



Home of the Tualatin River National Wildlife Refuge

Planning Commission Meeting Packet

FOR

**April 14, 2015
at 7 PM**

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**



**City of Sherwood
PLANNING COMMISSION
Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140
April 14, 2015 at 7:00 PM**

Agenda

- 1. Call to Order/ Roll Call**
- 2. Consent Agenda**
 - a. March 24, 2015 Planning Commission Minutes
- 3. Council Liaison Announcements (Council President Robinson)**
- 4. Staff Announcements (Brad Kilby)**
- 5. Community Comments**
- 6. New business**
 - a. **Public Hearing – PA 15-02 Medical Marijuana Dispensary Code Amendments (Michelle Miller)**

The City proposes to amend the Development Code to regulate Medical Marijuana Dispensaries beyond the State’s minimum regulations. The proposed amendments will define the land use zones where dispensaries are allowed, identify buffers where dispensaries would not be allowed, and identify other locational and operational restrictions. The amendments also include the land use process applicants must go through before the City approves a dispensary application.
- 7. Planning Commissioner Announcements**
- 8. Adjourn**

Consent Agenda

City of Sherwood, Oregon
Planning Commission
March 24, 2015

Work Session

Planning Commission Members Present: Staff Present:

Chair Jean Simson	Brad Kilby, Planning Manager
Vice Chair Russell Griffin	Michelle Miller, Senior Planner (work session only)
Commissioner Pearson	Connie Randall, Associate Planner (work session only)
Commissioner James Copfer (regular mtg only)	Kirsten Allen, Planning Dept. Program Coordinator

Planning Commission Members Absent:

Commissioner Lisa Walker

Council Members Present:

Council President Sally Robinson

Legal Counsel:

Chris Crean (regular meeting only)

Note: Two Planning Commission seats are vacant.

Chair Jean Simson called the meeting to order at 6:00 pm.

1. Medical Marijuana Dispensary Draft Language

Michelle Miller gave a presentation with a review of the Public Work Session held on March 10, 2015, the online survey results and the draft language for Medical Marijuana Dispensary (MMD) legislation (see record, Exhibit 1). Discussion followed. Staff was directed to amend the location of the verbiage in the Industrial Zone code section of the Sherwood Municipal Code and to add City Council's directive not to ban MMD's outright to any future presentations to the public.

2. Housing Needs Analysis regulatory framework

Kirstin Green, with Cogan, Owens, Green the City's consulting firm for the Sherwood West Preliminary Concept Plan reviewed the *Executive Summary: Sherwood Housing Needs Analysis* prepared by ECONorthwest (see record, Exhibit 2). She said the document provided was the "light" version at five pages as housing needs analyses are very detailed and generally over one hundred pages. The draft Housing Needs Analysis is available on line under the About the Project tab at www.sherwoodoregon.gov/sherwoodwest. The Sherwood West Preliminary Concept Plan Community Advisory Committee will discuss the Housing Needs Analysis on April 2nd. Discussion followed.

Chair Simson adjourned the work session at 6:59 pm to convene to a regular Planning Commission meeting.

Regular Meeting

1. Call to Order/Roll Call

Chair Jean Simson called the meeting to order at 7:04 pm.

2. Consent Agenda

Chair Simson asked for a motion and the following was received.

Motion: From Commissioner Alan Pearson to approve the Consent Agenda, Seconded by Vice Chair Russell Griffin. All present Planning Commissioners voted in favor (Commissioner Walker was absent).

3. Council Liaison Announcements

Council President Sally Robinson said the Council would review the Medical Marijuana Dispensaries code language expected to be forwarded by the Planning Commission and announced the Sherwood West Preliminary Concept Plan Community Advisory Committee meeting on April 2, 2015 at 6:30 pm at the Sherwood Police Department.

4. Staff Announcements

Brad Kilby, Planning Manager, announced the Police Advisory Board meeting on April 2, 2015 at 7pm at City Hall would be discussing the Medical Marijuana Dispensaries draft language. He stated that resolutions for two new Planning Commission members would be before the City Council on April 7th; Christopher Flores and Michael Meyer. The new commissioners will be seated before the April 14, 2015 Planning Commission hearing for the medical marijuana legislation.

Mr. Kilby informed of a neighborhood meeting April 20th at City Hall in the mezzanine for the Woodhaven Park improvements, which will include parking and some more formal play areas. He reminded audience members of an opportunity to sign up for weekly notifications related to Planning updates available on the website at <http://www.sherwoodoregon.gov/subscribe>.

Mr. Kilby advised that a new Planning Commission liaison will be needed for the Cedar Creek Trail Local Trail Advisory Committee after the departure of John Clifford from the Planning Commission. The Cedar Creek Trail procurement process at the Oregon Department of Transportation is near completion.

5. Community Comments

There were no community comments.

6. New Business

a. Public Hearing – PA 15-01 Water System Master Plan Update

Chair Simson read the public hearing statement and turned the time over to the Planning Department for a staff report.

Brad Kilby, Planning Manager, informed that the proposed plan amendment incorporated the 2015 Water System Master Plan by reference into the Comprehensive Plan and said Sherwood's Comprehensive Plan had not been updated since 1991. He indicated that the City wanted to take the opportunity to update the Comprehensive Plan with this iteration of the Water System Plan update.

Mr. Kilby pointed to Chapter 7 in Volume 2 of the Comprehensive Plan about [Community Facilities and Services] indicating that the City would update:

- The Table of Contents page,
- Objective B.7, by removing plan dates and make relevant to the current,
- Table VII-1, to reflect the name change from the Unified Sewerage Agency to Clean Water Services, and
- Remove references to telephone and cable providers.

He stated that the entire section under the Water Service Plan including the Introduction, Existing Water System Conditions, Analysis of the Existing System and Recommended Improvements to the Existing System would be replaced and the 2015 Water Master Plan would be adopted by reference.

Mr. Kilby described two specific criteria in the Development Code, chapter three of the Comprehensive Plan, that require

a.) An established need for the changes being proposed is consistent with state, local, and regional laws relating to water systems.

Mr. Kilby believed council established a need by initiating the consultant contract and going through the process of updating the Water System Master Plan; and

b.) Amendments are consistent with the Transportation Planning Rule (TPR).

In updating the Water Service portion of the Chapter 7, the proposed amendments have no effect or bearing on the functional classification of any streets in the transportation system. This criterion was deemed not applicable.

Mr. Kilby explained that Exhibit A, in the packet, was the tracked changes version which included the proposed amendments. He said items shown in red strikethrough are proposed to be deleted (everything in the original 1991 comprehensive plan relating to the water system) and replaced in essence with the Executive Summary from the 2015 Water System Master Plan.

Mr. Kilby indicated that other portions of Comprehensive Plan, Chapter 7 still had references to the Unified Sewerage Agency and other outdated items and the hope was to update the Sewer Master Plan and Waste Water Master Plan, thus updating those portions of Chapter 7 at that time.

Mr. Kilby said Exhibit B was the clean version of the proposed language. He explained that there were questions raised by the Commission at the work session on February 24, 2015 and Exhibit C was a letter from Craig Sheldon, Public Works Director, addressing concerns raised by the Commission. Exhibit D was the Draft 2015 Water System Master Plan.

Mr. Kilby indicated the Planning Commission would make a recommendation to the City Council, that staff believed findings had been made demonstrating a need to make the changes within the Comprehensive Plan and recommended a Planning Commission recommendation to City Council for approval of the proposed changes to the Comprehensive Plan. He asked for questions from the Commission.

Chair Simson commented that the City was adopting the Water System Plan by reference, but was limited by the existing format of the current Comprehensive Plan because it was really old. She asked for language at the end of the introduction paragraph shown on page 62 of the packet. Brad proposed the following be added *“the Water System Master Plan, that provides the supporting documentation to this section, is available as Appendix A to Volume 2 of the Sherwood Comprehensive Plan”*. There are no current appendixes to the Comprehensive Plan. Chair Simson ensured that other members of Commission had no objections to the added language. None were received.

Chair Simson asked about the policy statement and the eight objectives in the current comprehensive plan on page 50-51 of the packet proposing a change to B.7 which had to do with water, sewer and the Transportation System Plan. Mr. Kilby confirmed, and said it was because it referenced the Water Master Plan updates by year specifically, which were removed.

With no other questions for staff, Chair Simson asked for applicant testimony.

Craig Sheldon, City of Sherwood Public Works Director and Heidi Springer, Murray, Smith and Associates (MSA) came forward. Mr. Sheldon offered to answer any questions the Commission had and reminded that the Commission had viewed a presentation at the work session on February 24, 2015. He said he attempted to respond to concerns raised at the work session through his letter (Exhibit C). Mr. Sheldon stated 9800 letters were sent to account holders (5700) and property owners outside of the city limits because the master plan works out to the year 2034 and the City wanted property owners near the city to be involved too. He provided notes from the open house held on February 25, 2015 (see planning record, Exhibit E). The Commission took time to read the letter.

Chair Simson asked for public testimony.

Anthony Bevel, Sherwood resident came forward and asked about water use in case of a drought, commenting that the mountain looked pretty grim. He asked if the City of Sherwood had plans in place regarding conservation and getting the word out to have citizens conserve water.

With no other comments, Chair Simson asked the applicant to respond.

Craig Sheldon answered that the City is a member of the Regional Water Providers Consortium and conservation measures are in line with the consortium as well as neighboring jurisdictions in the region. He said notice was given through the utility bill as well as conservation notices in the Archer at times throughout the year. Mr. Sheldon indicated that the City was required to put notices about conservation in the paper April/May, because of the Willamette River fish flow. The City is required to measure the river every day during that time of year and a staff person does so every morning. He explained if the Willamette River hits a certain level we have to go into conservation measures, but commented that the chances of it happening were very slim because of the water rights obtained by

Tualatin Valley Water District (TVWD) in the mid-2000's as well as our water management/conservation measures from 2009. Mr. Sheldon said more can always be done on water conservation and there were kits at the Utility Billing office at the Public Works building that property owners can have for free. Kits include leak detection, shower heads, and rain gauges from the Regional Water Providers Consortium.

Chair Simson asked for questions from the Commission regarding the plan amendment and the Water System Master Plan.

Chair Simson expressed concern about fund allocations. She said citizens pay a lot; people living in the Utah desert pay less than in Sherwood. Chair Simson asked what in the Master Plan was going to make the Commission feel that it was not voting in more increases for the citizens of Sherwood.

Mr. Sheldon replied that the City was set up today to have water for years to come without any problem and a number of agencies around Sherwood cannot say that. He said there were agencies building millions of dollars' worth of projects that would not get their end result and they will come looking for water at some point, maybe twenty years from now. Mr. Sheldon said one of the things that has been done is the oversizing of pipes from Wilsonville to Sherwood. He assured the Commission that a lot of work has been done in the last five years.

Mr. Sheldon clarified that when Tualatin Valley Water District (TVWD) ran the water system in Sherwood they did what the City asked them to do, which was not a lot, but a bare bones program and never really moved ahead. He explained that most of the projects designated as rate payers' projects in this master plan were maintenance projects related to upsizing pipes; there are 2" and 4" galvanized pipes that are old and most of the \$50,000 is for the older part of town. Mr. Sheldon commented that System Development Charges (SDCs) pay for growth and some development will need oversizing for different flows in certain areas. He said the Master Plan was a plan that anticipated growth to happen. Mr. Sheldon added that as the person responsible for the water system he was excited, because Sherwood has done some great things over the years.

Mr. Sheldon acknowledged Sherwood's higher rates and said TVWD's current rate from Portland would increase 17% this year, Hillsboro just raised their rates 8% in October, and Tigard's water rates were close to or higher than Sherwood. He said he sees a number of agencies building projects with a 2026 deadline, where Sherwood has built a system, receiving good prices on steel to build the system. He explained the biggest thing would be at the treatment plant; when the Water Treatment Master Plan is done and the shared costs on how the agency moves forward with its partners. Mr. Sheldon indicated that he could not say that water rates would go down. He commented that a lot of people don't understand that 80-90% of the costs involved with water are fixed. He recounted that Sherwood pays \$1.5 million just to get water and it would not matter if the water was from Wilsonville or Portland; that is strictly production costs. He added that pumping costs to the wells takes electricity and PGE came out with a 6% rate increase this year. Mr. Sheldon said the City does not like to raise rates, but it starts to add up and rates have to be increased. He explained that City Council did not want to raise the rates and wanted to see how it went, so there were several years that rates were not increased. Mr. Sheldon said he would hate to give the Planning Commission misinformation, but out

of all of the water systems around here, Sherwood, has done the right thing going to the Willamette, cost wise. And it will pay off in the long run.

Chair Simson commented that the 2015 Water Master Plan allocated a total of \$2.1 million to current customers. In a vacuum it is hard to relate what that means. She asked to compare that amount with what was allocated in the 2005 Water Master Plan. She expressed her thoughts that oversizing the pipe from Wilsonville to Sherwood was a smart move since the City did not want to build six miles of pipe twice, because it was not big enough the first time. Her understanding was the pipe was built to accommodate 50,000 people and even if the Sherwood West area was fully built, the City would have a big enough pipe to get the water to us from Wilsonville.

