



**CITY OF BEAVERTON  
STAFF REPORT**

**TO:** Mayor Doyle and City Council

**STAFF REPORT DATE:** Wednesday, October 15, 2014

**STAFF:** Steven A. Sparks, AICP, Principal Planner

**SUBJECT:** **TA2014-0001 (Marijuana Dispensaries Text Amendment)**

**REQUEST:** The City is proposing to amend the Beaverton Development Code Chapter 20 (Land Uses) to allow Marijuana Dispensaries as a permitted use in the Community Service (CS), General Commercial (GC), and Corridor Commercial (CC) zoning districts. The amendment is being proposed consistent with State of Oregon Senate Bill 1531.

**APPLICANT:** City of Beaverton - Planning Division

**APPLICABLE CRITERIA:** Development Code Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

**HEARING DATE:** Tuesday, October 21, 2014

**RECOMMENDATION:** Staff recommend the City Council open the public hearing, consider testimony, and conduct a first reading of the proposed ordinance.

**1. Background**

An extensive record has been established for the proposed amendment to the Development Code to allow medical marijuana dispensaries in the City of Beaverton. The record includes, and is not limited to, the staff reports to the Beaverton Planning Commission and City Council dated June 11, 2014, July 30, 2014, September 3, 2014, and October 2, 2014. The established record is included by reference to this report.

The Beaverton City Council listened to a staff presentation on the Planning Commission recommended text amendment to allow medical marijuana dispensaries in three (3) different commercial zoning districts. The recommended text amendment consisted of the following:

- A. The use should be allowed in the GC (General Commercial), CS (Community Service), and CC (Corridor Commercial) zones.

- B. The use should be buffered from publicly owned recreational facilities operated by Tualatin Hills Park and Recreation District (THPRD).
- C. The use should be limited to a hours of operation of 7:00 AM to 10:00 PM without the possibility of extending those hours through a land use permitting process.

These recommended use regulations are the local regulations that the Planning Commission recommended to be added to the State regulations. The State regulations are:

- A. The use may not be located in a residential zone.
- B. The use must be 1,000 feet from elementary, secondary, or career schools attended primarily by minors; and
- C. The use must be 1,000 feet from another medical marijuana facility.

At the conclusion of the staff presentation at the October 14, 2014 Council meeting, Council members discussed the Planning Commission recommendation and focused on two (2) issues. Those issues were, should the City establish a buffer from THPRD operated public recreation facilities and should the proposed use be “medical marijuana dispensaries” or “marijuana dispensaries”?

At the conclusion of the Council's discussion, the Council directed staff to conduct a public hearing to consider revisions to the Planning Commission recommended text amendment.

## **2. Proposed Revisions**

### THPRD Buffer

The Council questioned whether the City should have a 1,000 foot buffer from public recreation facilities operated by THPRD. The buffer was proposed to be a companion to the 1,000 foot buffer from school sites that are attended primarily by minors. The reason for this was the presumption that recreational facilities are frequently used by minors and programs at the facilities are targeted to minors. In evaluating the map which shows the 1,000 foot THPRD buffer, the buffer has a very limited impact in excluding potential sites for the marijuana dispensary use. The most significant impact is in the area of the SW Walker Road and SW 158<sup>th</sup> Avenue intersection. By removing the THPRD buffer regulation, approximately seven (7) parcels will be added to the potential locations at which the use may be located. Staff recommend that due to the very limited nature of the applicability of the THPRD buffer, removing the buffer will simplify and improve the application of the regulations for permitting the dispensary use.

Parks

## Medical Marijuana

The Planning Commission debated the possibility of removing the word “Medical” from the proposed use “Medical Marijuana Dispensaries”. Staff had recommended not including the word “medical” in the proposed text amendment. The intent of the recommendation was to be responsive to the possibility of Ballot Measure (BM) 91 being passed by Oregon voters in the November 2014 election or in a subsequent election. If the voters pass BM 91 to allow recreational use of marijuana, a future text amendment may not be necessary to allow the use. This would save time and resources by addressing the issue with the current text amendment.

The Planning Commission did not agree with the staff recommendation and directed that the text amendment be limited to medical marijuana dispensaries. The Planning Commission concluded that there was enough uncertainty in how to address recreational marijuana that recommending an amendment at this time to permit the use would be unwise. The Commission found that if the BM passed, the State would be required to develop regulations for the use and at that time, review of potential local regulations would be appropriate.

The City Council discussed the possibility of removing the word “Medical” or “Medicinal” from the marijuana dispensary use. The Council discussed that the way BM 91 is worded, local regulation of marijuana dispensaries may not be allowed if BM 91 passes in November. However, if local regulation was in place prior to the potential passage of BM 91, local regulation may be allowed to continue. This understanding of the potential impact of BM 91 was cause enough to consider amending the Planning Commission recommended text amendment.

