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<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	WORK SESSION: <u>10</u>
FINAL ACTION:	_____

### CITY COUNCIL STAFF REPORT

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**TO:** City Council

**FROM:** Jon Holan, Community Development Director; Janie Schutz, Police Chief; Jesse VanderZanden, City Manager

**MEETING DATE:** February 8, 2015

**PROJECT TEAM:** Jon Holan; Janie Schutz; Kevin Ellingsburg

**SUBJECT TITLE:** Continued Work Session on possible Marijuana Regulations

**ACTION REQUESTED:**  Ordinance  Resolution  Motion  Informational

*X all that apply*

**ISSUE STATEMENT:** Provide further direction for possible code amendments addressing marijuana related activities.

**BACKGROUND:** Seven separate marijuana related activities are addressed by State law. The City approved Development and City code amendments on one of those activities: medical marijuana dispensaries. On September 14<sup>th</sup> and November 9<sup>th</sup> the City Council held work sessions to discuss further direction on the other marijuana related activities. At that time, the Council gave direction that marijuana related facilities should not be banned in the City but should be properly placed in the community. They also directed that no regulated marijuana activities should be allowed in residential districts. Further, the Council expressed the desire to allow dispensaries and retail outlets in both the Town Center zone districts as well as Community Commercial District.

At the last work session, the Council began the discussion of whether to require a separation distance between retail outlets. Currently, state law only requires a 1000 foot separation between marijuana dispensaries but does not require such separation for other marijuana related activities. At the request of the Council at the last work session, staff has attempted to find out if other jurisdictions state-wide have established such requirements. Staff contacted the League of Oregon Cities which does not have a comprehensive list at this time. However, they did indicate that to their knowledge that six jurisdictions either have or are considering separation requirements. Such cities as Bend, Medford, Ashland and Hillsboro are included in that list. In addition, several jurisdictions in Washington County with the exception of Beaverton appear to require separation between facilities as well as from schools and parks in several instances (see attached matrix).

In response to Council direction and number of marijuana related inquires staff has received; staff has prepared a set of code revisions that will be heard by the Planning Commission on Tuesday, January

19<sup>th</sup>. The amendments focus on prohibiting marijuana related activities in residential districts. In addition, it includes prohibiting establishments to allow consumption of marijuana related products such as vape lounges. It also includes establishing development and operational requirements for marijuana related activities beyond medical dispensaries.

To facilitate discussions, staff has prepared a set of potential code amendments as well as possible options. The attachment contains those possible amendments with options. To facilitate the review, the following is a summary of that attachment:

### **Locational Options**

Prohibit marijuana activities as a home occupation. (Included in current code update being considered by the PC)

### **Commercial Retail Marijuana Facilities**

- Propose similar location as medical marijuana dispensaries: allow in the Community Commercial zone district and prohibit in residential districts, Neighborhood Commercial and Town Center districts. (Proposed code amendment will allow dispensaries and retail outlets in the Town Center districts but prohibit retail outlets in Neighborhood Commercial district – medical dispensaries already prohibited in Neighborhood Commercial)
- Commercial Retail Options:
  - Allow commercial retail marijuana sales in all commercial zone districts including:
    - Neighborhood Commercial
    - Town Center districts (Included in current code update being considered by the PC)
    - Community Commercial (Included in current code update being considered by the PC)

### **Commercial Grow Sites**

- Propose to prohibit grow sites (both for medical and recreational purposes) in all residential districts. They would still remain permitted in the industrial districts. (Included in current code update)
- Grow Site Options:
  - Allow all marijuana grow sites in residential districts (will be prohibited in current code update)
  - Allow medical marijuana grow sites in residential districts (will be prohibited in current code update being considered by the PC)
  - Prohibit all grow site operations in the industrial districts
  - Prohibit grow sites regulated by the OLCC in industrial districts (which would continue to allow grow sites for medical marijuana)

### **Marijuana Processors and Wholesale Operations**

- No proposed change – allow in industrial districts – (at last work session, there was direction not to change)
- Processor and Wholesale Options:

- Allow processors and/or warehousing in:
  - Town Center districts
  - Community Commercial district

