

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 15-07

AN ORDINANCE AMENDING THE TIGARD DEVELOPMENT CODE (TITLE 18) 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 LOCATION STANDARDS, REQUIRE EXTERIOR DESIGN REQUIREMENTS TO ENHANCE SECURITY, ESTABLISH OFF-SITE ODOR STANDARDS, AND CREATE AN ASSOCIATED REVIEW PROCEDURE; AND DECLARING AN EMERGENCY

WHEREAS, the Tigard City Council directed Planning Division staff to prepare amendments to the Tigard Community Development Code pertaining to the design, location and operation of marijuana businesses within the boundaries of the City; and

WHEREAS, amendments to the Tigard Community Development Code Chapter 18.210 would remove legal uncertainty and allow the City to conform to state statutes regarding medical and recreational marijuana authorized under ORS 475.300 (Oregon Medical Marijuana Act) and Measure 91 (Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act); and

WHEREAS, the purpose of creating Chapter 18.735 is to establish reasonable time, place, and manner restrictions to address the nuisance impacts that may be created by marijuana facilities, as specifically authorized by the Oregon Medical Marijuana Act and the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act; and

WHEREAS, notice was provided to the Department of Land Conservation and Development at least 35 days prior to the first evidentiary public hearing; and

WHEREAS, notice of the public hearing was given in conformance with Community Development Code Chapter 18.390.060.D; and

WHEREAS, the Tigard Planning Commission held two duly noticed public hearings on January 12, 2015 and February 9, 2015 and recommended with a unanimous vote that Council approve the proposed code amendment, as amended; and

WHEREAS, the Tigard City Council held a public hearing on March 10, 2015, to consider the proposed amendment; and

WHEREAS, the Tigard City Council has considered the Planning Commission recommendation; and
WHEREAS, the Tigard City Council has considered the applicable Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197; any federal or state statutes or

regulations found applicable; any applicable Metro regulations; any applicable Comprehensive Plan Policies; and any applicable provisions of the City's implementing ordinances; and

WHEREAS, the Tigard City Council has determined that the proposed development code amendment is consistent with the applicable review criteria, and approves amendments to the Tigard Community Development Code as being in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Council adopts the findings recommended by the Planning Commission as contained in the February 24, 2015 Staff Report to the City Council, included as **Exhibit "A"** to this Ordinance as the basis in support of the corresponding code amendments.

SECTION 2: Council further adopts the supplemental findings and analysis contained in **Exhibit "B"** as additional legislative intent and basis in support of the corresponding code amendments.

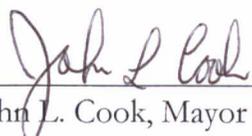
SECTION 3: Tigard Development Code (Title 18) is amended as shown in **Exhibit "C" – Marijuana Facilities** to this Ordinance.

SECTION 4: Emergency. With the expiration of the City's temporary prohibition on marijuana facilities scheduled for May 1, 2015, this ordinance is necessary for the immediate protection of the public peace, health, safety and welfare and shall take effect immediately after passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By unanimous vote of all Council members present after being read by number and title only, this 21st day of April, 2015.


Norma I. Alley, Deputy City Recorder

APPROVED: By Tigard City Council this 21st day of April, 2015.


John L. Cook, Mayor

Approved as to form:


City Attorney

4/21/15
Date

Agenda Item:
Hearing Date: March 10, 2015 Time: 7:30 PM

<p>PLANNING COMMISSION RECOMMENDATION TO THE CITY COUNCIL FOR THE CITY OF TIGARD, OREGON</p>	
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SECTION I. APPLICATION SUMMARY

CASE NAME: MARIJUANA FACILITIES DEVELOPMENT CODE AMENDMENT

CASE NO.: Development Code Amendment (DCA) DCA2014-00002

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 location standards, 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 below in Section IV of this report:

APPLICANT: City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223

ZONES: Citywide

LOCATION: Citywide and properties identified in the Attached 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.

SECTION II. PLANNING COMMISSION RECOMMENDATION

Planning Commission recommends approval by ordinance of the proposed development code text amendments (Attachment 1), with any alterations as determined by Council through the public hearing process.

