

ORDINANCE NO. 1379-15

AN ORDINANCE ALLOWING MARIJUANA FACILITIES IN LIGHT MANUFACTURING, GENERAL MANUFACTURING, AND MANUFACTURING BUSINESS PARK PLANNING DISTRICTS WITH CERTAIN RESTRICTIONS; ALLOWING HOMEGROWN MARIJUANA OUTDOORS WITH CERTAIN RESTRICTIONS; AMENDING TUALATIN DEVELOPMENT CODE CHAPTERS 31, 60, 61, AND 64; CREATING NEW CHAPTER 80; AND ADDING NEW PROVISIONS (PTA-15-01)

WHEREAS, on November 3, 1998, Oregon voters approved Ballot Measure 67, known as the "Oregon Medical Marijuana Act;" and

WHEREAS, on November 4, 2014, Oregon voters approved Ballot Measure 91, known as the "Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act," which authorized recreational marijuana production, sales, and use; and

WHEREAS, the City Council previously adopted TMC Chapter 9-08 to prohibit medical marijuana facilities from operating in Tualatin, the prohibition of which expires on May 1, 2015; and

WHEREAS, the Tualatin Municipal and Development Codes do not currently allow marijuana facilities in any planning district; and

WHEREAS, the Community Development Director initiated Plan Text Amendment PTA-15-01 to allow marijuana facilities to operate with certain restrictions in the Light Manufacturing, General Manufacturing, and Manufacturing Business Park Planning Districts; and

WHEREAS, the City provided notice of PTA-15-01 to the Oregon Department of Land Conservation and Development as provided in ORS 197.610; and

WHEREAS, notice of public hearing of PTA-15-01 was given as required by Tualatin Development Code 1.031, and a public hearing was held where City Council heard and considered the testimony and evidence presented by the City staff and those appearing at the public hearing, and a majority of City Council having approved PTA-15-01; and

WHEREAS, pursuant to Article XI, Section 2 of the Oregon Constitution, the City of Tualatin has "home rule" authority to adopt regulations relating to marijuana facilities;

NOW THEREFORE, THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC 31.060 is amended by adding the terms and definitions as follows:

Marijuana. All parts of the plant of the 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, and includes both medical and recreational marijuana as defined by Oregon law.

Marijuana, edible. Edible product that contains marijuana.

Marijuana extract. A product obtained by separating resins from the marijuana plant by solvent extraction.

Marijuana facility. A commercial or public use or structure where marijuana is produced, processed, wholesaled, retailed, distributed, transferred, sold or consumed and registered with the Oregon Health Authority (OHA) or the Oregon Liquor Control Commission (OLCC).

Marijuana, homegrown. Marijuana grown or made by a person 21 years of age or older for noncommercial purposes.

Section 2. TDC 60.020 is amended to read as follows:

Section 60.020 Permitted Uses.

No building, structure or land shall be used in this district, except for the following uses as restricted in TDC 60.021:

(1) Assembly, packaging, processing and other treatment of products, such as dairy products, and soft drinks.

~~(2)(15)~~-Assembly and packaging of small electrical and electronic appliances, such as radios, televisions, phonographs, audio, video and computer equipment, and office machines.

~~(3)(2)~~-Assembly of the following types of products:

- (a) Bicycles.
- (b) Small electric generators.
- (c) Small electric motors.
- (d) Marine pleasure craft.
- (e) Sashes and doors.

(f) Vending machines.

~~(4)(25)~~ Child day care center, provided it is in a building with manufacturing, processing, assembling, warehousing or wholesaling uses and provided all exterior walls and outdoor play areas shall be at least 400 feet from the exterior walls and pump islands of any automobile service station, irrespective of any structures in between.

~~(5)(3)~~ Contractor's office.

~~(6)(29)~~ Electrical substation.

~~(7)(4)~~ Electroplating.

~~(8)(26)~~ Greenways and Natural Areas, including but not limited to bike and pedestrian paths and interpretive stations.

