

To: Planning Commission

FROM: Planning Department



Michelle Miller, AICP
Senior Planner

Proposal:

The proposal seeks to amend the Sherwood Zoning and Community Development Code Chapters 16.10 (Definitions), 16.22 (Residential Land Use), 16.31 (Industrial Land Use), 16.38 (Special Uses) and 16.72 (Procedures for Processing Development Permits) in order to develop reasonable time, place and manner restrictions concerning medical marijuana dispensaries. The proposed text amendment Code language is included as Exhibit A.

Specifically, the proposed Code amendments include:

- Adding definitions for 'Medical Marijuana Dispensary' and 'Mobile Vendor'
- Adding medical marijuana dispensary to the "Use Tables" categories in the Commercial and Industrial zones, specifically to permit dispensaries in the Retail-Commercial, General Commercial, Light Industrial and General Industrial zones only
- Adding Medical Marijuana Dispensary to the Type II process- staff level decision with posting onsite and notice to property owners within 1000 feet
- Adding criteria for Medical Marijuana Dispensary in the Special Use Chapter that restricts the hours, adds restrictive buffers around public parks and plazas, and provides for specific security measures and site requirement.

I. BACKGROUND

- A. Applicant: This is a City-initiated text amendment.
- B. Location: The proposed amendment is to the text of the Sherwood Zoning and Development Code and applies citywide.
- C. Review Type: The proposed text amendment requires a Type V review, which involves public hearings before the Planning Commission and City Council. The Planning Commission is scheduled to consider the matter on April 14, 2015. At the close of the hearing, the Commission will forward a recommendation to the City Council who will consider the proposal, and make the final decision whether to approve, modify, or deny the proposed language. Any appeal of the City Council's decision relating to this matter will be considered by the Oregon Land Use Board of Appeals.
- D. Public Notice and Hearing: Notice on the proposed amendment was published in *The Times* on April 9, 2015 and published in the April 2015 edition of the Gazette. Notice was also posted in five public locations around town and on the web site on March 24, 2015.

E. Review Criteria

The required findings for the Plan Amendment are identified in § 16.80 (Plan Amendments), Comprehensive Plan Criteria: Chapter 2-Planning Process, Metro Urban Growth Management Functional Plan: Title 4. , Oregon Transportation Planning Rule: (OAR 660-012-0060), Statewide Planning Goals: Goal 1- Citizen Involvement.

F. History

On November 3, 1998, Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana Act (OMMA), which allowed medical use of marijuana in Oregon within specified limits for persons suffering from a qualifying debilitating health condition and established a state-controlled permit system for patients and caregivers. In December 1998, the Oregon Legislature passed the Oregon Medical Marijuana Act (ORS 475.300), identifying the Oregon Health Authority (OHA) as the regulatory agency responsible for registering patients and caregivers.

The law originally allowed cardholders to grow their own marijuana or obtain it from other registered growers if they were not able to grow it themselves. In recent years, a number of medical marijuana “dispensaries” have opened across the state. These dispensaries obtain marijuana from registered growers and act as “retail” marketplaces for cardholders who find it difficult to obtain their medical marijuana.

The dispensaries were neither registered cardholders nor registered growers; consequently, they existed in a legal gray area. In 2013, in order to address the uncertain legality of these dispensaries and to regulate them at the state level, the Oregon Legislature passed HB 3460, which establishes uniform registration and licensing procedures.

HB 3460 requires a dispensary to register with the state and meet certain requirements. These include requirements for location, pesticide/mold testing, tracking, security measures and criminal background checks. In order to obtain a “proof of registration,” the dispensary must submit an application to the OHA listing certain identifiers (name, address, etc.), obtain a business license from the Secretary of State, and submit documentation demonstrating that it has met the state registration requirements of HB 3460.

Specifically, the state rules require that:

- A dispensary must be located in an area zoned for commercial, industrial or mixed uses or as agricultural land.
- They must be at least 1000 feet from schools and 1000 feet from any other registered dispensary.
- No dispensary may be located at the same address as a registered medical marijuana grow site, and
- Dispensaries must install security systems with certain elements, including video surveillance, alarms and a safe.

The OHA is required to conduct a criminal background check of any person listed as the person responsible for the dispensary. A prior conviction for certain controlled substance crimes prohibits a person from operating a dispensary for five years from the date of conviction, and those with multiple convictions are banned completely from registering. Dispensary operators must be Oregon residents. (Exhibit B. OARs concerning Medical Marijuana Dispensary)

On March 7, 2014, the Oregon Senate adopted Senate Bill 1531, authorizing local jurisdictions to regulate medical marijuana dispensaries (MMDs) by imposing time, place and manner restrictions on their operations. It included provisions allowing local jurisdictions to

adopt a moratorium on dispensaries effective through May 1, 2015. Sherwood City Council approved a moratorium temporarily banning dispensaries that expires on May 1, 2015.