Mr. Sheldon responded that there were other factors to the oversizing. If future partners come online the City does not want our main transmission line that brings our water source to be shut down in order to bring those partners online. He explained the cost of upsizing of the pipe was a small amount when a ten foot deep ditch was already in the ground and with that cost comes the valving, the air vacuums, and everything else on the transmission line. Mr. Sheldon commented that oversizing the pipe was not for short term or future partners, but for the long term; 20 years from now.

Chair Simson asked if the emergency water access through Tualatin would be retained, as the contracts were expiring. She said it was discussed at the work session that if the water supply from Wilsonville was shut off the City would only have two days of water supply in our storage tanks, but as homeowners we are advised to have three days of emergency water. She questioned if the City was acting responsibly by only having little bit of storage and how long would it take to bring Tualatin online.

Mr. Sheldon responded that the plan called for the line to be shut down; but to remain as an emergency backup, after testing, chlorination, and flushing of the system. He explained that something could be online within two or three days. The City would have to flush the line and pass it through back tees in order for the water to enter the system.

Chair Simson asked for the fund allocation from customers in the 2005 Water Master Plan. Brian Ginter, from MSA responded that \$2.8 million in non-growth related projects was budgeted for the first ten years of the Capital Improvement Projects list from 2006-2015. The next ten years was similar with a total \$15 million in capital improvement projects in the 2005 Water System Master Plan which did not include the source improvements from Wilsonville to Sherwood that have been built. Mr. Ginter pointed out that when the plan was updated in 2005, a new source was not considered; it was just a distribution master plan.

Chair Simson commented that based on the capital improvements in the budget, rates should remain the same or go down taking nothing else into consideration. Mr. Sheldon commented that the biggest cost was operational which would continue to go up. He informed the Commission that the City has made some operational changes through installation of AMI meters (smart meters) that should pay off in the next two years and staff is already seeing some of the savings from an operational side. He said one of the bare minimums in the 2005 Plan was for \$25,000 to be reserved for replacements and the 2015 Plan called for \$50,000 in replacement costs, because no money has been put into water

infrastructure in the old part of town. The last larger project we did was upsizing a 6” water main on Upper Roy street to an 8” water main four or five years ago.

Chair Simson asked about the Supervisory Control and Data Acquisition System (SCADA). Mr. Sheldon explained that the SCADA telemetry system was how the City ran the water system after hours and collected data during the day from wells and pumps. He said staff can go online from home and run the water system after hours.

Vice Chair Griffin asked how long the city’s investment with the city of Wilsonville was. Mr. Sheldon said he believed Tigard, Tualatin, TVWD, and Sherwood purchased water rights and stated Sherwood had guaranteed access to water through the Wilsonville plant from the Willamette River at least through 2043 or 2050 which could be renewed at that time.

Vice Chair Griffin inquired about other larger municipalities west of Sherwood who might find themselves in a pinch for water and asked if Sherwood could get pushed aside or that the amount we draw would be imposed upon by a larger customer coming to Wilsonville.

Mr. Sheldon replied that this subject was a topic of discussion at a regional level. He explained that there were plans for an additional treatment plant and all the water rights are expected to be used up around the year 2070. He stated that through an agreement with the Willamette River Water Coalition the City has up to twenty million gallons of water right and he did not see where Sherwood would get pushed out. Mr. Sheldon commented that there were bigger players at the table, a benefit to Sherwood, and that operationally, having those players build a second treatment plant could change some of the dynamics of how Sherwood draws water and how the treatment plant operates; current staff at the treatment plant can run both of plants and production water around 2026 should go down.

Vice Chair Griffin asked when the treatment plant master plan expected to be available. Mr. Sheldon responded that it would be the end of 2016.

Chair Simson commented on the Capital Improvements Program Summary, saying that of the \$36 million budgeted, \$34 million is expected to be paid by development as it occurs. She detailed that the way it had been explained to her was that a capital improvement project list allows the city to better forecast the SDC charges and provides a reasonability measurement for when a developer comes in and what they are paying for. Then development pays for the cost of growth. So even though huge amounts of projects are listed, the City is not using citizen’s money until someone comes in to develop and then the developer pays through their SDC fees. She concluded that if the City has done the job right, existing customers do not have to pay for the cost of growth.

Note: developers also directly construct infrastructure needed to serve development.

Mr. Sheldon confirmed and commented on the lack of red lines in the 2015 Water System Master Plan that were prevalent in the 2005 plan. He said the City has spent money to get better data, in our water flushing program, in order to provide results to MSA for this update; in a water system you have to spend money to do some of this. He added that the City’s goal with this update was to craft a plan that was more maintenance related now that the City has a long term source. Chair Simson received

verification that the red lines from the 2005 Master plan were from water lines that needed to be fixed, replaced or maintained.

Vice Chair Griffin asked if Mr. Sheldon thought there was an Achilles' heel in the Water System. Mr. Sheldon answered that many other agencies wished they had what Sherwood's has; they have old pipes that cannot be funded. Sherwood has some things that need done, but overall is doing well.

Commissioner Copfer asked if there were any conversations about adding additional storage. Mr. Sheldon said there was not as they feel there was enough storage. Mr. Sheldon expounded that there was a plan for another reservoir at a future date. One was planned to partner with Wilsonville, but that did not work out. Instead the City built the reservoir at Snyder Park. He added that spending the money to build the second Snyder Park reservoir took a lot of the red the red lines off the master plan and the 535 Reservoir that will need to be built has been pushed out even farther.

Mr. Sheldon commented that if he had anything he was concerned about with this system it would be that there was no upper elevation reservoir serving the other side of Sunset Blvd and the area was getting fed strictly out of the new pump station. If the area was being fed out of an old pump station he would be worried because the City would be relying on a 1970 pump station in the summer months because water from the single existing reservoir could not pump down. He said he was less worried then he used to be.

Commissioner Copfer asked if Sherwood was part of the Wilsonville reservoir to be built on Tooze Road. Mr. Sheldon replied that we were not.

Chair Simson asked about a comment in the open house notes (Exhibit E) concerning the City double dipping in regards to street lights because the charge was on the utility bill. She acknowledged that the utility bill was not part of the Comprehensive Plan, but felt as a City representative, she needed to ask about the additional fees and taxes on the utility bill. Mr. Sheldon answered that the individual at the open house felt that the City was double dipping because PGE charged a franchise and street light fee on their bill. Mr. Sheldon remarked that everybody wants to talk about how high our water rates are and reminded that the utility bill covers a variety of utilities. He said the residential monthly bill for water averaged a little over \$40 and the sewer charge is about \$39. He explained that the city issues billing for Clean Water Services and they have indicated that they expect a 5% increase every year. Mr. Sheldon described the bill as including utilities, street fees and the street lights; a common practice on a number of agencies' utility bills.

Commissioner Copfer referred to the comment from the open house letter that stated that Clean Water Services had not increased the City's fees in years. Mr. Sheldon clarified that rates have been raised between 3-5% annually and said their storm rate increases annually as well; from about forty to fifty cents last year. He said that the City does the billing for Clean Water Services on accounts outside of the city as well and they have been raising their rates.

Commissioner Copfer asked if there was a public record that shows how the funds collected are spent to verify that the funds are not being used for special projects outside what is approved. Mr. Sheldon responded that the Finance Department tracks the revenue, contingencies, and debt service.

Commissioner Copfer wanted to know if there was an easy way of showing what the funds are being used for. Mr. Sheldon recommended making inquiries to the Finance Department.

Chair Simson expressed appreciation for the letter from Mr. Sheldon (Exhibit C), because of the concerns she had expressed about how much the projects were and how much customers were paying. She commented that the 2015 Water Master Plan called for saturation development, meaning that development for the Sherwood West was accounted for in the 20 year horizon.

Heidi Springer, MSA, responded that they looked at saturation development in the Sherwood West area as a means of sizing facilities for the area, but were not anticipating development to occur within the twenty years. She said assumptions were made for the purposes of the Water Master Plan in the Sherwood West area with awareness that a concept plan is in process. She said assumptions help inform adequate sizing, but we are not projecting a saturation development within twenty years in that area.

For clarification, Chair Simson recited that the plan indicated that *if* Sherwood West were to develop completely it needed a certain size pipe and the City will plan for that size of pipe from the beginning so the entire development can occur over the next twenty to fifty years and be sized appropriately from the beginning. She mentioned that the capital improvements do not account for 100% growth in the Sherwood West area, but a smaller percent within the ten to twenty year plan. The Capital Improvement Projects that are listed in the Sherwood West area within the next ten to twenty years are projects that may not occur at all, because development in Sherwood West may not start. She said the information was for City Council to prioritize projects in the Capital Improvements Plan when they go through the budgeting process. Ms. Springer confirmed.

Commissioner Pearson commented about the snow pack and said he was told the City's water was not dependent on Mt. hood runoff, but upon spring rains. So the fact that the snow pack is not high does not impact our water. He commented on a conservation note, that when he washes his hands he washes them over an empty coffee can and uses that water to flush the toilet. Commissioner Pearson added that he read the 2015 Water Master Plan and commended the consultant for making it understandable.

With no other questions from the Commission, chair Simson closed the public testimony portion of the hearing. She asked if there were any further question for staff from the commission. None were received.

With no other discussion, the following motion was received.

Motion: From Vice Chair Russell Griffin to forward a recommendation of approval to the City Council for the Water System Master Plan Update, PA 15-01 code update, based on the applicant's testimony, public testimony received, and the analysis, finding and addition to the Staff Report. Seconded by Commissioner Alan Pearson.

Chair Simson clarified that the addition in the staff report was to the introduction paragraph of the code.

All present Planning Commissioners voted in favor (Commissioners Walker was absent).

7. Planning Commissioner Announcements

Chair Simson announced the Sherwood West Preliminary Concept Plan Community Advisory Committee meeting at 6:30 pm on April 2, 2015 at the Sherwood Police Facility.

Vice Chair Griffins commented that being part of the first community musical at the new cultural arts center was a total blast. He said it is a great facility and he felt it was in good hands. He remarked that it was a pleasure having the show there and literally thousands of people came to see the show.

Commissioner Copfer added that it also helped identify some items that need to be addressed.

8. Adjourn

Chair Simson adjourned the meeting at 8:00 pm.

Submitted by:

Kirsten Allen

Planning Department Program Coordinator

Approval Date: _____

New Business Agenda

Item A

CITY OF SHERWOOD
Staff Report
File No: PA 15-02
Medical Marijuana Dispensary Code Amendment

Date: April 7, 2015

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

Exhibit A. Medical Marijuana Dispensary

Plan Amendment -**DRAFT CODE LANGUAGE**

April 3, 2015

Additions are in BLUE

Add to Section 16.10- DEFINITIONS

MEDICAL MARIJUANA DISPENSARY: A retail facility registered by the Oregon Health Authority that is allowed to receive marijuana, immature marijuana plants or usable marijuana products (such as edible products, ointments, concentrates or tinctures) and to transfer that marijuana, immature plants, or usable project to a person with a valid Oregon Medical Marijuana Program card (a patient or the patient's caregiver). A dispensary includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.

MOBILE VENDOR: A service establishment operated from a licensed and moveable vehicle that vends or sells food and/or drink or other retail items processed or prepared on-site to walkup customers.

EXISTING Definitions (for reference purposes)

Public Park: A park, playground, swimming pool, reservoir, athletic field, or other recreational facility which is under the control, operation or management of the City or other government agency.

Educational Institution: Any bona-fide place of education or instruction, including customary accessory buildings, uses, and activities, that is administered by a legally-organized school district; church or religious organization; the State of Oregon; or any agency, college, and university operated as an educational institution under charter or license from the State of Oregon. An educational institution is not a commercial trade school as defined by Section 16.10.020.

Add to Land uses tables of Chapter 16.22.10 and 16. 31 tables with footnotes to see Special Uses

Chapter 16.22 Commercial Land Use Districts

16.22.020 - Uses

A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C), and not permitted (N) in the Commercial Districts. The specific land use categories are described and defined in Chapter 16.88 Use Classifications and Interpretations.

B. Uses listed in other sections of this code, but not within this specific table are prohibited.

C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88 Use Classifications and Interpretations.

D. Additional limitations for specific uses are identified in the footnotes of this table.

COMMERCIAL USES	OC	NC	RC	GC
COMMERCIAL				
General Retail - sales oriented				
• General retail trade, not exceeding 10,000 square feet of gross square footage.	P	P	P	P
• General retail trade greater than 10,000 square feet of gross square footage	N	P	P	P
• Medical Marijuana Dispensary, not exceeding 5,000 square feet of gross square footage	<u>N</u>	<u>N</u>	<u>P⁹</u>	<u>P⁹</u>

[9. See Special Criteria for Dispensary under Chapter 16.38.020 .](#)

CHAPTER 16.31 INDUSTRIAL LAND USES

16.31.020 - Uses

A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C) and not permitted (N) in the industrial zoning districts. The specific land use categories are described and defined in Chapter 16.88.

B. Uses listed in other sections of this code, but not within this specific table are prohibited.

C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88

D. Additional limitations for specific uses are identified in the footnotes of this table.

INDUSTRIAL USES	LI	GI	EI
COMMERCIAL			
General Retail - sales oriented			
• Incidental retail sales or display/showroom directly associated with a permitted use and limited to a maximum of 10 % of the total floor area of the business. ⁷	C	C	P
• Medical Marijuana Dispensary, not exceeding 5,000 square feet of gross square footage	<u>P¹⁰</u>	<u>P¹⁰</u>	<u>N</u>
• Tool and Equipment Rental and Sales, Including Truck Rental. ⁷	P	P	P
• Retail plant nurseries and garden supply stores (excluding wholesale plant nurseries).	P	P	N
• Wholesale building material sales and service	C	P	N
• Retail building material sales and lumberyards ⁷			

[10. See Special Criteria for Dispensary under Chapter 16.38.020.](#)

Add Medical Marijuana Dispensary to Category Type II Land Use Procedures for Processing Development Permits.

