

TO: Sherwood City Council and Planning Commission

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SUBJECT: Medical Marijuana Dispensaries, Recreational Marijuana and Marijuana-related businesses

At the upcoming work session, staff will be presenting information on recent changes to the medical and recreational marijuana laws. Last year, statewide medical marijuana dispensary regulations were approved and we knew a community conversation about the best way to regulate these types of facilities was in order. Sherwood has a moratorium in place for now, banning medical marijuana facilities that will soon expire on May 1, 2015. At the work session, we hope to begin the conversation about regulating these specific types of facilities in order to ensure that any changes we want to make to our code are in place before the moratorium expires.

The passage of Ballot Measure 91, which legalized recreational marijuana, necessitates the Sherwood community to begin an even more robust and directed discussion on how to regulate recreational marijuana, especially as it concerns retail and any marijuana related- businesses that may want to locate in Sherwood. We hope to begin the discussion and get feedback from you on a recommended approach for engaging the community on this important issue for Sherwood.

This paper provides some background information from a land use perspective so you may begin to consider some of the alternatives for regulating marijuana. The three topics in this paper are broken down into (1) medical marijuana dispensaries, (2) recreational marijuana facilities and (3) marijuana-producing and related business. Staff has provided some options and alternatives to consider as we move forward with making the most appropriate decisions for the benefit of our community as a whole.

Medical Marijuana Dispensaries

Medical marijuana has been available in Oregon for 16 years, when Oregon voters approved Ballot Measure 67, which allowed medical use of marijuana in Oregon and established a state-controlled permit system. In December 1998, the Oregon Legislature passed Oregon Medical Marijuana Act (ORS 475.300), identifying the Oregon Health Authority (OHA) as the regulatory agency responsible for registering patients and caregivers. As of the first of this year, nearly 70,000 people have registered in Oregon and obtained medical marijuana cards. Statewide, there are almost 35,000 register caregivers supplying cardholders with medical marijuana.

In 2013, the Oregon legislature passed a law that established a medical marijuana dispensary program. On March 7, 2014, the Oregon Senate adopted Senate Bill 1531, authorizing local jurisdictions to regulate medical marijuana dispensaries (MMDs) and included provisions allowing local jurisdiction 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.

State Regulations concerning Medical Marijuana Dispensaries

- The dispensary must be located in an area zoned for commercial, industrial, mixed use, or agriculture and may not be located at the same address as a marijuana grow site.
- Must not be located within 1,000 feet of a public or private school (Elementary, secondary, or career school attended primarily by minors)
- Must not be located within 1,000 feet of another medical marijuana facility
- Must install a security system
- Must be a registered business in the state of Oregon
- Cannot be mobile

Options to Consider for Sherwood's Land Use Regulations of Medical Marijuana Dispensaries (MMDs)

Council may decide to regulate MMDs the same as retail marijuana stores or come up with different rules for each type of marijuana distribution facility. Currently, the Oregon Health Authority (OHA) regulates MMDs and the Oregon Liquor Control Commission (OLCC) will control recreational marijuana. As a result, the state rules and prohibitions may be different. Measure 91 expressly states that it does not affect the Oregon Medical Marijuana Act and that the OHA will continue to oversee medical marijuana.

The following are some of the options that could be used in combination to regulate these types of dispensaries in Sherwood.

1. **No Action:** City does not regulate beyond the State regulations. The Community Development Department would likely treat the dispensary as a permitted retail use in all of the commercial zones.
 - Sherwood Code: Retail uses and pharmacies are permitted outright in all commercial zones. This means if a dispensary met the state licensing

requirement(see restrictions above) and wanted to go in an existing vacant storefront, the business may not be subject to any additional land use process (No notice, hearing, or additional restrictions)

- A dispensary would not be a permitted use in any industrial zone in Sherwood.
- Any grow operations beyond the six plants per person would be considered a nursery and allowed in the industrial zones.

2. **Ban all facilities**

- Local bans of MMD risks legal challenges that have not been fully tested in court.
- The League of Oregon Cities is seeking clarification from the state legislature.

3. **Limit the Number of Dispensaries**

- Allow at least 1, but no more than X number of dispensaries in the community.

4. **Limit the land use zone of where the facility can be located (Industrial/Commercial)**

- Determine the most appropriate land use category for dispensaries by amending the Development Code to permit or conditionally permit medical marijuana dispensaries in a particular zone-either one or more of the commercial or industrial zones.

5. **Require a conditional or special use permit**

- Requires a hearing with a Hearing Officer who can make special conditions on the use-hours of operation, signage, lighting or security measures.
- Create a new category-Special Use that allows for the decision maker to make special provisions especially for that use relating to time, place or manner-what the exterior of the building looks like, potential signage restrictions.

6. **Limit the facility's location based on proximity to other types of uses, zones, or facilities**

- Add within a certain number of feet near a park, pre-school, licensed day care, local community, library, arts center, residential zone or anywhere children may congregate.
- Some jurisdictions have rules that dispensaries cannot be 500 ft. from a residential zone for example.
- Some jurisdictions have added restrictions to dispensaries located near pre-schools or child-related activity centers, like daycares or YMCA.