G. Public Outreach

From March 6-31, 2015, the City initiated an online survey to gauge the community's level of support for time, place and manner restrictions for regulating medical marijuana dispensaries. The survey generated 180 responses with support for regulating hours of operation (57%), and providing additional buffers where medical marijuana dispensaries may not be located (40%). Thirty-five percent of the respondents believed that the state regulations were adequate.

While some respondents commented that dispensaries should be treated like pharmacies, other respondents believed that there should be a ban on dispensaries altogether within Sherwood. The City Council indicated in a work session with the Planning Commission that the City should not consider banning medical marijuana dispensaries outright because a ban has not been fully tested in court and the City does not want to use resources for a test case for any new regulations concerning medical marijuana dispensaries.

Respondents were asked whether to restrict the zone where medical marijuana dispensaries may be located. Twelve percent preferred that dispensaries should be limited to the commercial zone only, 34% thought that dispensaries could be located in both commercial and industrial zones, and 54% supported dispensaries in industrial zones only.

The Planning Commission held a Public Work Session on March 10, 2015 where the community was encouraged to attend. At the session, Commissioners led small group discussions on several issues concerning regulating medical marijuana dispensaries. The Commission noted a wide variety of opinion about the appropriate regulations concerning dispensaries. When asked which zone would be suitable for medical marijuana dispensaries, support was favorable for both industrial and commercial zones and keeping the zoning the same as the State regulations. Consensus was reached on creating 1000-foot buffers around the parks where dispensaries could not be located as well as identifying that dispensaries could be processed under a special use category as a Type II staff level decision.

Staff met with the Police Advisory Board on April 2, 2015 and provided the draft code amendments concerning medical marijuana dispensaries. The Board considered the language and discussed the various time, place and manner restrictions proposed. In considering the proposal, the majority of the Board agreed that the Commission should consider limiting the land use zoning to industrial lands only, reduce the allowable size of a dispensary to 2,500 square feet, and allow a dispensary to remain open until 7 pm during weekdays. The Board also decided that a definition of a public plaza should be included with the amendments and that language should be added to prohibit a dispensary from delivery services in addition to the prohibition on mobile vending. The Police Advisory Board's recommended changes to the code amendments are attached as Exhibit C.

II. PUBLIC COMMENTS

Ballot Measure 56 requires local jurisdictions to notify individual property owners when a change to a comprehensive plan or zoning ordinance could result in a rezone of property. The proposed amendments in this application will not change the base zoning classification or be a change that limits or prohibits previously allowed land uses. The proposed amendments do not limit or prohibit currently allowed land uses. The amendments will actually create new permitted uses within the land use categories of retail commercial, general commercial, light industrial and general industrial land use zones. Therefore, Ballot Measure 56 is not applicable to this Code amendment.

Notice on the proposed amendment was published in *The Times* on April 9, 2015 and published in the April 2015 edition of the Gazette. Notice was also posted in five public locations around town and on the web site on March 24, 2015.

Sheri Ralston submitted comments via email on March 25, 2015. She is considering opening a dispensary in Sherwood and commented on the proposed hours of operation from 10 to 6 Sunday through Thursday and 10 to 8 on Saturday and Sunday. She commented that it would be likely that many working medical marijuana patients shop at dispensaries on their way home from work. She wanted the Commission and Council to consider modifying the hours to 10:00 am to 8:00 pm Monday through Thursday and felt that the Friday, Saturday and Sunday hours looked appropriate. Her email indicated that she had done some background research on comparing other jurisdictions' regulations concerning hours of operation with the following results:

- Beaverton has adopted hours of operation from 7:00 am to 10:00 pm all days
- Newberg is considering hours of operation from 9:00 am to 8:00 pm all days (vote is April 6th)
- Tualatin is considering hours of operation from 10:00 am to 8:00 pm all days
- Hillsboro has adopted hours of operation from 10:00 am to 8:00 pm Monday through Thursday. 10:00 am to 10:00 pm Friday, Saturday and Sundays
- McMinnville has adopted hours of operation from 10:00 am to 7:00 pm all days

Her comments are attached as Exhibit D.

Staff Response: Council has discretion under time, place and manner regulations to determine the most appropriate hours of operation that are in the community's best interest. The online survey concerning regulating medical marijuana dispensaries in Sherwood indicated support for restrictions concerning hours of operation. The Planning Commission Public Work Session also indicated support for restricting hours of operation and wanted hours that would accommodate patients as well as deter youth from congregating near dispensary locations. The hours of operation should facilitate patients' ability to access the dispensary as well as address the general community's safety and security concerns.