SECTION III. BACKGROUND INFORMATION & PROJECT SUMMARY

The purpose of the Marijuana Facilities Project is to establish reasonable time, place, and manner restrictions on the full range of “medical” and “recreational” marijuana facilities soon to be allowed under State Law. A brief summary of legislative history is below, followed by a summary of the proposed changes and comparable regulations adopted by nearby jurisdictions.

Legislative Timeline

- November 3, 1998 - Oregon voters approved Ballot Measure 67 allowing the medical use of marijuana. Known as the Oregon Medical Marijuana Act (OMMA), the law protects medical marijuana users who comply with its requirements from state criminal prosecution.
- August 14, 2013 - Governor signs HB3460, which requires the Oregon Health Authority to develop and implement a process to register medical marijuana dispensaries so that patients could legally purchase medical marijuana. Under this bill, dispensaries cannot be within 1,000 feet of a school, 1,000 feet of another dispensary, and must be located within an industrial, commercial, or mixed-use zone.
- February 11, 2014 - City of Tigard adopts a temporary prohibition on medical marijuana dispensaries under Ordinance 14-04.
- March 19, 2014 – Governor signs SB1531 which authorizes local governments to adopt reasonable regulations regarding the hours of operation; location; and manner in which medical marijuana dispensaries are operated. SB1531 also states that a local jurisdiction may enact an ordinance declaring a one-year moratorium on dispensaries.
- April 22, 2014 - Tigard City Council extends the temporary prohibition on marijuana dispensaries until May 1, 2014 under Ordinance 14-08.
- November 4, 2014 - Oregon voters approved Ballot Measure 91 to legalize the use and possession of recreational marijuana on July 1, 2015. The law also directs the Oregon Liquor Control Commission to tax, license, and regulate recreational marijuana through a licensing system to be established by January 2016. The measure did not make any changes to the existing medical marijuana system.
- February 9, 2014 Tigard Planning Commission makes a recommendation to the City Council to establish Marijuana Facility regulations within the Tigard Development Code.
- May 1, 2015 - Automatic sunset date of Tigard’s temporary prohibition on medical marijuana dispensaries. No further extensions allowed under state statute.

Proposed Amendments

At present the city is unable to issue any new permits or activities related to state-authorized marijuana use due a temporary prohibition, as discussed above, and a TDC requirement that all development be consistent with federal law. This places the Development Code at odds with recent legislative changes made by the Oregon State Legislature and Oregon Voters. The purpose of this project is to bring the City into compliance with state law while preventing or mitigating unwanted community impacts that could potentially result from marijuana facilities operating within the community.

As proposed, the new code language would result in the following:

- Amend the Tigard Development Code as follows:
 - Text Amendments to Chapter 18.120 (Definitions) to establish new definitions for “Marijuana” and “Marijuana Facility”

EXHIBIT "A"

- Text Amendments to Chapter 18.210 (General Administrative Provisions) to remove the requirement for consistency with federal law
- Creation of Chapter 18.735 (Marijuana Facilities) to establish development standards and a review process for marijuana facilities requiring a state license or registration.
- Proposed text changes to TDC 18.210 would reduce legal uncertainties and exposure to litigation presented to the City and applicants where state and federal law conflict on the matter of marijuana.
 - Tigard Development Code (TDC) Subsection 18.210.030.A presently 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.
 - If the code remains unchanged, 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).
 - Measure 91 requires a petition and election of the voters for a jurisdiction to prohibit recreational marijuana licenses.
- Proposed text changes to create TDC 18.735 (Marijuana Facilities) would apply a uniform set of development standards to facilities requiring a state license or registration under ORS 475 (Oregon Medical Marijuana Act) and Statewide Ballot Measure 91 (Oregon Legalized Marijuana Initiative).
- Would supplement existing state rules regarding buffer and zone requirements for the siting of medical marijuana dispensaries, and any future state requirements for the siting of recreational marijuana facilities as the OLCC and State Legislature establish new regulations for their location and operation.
 - Would establish location restrictions based on whether or not the marijuana facility was involved in a retail or non-retail capacity.
 - Retail uses would be limited to properties fronting Main Street or Pacific Highway, with a minimum 1,000 foot buffer between facilities and a 500 foot buffer from parks and libraries.
 - Non-retail uses would not be allowed within 500 feet of a residential zone, a parks and recreation zone, or a public library.
 - Would limit hours of operation to between 10am and 8pm.
 - Would establish design requirements and odor standards to prevent off-site nuisances and enhance security.
- Would apply to the full range of activities associated with the production, processing, distribution, and sale of marijuana.
- Would not remove or replace existing code requirements for the underlying use. For example, a dispensary or an indoor grow facility would be required to meet all development code requirements applicable to “Sales-Oriented Retail” or “General Industrial” land uses in the underlying zone.