CHAPTER 16.72 Procedures for Processing Developing Permits

16.72.010 - Generally

A. Classifications

Except for Final Development Plans for Planned Unit Developments, which are reviewed per Section 16.40.030, all quasi-judicial development permit applications and legislative land use actions shall be classified as one of the following:

2. Type II

The following quasi-judicial actions shall be subject to a Type II review process:

a. Land Partitions

b. Expedited Land Divisions - The Planning Director shall make a decision based on the information presented, and shall issue a development permit if the applicant has complied with all of the relevant requirements of the Zoning and Community Development Code. Conditions may be imposed by the Planning Director if necessary to fulfill the requirements of the adopted Comprehensive Plan, Transportation System Plan or the Zoning and Community Development Code.

c. "Fast-track" Site Plan review, defined as those site plan applications which propose less than 15,000 square feet of floor area, parking or seating capacity of public, institutional, commercial or industrial use permitted by the underlying zone, or up to a total of 20% increase in floor area, parking or seating capacity for a land use or structure subject to conditional use permit, except as follows: auditoriums, theaters, stadiums, and those applications subject to Section 16.72.010.4, below.

d. "Design Upgraded" Site Plan review, defined as those site plan applications which propose between 15,001 and 40,000 square feet of floor area, parking or seating capacity and which propose a minimum of eighty percent (80%) of the total possible points of design criteria in the "Commercial Design Review Matrix" found in Section 16.90.020.4.G.4.

e. Industrial "Design Upgraded" projects, defined as those site plan applications which propose between 15,001 and 60,000 square feet of floor area, parking or seating capacity and which meet all of the criteria in 16.90.020.4.H.1.

f. Homeowner's association street tree removal and replacement program extension.

g. Class B Variance

h. Street Design Modification

i. Subdivisions between 4—10 lots

[j. Medical Marijuana Dispensary permit](#)

16.38 SPECIAL USES

16.38.010 GENERAL PROVISIONS

Special uses included in this Section are uses which, due to their effect on surrounding properties, must be developed in accordance with special conditions and standards. These conditions and standards may differ from the development standards established for other uses in the same zoning district. When a dimensional standard for a special use differs from that of the underlying zoning district, the standard for the special use shall apply.

16.38.020 MEDICAL MARIJUANA DISPENSARY

A. CHARACTERISTICS:

[1. A medical marijuana dispensary is defined in Chapter 16.10.](#)

2. Registration and Compliance with Oregon Health Authority Rules. A medical marijuana dispensary must have a current valid registration with the Oregon Health Authority under ORS 475.314. Failure to comply with Oregon Health Authority regulations is a violation of this Code.

B. APPROVAL PROCESS: Where permitted, a medical marijuana dispensary is subject to approval under § 16.72.010A.2a, the Type II land use process.

C. STANDARDS

1. Hours of Operation.

a. A medical marijuana dispensary may not be open to the public before 10:00 am and not later than 6:00 pm from Sunday through Thursday.

b. A medical marijuana dispensary may not be open to the public before 10:00 am and not later than 8 pm on Friday and Saturday.

2. Security Measures Required.

a. Landscaping must be continuously maintained to provide clear lines of sight from a public right of way to all building entrances.

b. Exterior lighting must be provided and continuously maintained.

c. Any security bars installed on doors or windows visible from a public right of way must be installed interior to the door or window, in a manner that they are not visible from the public right of way.

3. Co-location prohibited.

a. A medical marijuana dispensary may not be located at the same address as a marijuana manufacturing facility, including a grow operation.

b. A medical marijuana dispensary may not be located at the same address with any facility or business at which medical marijuana is inhaled or consumed by cardholders.

4. Mobile and Delivery Businesses Prohibited.

a. A dispensary may not operate as a mobile business as defined in Chapter 16.10.

5. Drive-Through, Walk-Up. A medical marijuana dispensary may not have a walk-up window or a drive-through.

6. Proximity Restrictions.

A dispensary may not be located within 1,000 feet of any of the uses listed below. For purposes of this paragraph, the distance specified is measured from the closest points between the property lines of the affected properties:

a. An Educational Institution: public or private elementary, secondary, or career school that is attended primarily by children under 18 years of age.

b. Another medical marijuana dispensary.

c. A Public Park or Plaza.

Exhibit B

Final Rules for the Medical Marijuana Dispensary Program

January 28th, 2015

These are the final rules governing medical marijuana dispensaries in Oregon. Individuals intending to file an application to register a dispensary should use these rules as a guide. Visit mmj.oregon.gov for more information.

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OREGON ADMINISTRATIVE RULES
OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION
CHAPTER 333

DIVISION 8

MEDICAL MARIJUANA

Medical Marijuana Facilities

333-008-1000

Applicability

- (1) A person may not establish, conduct, maintain, manage or operate a facility on or after March 1, 2014, unless the facility has been registered by the Authority under these rules.
- (2) Nothing in these rules exempts a PRF, an employee of a registered facility, or a registered facility from complying with any other applicable state or local laws.
- (3) Registration of a facility does not protect a PRF or employees from possible criminal prosecution under federal law.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

333-008-1010

Definitions

For the purposes of OAR 333-008-1000 through 333-008-1400 the following definitions apply:

- (1) "Agricultural land" means land that is located within an exclusive farm use zone as that term is described in ORS 215.203.
- (2) "Attended primarily by minors" means that a majority of the students are minors.
- (3) "Authority" means the Oregon Health Authority.
- (4) "Batch" means a quantity of usable marijuana of a single strain or a number of immature plants transferred at one time to a facility by a person authorized by a patient to transfer usable marijuana to a registered facility.
- (5) "Business day" means Monday through Friday excluding legal holidays.
- (6) "Career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.
- (7) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.
- (8)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority.
- (b) "Designated primary caregiver" does not include the person's attending physician.
- (9) "Domicile" means the place of abode of an individual where the person intends to remain and to which, if absent, the individual intends to return.
- (10) "Edible" means a product made with marijuana that is intended for ingestion.

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- (11) “Elementary school” means a learning institution containing any combination of grades Kindergarten through 8 or age level equivalent.
- (12)(a) “Employee” means any person, including aliens, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer.
- (b) “Employee” does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.
- (13) “Facility” means a medical marijuana facility.
- (14) “Farm use” has the meaning given that term in ORS 215.203.
- (15) “Finished product” means a useable marijuana product, including but not limited to edible products, ointments, concentrates and tinctures. A finished product does not mean dried marijuana flowers.
- (16) “Grower” has the same meaning as “person responsible for a marijuana grow site.”
- (17) “Grow site” means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient.
- (18)(a) “Immature marijuana plant or immature plant” means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.
- (b) A seedling or start that does not meet all three criteria in subsection (18)(a) is a mature plant.
- (19) “Macroscopic screening” means visual observation without the aid of magnifying lens(es).
- (20) “Microscopic screening” means visual observation with a minimum magnification of 40x.
- (21) “Minor” means an individual under the age of 18.
- (22) “Oregon Medical Marijuana Program” or “OMMP” means the program operated and administered by the Authority that registers patients, designated primary caregivers, and growers.
- (23) “Patient” has the same meaning as “registry identification cardholder.”
- (24) “Person” means an individual.
- (25) “Person responsible for a marijuana grow site” means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose and has the same meaning as “grower”.
- (26) “Person responsible for a medical marijuana facility” or “PRF” means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in these rules and has been approved by the Authority.
- (27) “Pesticide” means any substance or mixture of substances, intended to prevent, destroy, repel, or mitigate any pest.
- (28) “Premises” means a location registered by the Authority under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.
- (29) “Random sample” means an amount of usable marijuana taken from a batch in which different fractions of the usable marijuana have an equal probability of being represented.
- (30) “Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

Final rules for the Medical Marijuana Dispensary Program
January 28th, 2015

(31) “Remuneration” means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.

(32) “Resident” means an individual who has a domicile within this state.

(33) “Restricted area” means a secure area where usable marijuana and immature plants are present.

(34) “Safe” means:

(a) A metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered facility that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(b) A vault; or

(c) A refrigerator or freezer capable of being locked for storing edibles or other finished products that require cold storage that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(35) “Secondary school” means a learning institution containing any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(36) “Secure area” means a room:

(a) With doors that are kept locked and closed at all times except when the doors are in use; and

(b) Where access is only permitted as authorized in these rules.

(37) “Single strain” means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(38) “These rules” means OAR 333-008-1000 through 333-008-1400.

(39) “Usable marijuana” has the meaning given that term is ORS 475.302 and includes “finished product”.

(40) “Valid testing methodology” means a scientifically valid testing methodology described in a published national or international reference and validated by the testing laboratory.

(41) “Vault” means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

333-008-1020

Application for Medical Marijuana Facility Registration

(1) A PRF wishing to apply to register a facility must provide to the Authority:

(a) An application on a form prescribed by the Authority;

(b) The applicable fee as specified in OAR 333-008-1030;

(c) Documentation that demonstrates the facility is registered as a business or has filed an application to register as a business with the Office of the Secretary of State;

(d) Documentation that shows the current zoning of the location of the proposed facility;

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- (e) Documentation, on a form prescribed by the Authority, with the applicant's affirmation that the proposed facility is not within 1,000 feet of the real property comprising a public or private elementary, secondary or career school;
 - (f) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-1130; and
 - (g) Proof that the PRF resides in Oregon in accordance with OAR 333-008-1120(1)(a).
- (2) An application for the registration of a facility must be submitted by a PRF electronically via the Authority's website, <http://mmj.oregon.gov>. The documentation required in subsections (1)(c) through (g) of this rule may be submitted electronically to the Authority or may be mailed. If documentation is mailed, it must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered to be incomplete. If documentation is submitted electronically it must be received by the Authority by 5 p.m. Pacific Standard Time (PST) within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered incomplete. Applicable fees must be paid online at the time of application.
- (3) Applications will be reviewed in the order they are received by the Authority. An application is considered received as of the date and time that payment of fees is authorized by the entity that issued the credit or debit card used by the PRF to pay the fees.
- (4) The Authority shall return an incomplete application to the person that submitted the application. A person may re-submit an application that was returned as incomplete at any time. An application that is returned as incomplete must be treated by the Authority as if it was never received. An application is considered incomplete if:
- (a) An application does not contain all the requested information in the form;
 - (b) The applicant does not submit the required documentation described in subsections (1)(c) through (g) of this rule; or
 - (c) The application and registration fees are not paid.
- (5) A PRF who wishes to register more than one location must submit a separate application, registration fees, and all documentation described in section (1) of this rule for each location.
- (6) At the time of application the PRF will be asked, by the Authority, to sign an authorization waiving the confidentiality of the location of the facility and permitting the Authority to make the location and name of the facility public if the facility is registered.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

333-008-1030

Fees

- (1) The initial fees for the registration of a facility are:
 - (a) A non-refundable application fee of \$500; and
 - (b) A \$3,500 registration fee.
- (2) The annual renewal fees for the registration of a facility are:
 - (a) A \$500 non-refundable renewal fee; and
 - (b) A \$3,500 registration fee.
- (3) The Authority must return the registration fee if:
 - (a) An application is returned to the applicant as incomplete;
 - (b) The Authority denies an application; or
 - (c) An applicant withdraws an application.

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Stat. Auth.: ORS 475.314, 475.338
Stats. Implemented: 475.314

333-008-1040

Application Review

- (1) Once the Authority has determined that an application is complete it will review an application to the extent necessary to determine compliance with ORS 475.314 and these rules.
- (2) The Authority may, in its discretion, prior to acting on an application:
 - (a) Contact the applicant and request additional documentation or information;
 - (b) Inspect the premises of the proposed facility; and
 - (c) Verify any information submitted by the applicant.
- (3) Prior to making a decision whether to approve or deny an application the Authority must:
 - (a) Ensure that the criminal background check process has been completed and review the results;
 - (b) Contact the OMMP and obtain documentation of whether the location of the facility is the same location as a registered grow site under OAR 333-008-0025;
 - (c) Review documentation submitted by the applicant to determine, based on the information provided by the applicant, whether the proposed facility is located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school;
 - (d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility; and
 - (e) Verify that the business that operates the facility is registered with the Office of the Secretary of State.
- (4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority must return the application to the applicant as incomplete.
- (5) If the proposed facility is in compliance with ORS 475.314(3)(a) through (d) and the PRF has passed the criminal background check and resides in Oregon, the Authority must notify the applicant in writing that the dispensary and PRF have met the initial criteria for registration. Within 60 days of the Authority's notification the applicant must submit a form, prescribed by the Authority, that the proposed facility and PRF are in compliance with these rules, including but not limited to:
 - (a) Installation of a security system, including a video surveillance system, and alarm system that are all operational, and installation of a safe in accordance with OAR 333-008-1140 through 333-008-1180;
 - (b) Having policies and procedures as required by OAR 333-008-1200 and training for employees on the policies and procedures;
 - (c) Identification of at least one laboratory that will perform the testing required in OAR 333-008-1190;
 - (d) Having a fully operational electronic data management system in accordance with OAR 333-008-1210; and
 - (e) Having packaging and labeling that complies with OAR 333-008-1220 and 333-008-1225.
- (6) If the Authority does not receive the form described in section (5) of this rule within 60 days of the applicant being notified that the dispensary and PRF met initial criteria for registration, the applicant's application will be returned as incomplete.

