
City of Sherwood, Oregon
Planning Commission Meeting
July 26, 2016

Planning Commissioners Present:

Chair Jean Simson
Vice Chair Russell Griffin
Commissioner Chris Flores
Commissioner Alan Pearson
Commissioner Lisa Walker (regular mtg)

Staff Present:

Julia Hajduk, Community Development Director
Bob Galati, City Engineer
Brad Kilby, Planning Manager
Michelle Miller, Senior Planner
Michelle Babcock, Admin. Assistant II

Planning Commission Members Absent:

Commissioner Michael Meyer
Commissioner Rob Rettig

Council Members Present:

None

Public Work Session and Public Open House

1. Presentation of the Sanitary Sewer Master Plan and Stormwater Master Plan

Chair Simson began the meeting at 6:00 pm.

Mike Carr with his team of consultants from MSA led the joint work session and open house. He gave a presentation on the existing conditions of the sanitary sewer and stormwater assets and the proposed updates to the City's master plans including areas of concern, recommended capital improvement projects with estimated costs (see record, Exhibit 1). The master plan updates will be reviewed by the Planning Commission in a public hearing with recommendations to City Council.

The Planning Commission held a recess at 6:48 pm to convene to the regular meeting.

Regular Meeting

1. Call to Order/Roll Call

Chair Jean Simson convened the meeting at 7:01 pm.

With no Consent Agenda or Council Liaison Announcements, she asked for Staff Announcements.

2. Consent Agenda

None

3. Council Liaison Announcements

Julia Hajduk, Community Development Director on behalf of the Council announced that the Council forwarded several charter amendments to the November 2016 ballot including the Mayoral term, Council stipend, City Recorder supervision, change the ordinance reading process to clarify how it works and general charter clean up.

4. Staff Announcements

Brad Kilby, Planning Manager, reported that Connie Randall would return as a city staff member on August 15, 2016 to work on the Comprehensive Plan update. He noted that Commissioner Rettig had filled a vacated Planning Commission seat for the last six months and the mayor had chosen to reappoint

him on August 16th to a full term. He invited Planning Commission members to attend training offered by the Oregon City Planning Director's Association on September 29, 2016.

Mr. Kilby suggested a motion to amend the agenda to include item 6 as New Business and to change item 6.a. from medical to recreational marijuana.

Motion: Commission Pearson to amend the agenda to read item number 6 as New Business and Public Hearing, PA 16-05 as Recreational Marijuana Facilities (Michelle Miller), Seconded by Commissioner Chris Flores. All present Planning Commissioners voted in favor.

5. Community Comments

None

6. New Business

a. Public Hearing – PA 16-05 Recreational Marijuana Facilities (Michelle Miller)

Chair Simson read the public hearing statement and stated the Planning Commission would make a recommendation to City Council who would be the final hearing authority; appeals would be made to the Land Use Board of Appeals (LUBA). She stated as a legislative hearing there was no ex parte contact, bias or conflict of interest. Chair Simson asked for the staff report.

Michelle Miller, Senior Planner gave a presentation of the staff report (see record, Exhibit 2). She said the hearing was to discuss changes to the Sherwood Zoning and Development Code by adding definitions for the license types for recreational marijuana facilities, adding general criteria in Special Uses, Chapter 16.38, providing specific criteria for the different facilities, and zoning restrictions for the five license types.

She gave a history of the public outreach for the draft rules:

- Online Survey from March 1-31, 2016 with 289 responses
- Public Work Sessions with interested citizens, Planning Commission and Police Advisory Board members on March 10 and April 26
- Community Service Fair, May 21
- Music on the Green, July 13
- Sherwood Main Streets, July 21
- Monuments, Archer and Posters
- Public Notice Posted July 5

Ms. Miller explained that staff has been directed to evaluate the issue, because council had placed the issue of whether to ban recreational marijuana facilities in Sherwood before the voters to decide. She said the legislation before the Commission was in the event that the temporary ban in place was lifted. Sherwood should have rules and regulations that are specific to our community.

Ms. Miller said the Oregon Liquor Control Commission had been developing rules since Measure 91 in 2014 and had come up with five different license types to provide a kind of "seed to sale" distribution network along with laboratory and research facilities. The Oregon Liquor Control Commission (OLCC) will be issuing the five license types as follows:

- 1. Producer:** growing and cultivating
- 2. Processor:** converting marijuana to product extract, or edibles
- 3. Wholesaler:** transferring and distributing quantities of product
- 4. Retailer:** can sell and deliver directly to consumers
- 5. Laboratory or Research:** testing facility licensed by the OLCC

Ms. Miller explained that the OLCC had established broad rules statewide; facilities were not allowed on federal property, at the same physical location or address as a liquor license holder, nor at the same physical location/ address as a medical marijuana dispensary, growing or processing site registered with the Oregon Health Authority (OHA). Facilities are not allowed in the residential zones (with the exception of producers) and retailers cannot be within 1000 feet of public or private schools. Ms. Miller stated that the proposed rules for Sherwood go beyond the state regulations.