Other Jurisdictional Responses

To facilitate deliberation and establish a framework for what is considered “reasonable” by other jurisdictions, staff is including a summary of how other cities have chosen to regulate marijuana dispensaries within their borders. Note, the proposed text amendments included as Attachment 1 will apply to the full chain of production and distribution, in anticipation of future licensing authorized under Measure 91, and are not limited to dispensaries as is the case with each city or county below.

Washington County

- Limited to hours between 8:00am and 10:00pm.

- Allowed in specified commercial and industrial districts, with square footage limited to 3,000 square feet within the Industrial (IND), General Commercial (GC), and Rural Commercial (R-COM) Land Use Districts.
- Minimum 2,000 feet between dispensaries.
- Minimum 1,500 feet from any light rail platform.
- Entrances and off-street parking areas must be well lit and not visually obscured from public view.

City of Salem

- Limited to hours between 10:00am and 8:00pm.
- Cannot be located within:
 - Central Business Zoning District.
 - Within a residence or mixed-use property that includes a residence.
 - Within 500 feet of a public park or public playground.
 - Within 100 feet of a residentially zoned property unless the location abuts a major arterial or parkway.
 - Within 100 feet of a certified child care facility.
- Drive-through windows prohibited.
- All odors must be contained to premises.

City of Beaverton:

- Limited to hours between 7:00am and 10:00pm.
- Limited to three zones: GC (General Commercial), CS (Community Service), and CC (Corridor Commercial).

City of Ashland

- Limited to hours between 9:00am and 7:00pm.
- Limited to properties adjacent to a boulevard, and prohibited within the Downtown Design Standards Zone.
- Design standards
 - Must be located within a permanent building.
 - Drive-through windows prohibited.
 - Security bars and grates prohibited.
 - Establishes off-site odor standards.

City of McMinnville

- Limited to hours between 10am and 7pm.
- Minimum 1,000 foot buffer from a preschool, public library, aquatic center, and community center.

City of Albany

- Minimum 300 foot distance buffer from any property zoned residential, mixed-use, Office Professional, or Neighborhood Commercial.
- Restrictions do not apply to property zoned Industrial Park, Light Industrial, or Heavy Industrial.

SECTION IV. APPLICABLE CRITERIA, FINDINGS AND CONCLUSIONS

STATEWIDE PLANNING GOALS AND GUIDELINES

State planning regulations require cities to adopt and amend Comprehensive Plans and land use regulations in compliance with the state land use goals. Because the proposed Code Amendments have a limited scope and the text amendments address only some of the topics in the Statewide Planning Goals, only applicable Statewide Goals are addressed below.

Statewide Planning Goal 1 – Citizen Involvement:

This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

FINDING: This goal has been met by complying with the Tigard Development Code notice requirements set

forth in Section 18.390.060 (Type IV Procedures). Notices were sent by US Postal Service on December 16, 2015 to affected government agencies and the latest version of the City's interested parties list. A notice was published in the Oregonian newspaper and the City published newsletter (Cityscape) prior to the hearing. Project information and documents were published to the City website prior to the public hearing. A minimum of two public hearings will be held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided. This goal is satisfied.

**Statewide Planning Goal 2 – Land Use Planning:
This goal outlines the land use planning process and policy framework.**

FINDING: The Department of Land Conservation and Development (DLCD) has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. The Development Code implements the Comprehensive Plan. The Development Code establishes a process and standards to review changes to the Tigard Development Code in compliance with the Comprehensive Plan and other applicable state requirements. As discussed within this report, the applicable Development Code process and standards have been applied to the proposed amendment. This goal is satisfied.