~~(9)(11)~~ Laboratories: testing, medical, dental, photo, or motion picture, except structural-mechanical testing laboratories.

~~(10)(5)~~ Laundry, dry cleaning, dyeing or rug cleaning plant (non-retail).

~~(11)(6)~~ Machine shop, including automotive machine shop, of less than 7,500 gross square feet.

~~(12)(17)~~ Manufacture of musical instruments, toys and novelties.

~~(13)(16)~~ Manufacture of pottery and ceramics, using only previously pulverized clay.

~~(14)(7)~~ Manufacture of the following types of products:

(a) Cabinets.

(b) Furniture.

(c) Mattresses.

(d) Scientific, medical or dental laboratory measuring, analyzing and controlling equipment, and related tools and supplies.

~~(15)~~ Marijuana facility, subject to the provisions in TDC Chapter 80.

~~(16)(18)~~ Molding of small products from plastic.

~~(17)(30)~~ Natural gas pumping station.

~~(18)~~(40) Offices for executive, administrative, and professional uses related to the sale or service of industrial products.

~~(19)~~(33) Other uses of similar character found by the Planning Director to meet the purpose of this district, as provided in TDC 31.070.

~~(20)~~(44) Processing, assembly, packaging, and other treatment of small products manufactured from the following previously prepared or semi-finished materials: bone, hair, fur, leather, feathers, textiles, plastics, glass, wood, paper, cork, wire up to 1/4 inch (0.25") in diameter, rubber, and rubber compounds, precious or semi-precious stones, and similar small products composed of previously prepared or semi-finished materials.

~~(21)~~(42) Processing, assembly, packaging, or other treatment of such products as bakery goods, candy, cosmetics, pharmaceuticals, toiletries.

~~(22)~~(43) Processing, assembly, packaging, and other treatment of such products as small hand tools, optical goods, hearing aids, and scientific instruments or equipment.

~~(23)~~(24) Production of agricultural crops.

~~(24)~~(28) Public works shop and storage yard.

~~(25)~~(22) Publishing and printing (non-retail).

~~(26)~~(49) Sales of industrial hand tools, industrial supplies such as safety equipment and welding equipment, that are products primarily sold wholesale to other industrial firms or industrial workers.

~~(27)~~(23) Sewer and water pump stations, pressure reading stations, water reservoir.

~~(28)~~(35) Shared service facilities.

~~(29)~~(8) Spinning or knitting of fibers.

~~(30)~~(9) Storage of automobiles, boats, buses, trailers, and recreational vehicles, except not allowed in the Special Commercial Setback, TDC 60.035(1-3).

~~(31)~~(27) Telephone exchange or switching facility.

~~(32)~~(24) Trade or industrial schools.

~~(33)~~(34) Transportation facilities and improvements.

~~(34)~~(20) Warehousing related to the above uses; and warehousing for merchandise or goods normally sold or owned in commercial or residential planning districts, but excluding direct retail sales to customers from such warehouse structure, and excluding the storage of hazardous materials.

~~(35)~~(32) Wireless communication facility.

~~(36)~~(34) Wireless communication facility attached.

Section 3. TDC 60.021 is amended to read as follows:

Section 60.021 Restrictions on Permitted Uses in ML.

The following restrictions shall apply to those uses listed as permitted uses in TDC 60.020:

(1) The use must be conducted wholly within a completely enclosed building, except off-street parking and loading, utility facilities, wireless communication facilities, outdoor storage of materials and products directly related to the permitted use and outdoor play areas of child day care centers as required by State day care certification standards.

(2) The retail sale of products manufactured, assembled, packaged or wholesaled on the site is allowed provided that the retail sale area, including the showroom area, shall be no greater than 5% of the gross floor area of the building not to exceed 1,500 square feet.

