



**CITY OF BEAVERTON  
STAFF REPORT**

**TO:** Planning Commission

**STAFF REPORT DATE:** Wednesday, December 30, 2015

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

**SUBJECT:** **TA2015-0005 (Recreational Marijuana Text Amendment)**

**REQUEST:** The City is proposing to amend the Beaverton Development Code Chapter 20 (Land Uses) to allow recreational marijuana retail sales as a permitted use in the Community Service (CS), General Commercial (GC), and Corridor Commercial (CC) zoning districts. The City is also proposing to amend the Code to allow wholesale marijuana sales and marijuana processing in the Office Industrial (OI) and Industrial (Ind) zoning districts. The amendment being proposed is consistent with parameters of Ballot Measure 91 approved by Oregon voters in 2014 and consistent with the draft recommended Recreational Marijuana Rules being considered by the Oregon Liquor Control Commission (OLCC).

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

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

**HEARING DATE:** Wednesday, January 6, 2016

**RECOMMENDATION:** Staff recommend the Planning Commission review the proposal, open the public hearing, and recommend approval of the proposed text amendment to the City Council.

**1. Background**

In October 2014, the Beaverton City Council adopted Ordinance 4648 which established local rules for Marijuana Dispensaries. This ordinance was adopted in response to the 2014 Oregon Legislature's passage and Governor Kitzhaber's signature of Senate Bill 1531 (SB 1531) allowing medicinal marijuana facilities to be located in Oregon. SB 1531 allowed local jurisdictions to place additional "reasonable" regulations on the medicinal marijuana facility use, provided that the regulations were solely based on time, place, and manner. The City of Beaverton adopted local controls in Ordinance 4648 for a new use

entitled Marijuana Dispensary consistent with the provisions of SB 1531. Those local regulations being the following:

1. The City titled the use Marijuana Dispensary rather than Medical Marijuana Facility as titled in SB 1531.
2. Marijuana Dispensary uses must be located in the Community Service (CS), General Commercial (GC), and Corridor Commercial (CC) zoning districts.
3. The use could only operate between the hours of 7:00 AM and 10:00 PM.

State regulations for the medical marijuana facilities are administered by the Oregon Health Authority (OHA) and include the following zoning type regulations:

1. The use cannot be in a residential zone.
2. The use must be located not less than 1,000 feet from a school.
3. The use must be located not less than 1,000 feet from another medical marijuana facility.

In November 2014, Oregon voters approved Ballot Measure 91 (BM 91) authorizing the growing, processing, selling, and use of recreational marijuana. The State directed OLCC to be the regulating agency for recreational marijuana uses. Since November 2014, most local jurisdictions have been waiting for draft rules governing the growing, processing, selling, and using of recreational marijuana to be issued by OLCC.

On October 1, 2015, the State authorized strictly limited recreational marijuana sales unless prohibited by an ordinance adopted by the city, but only at licensed medical marijuana facilities. There are currently five (5) marijuana dispensaries in Beaverton that are licensed by OHA as medical marijuana facilities. OLCC has adopted interim regulations governing the growing, production, wholesale, and retail sales of recreational marijuana applicable only to medical marijuana facility locations where recreational marijuana may be sold.

OLCC issued draft rules (OAR chapter 845, division 25) in November 2015 for future, stand-alone, recreational marijuana uses. At the November 17, 2015 Beaverton City Council round table briefing, the City Council directed staff to prepare amendments to the Development Code to address the location of recreational marijuana uses. The Council's direction to staff was to have recreational marijuana locational regulations match Marijuana Dispensary locational regulations as closely as possible.

OLCC will begin accepting applications on January 4, 2016 for stand-alone recreational marijuana licenses in the following categories: (1) growing; (2) processing; (3) wholesale; and (4) retail. OLCC will start with processing and issuing licenses for marijuana growing operations on January 4<sup>th</sup>; however, licenses for all categories will likely be filed with OLCC. A time frame for OLCC issuing licenses for recreational marijuana uses has not been specified by OLCC.

The only zoning type regulations that OLCC is considering for the State's recreational marijuana rules are:

1. Recreational marijuana uses in "exclusively residential zones" are prohibited.
2. Uses shall not be located within a 1,000 foot buffer from schools.
3. Retailers can only sell to consumers between the hours of 7:00 AM and 10:00 PM.

## **2. Proposed Text Amendments**

The proposed amendments to the Development Code to address recreational marijuana uses are attached in Exhibit A. As noted above, the OLCC will be licensing recreational marijuana in the following four (4) categories:

### **Growing Operations**

Growing operations are agricultural uses and can take place indoors or outdoors. OLCC is considering a range of regulations for growing operations which include, but are not limited to, production size, screening, and security. The Development Code does not list agricultural uses as a permitted use; therefore, the growing operations use is not allowed in Beaverton.