**Statewide Planning Goal 6 – Air, Water, and Land Resources Quality:
This goal seeks to maintain and improve the quality of the air, water and land resources by the state.**

FINDING: The Department of Land Conservation and Development has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. The proposed text amendments create a land use control that will buffer land uses and prevent or mitigate off-site impacts that could lead to conflicting impacts upon air resources. Consistency with the City's air quality goal and policies are discussed later in this report under applicable policies of the Tigard Comprehensive Plan. This goal is satisfied.

**Statewide Planning Goal 9 – Economic Development:
This goal seeks to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**

FINDING: The Department of Land Conservation and Development has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. Consistency with the City's Comprehensive Plan Economic Development goals and policies is discussed later in this report under Tigard Comprehensive Plan Goal 9.1 and associated policies. This goal is satisfied.

CONCLUSION: Based on the findings above and the related findings below, staff finds the proposed code amendments are consistent with applicable Statewide Planning Goals.

APPLICABLE PROVISIONS OF THE OREGON MEDICAL MARIJUANA ACT

Initially adopted by State ballot measure in 1998, the Oregon Medical Marijuana Act (ORS 475) governs the production, distribution, and use of medical marijuana within the State of Oregon. In March 2014, the Oregon Legislature amended ORS 475 under Senate Bill 1531 which authorizes local governments to impose reasonable regulations on the operation of medical marijuana facilities.

SECTION 2. Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, "reasonable regulations" includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

FINDING: As detailed in Attachment 1, the proposed amendments establish reasonable restrictions on hours of operation, allowed locations, and design and operational requirements to prevent or mitigate potential off-site community impacts. Because SB1531 does not define the word "reasonable", the amendments are based in part on pre-existing development code restrictions already adopted and enforced within the city of Tigard, or elsewhere across the state and Pacific Northwest. As detailed in Attached 2, preliminary mapping of the effects of the proposed location restrictions indicates that a significant portion of the City can comply with the buffer restriction, and would not create an undue burden on businesses trying to find a location to operate. This

requirement is met.

CONCLUSION: Based on the findings above, staff finds that the proposed code text amendment is consistent with the Oregon Medical Marijuana Act.

APPLICABLE PROVISIONS OF THE CONTROL, REGULATION, AND TAXATION OF MARIJUANA AND INDUSTRIAL HEMP ACT (MEASURE 91)

On November 4, 2014, Oregon voters approved Ballot Measure 91 (Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act) to legalize the use and possession of recreational marijuana on July 1, 2015. The law also directs the Oregon Liquor Control Commission to tax, license, and regulate recreational marijuana. Section 59 of the act specifically authorizes local governments seeking to impose reasonable time, place, and manner restrictions in order to address adverse community impacts.

SECTION 59. Authority of cities and counties over establishments that serve marijuana.

(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.

FINDING: As detailed in Attachment 1, the proposed amendments establish reasonable restrictions on hours of operation, allowed locations, and design and operational requirements to prevent or mitigate potential off-site community impacts. Because Measure 91 does not define the word "reasonable", the amendments are based in part on pre-existing development code restrictions already adopted and enforced within the city of Tigard, or elsewhere across the state and Pacific Northwest. As detailed in Attached 2, preliminary mapping of the effects of the proposed location restrictions indicates that a significant portion of the City can comply with the buffer restriction, and would not create an undue burden on businesses trying to find a location to operate.

As detailed below and in the purpose statement of the proposed Marijuana Facilities chapter, the purpose of the proposed amendments is to prevent or mitigate possible adverse community impacts associated with marijuana facilities. These include, but are not limited to, the following:

- Diversion of marijuana to unauthorized cardholders, particularly minors;
- 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; and/or
- Explosions resulting from the use of butane as a processing agent.

These impacts are intended to be prevented or controlled by creating minimum distances between marijuana facilities and residential neighborhoods or other places where children are present, by limiting hours of operation, limiting off-site odors, and requiring minimum design standards to facilitate security and safety. This requirement is met.

CONCLUSION: Based on the findings above, staff finds that the proposed code text amendment is consistent with the Oregon Medical Marijuana Act.