Staff recommend that proceeding with such an amendment to the Planning Commission recommended text will be acceptable. Regardless of BM 91 passing, State Statute currently only allows “medical marijuana dispensaries”. By having the use “marijuana dispensaries”, the City will not be allowing any type of marijuana sales. State Statute will still govern and those sales will continue to be solely for medical marijuana. Recreational sales of marijuana will only be allowed if BM 91 is passed by Oregon voters.

### **3. Facts and Findings**

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. Staff recommend that the analysis contained in this report as well as the Planning Commission record support the local time, place, and manner regulations on medical marijuana dispensaries as authorized by Statute. The following are the findings of fact for TA 2014-0001 (Marijuana Dispensaries Text Amendment):

## **Development Code Approval Criteria**

- 1. The proposal satisfies the threshold requirements for a Text Amendment application.**

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when any change is proposed to the Development Code, excluding changes to the zoning map. TA 2014-0001 proposes to make changes to Chapter 20 of the Development Code. Therefore, staff find that approval criterion one has been met.

- 2. All City application fees related to the application under consideration by the decision-making authority have been submitted.**

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City-initiated application are not required where the application fee would be paid from the City's General Fund. The Planning Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required. Staff find that approval criterion two is not applicable.

- 3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.**

Metro's Urban Growth Management Functional Plan (UGMFP) is the document that defines how local governments are to implement the Metro Regional Urban Growth Goals and Objectives. The UGMFP is comprised of the following titles:

- Title 1: Requirements for Housing and Employment Accommodations
- Title 2: Regional Parking Policy (Repealed and moved to Title 4 of the Regional Transportation Functional Plan (RTFP))
- Title 3: Water Quality and Flood Management
- Title 4: Industrial and Other Employment Areas
- Title 5: Neighbor Cities and Rural Reserves
- Title 6: Centers, Corridors, Station Communities and Main Streets
- Title 7: Housing Choice
- Title 8: Compliance Procedures
- Title 9: Performance Measures (Repealed)
- Title 10: Functional Plan Definitions
- Title 11: Planning for New Urban Areas
- Title 12: Protection of Residential Neighborhoods
- Title 13: Nature in Neighborhoods
- Title 14: Urban Growth Boundary

The City is required to have its land use regulations conform to the UGMFP. The Development Code has been amended to incorporate several policies of the UGMFP. This proposed text amendment does not conflict with the UGMFP. The UGMFP is silent on the issue of marijuana dispensaries.

As part of the City's standard noticing procedures, Metro was sent a copy of the DLCD notice, which contained reference to the draft text and summary of the changes to the Code. Metro staff did not provide any comment in response. Therefore, staff find that approval criterion three has been met.

**4. *The proposed text amendment is consistent with the City's Comprehensive Plan.***

The proposed text amendment will add a new permitted use to the General Commercial, Community Service, and Corridor Commercial zoning districts. Staff have reviewed the Comprehensive Plan and have not identified any policies which are applicable to the proposed text amendment. Therefore, staff find that approval criterion four not applicable to the proposed amendment.

**5. *The proposed text amendment is consistent with other provisions within the City's Development Code.***

Staff have not identified any known conflicts between the proposed text and the other provisions of the Development Code. The proposal will add a new permitted use which is not identified in any other section of the Development Code. Therefore, staff find that approval criterion five has been met.

**6. *The proposed amendment is consistent with all applicable City ordinance requirements and regulations.***

Staff has not identified any other applicable City ordinance requirements and regulations that would be affected by the proposed text amendment. Possible conflict may exist with respect to the sale and use of a controlled substance. However, such regulations are federal and state regulations and not local regulations. Therefore, staff find that approval criterion six has been met.

**7. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

Staff have determined that there are no other applications and documents related to the request that will require further City approval. Therefore, staff find that approval criterion seven has been met.

Based on the facts and findings presented, staff conclude that the proposed amendment to the Development Code is consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7.

### ***Other applicable approval criteria***

As a post-acknowledgement amendment to the City's Development Code, the proposed text amendment is subject to ORS 197.175(1), which requires that the City demonstrate that the proposed text amendment be consistent with the relevant Statewide Planning Goals. Staff have determined that Statewide Planning Goals 1 and 2 are applicable to the proposed amendment

*Goal 1 Citizen Involvement To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

Staff find that the City has provided adequate notice and opportunity for public involvement for the proposed text amendment and public hearing.

*Goal 2 Land Use Planning To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.*

Staff find that the proposed text amendment fits within the established process and framework. Furthermore, the findings contained within this report establish an adequate factual basis for the proposal.

Therefore, staff find that the proposed text amendment complies with all of the applicable State Planning Goals.