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Stat. Auth.: ORS 475.314, 475.338
Stats. Implemented: 475.314

333-008-1050

Approval of Application

- (1) If the Authority receives the form required to be submitted under OAR 333-008-1040(5) the Authority must perform a site visit within 30 days of receiving the form to determine whether the PRF and facility are in compliance with these rules.
- (2) If, after the site visit the Authority determines that the facility is in compliance with these rules the Authority must provide the applicant with proof of registration that includes a unique registration number, and notify the PRF in writing that the facility may operate.
- (3) If, after the site visit the Authority determines that the facility is not in compliance with these rules the Authority may:
 - (a) Give the PRF 10 business days to come into compliance;
 - (b) Propose to deny the facility's registration in accordance with OAR 333-008-1275(2); or
 - (c) Consider the application to be incomplete.
- (4) A facility that has been registered must display proof of registration in a prominent place inside the facility so that proof of registration is easily visible to individuals authorized to transfer usable marijuana and immature plants to the facility and individuals who are authorized to receive a transfer of usable marijuana and immature plants from the facility at all times when usable marijuana or immature plants are being transferred.
- (5) A registered facility may not use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration on any signs at the facility, on its website, or in any advertising or social media.
- (6) A facility's registration is only valid for the location indicated on the proof of registration and is only issued to the PRF that is listed on the application or subsequently approved by the Authority.
- (7) A facility's registration may not be transferred to another location.

Stat. Auth.: ORS 475.314, 475.338
Stats. Implemented: 475.314

333-008-1060

Denial of Application

- (1) The Authority must deny an application if:
 - (a) An application, supporting documentation provided by the PRF, or other information obtained by the Authority shows that the qualifications for a facility in ORS 475.314 or these rules have not been met; or
 - (b) The PRF has been:
 - (A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date the application was received by the Authority; or
 - (B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or
 - (C) Prohibited by a court from participating in the OMMP.
- (2) If the PRF that is identified in the application is not qualified to be a PRF, the Authority will permit a change of PRF form to be submitted in accordance with OAR 333-008-1120, along with

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the applicable criminal background check fee. If the proposed PRF is not qualified to be a PRF, the Authority must deny the application in accordance with section (1) of this rule.

(3) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1070

Expiration and Renewal of Registration

(1) A facility's registration expires one year following the date of application approval.

(2) If a PRF wishes to renew the facility's registration, the person must submit to the Authority within 60 calendar days of the registration's expiration:

(a) An application renewal form prescribed by the Authority;

(b) The required renewal fees;

(c) Forms required for the Authority to do a criminal background check on the PRF.

(3) A PRF that does not submit timely renewal documentation in accordance with section (2) of this rule may not operate the facility if the previous registration expires prior to the Authority issuing a renewed registration. The facility will remain registered until a renewal is either issued or denied, but the facility may not operate with an expired registration.

(4) If a PRF does not submit a renewal form and the required renewal fees prior to the registration's expiration, the registration is expired and is no longer valid, and the PRF may reapply for registration.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1080

Notification of Changes or Events

(1) A PRF must notify the Authority within 10 calendar days of any of the following:

(a) The PRF's conviction for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(b) The issuance of a court order that prohibits the PRF from participating in the OMMP;

(c) A decision to change the PRF;

(d) A decision to permanently close the facility at that location;

(e) A decision to move to a new location;

(f) A change in ownership;

(g) A change in the person's residency;

(h) The location of a public or private elementary, secondary or career school attended primarily by minors within 1,000 feet of the facility;

(i) Any structural changes within the facility that will result in a change to the secure or restricted areas, or entrances or exits to the facility; and

(j) The theft of usable marijuana or immature plants.

(2) The notification required in section (1) of this rule must include a description of what has changed or the event and any documentation necessary for the Authority to determine whether the facility is still in compliance with ORS 474.314 and these rules including but not limited to, as applicable:

(a) A copy of the criminal judgment or order;

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- (b) A copy of the court order prohibiting the PRF from participating in the OMMP;
- (c) The location of the school that has been identified as being within 1,000 feet of the facility;
- (d) The information required in OAR 333-008-1120 and 333-008-1130 to determine the residency of the new PRF and to perform the criminal background check; or
- (e) A copy of the police report documenting that the theft of usable marijuana or immature plants was reported to law enforcement.

(3) Failure of the PRF to notify the Authority in accordance with this rule may result in revocation of a facility's registration.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1090

Required Closures

A facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants if:

- (1) The PRF is convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;
- (2) The PRF changes and the Authority has not:
 - (a) Performed a criminal background check on the proposed PRF in accordance with OAR 333-008-1130;
 - (b) Determined whether the individual is a resident of Oregon; and
 - (c) Provided written approval that the new PRF meets the requirements of ORS 475.314.
- (3) The PRF has been ordered by the court not to participate in the OMMP; or
- (4) A public or private elementary, secondary or career school attended primarily by minors is found to be within 1,000 of the registered facility.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1100

Business Qualifications for Medical Marijuana Facility Registration

A facility must maintain a current registration as a business with the Office of the Secretary of State in order to receive or maintain registration.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1110

Locations of Medical Marijuana Facilities

- (1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.
- (2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.
- (3) A facility may not be located:
 - (a) At the same address as a registered marijuana grow site;
 - (b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or
 - (c) Within 1,000 feet of another medical marijuana facility.

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(4) For purposes of implementing ORS 475.314(3)(c), the Authority will consider a location to be a school if it has at least the following characteristics:

(a) Is a public or private elementary, secondary or career school as those terms are defined OAR 333-008-1010;

(b) There is a building or physical space where students gather together for education purposes on a regular basis;

(c) A curriculum is provided;

(d) Attendance at the location meets Oregon's mandatory attendance law, ORS 339.010 or an exemption under ORS 339.030(1)(a); and

(e) Faculty is present to teach or guide student education.

(5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public or private elementary, secondary or career school to the closest point of the premises of a facility. If any portion of the premises of a proposed or registered facility is within 1,000 feet of a public or private elementary, secondary or career school it may not be registered.

(6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of a registered facility to the closest point anywhere on the premises of a proposed facility. If any portion of the premises of a proposed facility is within 1,000 feet of a registered facility it may not be registered.

(7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1120

Person Responsible for a Medical Marijuana Facility (PRF)

(1) A PRF must:

(a) Be a resident of Oregon. Residency may be proved by submitting to the Authority:

(A) A valid Oregon driver's license, a valid Oregon identification card that includes a photograph of the person, a valid passport, or a valid military identification card that includes a photograph of the person; and

(B) Copies of utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the domicile of the PRF.

(b) Have legal authority to act on behalf of the facility; and

(c) Be responsible for ensuring the facility complies with applicable laws, if registered.

(2) A PRF may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) A PRF is accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of the PRF, who violate ORS 475.314 or these rules.

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- (4) If a PRF no longer meets the criteria of a PRF the Authority shall inform the PRF and the owner of the facility if different that:
 - (a) The PRF may no longer serve in that capacity;
 - (b) In order to remain registered, a change of PRF form must be submitted along with a criminal background check fee of \$35; and
 - (c) The facility may not operate until the Authority has approved a PRF.
 - (5) If the Authority is notified that a change of PRF is needed, the current PRF is no longer able to serve as the PRF, or the PRF has been or will be removed by the owner of a facility, the owner of the facility must submit a change of PRF form to the Authority within 10 business days of the notification or the Authority will begin proceedings to revoke the registration of the facility.
 - (6) If the PRF of record for the facility is no longer serving in that capacity the facility may not operate until a new PRF has been approved by the Authority.
- Stat. Auth.: ORS 475.314, 475.338
Stats. Implemented: 475.314

333-008-1130

Criminal Background Checks

- (1) A PRF must, at the time of application, provide to the Authority:
 - (a) A criminal background check request form, prescribed by the Authority that includes but is not limited to:
 - (A) First, middle and last name;
 - (B) Any aliases;
 - (C) Date of birth;
 - (D) Driver's license information; and
 - (E) Address and recent residency information.
 - (b) Fingerprints in accordance with the instructions on the Authority's webpage:
<http://mmj.oregon.gov>.
 - (2) The Authority may request that the PRF disclose his or her Social Security Number if notice is provided that:
 - (a) Indicates the disclosure of the Social Security Number is voluntary; and
 - (b) That the Authority requests the Social Security Number solely for the purpose of positively identifying the PRF during the criminal records check process.
 - (3) The Authority shall conduct a criminal records check in order to determine whether the PRF has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II in any state.
 - (4) The Authority must conduct a criminal background check in accordance with this rule on a PRF every year at the time of application renewal.
 - (5) If a PRF wishes to challenge the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the Department of State Police or Federal Bureau of Investigation, those challenges must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process specified in OAR 333-008-1060(2).
- Stat. Auth.: ORS 475.314, 475.338
Stats. Implemented: 475.314

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333-008-1140

Security for Registered Facilities

- (1) The PRF must ensure that a registered facility complies with OAR 333-008-1140 through 333-008-1180.
- (2) The PRF is responsible for the security of all usable marijuana and immature plants in the registered facility, including providing adequate safeguards against theft or diversion of usable marijuana and immature plants and records that are required to be kept.
- (3) The PRF must ensure that commercial grade, non-residential door locks are installed on every external door at a registered facility prior to opening for business and used while a facility is registered.
- (4) During all hours when the registered facility is open for business, the PRF must ensure that:
 - (a) All usable marijuana and immature plants received and all usable marijuana and immature plants available for transfer to a patient or a designated primary caregiver are kept in a locked, secure area that can only be accessed by authorized personnel.
 - (b) All areas where usable marijuana or immature plants are received for transfer by a registered facility are identified as a restricted access area by posting a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads, “Restricted Access Area – Authorized Personnel Only”.
 - (c) All areas where usable marijuana or immature plants are available for transfer to a patient or designated primary caregiver are:
 - (A) Identified as a restricted access area and clearly identified by the posting of a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads “Restricted Access Area – No Minors Allowed”;
 - (B) Supervised by the PRF or an employee of the registered facility at all times when a patient or designated primary caregiver is present; and
 - (C) Separate from any area where usable marijuana or immature plants are being transferred to a registered facility.
- (5) During all hours when the registered facility is not open for business the PRF must ensure that:
 - (a) All entrances to and exits from the facility are securely locked and any keys or key codes to the facility remain in the possession of the PRF or authorized employees;
 - (b) All usable marijuana is kept in a safe; and
 - (c) All immature plants are in a locked room.
- (6) The PRF must ensure that:
 - (a) Electronic records are encrypted, and securely stored to prevent unauthorized access and to ensure confidentiality;
 - (b) There is an electronic back-up system for all electronic records; and
 - (c) All video recordings and archived required records not stored electronically are kept in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the registered facility is open.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

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333-008-1150

Alarm System for Registered Facilities

(1) Prior to being registered a PRF must ensure that the facility has a fully operational security alarm system, installed by an alarm installation company, on all facility entry or exit points and perimeter windows.

(2) The security alarm system for the registered facility must:

(a) Be able to detect movement inside the registered facility;

(b) Be programmed to notify a security company that will notify the PRF or his or her designee in the event of a breach; and

(c) Have at least two operational “panic buttons” located inside the registered facility that are linked with the alarm system that notifies a security company.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1160

Video Surveillance Equipment for Registered Facilities

(1) Prior to being registered a PRF must ensure that a fully operational video surveillance recording system is installed in the facility.

(2) Video surveillance equipment must, at a minimum:

(a) Consist of:

(A) Digital or network video recorders;

(B) Cameras capable of meeting the requirements of OAR 333-008-1170 and this rule;

(C) Video monitors;

(D) Digital archiving devices; and

(E) A color printer capable of producing still photos.

(b) Be equipped with a failure notification system that provides prompt notification to the PRF or employees of any prolonged surveillance interruption or failure; and

(c) Have sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.

(3) All video surveillance equipment and recordings must be stored in a locked secure area that is accessible only to the PRF, authorized employees of the registered facility and the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1170

Required Camera Coverage and Camera Placement for Registered Facilities

(1) Prior to being registered a PRF must ensure that the facility has camera coverage for:

(a) All secure and restricted access areas described in OAR 333-008-1140;

(b) All point of sale areas;

(c) All points of entry to or exit from secure and restricted access areas; and

(d) All points of entry to or exit from the registered facility.

(2) A PRF must ensure that cameras are placed so that they capture clear and certain images of any individual and activity occurring:

(a) Within 15 feet both inside and outside of all points of entry to and exit from the registered facility; and

(b) Anywhere within secure or restricted areas on the facility premises.

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Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1180

Video Recording Requirements for Registered Facilities

(1) A PRF must ensure that all cameras are continuously monitored by motion sensor video equipment or similar technology 24 hours a day when usable marijuana or immature plants are on the premises of the facility.