### **Processing**

Marijuana Processing is activity that processes parts of the marijuana plant into other products such as edibles or topical creams. Current Code identifies "Processing" as an allowed use in most of the City's Multiple Use zones and in all Industrial zones. Processing is a general and broadly defined use and does not specify the type of processing that can take place.

The proposed amendments will establish a new use, Marijuana Processing, as a permitted use in the City's Office Industrial and Industrial zoning districts. Many concerns about marijuana processing are focused on how marijuana extracts and marijuana concentrates are created. OLCC regulations under consideration are extensive and include, but are not limited to, processor training, processing safety standards, and commercial kitchen requirements. Marijuana processing is thoroughly addressed by OLCC regulations and staff do not recommend additional local regulations. However, staff recommend that Marijuana Processing be subject to the same use restrictions as the Processing use specified in the existing code, for consistency between the two uses.

### **Wholesale**

In the current Development Code, "Wholesale" is broadly defined as "The bulk sale of goods generally for resale to a person other than the direct consumer." Wholesale uses and activities are permitted in the Industrial zones. Staff recommend adding a new use, Wholesale Marijuana Sales, to make clear that this specific use is allowed in the Office Industrial and Industrial zoning districts. Staff do not recommend additional local regulations.

## **Retail**

Retail sales are currently permitted in every City zone except residential zones. At the November 17, 2015 City Council round table briefing, the Council was clear that its desire is to have the zoning requirements for retail marijuana sales match those of the marijuana dispensary use.

The proposed amendment will add a new use, Retail Marijuana Sales, to the Development Code. The use will be allowed in the Community Service (CS), General Commercial (GC), and Corridor Commercial (CC) zoning districts, which are the same zoning districts where the marijuana dispensary use is allowed.

Draft OLCC regulations will not allow retail marijuana sales in “an area that is zoned exclusively for residential use.” The OLCC regulations do not define “zoned exclusively for residential use”. Therefore, staff recommend the addition of a specific prohibition of all marijuana uses in the residential zoning districts.

Draft OLCC regulations contain a buffer provision, or exclusion area, for retail marijuana sales. Like OHA’s requirements for medical marijuana facilities, OLCC regulations require a 1,000 foot buffer from schools. Schools are defined by the proposed State regulation as:

- “a public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
- a private or parochial elementary school, teaching children as described in ORS 339.030.”

Unlike OHA’s requirements for medical marijuana facilities, OLCC’s draft regulations do not require a buffer from another retail marijuana sales use or medical marijuana facility. Pursuant to City Council direction, staff recommend that retail marijuana sales have an additional local requirement of a 1,000 foot buffer from another retail marijuana sales use or marijuana dispensary use. The purpose of recommending the 1,000 foot buffer from other marijuana sales or dispensary uses is to have the same standards for what are essentially the same uses.

Because of the State’s bifurcated organization and regulation of marijuana sales, staff recommend adding two definitions to Chapter 90 defining Marijuana Dispensary and Retail Marijuana Sales to help clarify applicability of State regulations to these two locally permitted uses.

### **3. Public Comment**

Public notice was provided consistent with Section 50.50 of the Development Code. No written public comment has been received by the City.

#### **4. 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, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA 2015-0005 (Recreational Marijuana 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 2015-0005 proposes to make changes to Chapter 20 and Chapter 90 of the Development Code, as shown in Exhibit A. 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 uses.

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, similar to Exhibit A. 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 Community Service, General Commercial, and Corridor Commercial zoning districts. The proposed amendment will also add clarification to marijuana uses in other zoning districts such as Marijuana Processing and Wholesale Marijuana Sales in the Office Industrial and Industrial 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 does not apply 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. Staff have noted one discrepancy between the OLCC draft regulations and the existing OHA regulations concerning buffers between marijuana sales sites. The proposed amendment will eliminate the discrepancy by adopting a local regulation whereby both retail marijuana sales and marijuana dispensary uses shall be 1,000 feet from other marijuana sales sites. Furthermore, the proposed amendment will add definitions of retail marijuana sales and marijuana dispensary to eliminate potential conflict or confusion between the two uses. 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 have 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 the proposed text amendment is 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.

**5. *Staff Recommendation(s)***

Staff offer the following recommendations for the conduct of the September 10, 2014 public hearing for TA 2014-0001 (Marijuana Dispensaries Text Amendment):

- A. Conduct a public hearing and receive all public testimony relating to the proposal.

- B. Consider the public testimony and the facts and findings presented in the staff report and deliberate on policy issues and other issues identified by the Commission or the public.
- C. Recommend approval of the proposed text amendment to the City Council for its consideration on the next available Council agenda.

**6. Exhibits**

- Exhibit A Proposed changes to Chapter 20
- Exhibit B OLCC Recreational Marijuana Licensing Pathway.
- Exhibit C Map showing licensed marijuana dispensary locations.
- Exhibit D Zoning Map showing CS, GC, and CC zones only
  - Map 1 illustrates northern half of Beaverton
  - Map 2 illustrates southern half of Beaverton