mayor Cook and the Tigard City Council

From: John Floyd, Associate Planner

Re: DCA2014-00002 Marijuana Facilities (Continued from March 10, 2015)

Date: April 6, 2015

On March 10, Council held a public hearing on the Planning Commission recommendation for marijuana facility regulations. In response to public testimony and subsequent deliberation, the item was continued due to the absence of two Council members and to allow time for further analysis and deliberation. In addition, the written record was left open until April 1 to allow opportunity for additional public testimony.

When considering the following analysis and attached testimony, the Council may wish to keep in mind that the legal marijuana economy is still maturing, with many unknown issues and a dynamic regulatory environment at both the state and federal level. The OLCC has yet to establish rules for licensing, marijuana legislation is pending in Salem, and a new presidential administration will take office in 2 years. As a result, the Council may wish to act conservatively until State and Federal regulations stabilize and integrate, and more information is gathered regarding potential nuisance impacts of marijuana sales. A conservative choice would be for Council to establish greater restrictions on the areas available for retail marijuana facilities now, as it will be easier to expand the areas designated for marijuana sales later rather than to contract them.

Clarification of Medical and Recreational Distribution as “Retail” Uses

The marijuana text amendments are intended to be additive to existing code regulations, and are not intended to replace any existing code. Under existing code, both medical marijuana dispensaries and recreational marijuana retailers fall under the same definition of “sales-oriented retail” as presently defined in the Tigard Development Code. For comparison’s sake, this same use classification also encompasses pharmacies and liquor stores. Due to the similarity of use classifications and potential community impacts, staff proposed a singular method of regulating both medical and recreational marijuana sales in order to allow adaptability as the OLCC and Oregon Medical Marijuana Program are adjusted over time by the legislature and state agencies. The planning commission concurred in their recommendation to Council.

Amend to Allow Multiple Licenses on one site

On March 10 the matter of co-licensing on a single property was raised. Should Council wish to allow both recreational and medicinal sales on the same property, language could be added to allow both a medical and a recreational license on the same property. This could also be expanded to allow growing, processing, and testing to occur on the same site (provided the applicant could also obtain state approval for co-location).

It should be noted that on March 3, 2015 the OLCC recommended against the co-location or co-licensing of medical and recreational distributors. As detailed in Attachment 1 of this memorandum, the OLCC is concerned about the integrity of the medical marijuana system when compared to standards it seeks to establish for a successful retail marijuana program. More specifically, the OLCC is concerned that current medical marijuana standards are inadequate in regards to the tracking and testing of marijuana from “seed to sale”, is not of sufficient integrity to prevent the diversion of medical marijuana into the black market, and threatens the recreational marijuana program’s compliance with federal guidelines.

Amend to Remove Main Street or MU-CBD Zone

Members of the public and individual Council members have questioned the Planning Commission’s recommendation to designate Main Street as an allowed location for marijuana distribution. Arguments in favor include multimodal access (car, bike, foot, wheelchair, transit) in a centralized location. Arguments against include the presence of children in an area designated for high pedestrian traffic and community events.

Should Council not find Main Street an appropriate location, changes could be made to simply remove Main Street as a designated location. Alternatively, Council could adopt a general prohibition of such uses in the whole of the MU-CBD zone which encompasses the general downtown area. Such an action would be consistent with regulations adopted by other cities such as Beaverton, Hillsboro (proposed), Salem, and Ashland which all prohibit the siting of dispensaries within their downtown core.

Expand Allowed Locations for Retail Sales

On March 10, Council discussed the suitability of Washington Square, Scholls Ferry Road, and other locations for retail sales. There was also concern about the number of stores on Pacific Highway. Council may wish to consider the following options:

The Planning Commission recommendation could be expanded to include one or more arterials as allowed locations for retail marijuana facilities, and not just Pacific Highway. Such a recommendation would be consistent with the Planning Commission’s desire for locating such businesses in areas with heightened visibility and minimization of impacts to residential land uses. An expansion to include all arterials would open the Washington Square and