(2) A PRF must ensure that:

(a) All surveillance recordings are kept for a minimum of 30 calendar days and are in a format that can be easily accessed for viewing;

(b) The surveillance system has the capability to produce a color still photograph from any camera image;

(c) The date and time is embedded on all surveillance recordings without significantly obscuring the picture;

(d) Video recordings are archived in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place; and

(e) Video surveillance records and recordings are available upon request to the Authority for the purpose of ensuring compliance with ORS 475.314 and these rules.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1190

Testing

(1) Prior to being registered a PRF must have documentation that identifies at least one laboratory that will do the testing in accordance with these rules and identify who will do the testing for immature plants.

(2) A PRF must ensure that usable marijuana and immature plants are tested for pesticides, mold and mildew in accordance with this rule prior to the usable marijuana or immature plants being transferred to a patient or a designated primary caregiver. A PRF may accept test results from a grower or other individual for flowers or other usable plant material if:

(a) The grower or other individual provides a copy of the test results;

(b) The PRF can demonstrate that the grower or other individual took random samples from the batch to be tested; and

(c) The PRF can demonstrate that the batch from where samples were taken were sealed and not tampered with from the time samples for testing were taken and when they were delivered to the facility.

(3) Upon usable marijuana being transferred to a registered facility in accordance with OAR 333-008-1230, the PRF must ensure the usable marijuana is segregated into batches, that each batch is placed in an individual container or bag, and that a label is attached to the container or bag that includes at least the following information:

(a) A unique identifier;

(b) The name of the person who transferred it; and

(c) The date the usable marijuana was received by the registered facility.

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- (4) Sampling. A PRF must ensure that random samples from each batch are taken in an amount necessary to conduct the applicable test, that the samples are labeled with the batch's unique identifier, and submitted for testing.
- (5) Testing. A PRF must ensure that each sample is tested for pesticides, mold, and mildew and for an analysis of the levels of tetrahydrocannabinol (THC) and cannabidiol (CBD).
- (a) Immature Plants. An immature plant may be tested for pesticides, mold or mildew by conducting a macroscopic or microscopic screening to determine if the plant has visible pesticide residue, mold or mildew. Testing for mold and mildew on immature plants must be done at least every 30 calendar days.
- (b) Flowers or other usable marijuana plant material. Usable marijuana in the form of flowers or other plant material must be:
- (A) Tested for pesticides, mold and mildew using valid testing methodologies and macroscopic or microscopic screening may not be used;
- (B) Tested for pesticides by testing for the following analytes:
- (i) Chlorinated Hydrocarbons;
- (ii) Organophosphates;
- (iii) Carbamates; and
- (iv) Pyrethroids; and
- (C) Analyzed, using valid testing methodologies, to determine the levels of THC and CBD.
- (c) Finished Products. If a facility receives a transfer of a pre-packaged finished product the facility may, in lieu of testing the finished product, obtain from the individual who transferred the finished product, lab results that show the usable marijuana in the finished product was tested in accordance with this rule, and that the finished product was tested for levels of THC and CBD.
- (6) Laboratory Requirements. A PRF must ensure that all testing, except for testing of immature plants, is done by a third party or in-house laboratory that:
- (a) Uses valid testing methodologies; and
- (b) Has a Quality System for testing of pesticides, mold and mildew that is compliant with the:
- (A) 2005 International Organization for Standardization 17025 Standard; or
- (B) 2009 National Environmental Laboratory Accreditation Conference Institute TNI Standards.
- (7) Macroscopic or microscopic screening of immature plants must be conducted by a person who has a minimum of a bachelor's degree in horticulture, botany, plant pathology, or microbiology but is not required to be done by a laboratory.
- (8) Testing Results. A laboratory must provide testing results to the PRF signed by an official of the laboratory who can attest to the accuracy of the results, and that includes the levels of pesticides, mold or mildew detected and the levels of THC and CBD.
- (a) If an immature plant has visible pesticide residue, mold or mildew it must be deemed to test positive and must be returned to the person who transferred the immature plant to the registered facility.
- (b) A sample of usable marijuana shall be deemed to test positive for mold and mildew if the sample has levels that exceed the maximum acceptable counts in Appendix A.
- (c) A sample of usable marijuana shall be deemed to test positive for pesticides with a detection of more than 0.1 parts per million of any pesticide.
- (9) If an immature plant or sample of usable marijuana tests positive for pesticides, mold or mildew based on the standards in this rule the PRF must ensure the entire batch from which the sample was taken is returned to the person who transferred the immature plant or usable

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marijuana to the registered facility and must document how many or how much was returned, to whom, and the date it was returned.

(10) A registered facility may perform its own testing as long as the testing complies with this rule.

(11) The PRF may permit laboratory personnel or other persons authorized to do testing access to secure or restricted access areas of the registered facility where usable marijuana or immature plants are stored. The PRF must log the date and time in and out of all such persons.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1200

Operation of Registered Facilities

(1) A PRF must ensure that a registered facility does not permit:

(a) A minor to be present in any area of a registered facility where usable marijuana or immature plants are present, even if the minor is a patient or an employee; and

(b) Consumption, ingestion, inhalation or topical application of usable marijuana anywhere on the premises of the registered facility, except that an employee of a registered facility who is a patient may consume usable marijuana during his or her work shift on the premises of the registered facility as necessary for his or her medical condition, if the employee is:

(A) Alone and in a closed room if the usable marijuana is being smoked;

(B) Not visible to patients or caregivers on the premises of the registered facility to receive a transfer of usable marijuana or an immature plant; and

(C) Not visible to the public outside the facility.

(2) A PRF must ensure that a registered facility uses an Oregon Department of Agriculture licensed and certified scale to weigh all usable marijuana.

(3) The following persons are the only persons permitted in any area of a registered facility where usable marijuana or immature plants are present, and only in accordance with these rules, as applicable:

(a) A PRF;

(b) An owner of a registered facility;

(c) An employee of the registered facility;

(d) Laboratory personnel in accordance with OAR 333-008-1190;

(e) A contractor authorized by the PRF to be on the premises of a registered facility;

(f) A patient, designated primary caregiver, or growers;

(g) An authorized employee or authorized contractor of the Authority;

(h) Other government officials that have jurisdiction over some aspect of the registered facility or that otherwise have authority to be on the premises of the registered facility; and

(i) A governmental official authorized by the Authority to be on the premises if accompanied by an Authority representative and the facility has been provided notice and has agreed to permit the governmental official access.

(4) A PRF must have written detailed policies and procedures and training for employees on the policies and procedures that at a minimum, cover the following:

(a) Security;

(b) Testing;

(c) Transfers of usable marijuana and plants to and from the facility;

(d) Operation of a registered facility;

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- (e) Required record keeping;
 - (f) Labeling; and
 - (g) Violations and enforcement.
- Stat. Auth.: ORS 475.314, 475.338
Stats. Implemented: 475.314

333-008-1210

Record Keeping

- (1) A PRF must ensure that the following information is documented and maintained electronically in a manner that can easily be shared with the Authority or accessed by the Authority:
- (a) All Authorization to Transfer forms, including the date on which a form was received;
 - (b) Any written notifications from a patient with regard to any change in status as required by ORS 475.309(7)(a)(B) or (10)(a);
 - (c) Any revocation of an Authorization to Transfer form;
 - (d) All transfer information required in OAR 333-008-1230 and 333-008-1245;
 - (e) Documentation of the costs of doing normal and customary business used to establish the reimbursement amounts for transfers of usable marijuana or immature plants, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.
 - (f) The amount of money paid by a registered facility to a grower for each transfer of usable marijuana or immature plants;
 - (g) The amount of money paid by each patient or designated primary caregiver for a transfer of usable marijuana or an immature plant;
 - (h) The laboratory reports of all testing and other information required to be documented in OAR 333-008-1190; and
 - (i) All other information required to be documented and retained by these rules.
- (2) The PRF must ensure that information required to be documented pursuant to section (1) of this rule is maintained in a safe and secure manner that protects the information from unauthorized access, theft, fire, or other destructive forces, and is easily retrievable for inspection by the Authority upon request, either at the registered facility or online.
- (3) A PRF must ensure that a registered facility uses an electronic data management system for the recording of transfers of usable marijuana and immature plants. The system must meet the following minimum requirements:
- (a) Record the information required to be documented in this rule and OAR 333-008-1230 and 333-008-1245;
 - (b) Provide for off-site or secondary backup system;
 - (c) Assign a unique transaction number for each transfer to or from the registered facility;
 - (d) Monitor date of testing and testing results;
 - (e) Track products by unique transaction number through the transfer in, testing and transfer out processes;
 - (f) Generate transaction and other reports requested by the Authority viewable in PDF format;
 - (g) Produce reports, including but not limited to inventory reports; and
 - (h) Provide security measures to ensure patient and grower records are kept confidential.
- (4) Documents and information required to be maintained in these rules must be retained by the PRF for at least one year.

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(5) A PRF must provide the Authority with any documentation required to be maintained in these rules upon request, in the format requested by the Authority, or permit the Authority access to such documentation on-site.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1220

Labeling

(1) Prior to transferring usable marijuana a PRF must ensure that a label is affixed to the usable marijuana that includes but is not limited to:

(a) Flowers or other usable plant material:

(A) Percentage of THC and CBD;

(B) Weight in grams;

(C) Testing batch number and date tested;

(D) Who performed the testing ; and

(E) Description of the product (strain).

(b) Finished product:

(A) THC and CBD potency;

(B) The weight or volume of useable marijuana in the packaged finished product in grams, milligrams, or milliliters, as applicable;

(C) Testing batch number and date tested;

(D) Who performed the testing; and

(E) Warning label in accordance with section (2) of this rule.

(2) If the registered facility transfers a finished product, the PRF must ensure that the finished product has a warning label on the outside of the packaging that includes the following:

“WARNING: MEDICINAL PRODUCT – KEEP OUT OF REACH OF CHILDREN” in bold capital letters, in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

333-008-1225

Packaging

(1) For purposes of this rule:

(a) “Child-resistant safety packaging” means:

(A) Containers designed and constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly;

(B) Opaque so that the product cannot be seen from outside the packaging;

(C) Closable for any product intended for more than a single use or containing multiple servings; and

(D) Labeled in accordance with OAR 333-008-1220.

(b) “Container” means a sealed, hard or soft-bodied receptacle in which a tetrahydrocannabinol-infused product is placed prior to being transferred to a patient or caregiver.

(c) “Packaged in a manner not attractive to minors” means the tetrahydrocannabinol-infused product is not in a container that is brightly colored, depicts cartoons or images other than the

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logo of the facility, unless the logo of the facility depicts cartoons, in which case only the name of the facility is permitted.

(2) A registered facility may not transfer any tetrahydrocannabinol-infused product that is meant to be swallowed or inhaled, unless the product is:

- (a) In child-resistant safety packaging; and
- (b) Packaged in a manner that is not attractive to minors.

Stat. Auth.: ORS 475.314

Stats. Implemented: ORS 475.314

333-008-1230

Transfers to a Registered Facility

(1) A patient may authorize usable marijuana or immature marijuana plants to be transferred to a registered facility by signing an Authorization to Transfer form prescribed by the Authority. A patient may authorize transfers to more than one registered facility. A separate form must be provided for each registered facility. The Authorization must include, but is not limited to, the following information:

- (a) The patient's name, OMMP card number and expiration date and contact information;
- (b) The name and contact information of the individual who is authorized to transfer the usable marijuana or immature marijuana plants to the registered facility and that individual's OMMP card number and expiration date;
- (c) The name and address of the registered facility that is authorized to receive the usable marijuana or immature marijuana plants; and
- (d) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(2) Only a patient, the patient's designated primary caregiver, or the patient's grower may be authorized to transfer usable marijuana or immature plants to a registered facility.

(3) The original Authorization to Transfer form must be provided to the registered facility to which a transfer may be made by the patient or person authorized to transfer the usable marijuana or immature plants. The patient should retain a copy of the Authorization to Transfer form for his or her records and provide a copy to the person authorized to transfer the usable marijuana or immature plants.

(4) An Authorization to Transfer form automatically expires on the date the patient's OMMP card expires, unless the patient has specified an earlier expiration date. If the patient renews his or her OMMP card the patient may execute a new Authorization to Transfer form in accordance with this rule.

(5) Once usable marijuana or an immature plant is transferred to a registered facility pursuant to a valid Authorization to Transfer form, the usable marijuana or immature plant is no longer the property of the patient unless the usable marijuana or immature plants are returned by the registered facility.

(6) Prior to a registered facility accepting a transfer of usable marijuana or immature plants the PRF must ensure that:

- (a) It has a valid Authorization to Transfer form on file that authorizes the individual that is transferring the usable marijuana or immature plants to make the transfer; and
- (b) The individual transferring the usable marijuana or immature plants is the individual authorized to make the transfer.

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(7) A PRF must ensure that when a registered facility accepts a transfer of usable marijuana or an immature plant the batch of usable marijuana and each immature plant are segregated in accordance with the testing rule, OAR 333-008-1190 and that the following information is documented, as applicable:

- (a) The unique identifier;
- (b) The weight in metric units of all usable marijuana received by the registered facility;
- (c) The number of immature plants received by the registered facility;
- (d) The amount of a finished product received by the registered facility, including, as applicable, the weight in metric units, or the number of units of a finished product;
- (e) A description of the form the usable marijuana was in when it was received, for example, oil or an edible product;
- (f) Who transferred the usable marijuana or the immature plant, the individual's OMMP card number and expiration date of the card, a copy of the individual's picture identification, the date the usable marijuana or an immature plant was received, and the name of the patient who authorized the transfer; and
- (g) The amount of reimbursement paid by the registered facility.