III. AGENCY COMMENTS

Staff sent notice to the Department of Land Conservation and Development on March 12, 2015. They have made no comments.

Jeff Groth, Sherwood Police Chief, provided the comments that the dispensaries should only be permitted within the light and general industrial zones. He wanted to limit the visibility of the dispensaries from the public view. (Exhibit E)

IV. PLAN AMENDMENT REQUIRED FINDINGS

The applicable Plan Text Amendment review criteria are 16.80.030.A and C

16.80.030.A - Text Amendment Review

An amendment to the text of the Comprehensive Plan shall be based upon the need for such an amendment as identified by the Council or the Commission. Such an amendment shall be consistent with the intent of the Comprehensive Plan, and with all other provisions of the Plan and Code, and with any applicable State or City statutes and regulations.

Consistency with State Statutes and Regulations

State law authorizes the operation of medical marijuana facilities and provides those facilities with immunity from state criminal prosecution. Although the State of Oregon has passed legislation authorizing medical marijuana facilities and providing criminal immunity under state law, the operation of those facilities remains illegal under federal law.

The City Council has home rule authority to decide whether and under what conditions, certain commercial conduct should be regulated within the City and subject to the general and police powers of the City, except when local action has been clearly and unambiguously preempted by state statute.

ORS 475.300-475.346 the Oregon Medical Marijuana Act

The proposal is consistent with ORS 475.314 (3) which prohibits locations of dispensaries within 1000 feet of a school attended primarily by minors, or within 1000 feet of another dispensary. The proposed regulations also define a dispensary as a facility that is registered with the Oregon Health Authority, thereby ensuring that the facility is subject to the state regulations as well.

OAR 33-008-1110:

The proposed regulations are consistent with this section which is concerns the locations of dispensaries. This section prohibits the location of dispensaries within 1000 feet of a school attended primarily by minors or 1000 feet from another dispensary. The OAR addresses that a dispensary cannot be located at the same address as a grow site, which includes production as defined in ORS 475.005. The proposed amendments define “medical marijuana dispensary” as a facility registered with the Oregon Health Authority, thereby ensuring that the facility is subject to the same regulations as well. The proposed amendments also include these provisions, and therefore implement and enforce the OAR.

Consistency with Local Regulations

The current Sherwood Municipal Code and the Zoning and Development Code do not specifically permit medical marijuana dispensaries as an allowed use in any of the planning districts. Given the statewide authorization of medical marijuana and its related businesses, the lack of regulations causes legal uncertainty about whether and under what circumstances a dispensary could be located within the City. City regulations are needed to clarify this uncertainty and establish which planning districts dispensaries are to be located and under what restrictions they may operate.

The proposed amendment would create a Type II land use process for permitting medical marijuana dispensaries under 5,000 square feet in size within the Retail-Commercial, General Commercial, Light, and General Industrial use districts only. These zones are able to accommodate dispensaries with adequate infrastructure and a dispensary is the type of business similar to special retail uses and the most similar to other businesses within this zone. The Office Commercial and Neighborhood Commercial zones are not suitable locations for dispensaries as these zones are closer to residential neighborhoods and parks. The limitation of 5,000 square feet in size is comparable to the permitted incidental “retail” uses maximum allowed within Sherwood’s industrial zones and compatible with Metro Title 4 Functional Plan.

State law requires a 1000-foot buffer zone around elementary and secondary schools, presumably in order to minimize adverse impacts on places where minor children congregate and minimize diversion of medical marijuana to minors. Parks in Sherwood have outdoor play areas where minors congregate, sometimes unsupervised. The additional buffer around parks is similar to what other jurisdictions such as Newberg, Salem, and Tigard have done in other public areas.

The proposed amendments establish reasonable restrictions on hours of operation, allowed locations, and design and operational requirements to prevent or mitigate potential offsite community impacts. As detailed in the Buffer Map (Exhibit F), the mapping of the effects of the proposed location restrictions indicates that there are limited areas where potential dispensaries can comply with the buffer restriction, and would not create an undue burden on businesses trying to find a location to operate.

The purpose of the proposed amendments is to prevent or mitigate possible adverse community impacts associated with medical marijuana dispensaries. These include, but are not limited to the following:

- Diversion of marijuana to unauthorized cardholders, particularly minors;
- 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
- Unwanted noise generated by visiting customers during early or late hours

These impacts are intended to be prevented or controlled by creating minimum distances between medical marijuana dispensaries and residential neighborhoods or other places where children are present, by limiting hours of operation, and requiring minimum design standards to facilitate security and safety.