(3) For other retail uses, excluding retail sales of products manufactured, assembled, packaged or wholesaled on the site, the following restrictions shall apply:

(a) Retail uses on land designated Employment Area or Corridor on Map 9-4 shall not be greater than 60,000 square feet of gross floor area per building or business.

(b) Retail commercial, retail service and professional service uses on land designated Industrial Area on Map 9-4 shall not be greater than 5,000 square feet of sales or service area in a single outlet, or not greater than 20,000 square feet of sales or service area for multiple outlets in a single building or in multiple buildings that are part of the same development project, with the following two exceptions, which shall not be subject to the size limitations stated in this subsection:

(i) Commercial uses within the Special Setbacks for Commercial Uses Area, shown on Map 9-5, and as specified in TDC 60.035.

- (ii) Development approved through the application of the Industrial Business Park Overlay District to certain properties, as specified in TDC Chapter 69.
- (iii) Development approved through the application of standards for additional small-scale mixed uses in ML as specified in TDC 60.037-60.038.

(4) Marijuana facilities are subject to the provisions in TDC Chapter 80. To the extent there is a conflict between the provisions in this Chapter and the provisions in TDC Chapter 80, the provisions in TDC Chapter 80 apply.

Section 4. TDC 61.020 is amended to read as follows:

Section 61.020 Permitted Uses.

No building, structure or land shall be used, except for the following uses as restricted in TDC 61.021.

(1) All uses permitted by TDC 60.020 and 60.037 in the Light Manufacturing Planning District.

(2) Assembly, packaging, processing, and other treatment of beer, coffee, and canned goods.

(3) Assembly of electrical appliances, such as refrigerators, freezers, washing machines, and dryers.

(4) Auto body and/or paint shop; auto machine shop; auto radiator repair shop; general auto and light truck repair, including but not limited to, repairing and rebuilding engines and repair of transmissions, drivelines and rearends except not allowed in the Special Commercial Setback, TDC 61.035(1-3).

(5) Chemical warehouse and distribution.

(6) Cold storage plant.

(7) Concrete batch plant, except not allowed in the Leveton Tax Increment District.

(8) Manufacture of the following types of products:

(a) Batteries.

(b) Boilers.

- (c) Bottles.
- (d) Brick, tiles, or terra cotta.
- (e) Cans.
- (f) Chainsaws.
- (g) Electric generators.
- (h) Electric motors.
- (i) Electric transformers.
- (j) Engines, larger gasoline or diesel.
- (k) Heating and cooling equipment.
- (l) Industrial gases, excluding chlorine.
- (m) Ladders.
- (n) Lawnmowers.
- (o) Manufactured Dwellings.
- (p) Motor vehicles.
- (q) Paint.
- (r) Pet food.
- (s) Prefabricated building or structural members for buildings.
- (t) Rototillers.
- (u) Signs and display structures.
- (v) Windows.

(9) Marijuana facility, subject to the provisions in TDC Chapter 80.

(10)(9) Metal casting (small to large size).

~~(11)(40)~~ Metal fabrication (light to medium) (of unfinished or semi-finished metals).

~~(12)(22)~~ Other uses of a similar character found by the Planning Director to meet the purpose of this district, as provided in TDC 31.070.

~~(13)(44)~~ Petroleum product distribution and storage.

~~(14)(42)~~ Planning mill.

~~(15)(43)~~ Processing, assembly, packaging, and other treatment of small products manufactured from sheet metal, wire larger than 1/4 inch (0.25") in diameter, or tobacco.

~~(16)(44)~~ Production of agricultural crops.

~~(17)(23)~~ Sale, service and rental of construction and industrial equipment to contractors and industrial firms only.

~~(18)(45)~~ Sale, service and rental of industrial machinery including machine tools, processing, and packaging machinery, forklifts, hoists and conveyors.

~~(19)(46)~~ Sandblasting.

~~(20)(47)~~ Storage and retail sale of rock, gravel, barkdust, sawdust, coal or topsoil except not allowed in the Special Commercial Setback, TDC 60.035(1-3).