(8) Nothing in these rules requires a PRF or a registered facility to accept a transfer of usable marijuana or immature plants.

(9) A PRF must ensure that:

- (a) From the time that a batch or plant has been received by the registered facility until it is tested in accordance with these rules, the usable marijuana and immature plants are segregated, withheld from use, and kept in a secure location so as to prevent the marijuana or plants from becoming contaminated or losing efficacy, or from being tampered with or transferred except that samples may be removed for testing; and
- (b) No usable marijuana or immature plants are transferred to a patient or designated primary caregiver until testing has been completed, the registered facility has received a written testing report, and the usable marijuana and immature plants have tested negative for pesticides, mold and mildew.

(10) Usable marijuana and immature plants must be kept on-site at the facility. The Authority may cite a PRF for a violation of these rules if during an inspection it cannot account for its inventory or if the amount of flowers or other usable marijuana plant material at the registered facility is not within five percent of the documented inventory.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

333-008-1245

Transfers to a Patient or Designated Primary Caregiver

(1) A registered facility may not transfer a tetrahydrocannabinol-infused product that is manufactured in a manner that is attractive to minors. For purposes of this section a product is considered to be manufactured in a manner that is attractive to minors if it is:

- (a) Brightly colored; or
- (b) In the shape of an animal or any other commercially recognizable toy or candy.

(2) Prior to a registered facility transferring usable marijuana or an immature plant to a patient or a designated primary caregiver the PRF must ensure that:

- (a) The usable marijuana or an immature plant has not tested positive for mold, mildew or pesticides as specified in OAR 333-008-1190; and

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(b) The identity and cardholder status of the person requesting usable marijuana or an immature plant is verified by viewing the person's OMMP card and picture identification and making sure the two match.

(3) The PRF must ensure that for each transfer of usable marijuana or an immature plant to a patient or a designated primary caregiver the following information is documented:

(a) The name, OMMP card number and expiration date of the card of each person to whom the registered facility transfers usable marijuana or an immature plant;

(b) A copy of the person's picture identification;

(c) The amount of usable marijuana transferred in metric units, if applicable;

(d) The number of immature plants transferred, if applicable;

(e) The amount of a finished product transferred in metric units, or units of the finished product, if applicable;

(f) A description of what was transferred;

(g) The date of the transfer; and

(h) The amount of money paid by a patient or a designated primary caregiver to a registered facility for the transfer of usable marijuana or an immature plant.

(4) The PRF must ensure that a registered facility does not transfer at any one time more usable marijuana or immature plants than a patient or designated primary caregiver is permitted to possess under ORS 475.320(1)(a). A PRF is not responsible for determining whether a patient or designated primary caregiver is limited in the amount of usable marijuana he or she can possess under 475.320(1)(b).

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

333-008-1250

Inspections

(1) The Authority must conduct an initial inspection of every registered facility within six months of approving an application to ensure compliance with these rules, and must conduct a routine inspection of every registered facility at least every year.

(2) The Authority may conduct a complaint inspection at any time following the receipt of a complaint that alleges a registered facility is in violation of ORS 475.314 or these rules.

(3) The Authority may conduct an inspection at any time if it believes, for any reason, that a registered facility or a PRF is in violation of ORS 475.314 or these rules.

(4) A PRF and any employees, contractors, or other individuals working at a registered facility must cooperate with the Authority during an inspection.

(5) If an individual at a registered facility fails to permit the Authority to conduct an inspection the Authority may seek an administrative warrant authorizing the inspection pursuant to ORS 431.262.

Stat. Auth.: ORS 431.262, 475.314, 475.338

Stats. Implemented: ORS 431.262, 475.314

333-008-1260

Violations

(1) The following are violations of ORS 475.314 or these rules:

(a) A PRF or an employee of a facility failing to cooperate with an inspection;

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- (b) The submission by a PRF, employee, or owner of a facility of false or misleading information to the Authority;
- (c) Transferring usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver;
- (d) Accepting a transfer of usable marijuana or immature plants without a valid authorization from the patient;
- (e) Possessing a mature marijuana plant at the registered facility;
- (f) Failing to document and maintain information in the manner required by these rules;
- (g) Failing to account for flowers or other usable marijuana plant material in accordance with OAR 333-008-1230(10);
- (h) Failing to submit a plan of correction in accordance with OAR 333-008-1275;
- (i) Failing to comply with an emergency suspension or final order of the Authority, including failing to pay a civil penalty; or
- (j) Failing to comply with ORS 475.314 or any of these rules.

(2) It is a violation of ORS 475.314 and these rules to operate a facility without being registered by the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

333-008-1275

Enforcement

(1)(a) Informal Enforcement. If, during an inspection the Authority documents violations of ORS 475.314 or any of these rules, the Authority may issue a written Notice of Violation to the PRF that cites the laws alleged to have been violated and the facts supporting the allegations.

(b) The PRF must submit to the Authority a signed plan of correction within 10 business days from the date the Notice of Violation was mailed to the person. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the Notice.

(c) A PRF must correct all deficiencies within 10 business days from the date of the Notice, unless an extension of time is requested from the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(d) The Authority must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority it must notify the PRF in writing and request that the plan of correction be modified and resubmitted no later than 10 business days from the date the letter of non-acceptance was mailed.

(e) If the registered facility does not come into compliance by the date of correction reflected on the plan of correction, the Authority may propose to revoke the registration of the facility or impose civil penalties.

(f) The Authority may conduct an inspection at any time to determine whether a registered facility has corrected the deficiencies in a Notice of Violation.

(2) Formal Enforcement. If, during an inspection or based on other information the Authority determines that a registered facility or PRF is in violation of ORS 475.314 or these rules the Authority may issue:

(a) A Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470.

(b) A Notice of Imposition of Civil Penalties in accordance with ORS 183.745. Civil penalties may be issued for any violation of ORS 475.314 and these rules, not to exceed \$500 per violation per day.

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- (c) An Order of Emergency Suspension pursuant to ORS 183.430.
 - (3) The Authority must determine whether to use the informal or formal enforcement process based on the nature of the alleged violations, whether there are mitigating or aggravating factors, and whether the PRF or the registered facility has a history of violations.
 - (4) The Authority must issue a Notice of Proposed Revocation if the:
 - (a) Facility no longer meets the criteria in ORS 475.314(3)(a) to (d); or
 - (b) PRF is not a resident of Oregon, has disqualifying criminal convictions as described in OAR 333-008-1120, or a court has issued an order that prohibits the PRF from participating in the OMMP under ORS 475.300 through 475.346 unless a new PRF is approved by the Authority.
 - (5) The Authority may maintain a civil action against a facility that is operating but not registered in accordance with ORS 475.314 and these rules.
 - (6) The Authority may revoke the registration of a facility for failure to comply with an ordinance adopted by a city or county pursuant to Oregon Laws 2014, chapter 79, section 2, if the city or county:
 - (a) Has provided the facility with due process substantially similar to the due process provided to a registration or license holder under the Administrative Procedures Act, ORS 183.413 to 183.470; and
 - (b) Provides the Authority with a final order that is substantially similar to the requirements for a final order under ORS 183.470 that establishes the facility is in violation of the local ordinance.
 - (7) The Authority must post a final order revoking the registration of a facility on the Authority's website and provide a copy of the final order to the OMMP.
 - (8) To the extent permitted by law, if the Authority discovers violations that may constitute criminal conduct or conduct that is in violation of laws within the jurisdiction of other state or local governmental entities, the Authority may refer the matter to the applicable agency.
 - (9) If the registration of a facility is revoked the PRF must make arrangements to return the usable marijuana and immature plants in amounts still possessed by the facility, to the person who transferred the usable marijuana or immature plants and must document the same.
 - (10) The Authority is not required to accept the surrender of a registration and may proceed with an enforcement action even if a PRF has surrendered the facility's registration.
- Stat. Auth.: ORS 431.262, 475.314 & 475.338
Stats. Implemented: ORS 431.262 & 475.314

333-008-1280
Confidentiality

- (1) Any criminal background information received by the Authority about a PRF during the criminal background check process is confidential and is not subject to disclosure without a court order.
- (2) The name of a PRF and the address of a registered facility is confidential and is not subject to disclosure without a court order, except as provided in ORS 475.331(2) and section (5) of this rule, or unless a PRF has authorized disclosure.
- (3) If an application has been denied, the information submitted to the Authority in an application for registration of a facility is not confidential and may be subject to disclosure under ORS 192.410 through 192.505.
- (4) A final order revoking the registration of a facility is not confidential and may be posted on the Authority's website or otherwise made public by the Authority.

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(5) Authorized employees of state and local law enforcement agencies may verify with the Authority at all times whether:

- (a) A location is the location of a registered facility; or
- (b) A person is listed as the PRF of a registered facility.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314, 475.331

333-008-1290

Change of Location

(1) A registered facility that changes location must submit a new application that complies with OAR 333-008-1020.

(2) A facility may not operate at a new location unless it is registered by the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

333-008-1400

Moratoriums

(1) For purposes of this rule, “moratorium” means an ordinance, adopted by the governing body of a city or county by May 1, 2014, that specifically suspends the operation of registered medical marijuana facilities within the area subject to the jurisdiction of the city or county, for a period of time that does not extend past May 1, 2015.

(2) If a city or county adopts a moratorium it must notify the Authority and provide a copy of the ordinance.

(3) An applicant applying for registration of a facility proposing to operate in an area subject to a moratorium may submit a request, in writing, to withdraw the application and may request a refund of the fees.

(4) A PRF of a registered facility located in an area subject to a moratorium may submit a request, in writing, to surrender its registration and request a refund of the fees.

(5) Upon receipt of a request to withdraw an application or surrender a registration under sections (3) or (4) of this rule the Authority shall determine whether the ordinance falls within the definition of moratorium and inform the applicant or PRF in writing whether:

- (a) The application is considered withdrawn and the fees refunded; or
- (b) The registration has been surrendered and the fees refunded.

(6) The Authority may refund all fees, including the non-refundable registration fee.

(7) Notifications or requests described in sections (2) to (4) of this rule may be submitted to the Authority:

(a) By mail at P.O. Box 14116, Portland, OR 97293; or

(b) By electronic mail to medmj.dispensaries@state.or.us.

Stat. Auth.: Oregon Laws 2014, Chapter 79, Section 3

Stats. Implemented: Oregon Laws 2014, Chapter 79, Section 3

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333-008-1190

Appendix A

Mold and Mildew limits for cannabis products (CFU/g)

	Total yeast and mold (mold and mildew)
Unprocessed materials*	10^4
Processed materials*	10^4
CO₂ and solvent based extracts	10^3

*Unprocessed materials include minimally processed crude cannabis preparations such as inflorescences, accumulated resin glands (kief), and compressed resin glands (hashish). Processed materials include various solid or liquid infused edible preparations, oils, topical preparations, and water-processed resin glands (“bubble hash”).

Source: American Herbal Pharmacopoeia Monograph, December 18th, 2013

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Oregon Medical Marijuana Program rules

333-008-0010

Definitions

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

- (1) "Act" means the Oregon Medical Marijuana Act.
- (2) "Applicant" means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Authority.
- (3) "Attending physician" means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.
- (4) "Authority" means the Oregon Health Authority.
- (5) "Debilitating medical condition" means:
 - (a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;
 - (b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
 - (A) Cachexia;
 - (B) Severe pain;
 - (C) Severe nausea;
 - (D) Seizures, including but not limited to seizures caused by epilepsy; or
 - (E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;
 - (c) Post-traumatic stress disorder; or
 - (d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the Authority by rule or approved by the Authority pursuant to a petition submitted under OAR 333-008-0090.
- (6) "Delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.
- (7) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority. "Designated primary caregiver" does not include the person's attending physician.
- (8) "Food stamps" means the Supplemental Nutrition Assistance Program as defined and governed by ORS 411.806 through 411.845.
- (9) "Grow site" means a specific location registered by the Authority used by the grower to produce marijuana for medical use by a specific patient.
- (10) "Grow site registration card" means the card issued to the patient and displayed at the grow site.
- (11) "Grower" has the same meaning as "person responsible for a marijuana grow site."
- (12) "Immature plant" has the same meaning as "seedling or start."
- (13) "Marijuana" means all parts of the plant 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. It does not include the mature stalks

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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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(14) “Mature plant” means a marijuana plant that does not fall within the definition of a seedling or a start.

(15) “Medical marijuana facility” is a facility, registered by the Authority, under OAR 333-008-1050.

(16) “Medical use of marijuana” means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(17) “Oregon Health Plan (OHP)” means the medical assistance program administered by the Authority under ORS chapter 414.

(18) “OMMP” refers to the office within the Authority that administers the provisions of the OMMA, and all policies and procedures pertaining thereto, as set forth in these rules.

(19) “Parent or legal guardian” means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(20) “Patient” has the same meaning as “registry identification cardholder.”

(21) “Person responsible for a marijuana grow site” means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose.

(22) “Person responsible for a medical marijuana facility” has the meaning given that term in OAR 333-008-1010.