Recreational Marijuana

Measure 91 legalizes personal possession of certain amounts of recreational marijuana for people 21 and over and creates a regulatory system for production, distribution and sales. Although Measure 91 passed statewide and in Washington County with 55% of voters approving, it did not pass in Sherwood. This is the breakdown of the Sherwood voting results on Measure 91:

Yes	3290	47 %
No	3738	53 %

There are still many questions as to how recreational marijuana will be regulated. The Oregon legislature will likely take up marijuana –related issues in their upcoming session. The Oregon Liquor Control Commission (OLCC) is tasked with regulating recreational marijuana and holding multiple “listening sessions” across the state to help figure out how to best administer rules surrounding marijuana. Three other states (Washington, Colorado and Alaska) have legalized recreational marijuana and developed different laws concerning its use. It may serve as examples of what to do or not do in Oregon.

Personal use and possession of recreational marijuana will be allowed on July 1, 2015. People will not be able to purchase marijuana in stores at that time, but will be able to use and grow marijuana in their homes without committing a crime. Measure 91 requires the OLCC to begin accepting state license applications for producers, processors, wholesalers, and retailers on January 4, 2016. Cities have the authority to adopt reasonable time, place and manner regulations and require compliance with other land use and development code conditions. The statewide rules concerning where these stores will be located along with other restrictions have yet to be determined.

Measure 91 Local “Opt Out” Provision

Measure 91 does not allow local jurisdictions to ban recreational marijuana-associated businesses outright. However, Measure 91 included a local “opt-out” provision for marijuana businesses through a petition process signed by at least 10 % of the registered voters in Sherwood wanting to ban recreational marijuana stores in the City. The ballot measure with the opt out provision would then need to be approved by a majority of the voters in order to create the ban on marijuana retail stores.

Measure 91 says that the “opt-out” election must occur at the “next statewide general election” which is November 2016. Any election held in 2015 is considered a “special election.” OLCC must begin the licensing process for producers, processors, wholesalers, and retailers by January of 2016, and it is possible for businesses to be permitted (and established) in Sherwood before a November 2016 election could be held.

Measure 91 Statewide Regulations Time Line

January –March 2015

The OLCC is conducting many listening sessions across the state to hear from people on how to regulate marijuana. The nearest local listening session is in Tigard.

Tigard:

Thursday, February 26, 4-6 p.m.

Embassy Suites Portland Washington Square

9000 SW Washington Square Road

Tigard, OR

July 1, 2015

Provisions regarding personal production and possession of recreational marijuana go into effect.

January 4, 2016

OLCC will begin to accept licenses for retail marijuana businesses.

November 2016

Next statewide general election where cities could opt out of licensing recreational marijuana retail facilities.

- The ballot measure requires that 10 % of the registered voters must sign a petition to place the “opt out” provision on the Ballot.
- Ballot Measure 91 requires that it be a “general” election. Any of the elections held in 2015 are considered special elections.

July 2017-Revenue Sharing

Measure 91 calls for an excise tax to be distributed to local jurisdictions. Prior to July of 2017, the amount is based on the population of the local jurisdictions. After July 2017, the excise tax will be based on how many licenses for retailers, growers, producers are in the jurisdictions.

Taxing Recreational Marijuana

Opinions are mixed as to whether jurisdictions can tax marijuana because Measure 91 expressly prohibited a local tax. Sherwood, along with other cities enacted a tax before the election. This issue may be taken up during the next legislative session.

Measure 91 provides for an excise tax that distributes the money proportionally to the following:

40% to Common School Fund

20% to Mental Health, Alcoholism and Drug Services

15 % to State Police

10 % to Cities for Enforcement

5% to Oregon Health Authority for Alcohol and Drug Abuse Prevention

The excise tax is something to consider as the community plans for marijuana's legalization. If the community "opts out" of allowing recreational marijuana retail sales, the City would not receive 10 % of the local revenue for enforcement. The excise tax revenue is based on the revenue generated where the marijuana store is located, not where the purchaser resides and may use marijuana. For example, there will likely be some Sherwood residents who purchase marijuana at the nearest store in Beaverton, Tigard or Tualatin and return to Sherwood to use the purchased marijuana. The other jurisdiction's police department receives the tax money for enforcement, not the Sherwood Police Department.

Community Engagement

The idea of legalized marijuana is bound to raise concerns and questions in the community. The statewide rules for recreational marijuana are still being debated and there are opportunities to weigh in on that discussion, but we should begin the discussion within the Sherwood community so we can hear their views. Then we can implement rules that fit our community specifically. We see multiple ways for people to engage the community through facilitated Planning Commission meetings with community members, online and paper surveys, website information, and open houses as we learn about what the statewide rules will be.

Marijuana Grow and Marijuana Related Manufacturing Facilities

Our three industrial zones would normally be the appropriate and permitted location for traditional nursery and manufacturing related businesses. Regulating marijuana-related facilities separately or with different conditions from traditional uses may be something the community wants to consider. Current medical marijuana regulations do not allow grow and dispensary facilities in the same location and they cannot be within 1000 feet from each other.

Marijuana Grow sites: Currently medical marijuana suppliers can grow up to six plants for a maximum of four authorized medical marijuana cardholders. Beyond that, there are no clear rules concerning larger operations. A recent Oregonian article, identified 64 large-scale medical marijuana grow sites (those serving over 11 patients) in the Portland area – a 178 percent increase since 2012. There is at least one grow facility in the 97140 zip code. By law, medical marijuana grow site locations are confidential and fall largely outside of state regulation. Police may check the Oregon medical marijuana cardholder database – which does not include patients' health records – only to confirm whether a particular address is a registered grow site.

Recreational Marijuana Grow and Manufacturing Sites: Since the passage of Measure 91, the number of "grow sites" will likely increase in the region. The community should begin thinking about whether to identify specific marijuana related "manufacturing and nursery" type uses within our industrial use land use categories in order to create special conditions for their approval as needed.