TIGARD COMPREHENSIVE PLAN

State planning regulations require cities to adopt and amend Comprehensive Plans and land use regulations in compliance with the state land use goals and consistent with Comprehensive Plan Goals and Policies. Because the Development Code Amendments have a limited scope and the text amendments address only some of the topics in the Tigard Comprehensive Plan, only applicable comprehensive plan goals and associated policies are addressed below.

Comprehensive Plan Goal 1: Citizen Involvement

Policy 1.1.2: The City shall define and publicize an appropriate role for citizens in each phase of the land use planning process.

FINDING: This goal has been met by meeting and exceeding the Tigard Development Code notice requirements set forth in Section 18.390.060 (Type IV Procedures). Notices were sent by US Postal Service on December 16, 2015 to affected government agencies and the latest version of the City's interested parties list, and a copy of the same notice was emailed to a list of individuals who had previously expressed interest in the topic of marijuana regulations within Tigard. A notice was published in the Oregonian newspaper and the City published newsletter (Cityscape) prior to the hearing. Project information and documents were published to the City website prior to the public hearing. A minimum of two public hearings will be held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided. This policy is met.

Comprehensive Plan Goal 2: Land Use Planning

Policy 2.1.2: The City's land use regulations, related plans, and implementing actions shall be consistent with and implement its Comprehensive Plan.

FINDING: As demonstrated in this staff report, the proposed amendments to the Tigard Development Code are consistent with the Tigard Comprehensive Plan. This policy is satisfied.

Policy 2.1.3: The City shall coordinate the adoption, amendment, and implementation of its land use program with other potentially affected jurisdictions and agencies.

FINDING: Copies of the proposed text amendments were sent to affected agencies were invited to comment on the proposal, as required by Section 18.390.060 (Type IV Procedures) and discussed in Section VII of this report. Comments submitted by affected agencies have been incorporated into this report and the proposed amendments. This policy is met.

Policy 2.1.6: The City shall promote the development and maintenance of a range of land use types which are of sufficient economic value to fund needed services and advance the community's social and fiscal stability.

FINDING: The proposed text amendments will enable a new type of taxable economic activity to occur within the city. This policy is satisfied.

Policy 2.1.11: The City shall adopt regulations and standards to protect public safety and welfare from hazardous conditions related to land use activities.

FINDING: The proposed text amendments are intended to protect the public welfare by providing for appropriate distance buffer from residential areas and parks, and minimum design requirements, in order to prevent or reduce hazards associated with a cash only business, a product with a strong black market value, and the exposure of a controlled product to minors. This policy is satisfied.

Policy 2.1.21 The City shall require all development to conform to site design/development regulations.

FINDING: The proposed amendments will require all marijuana facilities requiring a state license or state registration to conform to site design and development regulations, even when there is no underlying change in land use classification. This policy is satisfied.

Policy 2.1.23 The City shall require new development, including public infrastructure, to minimize conflicts by addressing the need for compatibility between it and adjacent existing and future land uses.

FINDING: The proposed amendments include use regulations and development standards to ensure compatibility between marijuana facilities subject to state licensing or registration, and adjacent development and public facilities. This policy is met.

Policy 2.1.24: The City shall establish design standards to promote quality urban development and to enhance the community's value, livability, and attractiveness.

FINDING: The proposed amendments include design standards that will protect community livability by allowing the development of marijuana facilities within the City in a manner that is compatible with surrounding land uses and public facilities. This policy is met.

Comprehensive Plan Goal 6: Environmental Quality

Policy 6.1.7: The City shall improve the Environmental Performance Standards to minimize impacts from noise and light pollution.

FINDING: The proposed amendments establish an environmental performance standard for marijuana related odors. This policy is satisfied.

Comprehensive Plan Goal 9: Economic Development

Policy 9.1.3 The City's land use and other regulatory practices shall be flexible and adaptive to promote economic development opportunities, provided that required infrastructure is made available.

FINDING: The proposed text amendments are intended to be flexible and adaptive to the new marijuana economy in Oregon, as investors try new and unknown business models and the state adopts new regulatory requirements. This flexibility and adaptability is grounded in the regulation of the license or regulation requirement, not the underlying land use classification, and a focus on minimum compliance standards rather than proscribed locations. This policy is met.