## Development Requirements

### Spacing (**where to start discussion**)

- Propose to apply spacing requirements for dispensaries (1000 foot separation between dispensaries) to Commercial Retail (see below)
- Options
  - Reduce the distance for the spacing requirement:
    - No requirement
    - 100 feet
    - 500 feet
    - Some other specific distance
  - Apply spacing requirements to other marijuana related activities:
    - Processors
    - Wholesalers
    - Grow Operations

### Other Development Requirements

- Propose to apply Marijuana Dispensaries Development Requirements to Other Marijuana Activities as follows:
  - Apply same requirements to Commercial Retail Marijuana facilities plus include 1000 foot separation between dispensaries and/or retail facilities unless on the same site
  - Apply modified requirements to other marijuana activities (processors, wholesale and grow sites) (Included in current code update before the PC except the 1000 foot separation requirement)
    - Compliance with state law
    - Entrances and off-street parking areas be well-lit and not visually obscured from public view/right-of-way
    - Located in permanent buildings with the exception of outdoor grow facilities
    - The dispensary must provide for secure disposal or render impotent marijuana remnants or by-products, or items with marijuana residue of any kind.
    - Marijuana facilities shall be separated by 1,000 feet from other marijuana related facilities unless at the same site.
    - For processing, indoor grow facilities and outdoor grow facilities involving greenhouses, require filtration on air exhaust systems to control odor.
- Options –
  - Require 100 foot setback from residential districts for processing and grow activities as part of odor control.

- For processors, identify the type of products to be processed, a description of equipment to be used, including any solvent, gases, chemicals or other compounds use to create extracts or concentrates (from proposed OLCC Rules)
- The exterior appearance of the structure is compatible with the exterior appearance of structures already constructed or under construction within the immediate area (from San Mateo County)
- Interior building lighting, exterior building lighting and parking area lighting will be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty (40) feet (from San Mateo County)
- Where windows secured with bars on the windows so as to prevent unauthorized entry, the bars shall be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency (from San Mateo County)
- For wholesale, processing and growing activities, absolutely no advertising of marijuana is allowed at any time; (from San Mateo County)
- For wholesale, processing and growing activities, exterior signage is limited to site addressing only; (from San Mateo County)

### **Operational Requirements – City Code**

- Apply requirements adopted for medical marijuana dispensaries. The adopted requirements are as follows (Included in current code update being considered by the PC):
  - A. A medical marijuana dispensary must comply with all applicable requirements of State law.
  - B. A medical marijuana dispensary must obtain a City Business License pursuant to Code Sections 7.000 to 7.070 prior to opening.
  - C. A medical marijuana dispensary may not be open to the public between the hours of 10:00 p.m. and 8:00 a.m.
  - D. All products and paraphernalia must be enclosed in an opaque bag or container upon exiting the facility.
  - E. A medical marijuana dispensary must provide secure disposal or render impotent marijuana remnants or by-products, including any item with marijuana residue.
- Apply appropriate requirements to:
  - Commercial retail facilities (all of the above requirements)
  - Wholesale (Items A, B and E of the above requirements)
  - Processors (Items A, B and E of the above requirements)
  - Grow Sites (Items A, B and E of the above requirements)

- All marijuana related facilities
- Options:
  - Require all personal and commercial grow activities indoors (from San Mateo County)
  - Properties shall be maintained so as to prevent blight or deterioration, or substantial diminishment or impairment of property values within the immediate area. (from San Mateo County)
  - Establish other operational requirements as yet not identified

### **Sales Tax**

It must be at 3% and must be approved by voters in a jurisdiction before it can be imposed. It can't be applied to either early sales of recreational marijuana at medical dispensaries or to any sales generate from medical marijuana related activities (sales, processing, wholesale and grow). However, the State is imposing a 25% sales tax on early sales which will be shared with local jurisdictions initially based on population (this will be reduced to 17% after early sales). If the City is to impose a sales tax, the following modifications need to be made with previously adopted Forest Grove Sales Tax Ordinance (Ordinance Number 2014-09) as follows:

- Change tax from 10% to 3%
- Exempt taxes on all medical marijuana related activities (dispensaries, processing, wholesale and grow)
- Specifically apply the tax on all recreation marijuana related activities (retail, processing, wholesale and grow)

Once adopted, the City will need to submit the ordinance for voter approval at the appropriate general election.