Ms. Miller showed a table which designated which commercial or industrial zones the five types of facilities could be located along with maps. The second showed locations in the commercial and industrial zones where facilities could be added based on buffers to parks, schools and the existing medical marijuana dispensary on Tualatin Sherwood Road. She explained the specific rules about each of the five license types.

Producer

Producers would be allowed in General or Light Industrial Zones for indoor production only. Special rules for odor mitigation measures would also be put in place. Producers would have to maintain a 100 foot buffer from residential locations and could be adjacent to an existing medical marijuana dispensary, but not at the same location. Ms. Miller described feedback from a public work session where people were not interested in having the facilities close to residential neighborhoods, so a 100 foot buffer was proposed adjacent to residential neighborhoods.

Retailer

Ms. Miller explained that retail was direct sales to customers over the age of 21. The proposal called for the zoning to be allowed in the General Commercial, Light Industrial and General Industrial zones. Retail would not include walk-up, drive-thru or mobile delivery and would not be within 1000 feet of a public or private school, another retail or medical marijuana facility, nor a public park or plaza as defined. Ms. Miller said this language was very similar to the language developed for medical marijuana dispensaries with the exception of permitting recreational facilities in the general commercial zone. She showed a map with the allowed locations in general commercial, general industrial, light industrial, and employment industrial zones.

Chair Simson noted that retail uses were not listed in the Industrial Zones table (pg. 39 of the packet). Ms. Miller pointed out that it was under the commercial section of the table on page 37. In discussing the buffers, it was explained that the buffers began at the property line and not from the edge of the building.

Processor, Wholesaler, and Laboratory or Research

Ms. Miller explained that these types of facilities did not raise a lot of concerns, because most of the activity would be inside a building and not open to the public. These types of facilities could not be located in Old Town, must be 100 ft. away from any residential zone and outdoor storage of marijuana would not be allowed. Security rules would apply. She said the city could not regulate signage based on the use nor the content of the sign; sign rules would apply based on the zoning.

Processors would be permitted in the General, Light, and Employment Industrial. They would not be located within 100 feet of a residential zone or at the same location as a medical marijuana dispensary.

Wholesalers would be permitted in the General, Light, and Employment Industrial and in the General Commercial zone. They would also have a 100 foot residential buffer and effectively be allowed in the areas north of Tualatin Sherwood Road.

Labs and testing facilities would be allowed in General, Light, and Employment Industrial, Office, General, Retail Commercial. With the 100 foot residential buffer, there were no Retail Commercial properties that would allow a lab or testing because of the proximity to the residential zone.

Chair Simson noted that the 100 foot residential buffer was for production, processors, testing and wholesale, but not retail. Ms. Miller confirmed and said the theory was that with the park and school buffer near the residential zones, it satisfied the idea of having the separation. If retail had the 100 foot residential buffer it would be similar to the permitted locations for Wholesalers.

Ms. Miller noted that the proposed code language was available as Exhibit A with proposed changes in color, Exhibit B was a clean copy of the code changes, Exhibit C was a memo regarding the online survey, and Exhibit D was the zoning map with buffers (see packet or planning record). She asked the Commission to forward a recommendation to City Council for the tentative hearing date of August 16, 2016.

Chair Simson called for public testimony.

Sheri Ralston, Sherwood resident and medical marijuana facility owner, advised that the state and OLCC measured the buffers from the edge of the building. She recommended a buffer around the YMCA because of the number of kids that frequented in the area and asked if she changed her medical marijuana facility to a recreational facility if the back of the property could be co-located for testing or processing. She noted that at her Newberg facility she had been allowed to co-locate a processor. Ms. Ralston asked if the ban should be lifted by the people's vote in November, would the co-location be allowed. She said the state, OLCC and many jurisdictions allowed a testing, wholesale or a processor, but not a producer to co-locate with a retail facility.

Chair Simson commented that for security and trips it seemed like an "economy of use" to have a couple of facilities co-located. Ms. Ralston chose not to comment personally, but responded that this was how the City of Newberg felt. She pointed out that she had not had any problems with security at her recreational facility in Newberg.

Ms. Miller explained that the buffers and rules established by the City could be different than the state and the city could choose to measure the buffers differently provided it was specifically defined in the code. She verified that it was proposed to specifically be defined from property line to property line.