Policy 9.1.12 The City shall assure economic development promotes other community qualities, such as livability and environmental quality that are necessary for a sustainable economic future.

FINDING: As detailed in Attachment 1, the proposed text amendments are intended to create minimum compliance standards to prevent or mitigate potential community impacts that could result from marijuana related business activity. This policy is met.

Comprehensive Plan Goal 10: Housing

Policy 10.2.1: The City shall adopt measures to protect and enhance the quality and integrity of its residential neighborhoods.

Policy 10.2.8: The city shall require measures to mitigate the adverse impacts from differing, or more intense, land uses on residential living environments, such as:

- A. Orderly transitions from one residential density to another;**
- B. Protection of existing vegetation, natural resources and provision of open space areas; and**
- C. Installation of landscaping and effective buffering and screening.**

FINDING: The proposed text amendments include use regulations and development standards to prevent or mitigate adverse impacts to adjacent uses, for the purpose of protecting the quality and livability of residential neighborhoods within the city. Development standards include minimum distance buffers, limits on hours of operation, and odor standards. All marijuana facilities approved under the proposed standards will also be subject to all other provisions of the Tigard Development Code, including landscaping and buffering standards (Chapter 18.745), Sensitive Lands (Chapter 18.775), and Urban Forestry (18.790). These policies are met.

CONCLUSION: Based on the findings above, staff concludes that the proposed code text amendment is consistent with applicable provisions of the Tigard Comprehensive Plan.

APPLICABLE PROVISIONS OF THE TIGARD DEVELOPMENT CODE

Tigard Development Code Section 18.380.020, Legislative Amendments to this Title and Map, states that legislative zoning map and text amendments shall be undertaken by means of a Type IV procedure, as governed by Section 18.390.060G.

FINDING: The proposed text and map amendments are legislative in nature. Therefore, the amendment will be reviewed under the Type IV legislative procedure as set forth in the chapter. This procedure requires public hearings by both the Planning Commission and City Council. This standard is met.

Section 18.390.060.G establishes standard decision-making procedures for reviewing Type IV applications. The recommendation by the Commission and the decision by the Council shall be based on consideration of the following factors: 1) The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197; 2) Any federal or state statutes or regulations found applicable; 3) Any applicable METRO regulations; 4) Any applicable comprehensive plan policies; and 5) Any applicable provisions of the City's implementing ordinances.

FINDING: Findings and conclusions are provided in this section for the applicable listed factors on which the recommendation by the Commission and the decision by the Council shall be based. This standard is met.

CONCLUSION: Based on the findings above, staff concludes that the proposed code text amendment is consistent with applicable provisions of the Tigard Development Code.

SUMMARY

CONCLUSION: As shown in the findings above, staff concludes that the proposed code text and map amendments are consistent with the applicable Statewide Planning Goals; the Oregon Medical Marijuana Act; the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (Measure 91); applicable Comprehensive Plan goals and policies, and the applicable provisions of the City's implementing ordinances. No federal or Metro statutes or regulations were found to be applicable.

SECTION V. STAFF ANALYSIS

Staff analysis and commentary on the proposed text amendments are included as Attachment 1. Even-numbered pages contain commentary on the amendments, which are contained on the opposite (following) odd-numbered page. The commentary establishes, in part, the legislative intent in adopting these amendments.

SECTION VI. OTHER ALTERNATIVES

No Action – The code would remain unchanged. This course of action presents uncertainty due to conflicting local, state, and federal requirements. Anticipated effects include the following:

- Existing 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).
- The City could be at risk of legal action for imposing a possible moratorium, potentially in conflict with state requirements.

Minimal Action – Only amend Subsection 18.210.030.A to remove conflict with federal law, defer all regulation to the state.

- Would reduce legal uncertainty for the City.
- Unique community impacts presented by commercial marijuana facilities may appear in greater

locations, frequency, and intensities than under the current recommendation.