Consistency with the Sherwood Comprehensive Plan

While this specific proposal does not include changes to the text of the Comprehensive Plan, it is a proposal that would amend language within the Development Code, which is a component of the larger Comprehensive Plan and is reviewed in that light. There do not appear to be any comprehensive plan requirements that would conflict with the proposed code language, as the Comprehensive Plan does not address or comment on specific types of land uses, like a medical marijuana dispensary but rather identifies policy goals for the more general land uses of commercial and industrial uses. The proposed language continues to implement the Land Use goals and policies as they apply to Commercial and Industrial zoning uses.

Consistency with Metro Urban Growth Management Functional Plan (Metro Code Chapter 3.07)

Title 4 of the Metro Functional Plan calls for the protection of industrial areas by limiting the size and location of new retail uses. The proposed regulations identify medical marijuana dispensaries as a use that would be limited in size in the industrial zone. Dispensaries are most similar to a retail uses as they are dispensing and selling medical marijuana rather than manufacturing a product from raw materials. The Functional Plan limits the size of this retail use within the industrial zone and the proposed amendment is compatible with this size limitation.

Consistency with Statewide Planning Goals

Because the comprehensive plan policies and strategies are not changing and the Comprehensive Plan has been acknowledged by the State, there are no known conflicts with this text change.

The proposed amendments have been discussed in several public venues, and staff has always been available to discuss the proposed changes, and has invited public comments throughout the course of the discussion. As a whole, the proposed amendments are consistent with Goal 1 (Citizen Participation) and Goal 2 (Land Use Planning).

The applicable Statewide Planning Goals include:

Goal 1 (Citizen Involvement)

Staff utilized the public notice requirements of the Code to notify the public of this proposed plan amendment. The City's public notice requirements have been found to comply with Goal 1 and, therefore, this proposal meets Goal 1.

FINDING: Based on the above discussion, the applicant satisfies this planning goal.

Goal 2 (Land Use Planning)

FINDING: The proposed amendment, as demonstrated in this report is processed in compliance with the local, regional and state requirements.

Goal 3 (Agricultural Lands)

Goal 4 (Forest Lands)

Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces)

Goal 6 (Air, Water and Land Resources Quality)

Goal 7 (Areas Subject to Natural Hazards)

Goal 8 (Recreational Needs)

Goal 9 (Economic Development)

Goal 10 (Housing)

FINDING: The Statewide Planning Goals 3-10 do not specifically apply to this proposed plan amendment; however, the proposal does not conflict with the stated goals.

Goal 11 (Public Facilities and Services)

Goal 12 (Transportation)

FINDING: As discussed earlier in this report, the proposed amendments are compatible with existing zoning designations and the public facilities and services. The amendments are consistent with the "Transportation Planning Rule" which implements Goal 12.

Goal 13 (Energy Conservation)

Goal 14 (Urbanization)

Goal 15 (Willamette River Greenway)

Goal 16 (Estuarine Resources)

Goal 17 (Coastal Shorelands)

Goal 18 (Beaches and Dunes)

Goal 19 (Ocean Resources)

FINDING: The Statewide Planning Goals 13-19 do not specifically apply to this proposed plan amendment; however, the proposal does not conflict with the stated goals.

FINDING: As discussed above in the analysis, there is a need for the proposed amendments in order to clarify the Sherwood Zoning and Community Development Code. The proposed amendments are consistent with the Comprehensive Plan and applicable City, regional and State regulations and policies.

16.80.030 - Transportation Planning Rule (TPR) Consistency

A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.

FINDING: The proposed amendments are not tied to any one development application and do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation system; therefore this policy is not applicable to the proposed amendment.

B. “Significant” means that the transportation facility would change the functional classification of an existing or planned transportation facility, change the standards implementing a functional classification, allow types of land use, allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, or would reduce the level of service of the facility below the minimum level identified on the Transportation System Plan.

C. Per OAR 660-12-0060, Amendments to the Comprehensive Plan or changes to land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan.

FINDING: The code amendments would not significantly affect a transportation facility because the average daily trips will be comparable to the number of trips anticipated with an already identified commercially or industrially zoned property.

Staff assessment and recommendation on Plan Amendment:

Based on the analysis above, there is adequate information to make findings in support of the proposed amendment. Therefore, staff recommends that the Planning Commission forward a recommendation of **APPROVAL** of the text amendment to the City Council as proposed.

V. ATTACHMENTS

- A. Proposed Text Amendment
- B. Final rules for the Medical Marijuana Dispensary Program, January 28, 2015
- C. Police Advisory Board Recommended Code Language
- D. Comments from Sheri Ralston, Sherwood citizen
- E. Comments from Jeff Groth, Sherwood Police Chief
- F. Schools, Parks and Plazas Buffer Map