~~(21)(48)~~ Structural-mechanical testing laboratories.

~~(22)(49)~~ Welding shop.

~~(23)(22)~~ Wireless communication facility.

~~(24)(20)~~ Wireless communication facility attached.

Section 5. TDC 61.021 is amended to read as follows:

Section 61.021 Restrictions on Permitted Uses.

The following restrictions shall apply to those uses listed as permitted uses in TDC 61.020:

(1) The use must be conducted wholly within a completely enclosed building, except off-street parking and loading, utility facilities, wireless communication facilities, outdoor storage of materials and products directly related to the permitted use and

outdoor play areas of child day care centers as required by State day care certification standards.

(2) The retail sale of products manufactured, assembled, packaged or wholesaled on the site is allowed provided that the retail sale area, including the showroom area, shall be no greater than 5% of the gross floor area of the building not to exceed 1,500 square feet.

(3) For other retail uses, excluding retail sales of products manufactured, assembled, packaged or wholesaled on the site, the following restrictions shall apply:

(a) Retail uses on land designated Employment Area or Corridor on Map 9-4 shall not be greater than 60,000 square feet of gross floor area per building or business.

(b) Retail commercial, retail service and professional service uses on land designated Industrial Area on Map 9-4 shall not be greater than 5,000 square feet of sales or service area in a single outlet, or not greater than 20,000 square feet of sales or service area for multiple outlets in a single building or in multiple buildings that are part of the same development project, with the following two exceptions, which shall not be subject to the size limitations stated in this subsection:

- (i) Commercial uses within the Special Setbacks for Commercial Uses Area, shown on Map 9-5, and as specified in TDC 61.035, except 61.035(4)(b).
- (ii) Development approved through the application of the Industrial Business Park Overlay District to certain properties, as specified in TDC Chapter 69.
- (iii) Development approved through the application of standards for additional small-scale mixed uses in ML as specified in TDC 60.037-60.038.

(4) Marijuana facilities are subject to the provisions in TDC Chapter 80. To the extent there is a conflict between the provisions in this Chapter and the provisions in TDC Chapter 80, the provisions in TDC Chapter 80 apply.

Section 6. TDC 64.020 is amended to read as follows:

Section 64.020 Permitted Uses.

No building, structure or land shall be used except for the following:

~~(1)(18)~~ Accessory Uses, incidental and subordinate to a permitted or conditionally permitted primary use.

~~(2)(9)~~ Corporate, regional, or district office headquarters for any use permitted in this Code, provided that the offices occupy at least 20,000 square feet and that no manufacturing is conducted where not otherwise permitted in this chapter.

~~(3)(14)~~ Electrical substation.

~~(4)(3)~~ Food and beverage product processing and packaging.

~~(5)(11)~~ Greenways and Natural Areas, including but not limited to bike and pedestrian paths and interpretive stations.

~~(6)(2)~~ Manufacture, assembly and production uses except the uses and activities listed as prohibited in TDC 64.040:

~~(7)~~ Marijuana facility, subject to the provisions in TDC Chapter 80.

~~(8)(4)~~ Metal fabrication (light to medium) (of unfinished or semi-finished metals).

~~(9)(5)~~ Molding of products from plastic and ceramic materials.

~~(10)(15)~~ Natural gas pumping station.

~~(11)(8)~~ Offices when part of a manufacturing use as listed in subsections (4) through (7) above (4), (6), (8), (9), (13), (16), and (19) of this section.

~~(12)(19)~~ Other uses of similar character, when found by the Community Development Director to meet the purpose of this district, as provided in TDC 31.070.

~~(13)(6)~~ Printing and publishing.

~~(14)(10)~~ Private parking lot improved and landscaped in accordance with TDC Chapter 73.

~~(15)(13)~~ Public works shop and storage yard.