Vice Chair Griffin asked where the definition came from and how it compared to other jurisdictions. Ms. Miller asserted there was a need to be clear about where the buffer boundary was and that the City of Hillsboro had formulated a similar rule when they codified medical marijuana rules. She added that building to building was less clear of where to measure and it was easier to define a property line. The buffers were measured at the property line and impacted a few properties that were close to the edge.

Mr. Kilby reminded the Commission that measuring from building edge left several hundred feet behind the schools before getting to the property line and when the City imposed buffers on other uses like sensitive areas, they are measured from the property line.

The Commission felt that the property line made the most sense and was consistent with other references in the code. Ms. Miller noted that the way to measure proximity restrictions was on page 45-46 of the packet in Exhibit A.

Ms. Miller said the co-location question should be discussed by the Commission and community standards were up to the Commission's discretion.

Chair Simson said the state rule would be applied if the Commission was silent and asked what the state rule on co-location was. Ms. Miller responded that recreational facilities could not be at the same location as a medical marijuana dispensary, growing or processing and they could not be at the same physical address. Ms. Miller referred to Ms. Ralston's example of a retail facility at the front address that could potentially be co-located with another suite or building that had a different address.

Ms. Miller clarified for Commissioner Pearson that two retail uses had a 1000 buffer and could not be adjacent. He wanted the public to be aware that building size and hours of operation were included in the proposed rules on page 46 of the packet. No retail facility type could be over 3000 sq. ft. in area, but other facility types did not have size limitations, but would be based on their business plan. Commissioner Pearson said that size based on zoning rules would apply.

Mr. Kilby said there were not rules for sizes of warehouses, therefore a marijuana warehouse would not be limited in size. Retail sales are limited to 10% in the Industrial Zone, but the 3000 sq. ft. limit would still apply regardless of the size of the warehouse.

Ms. Miller noted that Sherwood's recreational facility was fairly close to property zoned Office Commercial (on Hwy 99W), but because of the mixed use, no facilities would be allowed. She added that it was unknown what the zoning would be across Hwy 99W in the Urban Reserve area. Commissioner Walker commented that Sherwood's recreational facility should be considered like a park or a school as it was a community location. Chair Simson noted that a publically owned recreational facility was already defined as a buffered location. Staff agreed to add the buffer to the map.

Chair Simson repeated that if the Commission remained silent then co-location was regulated by the state which allowed recreational to be co-located with recreational if the address was different, but not with medical if the City did not adopt specific rules.

Vice chair Griffin noted that on page 8 the definitions of the marijuana facility types referred to "recreational marijuana" in some definitions and "marijuana" in others. Ms. Miller responded that the definitions were for facilities governed by the OLCC so it was implied that it was recreational only. Discussion followed. Chair Simson pointed out that medical marijuana was governed by the Oregon Health Authority and asked how that was handled in the Sherwood Code. Ms. Miller replied that the code was silent, as if it was any other type processing or producing business. They are regulated by the OHA and the City had no discretion as to where they were located. Ms. Miller proposed that the word "recreational" be removed, the commission was in consensus.

Vice Chair offered some formatting suggestions to help the table read better. He asked about the section regarding odors. Ms. Miller responded that it was in response to the public's concerns about excessive odors for nearby properties. She said the language came from the City of Hillsboro for marijuana odor mitigation. Ms. Miller pointed out that if the odor was really excessive the state DEQ could get involved. Vice Chair Griffin received confirmation that the odor rules were in addition to the state rules and asked if they could be onerous.

Commissioner Pearson commented that we discussed odors when updating the industrial standards. He was told marijuana could be malodorous. Vice Chair Griffin argued that with industrial standards the Environmental Protection Agency (EPA) standards would apply, but here the City was defining what should be done with very specific language.

Mr. Kilby suggested the Commission consider how the EPA or the state DEQ might regulate odors and gave an example of farming smells from harvesting sweet potatoes or onions that have a potent odor in Washington State. He commented that when talking about agricultural products and plants the state was going to be hands off, especially in a right to farm state like Oregon. Mr. Kilby noted that staff heard from other jurisdictions that odors always come up. The state did not have anything specific to those odors, so through the process the City decided to address odors for marijuana differently. He said it was a good question as to whether it was onerous, but it had been vetted through another jurisdiction and staff would investigate if it was a concern.

Chair Simson pointed to standards for recreational retail sales on page 45 of the packet where E.2 described access to retail facilities as prohibited to the public and limited to employees, personnel, and

customers over the age of 21. She commented the public was not generally prohibited from retail. The language was revised to read “Access to retail sales facility shall be limited to employees, personnel, and customers over the age of 21”.