(23) “Primary responsibility” as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS chapter 677, the patient's physician assistant licensed under ORS chapter 677, or the patient's nurse practitioner licensed under ORS chapter 678; and,

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(24) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(25) “Registry identification card” means a document issued by the Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(26) “Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

(27) “Replacement registry identification card” means a new card issued in the event that a registry identification cardholder's card, designated primary caregiver identification card, grower

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identification card, or grow site registration card is lost or stolen, or if a registry identification cardholder's designation of primary caregiver, grower, or grow site has changed.

(28) "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all three criteria shall be considered a mature plant.

(29) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(30) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(31) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

333-008-0020

New Registration Application and Verification

(1) A person may apply for a registry identification card on forms prescribed by the Authority. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form signed and dated by the applicant;

(b) Copies of legible and valid U.S. state or federal issued photographic identification that includes last name, first name, and date of birth from the applicant, the designated primary caregiver, and grower, as applicable. Acceptable forms of current U.S. state or federal issued photographic identification include but are not limited to:

(A) Driver's license;

(B) State identification card;

(C) Passport; or

(D) Military identification card.

(c) Written documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Authority, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) If applicable, a completed and notarized "Declaration of Person Responsible for Minor" form for any person under 18 years of age, signed and dated by the person responsible for the minor;

(e) The name of a designated primary caregiver, if any;

(f) The name of a designated grower (either the patient or another person), if any and the location of the grow site; and

(g) An application fee and grow site registration fee, if applicable, in the form of cash, bank check, money order, or personal check.

(2) The Authority shall process an application prior to issuing registry identification cards to assure that the application is complete and information provided has been verified.

(a) The Authority shall only accept applications that are mailed or are hand-delivered.

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(b) If an applicant does not provide all the information required and the application is considered incomplete, the Authority shall notify the applicant of the information that is missing, and shall allow the applicant 14 days to submit the missing information.

(c) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsections (2)(b) and (3)(e) of this rule, the application shall be rejected as incomplete. An applicant whose application is rejected as incomplete may reapply at any time. If an applicant submits an application fee and the application is subsequently denied or rejected, the application fee may be applied toward a new application submitted within one year of the denial or rejection date.

(d) The Authority may reject an application if the application or supporting documents appear to be altered (for example, writing is whited out). An application shall be denied in accordance with OAR 333-008-0030 if an application or supporting documents are determined to have been falsified.

(e) The Authority may verify information on each application and accompanying documentation, including:

(A) Contacting each applicant by telephone or by mail. If proof of identity is uncertain, the Authority may require a face-to-face meeting and may require the production of additional identification materials;

(B) Contacting a minor's parent or legal guardian;

(C) Contacting the Oregon Medical Board to verify that an attending physician is licensed to practice in the state and is in good standing;

(D) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Authority shall notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application. If the Authority is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed 30 days to submit written documentation or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030;

(E) Contacting the Division of Medical Assistance Programs, Department of Human Services-Self Sufficiency, or the Social Security Administration (SSA) to verify eligibility for benefits; and

(F) Conducting a criminal records check under ORS 181.534 of any person whose name is submitted as a grower.

(3) Application fees.

(a) A non-refundable application fee of \$200 is required at the time of application.

(b) If applicable as specified in OAR 333-008-0025, a non-refundable grow site registration fee of \$50 is required at the time of application.

(c) An applicant who can demonstrate current receipt of SSI benefits, current eligibility for OHP benefits or current receipt of food stamp benefits through the Oregon SNAP program qualifies for a reduced non-refundable application fee.

(A) An applicant demonstrating receipt of SSI benefits by providing a copy of a current monthly SSI benefit card showing dates of coverage is entitled to a reduced application fee of \$20.

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(B) An applicant demonstrating current eligibility for OHP benefits by providing a copy of the applicant's current eligibility statement is entitled to a reduced application fee of \$50.

(C) An applicant demonstrating receipt of current food stamp benefits, verified by enrollment in Oregon's Food Stamp Management Information System database system and by providing current proof of his or her food stamp benefits, is entitled to a reduced application fee of \$60.

(D) An applicant who falls within one of the categories listed in subparagraph (i) or (ii) of this paragraph and who provides a copy of the applicable determination from the United States Department of Veteran's Affairs (VA), is entitled to a reduced application fee of \$20:

(i) Receives service-connected compensation from the VA based on a finding by the VA of 100% service-connected disability; or

(ii) Receives a needs-based pension from the VA based on a finding by the VA of non-service connected disability.

(d) The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(e) The Authority shall notify an applicant who submits a reduced application fee for which the applicant is not eligible and will allow the applicant 14 days from the date of notice to pay the correct application fee and submit a current valid proof of eligibility.

(4) The application forms referenced in this rule may be obtained by contacting the Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or by calling 971-673-1234.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

333-008-0025

Marijuana Grow Site Registration

(1) A patient may register a marijuana grow site with the Authority. The address of a medical marijuana facility may not be listed by a patient on the grow site application as the location of the marijuana grow site. The Authority will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Authority an application, prescribed by the Authority, that includes:

(a) The name of the grower;

(b) The date of birth of the grower;

(c) The physical address of the marijuana grow site where marijuana is to be produced;

(d) The mailing address of the grower;

(e) The registry identification card number of the patient, if known, for whom the marijuana is being produced; and

(f) A non-refundable grow site registration fee of \$50 in the form of cash, bank check, money order, or personal check. If the grower is the applicant, he or she is not required to pay the grow site registration fee. The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the

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January 28th, 2015

Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(3) The Authority shall conduct a criminal background check on the grower as authorized under ORS 475.304.

(a) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offense occurred on or after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(b) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offenses occurred after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(c) The Authority shall notify a patient by certified mail that the grower is ineligible and the patient will be allowed the opportunity to identify another grower.

(4) The Authority shall issue a marijuana grow site registration card to a patient who has met the requirements of section (2) of this rule, unless the grower is disqualified under section (3) of this rule.

(5) A grower must display a marijuana grow site registration card for each patient for whom marijuana is being produced, at the marijuana grow site at all times.

(6) All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a patient by a grower, are the property of the patient and must be provided to the patient, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a registered medical marijuana facility, upon request.

(7) All marijuana produced for a patient must be provided to the patient or designated primary caregiver when the grower ceases producing marijuana for the patient.

(8) A grower must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the grower ceases producing marijuana for the patient.

(9) A patient or the designated primary caregiver of the patient may reimburse the grower for the costs of supplies and utilities associated with production of marijuana for patient. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.

(10) A grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.

(11) The Authority may not register a grow site if the location of the grow site is the same location as a medical marijuana facility.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

Final rules for the Medical Marijuana Dispensary Program
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333-008-0045

Interim Changes

- (1) A patient shall notify the Authority within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.
- (2) A patient shall notify, as applicable, the designated primary caregiver, the grower, and the person responsible for a medical marijuana facility of any changes in status including, but not limited to:
 - (a) The assignment of another individual as the designated primary caregiver for the patient;
 - (b) The assignment of another individual as a grower for the patient;
 - (c) The revocation of an Authorization to Transfer form under OAR 333-008-1230; or
 - (d) The end of eligibility of the patient to hold a registry identification card.
- (3) If the Authority is notified by the patient that a designated primary caregiver or a grower has changed, the Authority shall notify the designated primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that their card is no longer valid and must be returned to the Authority within seven calendar days.
- (4) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Authority within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Authority may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.
- (5) Change forms may only be submitted to the Authority via mail or in person at the OMMP office.
- (6) If a patient's designated primary caregiver, grower or grow site has changed, the non-refundable fee to receive a replacement card is \$100. If the patient qualifies for the reduced application fee of \$20, the non-refundable fee to receive a replacement card is \$20.
- (7) If a patient is registering a new grow site at any time other than when submitting a new application or a renewal application, a grow site registration fee will not be charged.

Stat. Auth.: ORS 475.309 & 475.312

Stats. Implemented: ORS 475.309 & 475.312

333-008-0050

Confidentiality

- (1) The Authority shall create and maintain either paper or computer data files of patients, designated primary caregivers, growers, and grow site addresses. The data files shall include all information collected on the application forms or equivalent information from other written documentation, plus a copy of OMMP registry identification cards, effective date, date of issue, and expiration date. Except as provided in section (2) of this rule, the names and identifying information of registry identification cardholders and the name and identifying information of a pending applicant for a card, a designated primary caregiver, a grower, and a marijuana grow site location, shall be confidential and not subject to public disclosure.

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January 28th, 2015

(2) Names and other identifying information made confidential under section (1) of this rule may be released to:

- (a) Authorized employees of the Authority as necessary to perform official duties of the Authority, including the production of any reports of aggregate (i.e., non-identifying) data or statistics;
- (b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify:
 - (A) That a person is or was a lawful possessor of a registry identification card;
 - (B) That a person is or was a person responsible for a registered medical marijuana facility;
 - (C) That the address is or was a documented grow site, and how many people are authorized to grow at that grow site;
 - (D) How many people a person was or is authorized to grow for; or
 - (E) That an address is or was the location of a registered medical marijuana facility.
- (c) Other persons (such as, but not limited to, employers, lawyers, family members) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or grower. The release of information must specify what information the Authority is authorized to release and to whom.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

333-008-0120

System to Allow Verification of Data at All Times

- (1) The Authority shall establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, grower, person responsible for a medical marijuana facility, grow site location, or medical marijuana facility is listed or registered with the Authority.
- (2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.
- (3) The Authority may allow the release of reports related to verification if it is without identifying data.
- (4) The Authority shall have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two business days, the Authority shall ensure program staff are available by phone for verification purposes.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 – 475.346

Exhibit C. Police Advisory Board Draft Code Language

Medical Marijuana Dispensary

Plan Amendment -**DRAFT CODE LANGUAGE**

April 3, 2015

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. The Board discussed adding Code language that a medical marijuana dispensary must post a sign in the front of the business notifying patrons that no one other than a registered card holder was allowed to enter the dispensary premises. This was not ultimately part of the recommended Code language approved by a majority of the Board.

In considering the proposal, the majority of the Board agreed to recommend to the Commission that they 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 plaza should be included with the amendments and that language should be added to prohibit a dispensary from delivery services in addition to the proposed prohibition on mobile vending.

Additions are in [BLUE](#)

Additions proposed by the Police Advisory Board are in [Green](#)

Deletions proposed by the Police Advisory Board are in ~~red strikethrough~~

Add to Section 16.10- DEFINITIONS

MEDICAL MARIJUANA DISPENSARY: A retail facility registered by the Oregon Health Authority that is allowed to receive marijuana, immature marijuana plants or usable marijuana products (such as edible products, ointments, concentrates or tinctures) and to transfer that marijuana, immature plants, or usable project to a person with a valid Oregon Medical Marijuana Program card (a patient or the patient's caregiver). A dispensary includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.

MOBILE VENDOR: A service establishment operated from a licensed and moveable vehicle that vends or sells food and/or drink or other retail items processed or prepared on-site to walkup customers.

PUBLIC PLAZA: a square in a city or town; an open area usually located near urban buildings and often featuring walkways, trees and shrubs, places to sit, and sometimes shops.

EXISTING Definitions (for reference purposes)

Public Park: A park, playground, swimming pool, reservoir, athletic field, or other recreational facility which is under the control, operation or management of the City or other government agency.

Educational Institution: Any bona-fide place of education or instruction, including customary accessory buildings, uses, and activities, that is administered by a legally-organized school district; church or religious organization; the State of Oregon; or any agency, college, and university operated as an educational institution under charter or license from the State of Oregon. An educational institution is not a commercial trade school as defined by Section 16.10.020.

Add to Land uses tables of Chapter 16.22.10 and 16.31 tables with footnotes to see Special Uses

Chapter 16.22 Commercial Land Use Districts

16.22.020 - Uses

A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C), and not permitted (N) in the Commercial Districts. The specific land use categories are described and defined in Chapter 16.88 Use Classifications and Interpretations.

B. Uses listed in other sections of this code, but not within this specific table are prohibited.

C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88 Use Classifications and Interpretations.

D. Additional limitations for specific uses are identified in the footnotes of this table.

COMMERCIAL USES	OC	NC	RC	GC
COMMERCIAL				
General Retail - sales oriented				
• General retail trade, not exceeding 10,000 square feet of gross square footae.	P	P	P	P
• General retail trade greater than 10,000 square feet of gross square footae	N	P	P	P
• <u>Medical Marijuana Dispensary, not exceeding 5,000 2,500 square feet of gross square footae</u>	<u>N</u>	<u>N</u>	<u>N</u> <u>P⁹</u>	<u>N</u> <u>P⁹</u>

~~9. See Special Criteria for Dispensary under Chapter 16.38.020.~~

CHAPTER 16.31 INDUSTRIAL LAND USES

16.31.020 - Uses

A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C) and not permitted (N) in the industrial zoning districts. The specific land use categories are described and defined in Chapter 16.88.

B. Uses listed in other sections of this code, but not within this specific table are prohibited.

C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88

D. Additional limitations for specific uses are identified in the footnotes of this table.

INDUSTRIAL USES	LI	GI	EI
COMMERCIAL			
General Retail - sales oriented			
<ul style="list-style-type: none"> Incidental retail sales or display/showroom directly associated with a permitted use and limited to a maximum of 10 % of the total floor area of the business.⁷ 	C	C	P
<ul style="list-style-type: none"> Medical Marijuana Dispensary, not exceeding 5,000 2,500 square feet of gross square footage 	<u>P¹⁰</u>	<u>P¹⁰</u>	<u>N</u>
<ul style="list-style-type: none"> Tool and Equipment Rental and Sales, Including Truck Rental.⁷ 	P	P	P
<ul style="list-style-type: none"> Retail plant nurseries and garden supply stores (excluding wholesale plant nurseries). 	P	P	N
<ul style="list-style-type: none"> Wholesale building material sales and service 	C	P	N
<ul style="list-style-type: none"> Retail building material sales and lumberyards⁷ 			

[10. See Special Criteria for Dispensary under Chapter 16.38.020.](#)

Add Medical Marijuana Dispensary to Category Type II Land Use Procedures for Processing Development Permits.