### **ATTACHMENT(s):**

Marijuana Activities - Proposed Development Code Amendments with Options

The following table identifies additional local time, place, and manner regulations established by Washington County jurisdictions.

	Beaverton	Cornelius <sup>1</sup>	Forest Grove	Hillsboro	Sherwood <sup>3</sup>	Tigard	Tualatin	Wilsonville	WaCo <sup>4</sup>
<b>Growing Operations</b>	Not Allowed								
<i>Zones?</i>	N/A			I-G, I-P, SC-BP			ML, MG, MBP		
<i>Permit Type?</i>	N/A			Development Review		Type 1			
<i>Buffers?</i>				100 feet from residential, mixed use, urban center or institutional zone		500 feet from residential zone, park zone, or library	3,000 feet from residential zone, ID'd park, school, and library. 2,000 feet from another marijuana facility Max 3,000 sq ft in size;		
<i>Local use restrictions?</i>	N/A		Entrance must be facing street; Must air filtration system	See NOTE 2 below		Prohib in MU-CBD; Must be inside permanent bldg.	no marijuana use colocation; entrances facing street; no odor at PL		
<b>Processing Operations</b>									
<i>Zones?</i>	OI and IND only			I-G, I-P, SC-BP, SCI			ML, MG, MBP		
<i>Permit Type?</i>	None, permitted use			Development Review		Type 1			
<i>Buffers?</i>				100 feet from residential mixed use, urban center or institutional zone		500 feet from residential zone, park zone, or library	3,000 feet from residential zone, ID'd park, school, and library. 2,000 feet from another marijuana facility Max 3,000 sq ft in size;		
<i>Local use restrictions?</i>	None		Entrance must be facing street; Must air filtration system	See NOTE 2 below		Prohib in MU-CBD; Must be inside permanent bldg.	no marijuana use colocation; entrances facing street; no odor at PL; Production thru butane prohib.		
<b>Wholesale Operations</b>									
<i>Zones?</i>	OI and IND only			I-G, I-P, SC-BP, SCI			ML, MG, MBP		
<i>Permit Type?</i>	None, permitted use			Development Review		Type 1			
<i>Buffers?</i>				100 feet from residential, mixed use, urban center or institutional zone		500 feet from residential zone, park zone, or library	3,000 feet from residential zone, ID'd park, school, and library. 2,000 feet from another marijuana facility		
<i>Local use restrictions?</i>	None		Entrance must be facing street	See NOTE 2 below		Prohib in MU-CBD; Must be inside permanent bldg.	Max 3,000 sq ft in size; no marijuana use		

						colocation; entrances facing street; no odor at PL.		
<i>Retail Sales Zones?</i>	CS, CC, GC only	TC-C, TC-T, TC-S	C-G, SCC-SC, SCC-MM, I-G		Must have frontage on 99W w/ entrance visible from 99W;	ML, MG, MBP		CBD, GC, IND, R-COM, TO-RC, TO-BUS, TO-EMP, NCMU-NB
<i>Permit Type?</i>	None, Permitted use		Development Review		Type 1			Type 2
<i>Buffers?</i>	1,000 feet from any marijuana sales use including dispensary use.		1,000 feet from schools (defined more expansively than OLCC); 1,000 feet from other recreational sales use; 2,000 feet from medical dispensary; 1,000 feet from public plaza or active use park		2,000 feet from any other marijuana facility  500 feet from library of park zone	3,000 feet from residential zone. ID'd park, school, and library. 2,000 feet from another marijuana facility		2,000 feet from any other marijuana facility.
<i>Other local use restrictions?</i>	Sales 7AM - 10PM	Sales 8AM-10PM; entrances facing street; Drive thru prohib;	Sales 10AM - 8PM (M-TH) 10AM - 10PM F-SU); No Mobile or temp businesses; No drive-in / through facilities.		Sales 8AM - 10PM; Prohib in MU-CBD; drive through prohib;  Comply w/odor & security lighting standards; Must be inside permanent bldg.	Max 3,000 sq ft in size; no marijuana use colocation; entrances facing street; no odor at PL Sales 10AM - 8PM drive thru prohib		Sales 8AM - 10PM  Max Floor Area in IND, GC, R-COM zones is 3,000 sf.
<i>Laboratory Testing Zones?</i>	OI and IND only		I-G, I-P, SC-BP, SCI					
<i>Permit Type?</i>	CUP in OI zone, permitted in IND zone		Development Review		Type 1			
<i>Buffers?</i>	None		100 feet from residential, mixed use, urban center or institutional zone		None			
<i>Local use restrictions?</i>	None		See NOTE 2 below		Prohib in MU-CBD; Must be inside permanent bldg.			
<i>Specific Prohibition in Residential Zones</i>	Yes, all marijuana uses.	Yes, all marijuana uses.	Home Occupation for recreational marijuana facilities prohibited		No	No		No