Vice Chair Griffin turned to item 8 on page 46 and asked for clarification of the 3000 square feet in area used for the display of retail marijuana products. Ms. Miller clarified that the display or retail area was limited to 3000 feet. This was Sherwood specific language similar to rules for medical marijuana dispensary size limits.

Chair Simson asked again about co-location and said the state did not allow recreational facilities to be at the same physical location or address as a medical facility. She asked if a medical growing facility could be at the same location as a medical dispensary. Ms. Miller was unsure because only the OHA and the police could know where medical production was located.

Vice Chair Griffin commented that it was confusing because it seemed that the OHA had made it very restrictive to get medical marijuana products, but the OLCC had made it much easier to get recreational marijuana. Commissioner Pearson said the commission should compare medical and recreational marijuana similar to apples and oranges and that jurisdictions were expected to view them different and not co-mingle them.

Ms. Miller explained that there were some temporary rules in other jurisdictions that did allow both recreational and medical to be at the same location now as a temporary rule, because the recreational licenses for retail had not been issued yet, so they were allowing the retail sales at medical dispensaries. The Sherwood City Council did a ban on that option. The permanent rule would not allow retail facilities at the same location, but it could change. Ms. Miller said one of the rules proposed for Sherwood was that a retail facility could not be within a 1000 feet nor be co-located of a medical dispensary. Commissioner Walker asked if a processing facility [or other type] could be co-located with a retail facility. Chair Simson commented that it was the retail spaces that would be “seen” by the public and being silent would allow the others to co-locate.

Commissioner Pearson noted that the land available for these operations was severely restricted. He said the City had taken the view that this was a business, ignoring the product, and talking about rules for wholesaling, warehousing and processing; the same as for meat, bread or cookies. Commissioner Pearson was okay with co-locations.

Commissioner Walker asked if the Commission was going to stay silent on co-location and let the state rules apply. The Commission agreed. Chair Simson stated that what was heard from the people was that concerns were about the public retail look of Sherwood and maintaining the family value. She said if the City was to allow it, then it can moderate how much retail the City had. She was hopeful a wholesale or production facility would not have big green signs.

Commissioner Walker said it surprised her that there was no residential buffer on the retail facilities and said they should be added. Ms. Miller said the allowed locations would be similar to the wholesale map locations as a retail buffer eliminated a number of locations on Hwy 99W. Discussion followed. Commissioners commented on how far 100 ft. was, where the buffer edge was, and that every residence would then have a buffer from marijuana facilities.

Motion: Commissioner Lisa Walker to change the recreational retail limitation to include a 100 foot [buffer] from residential properties for retail recreational facilities, Seconded by Chair Jean Simson.

Ms. Miller commented that if a retail facility was opened in the commercial property, then a 1000 buffer would be added and eliminate a number of the other commercial properties along Hwy 99W.

Commissioner Walker noted the simplicity of making all the residential buffers the same. She thought most of the public concern was over the retailers and to it seemed funny to make them the least restrictive. She added that the urban reserve properties around Sherwood may figure into marijuana regulations in the future.

Commissioner Pearson commented that the Commission was squeezing the areas down smaller and smaller. He said as long as the Commission was aware of that, he was okay with it.

All present Planning Commissioners voted in favor.

Commissioner Walker asked about the distance to state liquor stores and asked if a facility could be next door with a different address. Ms. Miller responded that the state rule did not allow marijuana facilities at the same location as liquor license, which included bars, and a retail facility could be next door.

Commissioner Walker asked about producers in the residential zones. Ms. Miller replied that the proposed rules did not allow producers for commercial uses in the residential zones and the state allowed growing for personal use in residential zones.

Motion: Vice Chair Russell Griffin to recommend approval to the City Council for PA 16-05 Recreational Marijuana Facilities based on the applicant testimony, public testimony received, and the analysis findings and conditions in the staff report with the modifications as duly stated in this meeting, Seconded by Commissioner Alan Pearson. All present Planning Commissioners voted in favor.

Mr. Kilby noted that the City Council public hearing was tentatively scheduled for August 16, 2016 and would be posted on the project website.

Chair Simson complemented the Police Advisory Board for their input and effort put into the rules.

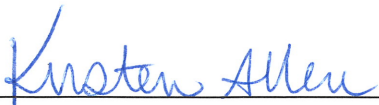
7. Planning Commissioner Announcements

Vice Chair Griffin commented that sometimes Planning Commission members made comments about projects and he wanted to ensure that they were not taken personally. He and Commissioner Walker recognized the hard work involved and said the critiques were not a reflection on staff. It was about working together to create a great product for the community. The rest of the commission concurred.

8. Adjourn

Chair Simson adjourned the meeting at 9:35 pm.

Submitted by:



Kirsten Allen, Planning Department Program Coordinator

Approval Date: September 13, 2016