CHAPTER 16.72 Procedures for Processing Developing Permits

16.72.010 - Generally

A. Classifications

Except for Final Development Plans for Planned Unit Developments, which are reviewed per Section 16.40.030, all quasi-judicial development permit applications and legislative land use actions shall be classified as one of the following:

2. Type II

The following quasi-judicial actions shall be subject to a Type II review process:

a. Land Partitions

b. Expedited Land Divisions - The Planning Director shall make a decision based on the information presented, and shall issue a development permit if the applicant has complied with all of the relevant requirements of the Zoning and Community Development Code. Conditions may be imposed by the Planning Director if necessary to fulfill the requirements of the adopted Comprehensive Plan, Transportation System Plan or the Zoning and Community Development Code.

c. "Fast-track" Site Plan review, defined as those site plan applications which propose less than 15,000 square feet of floor area, parking or seating capacity of public, institutional, commercial or industrial use permitted by the underlying zone, or up to a total of 20% increase in floor area, parking or seating capacity for a land use or structure subject to conditional use permit, except as follows: auditoriums, theaters, stadiums, and those applications subject to Section 16.72.010.4, below.

d. "Design Upgraded" Site Plan review, defined as those site plan applications which propose between 15,001 and 40,000 square feet of floor area, parking or seating capacity and which propose a minimum of eighty percent (80%) of the total possible points of design criteria in the "Commercial Design Review Matrix" found in Section 16.90.020.4.G.4.

e. Industrial "Design Upgraded" projects, defined as those site plan applications which propose between 15,001 and 60,000 square feet of floor area, parking or seating capacity and which meet all of the criteria in 16.90.020.4.H.1.

f. Homeowner's association street tree removal and replacement program extension.

g. Class B Variance

h. Street Design Modification

i. Subdivisions between 4—10 lots

[j. Medical Marijuana Dispensary permit](#)

16.38 SPECIAL USES

16.38.010 GENERAL PROVISIONS

Special uses included in this Section are uses which, due to their effect on surrounding properties, must be developed in accordance with special conditions and standards. These conditions and standards may differ from the development standards established for other uses in the same zoning district. When a dimensional standard for a special use differs from that of the underlying zoning district, the standard for the special use shall apply.

16.38.020 MEDICAL MARIJUANA DISPENSARY

A. CHARACTERISTICS:

1. A medical marijuana dispensary is defined in Section § 16.10.

2. Registration and Compliance with Oregon Health Authority Rules. A medical marijuana dispensary must have a current valid registration with the Oregon Health Authority under ORS 475.314. Failure to comply with Oregon Health Authority regulations is a violation of this Code.

B. APPROVAL PROCESS: Where permitted, a medical marijuana dispensary is subject to approval under § 16.72.010A.2a, the Type II land use process.

C. STANDARDS

1. Hours of Operation:

a. A medical marijuana facility may not be open to the public before 10:00 am and not later than 7:00 pm ~~6:00 pm~~ from Sunday through Thursday.

b. A medical marijuana dispensary may not be open to the public before 10:00 am and not later than 8 pm on Friday and Saturday.

2. Security Measures Required.

a. Landscaping must be continuously maintained to provide clear lines of sight from a public right of way to all building entrances.

b. Exterior lighting must be provided and continuously maintained.

c. Any security bars installed on doors or windows visible from a public right of way must be installed interior to the door or window, in a manner that they are not visible from the public right of way.

3. Co-location prohibited.

a. A medical marijuana dispensary may not be located at the same address as a marijuana manufacturing facility, including a grow operation.

b. A medical marijuana dispensary may not be located at the same address with any facility or business at which medical marijuana is inhaled or consumed by cardholders.

4. Mobile and Delivery Businesses Prohibited.

a. A dispensary may not operate as a mobile business as defined in Chapter 16.10.

b. A dispensary may not operate to deliver medical marijuana.

5. Drive-Through, Walk-Up. A medical marijuana dispensary may not have a walk-up window or a drive-through.

6. Proximity Restrictions.

A dispensary may not be located within 1,000 feet of any of the uses listed below. For purposes of this paragraph, the distance specified is measured from the closest points between the property lines of the affected properties:

a. An Educational Institution: public or private elementary, secondary, or career school that is attended primarily by children under 18 years of age.

b. Another medical marijuana dispensary.

c. A Public Park or Plaza.

Exhibit D

From: sralstonlux@aol.com
To: [Michelle Miller](#)
Subject: Fwd: hours of operation for medical marijuana dispensaries
Date: Wednesday, March 25, 2015 4:36:31 PM

Michelle,

Thank you for taking my call about the medical marijuana dispensary hours.

I am considering opening a dispensary up in Sherwood and I noticed in the minutes of the council meeting on March 24th a section noting possible hours of operation being 10 to 6 Sunday through Thursday and 10 to 8 on Saturday and Sunday.

I made 7 calls to various dispensaries that are currently in operation and the general consensus was that the busiest time of day for them on Mondays through Thursday is between 4:00 pm and 8:00 pm.

Many of the working medical marijuana patients shop the dispensaries on there way home from work.

I would like to request a consideration of 10:00 am to 8:00 pm on Monday through Thursday hours.

The Friday, Saturday and Sunday hours look appropriate..

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 Fri, Sat and Sundays.

McMinville has adopted hours of operation from 10:00 am to 7:00 pm all days

Regards

Sheri Ralston

Sherwood citizen

p 503-780-4509



Exhibit E

Police Department

20495 SW Borchers Drive
Sherwood, OR 97140
Tel: 503-625-5523
Dispatch: 503-629-0111
Fax: 503-925-7159

Home of the Tualatin River National Wildlife Refuge

City of Sherwood
22560 SW Pine St.
Sherwood, OR 97140
Tel 503-625-5522
Fax 503-625-5524
www.sherwoodoregon.gov

April 07, 2015

Sherwood Planning Commission
Sherwood City Council

Mayor
Krisanna Clark

Council President
Sally Robinson

Councilors
Linda Henderson
Dan King
Jennifer Harris
Jennifer Kuiper
Beth Cooke

City Manager
Joseph Gall, ICMA-CM

Assistant City Manager
Tom Pessemier, P.E.

Re: Medical Marijuana Dispensaries Code Amendment

Thank you for the opportunity to weigh in on this important topic. With full consideration of the issue, the Sherwood Police Department requests the following conditions be placed on medical marijuana dispensaries located in the City of Sherwood. These conditions focus on time, place and manner, as allowed by state statute, and are based on the premise that medical marijuana should be made available to patients, that the city should accommodate the legal dispensing of medicine to registered patients and that dispensaries should operate within the guidelines established in state statute.

Time:

The police department requests that dispensaries be regulated to operate between the hours of 10am and 7pm, seven (7) days a week. These hours will allow patients that work any of the three most common work shifts to have access to their medicine.



2009 Top Ten Selection

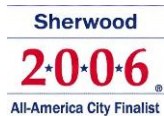
Place:

The police department requests that dispensaries be allowed to locate in either the industrial or light industrial zones of the city, for the following reasons;



2007 18th Best Place to Live

1. Medical marijuana dispensaries are unlike “normal” retail/commercial businesses in that they are required to operate as a not-for-profit dispensary. Patients may “reimburse” the dispensary an amount equivalent to the cost of manufacture and dispensing. In this way they are much different than a pharmacy, or pharmaceutical companies, since profit is not allowed by law. The dispensaries need only to “advertise” to their patients and once they have, there is no business need to be located in a retail or commercial zone.



2. A lot of people and a lot of resources have gone to combating youth substance abuse in Sherwood. Tremendous efforts have been spent, and will be spent, trying to reverse the negative community norms and image that comes with the nickname “Sher-weed”. Marijuana, medical or otherwise, is still illegal for young people to possess unless they hold a card. Allowing marijuana dispensaries to operate in the far more “open and

- plain sight” retail and commercial zones, like a spot along 99W where every passing motorist can see it, will not help our efforts.
3. Medical marijuana users do not cause problems and they do not flaunt their medicine. There is no need or necessity to locate marijuana dispensaries in retail/commercial zones next to restaurants or other family focused businesses. Imagine a marijuana dispensary next to Mudpuddles or Safari Sams?
 4. Locating dispensaries in the industrial zones would allow for more low-profile monitoring and compliance checks by authorities.

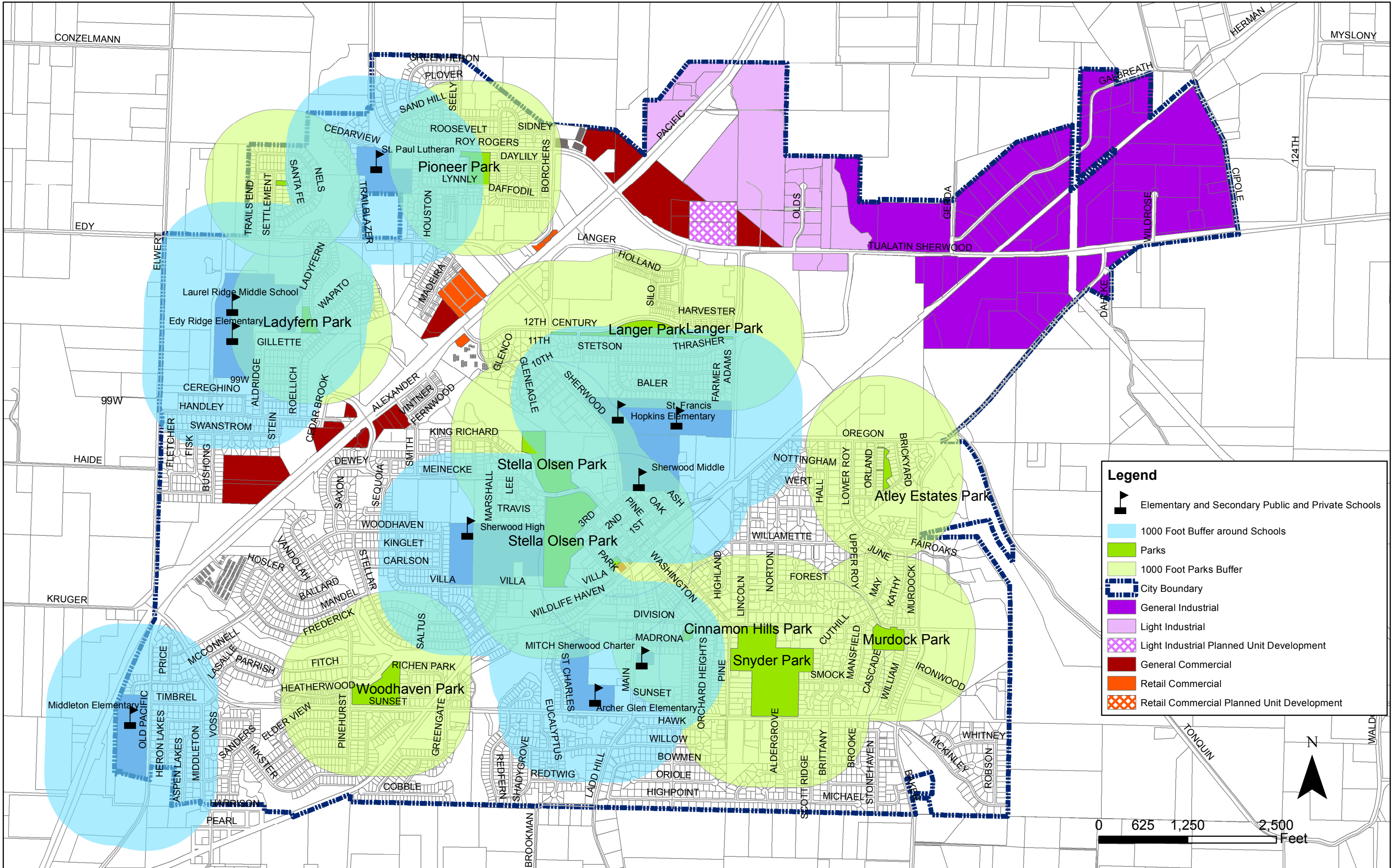
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The police department requests that;

1. The City Council adopt ORS 475.314 as Municipal Code, requiring dispensaries to operate under those guidelines as a matter of code.
2. The Municipal Code gives enforcement authority to the Sherwood Police and City Manager. The police department believes the community will rely on them to manage, supervise and provide oversight of any dispensaries, so it is important they be given the authority to do so.

Respectfully submitted,
Chief Jeff Groth

1000 Foot School Buffers with Industrial and Commercial Zones



Legend

- Elementary and Secondary Public and Private Schools
- 1000 Foot Buffer around Schools
- Parks
- 1000 Foot Parks Buffer
- City Boundary
- General Industrial
- Light Industrial
- Light Industrial Planned Unit Development
- General Commercial
- Retail Commercial
- Retail Commercial Planned Unit Development