Metzger area, as well as the 72nd Avenue Corridor and Bridgeport Village area to retail marijuana sales. The remainder would be practically excluded due to the presence of schools or the predominantly residential zoning of the corridors. That said, it should be noted that there is insufficient time to conduct targeted outreach to these additional locations, should Council wish to do so. A list of the all roads designated as arterials would include the following:

Predominantly Commercial

- Pacific Highway
- 72nd Avenue
- Upper Boones Ferry

Mixed Commercial/Residential

- Hall Boulevard
- Scholls Ferry Road
- Bonita Road
- Greenburg Road

Predominantly Residential

- Durham Road
- Roy Rogers Road
- Beef Bend Road
- Walnut Street
- Gaarde Street
- McDonald Street

In lieu of, or addition to the above changes, Council could adopt the staff recommendation to regulate both retail and non-retail marijuana facilities in an identical manner. This would open a larger proportion of the City provided the facility was at least 500 feet from a residential zone, a parks zone, and 1,000 feet from a school.

Council could expand the minimum required distance between retail facilities from 1000 feet to 1,500 or 2,000 feet in order to reduce concentration and distribute these facilities across a greater area.

Amend Primary Entry Requirements

The Planning Commission recommendation requires primary entrances to be oriented toward and visible from a public or private street. In order to address issues of potential ambiguity regarding older buildings not directly oriented to the roadway, or buildings with large setbacks, Council could remove the restriction for doorway visibility, or amend the recommended text as follows:

D. Primary entrances shall be ~~located on street-facing facades and~~ clearly visible from a public or private street.

As amended above, the regulations would still provide for natural surveillance to deter crime.

Window Coverings & Signage

Concern was expressed regarding the nature of signage and window coverings, and whether or not signage should be regulated and/or the use of film or frosted glass to prevent minors from viewing products contained therein.

The Oregon constitution contains very expansive language regarding freedom of expression, and prohibits any regulation based on content as determined through a robust body of case law. As a result, any sign regulation that does not apply equally to all property owners would likely be challenged and defeated.

However, other restrictions could be made applicable if intended to address unique security issues or other concerns of the community. In the matter of window coverings, the Tigard Police Department recommends the windows of retail marijuana facilities be made clear, as crime is less likely to occur when made visible to the public or passing officers. Council could adopt a requirement that a percentage of windows be made clear, unless otherwise required by the State.

Additional Public Comment

The City received 14 comment letters prior to the April 1 deadline for written comments. Copies of all letters are included in Attachment 2 of this memorandum.

The majority of the comments concern the appropriateness of Main Street as a designated location for retail marijuana facilities. Of those commenting on Main Street, the overwhelming majority opposed the main street designation. The most commonly cited reasons include presence of minors, community events, proximity to the transit center, and a diminishing of the quality of place.

Luke-Dorf submitted a comment letter opposing the location of a marijuana facility within close proximity of vulnerable residents, and requested a five-mile exclusion area from mental health and addiction treatment facilities.

Two potential operators submitted comment letters. One requested the Planning Commission reinstate the staff recommendation for the siting of retail marijuana facilities. The other requested approval of the Planning Commission recommendation and leave Main Street as a designated location.

One letter requested buffers from day-cares and pre-schools, reduced hours of operation, and a reduction in the number of potential facilities that could open within the City.

Attachments:

1. OLCC Recommendation Letter; March 3, 2015.
2. Written Testimony
 - a. Tigard Downtown Alliance; letter dated March 25, 2015
 - b. Connie Ramaekers; email received March 26, 2015
 - c. Linda Cook; letter dated March 24, 2015
 - d. Thomas L. Cook, PhD; letter dated March 24, 2015
 - e. Mike Stevenson; letter dated March 30, 2015
 - f. Tigard Cleaners; letter dated March 30, 2015
 - g. Shannon Spahan; undated letter received March 30, 2015
 - h. Shawn Keren; email received March 30, 2015
 - i. Luke-Dorf; letter dated March 30, 2015
 - j. Mark Johnson; email received March 30, 2015
 - k. Connie Ramaekers; email received March 31, 2015
 - l. Kaleafa; letter dated March 31, 2015
 - m. Sunnie Page; email received March 31, 2015
 - n. Steve DeAngelo; email received April 1, 2015