SECTION VII. AGENCY COMMENTS

City of Portland, City of Durham, City of Lake Oswego, City of Tualatin, City of King City, Washington County, METRO, ODOT, Oregon Department of Energy, DLCDC, DEQ, ODFW, CWS, Beaverton School District, Tigard/Tualatin School District, Tri-Met, Tigard Water District, Tualatin Valley Water District, Tualatin Hills Parks and Rec District, Tualatin Valley Fire & Rescue, Tigard Public Works, and Tigard Building Division were notified of the proposed code text amendment but provided no comment.

The **City of Beaverton** was notified of the proposal and had no objections.

The **City of Tigard Police Department** reviewed the proposal and suggested text changes to increase the distance buffer to 1,000 feet from schools for regulatory consistency, and inclusion of career schools as a point of buffering. Suggested changes have been incorporated into the proposed text amendments in Attachment 1.

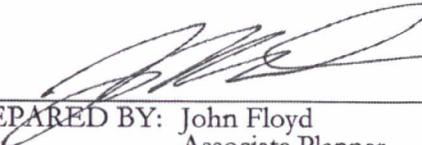
SECTION VIII. PUBLIC COMMENTS

The following individuals and organizations submitted written comments that were considered by the Planning Commission as they formed a recommendation to Council. These comments have been collected and included as Attachment 4. As summarized below, the written testimony was generally focused on documentation regarding potential community impacts, and the appropriateness of the proposed buffer distances (too little or too much).

- Gayle Allen – Email dated January 8, 2015. Expressed displeasure with marijuana dispensaries on Pacific Highway.
- Connie Ramaekers – Email and PowerPoint dated January 11, 2015, submitted on behalf of Tigard Turns the Tide. Provided documentation regarding potential impacts to public health, safety, and community character and viability related to the presence of marijuana production, processing, and sales. Requested an expansion of the buffers proposed by staff from 500 to 1,000 feet.
- CPO 4B – Resolution No. 15-01. Called for amendments to the proposed amendment package to increase the buffer distance from 500 to 1,000 feet.
- Julie Russell – Emails dated January 18 and January 23, 2015. The emails provided links to news stories documenting community impacts to
- Peter Brock – Email dated January 23, 2015 calling for a reduction of the proposed buffer from 500 to 200 feet, and arguments for the suitability of downtown Tigard for marijuana dispensaries.
- Zack Stratford – Email dated February 9, 2015. Provided copies of articles regarding community impacts of dispensaries, a summary of state requirements for medical marijuana dispensaries, and a draft rendering of a marijuana facility.

ATTACHMENTS:

- Attachments: 1. Draft Text Amendments.
- 2. Preliminary Location Maps – Retail
- 3. Preliminary Location Maps – Non-Retail
- 4. OLCC Liquor Stores by City (Last Updated 12/29/2014)
- 5. Written Public Comments



 PREPARED BY: John Floyd
 Associate Planner

February 24, 2015

 DATE



 APPROVED BY: Tom McGuire
 Assistant Community Development Director

February 24, 2015

 DATE



City of Tigard Memorandum

To: Mayor Cook and the Tigard City Council
From: John Floyd, Associate Planner
Re: DCA2014-00002 Marijuana Facilities (Continued from April 14, 2015)
Date: April 16, 2015

Background

On April 14 the Council provided direction to staff regarding proposed Development Code amendments pertaining to marijuana facilities. The direction was to modify the Planning Commission recommendation in the following manner:

- Prohibit marijuana facilities in the MU-CBD Zone (Downtown Tigard);
- Increase the buffer distance between retail uses from 1,000 feet to 2,000 feet;
- Adopt standards prohibiting the viewing of marijuana or marijuana product from outside the facility; and
- Amend the primary entry visibility standards to specify visibility from Pacific Highway.

In addition, staff recommends additional changes meant to clarify the chapter and increase the legibility and effectiveness:

- Consolidation of locational standards into one subsection;
- Correct a typo that inadvertently excluded secondary schools from location buffer requirements; and
- Clarification of exterior lighting standards to establish minimum illumination levels of 1.0 foot candles.

In support of these changes, staff recommends the following supplemental findings be adopted in addition to those contained in Section IV of the February 24, 2015 staff report to the City Council.

Supplemental Findings

Policy 2.1.11 - The City shall adopt regulations and standards to protect public safety and welfare from hazardous conditions related to land use activities.