NOTES:

1. Cornelius provided ordinance for medical marijuana facilities.

2. Hillsboro has extensive list of restrictions on production, processing, testing, and wholesale activities. The restrictions include no outdoor production, no public access permitted, additional security measures for landscaping, lighting, and security bars on windows, odor mitigation measures, and waste security measures.
3. Sherwood sent materials but Beaverton's ridiculously paranoid firewall specifications prevented viewing their regulations.
4. Washington County code only identifies and defines "Marijuana Facilities". Marijuana facilities includes medical marijuana dispensaries and recreational retail sales. Growing, processing, wholesale, and testing are not specifically included in the definition of marijuana facilities.

# Marijuana Work Session (Continuation from 9/14/15 and 11/9/15)

City Council Work Session  
February 8, 2016



# Previous Work Sessions

- Decided not to ban any marijuana related activities (previous voter information confirmed)
- Avoid activities in residential areas
- Allow Dispensaries and Retail Outlets in both Community Commercial and Town Center districts
- Staff is requesting direction in four areas:
  - Location (distance requirements)
  - Development Requirements
  - Operational Requirements
  - Sales Tax

# Locational Requirements

- Spacing (State law only pertains to Dispensaries)
  - Apply 1000 foot spacing to:
    - Commercial Retail
    - Grow Sites
    - Processors
    - Wholesale
    - All activities
  - Type
    - Separation from all others
    - Separation from similar activities
  - Extent
    - 100 feet
    - 500 feet
    - Some other specific distance
  - Other Cities
    - Most all other cities in Washington County has requirements as well as 5 others around the state
    - All activities
    - Also from parks (active vs passive recreational areas)

# Development Requirements

- Propose to apply Marijuana Dispensaries Development Requirements to Other Marijuana Activities (retail, grow, processor, wholesale)
  - Compliance with state law
  - Entrances and off-street parking areas be well-lit and not visually obscured from public view/right-of-way
  - Located in permanent buildings with the exception of outdoor grow facilities
  - The facility must provide for secure disposal or render impotent marijuana remnants or by-products, or items with marijuana residue of any kind.
  - For processing, indoor grow facilities and outdoor grow facilities involving greenhouses, require filtration on air exhaust systems to control odor. (new)

# Development Requirement Options (Continued)

- Require 100 foot setback from residential districts for processing and grow activities as part of odor control. (Hillsboro; Tigard is 500 feet)
- Filtration system for grow and processor operations.
- For processors, identify the type of products to be processed, a description of equipment to be used, including any solvent, gases, chemicals or other compounds use to create extracts or concentrates (from proposed OLCC Rules)
- The exterior appearance of the structure is compatible with the exterior appearance of structures already constructed or under construction within the immediate area (from San Mateo County)
- Interior building lighting, exterior building lighting and parking area lighting will be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty (40) feet (from San Mateo County)
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# Operational Requirements

- The adopted requirements for Dispensaries are as follows:
  - A. A medical marijuana dispensary must comply with all applicable requirements of State law.
  - 
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  - Grow Sites (Items A, B and E of the above requirements)
  - All marijuana related facilities

# Sales Tax

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  - Change tax from 10% to 3%
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