Finding: Council finds the proposed text amendments, including the increased buffer distances between retail facilities, restriction of retail uses to Pacific Highway, and the prohibition on marijuana facilities in the MU-CBD zone, to be a reasonable method to protect the public from unique hazards presented by state-licensed marijuana. Potential hazards include:

- Diversion of marijuana to unauthorized cardholder, particularly in areas where minors are likely to be present such as downtown Tigard or mixed-uses zones;
- 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; and/or
- Explosions resulting from the use of butane as a processing agent.

This policy is met.

Policy 9.3.2 - The City shall adopt land use regulations and standards to ensure a well-designed and attractive urban environment that supports/protects public and private sector investments.

Finding: Council finds the proposed text amendments to be reasonable method to prevent an over-concentration of a land use that could threaten or diminish public and private sector investments, and/or overall community livability. This diminishment is associated with factors such as the quasi-legal status of state-licensed marijuana, and the unique security and community livability concerns associated with these uses. This policy is met.

Policy 15.2.1 - New zoning, design standards, and design guidelines shall be developed and used to ensure the quality, attractiveness, and special character of the Downtown as the “heart” of Tigard, while being flexible enough to encourage development.

Policy 15.2.5 - Downtown design, development and provision of service shall emphasize public safety, accessibility, and attractiveness as primary objectives.

Finding: Council finds the prohibition of marijuana facilities in the MU-CBD zone to be consistent with Comprehensive Plan policies requiring the City to protect the special character, attractiveness, and safety of downtown Tigard. In addition to public safety hazards discussed previously in this memorandum, community livability issues associated with such land uses include:

EXHIBIT "B"

- Exposure of a controlled substance to minors, who are likely to be present in as a result of community events, public spaces, and services provided in downtown Tigard.
- Unpleasant odors associated with the growing, processing, and consumption of marijuana which could deter investment or affect community events and gathering places;
- Unwanted noise generated by visiting customers or equipment.

These policies are met.

**CITY OF TIGARD
MARIJUANA FACILITIES DEVELOPMENT CODE AMENDMENTS
DCA2014-00002**

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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.

18.735.040 Development Standards

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. The proposed development meets all of the following site location restrictions. All distances shall be measured at the closest property lines between the proposed site and nearest lot or parcel containing the specified use or characteristic.
 - 1. Marijuana facilities are prohibited within the MU-CBD Zone.
 - 2. The proposed development is not within 1,000 feet of a public or private elementary school, secondary school, or career school attended primarily by minors.
 - 3. Sale-Oriented Retail and Wholesale Sales uses open to the public shall be subject to the following restrictions:
 - a. Must be located on a lots or parcel with frontage along Pacific Highway (Oregon Route 99W);
 - b. Shall not be located not within 2,000 feet of another state-licensed retail or wholesale marijuana facility within or outside of City limits; and
 - c. Shall not be located within 500 feet of a Public Library or Tigard Parks and Recreation Zone.
 - 4. Non-retail uses and Wholesale Sales uses not open to the public shall not be located within 500 feet of one or more of the following zones or facilities:
 - a. Residential Zone
 - b. Parks and Recreation Zone
 - c. Public Library
- D. 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.
- E. Primary entrances shall be clearly visible from Pacific Highway (Oregon Route 99W).
- F. 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.

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.

On March 10 and April 14, Council considered the Planning Commission recommendation and made modifications in response to oral and written testimony. The majority of the testimony pertained to the appropriateness of marijuana facilities within the downtown area. In response to testimony, and the precedent set by similarly sized cities within the state (Beaverton, Hillsboro, Salem, and Ashland), the Council finds the exclusion of this type of business from the downtown area to be a reasonable method to protect the special characteristics and function of downtown Tigard. Council also directed staff to increase the spacing between retail uses from 1,000 feet to 1,500 feet to reduce their concentration within Pacific Highway corridor.

Proposed Text Amendments

- G. 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 with a minimum illumination level of 1.0 footcandles at the darkest spot on the ground surface.
- H. Drive-through marijuana facilities are prohibited.
- I. The proposed development shall confine all marijuana odors and other objectionable odors to levels undetectable at the property line.
- J. Marijuana or marijuana product shall not be visible from the exterior of the building or structure.