~~(16)(4)~~ Research and development offices and laboratories for chemical, engineering, and physical sciences; medical and pharmaceutical products; alternative energy production from sources such as solar and wind; industrial products and consumer products.

~~(17)(12)~~ Sewer and Water Pump Station, Pressure Reading Station. Water Reservoir.

~~(18)~~(17) Transportation Facilities and Improvements.

~~(19)~~(7) Warehousing related to the above uses in subsections (4), (6), (8), (9), (13), and (16) of this section.

~~(20)~~(46) Wireless communication facility attached.

Section 7. TDC 64.021 is amended to read as follows:

Section 64.021 Restrictions on Permitted Uses.

The following restrictions shall apply to those uses listed as permitted uses in TDC 64.020.

(1) The use must be conducted wholly within a completely enclosed building, except off-street parking and loading, utility facilities, wireless communication facilities, outdoor storage of materials and products directly related to the permitted use.

(2) The retail sale of products manufactured, assembled, packaged or wholesaled on the site is allowed provided that the retail sale area, including the showroom area, shall be no greater than 5% of the gross floor area of the building not to exceed 1,500 square feet.

(3) Marijuana facilities are subject to the provisions in TDC Chapter 80. To the extent there is a conflict between the provisions in this Chapter and the provisions in TDC Chapter 80, the provisions in TDC Chapter 80 apply.

Section 8. TDC Chapter 80 is added to the Tualatin Development Code as follows:

Section 80.010 Purpose. The purpose of this chapter is to:

(1) Protect the general health, safety, property, and welfare of the public;

(2) Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with State law, with the need to minimize adverse impacts to nearby properties that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;

(3) Prevent or reduce criminal activity that may result in harm to persons or property;

(4) Prevent or reduce diversion of State-licensed marijuana and marijuana derivatives to minors; and

(5) Minimize impacts to the City's public safety services by reducing calls for service.

Section 80.020 Definitions. Unless the context requires otherwise, the following words and phrases mean:

(1) "Marijuana" means all parts of the plant of the 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, and includes both medical and recreational marijuana as defined by Oregon law.

(2) "Marijuana, edible" means edible product that contains marijuana.

(3) "Marijuana extract" means a product obtained by separating resins from the marijuana plant by solvent extraction.

(4) "Marijuana facility" means a commercial or public use or structure where marijuana is produced, processed, wholesaled, retailed, distributed, transferred, sold or consumed and registered with the Oregon Health Authority (OHA) or the Oregon Liquor Control Commission (OLCC).

(5) "Marijuana, homegrown" means marijuana grown or made by a person 21 years of age or older for noncommercial purposes.

Section 80.030 Relationship to Other Standards.

(1) The provisions of this Chapter apply to all marijuana facilities requiring a State license or registration.

(2) The regulations in this Chapter are in addition to other development code standards. Sites with overlay zones, inventoried hazards, and/or sensitive lands are subject to additional regulations. Specific uses or development types may also be subject to regulations set forth elsewhere in the Tualatin Development Code.

(3) To the extent there is a conflict between other provisions in the Tualatin Development Code and the provisions of this Chapter, the provisions in this Chapter apply.

Section 80.050 Planning Districts Where Marijuana Facilities Permitted. Marijuana facilities are permitted in the following planning districts and subject to the other provisions of this Chapter:

(1) Light Manufacturing (ML);

(2) General Manufacturing (MG); and

(3) Manufacturing Business Park (MBP).

Section 80.060 Standards for Marijuana Facilities.

(1) All Marijuana facilities must comply with all applicable State requirements.

(2) A marijuana facility cannot be located within 3,000 feet, measured from the nearest property line, from any:

(a) Residential Planning District or residential uses;

(b) City Park listed below:

- (i) Atfalati Park
- (ii) Brown's Ferry Park
- (iii) Ibach Park
- (iv) Jurgens Park
- (v) Lafky Park
- (vi) Little Woodrose Nature Park
- (vii) Saarinen Wayside Park
- (viii) Stoneridge Park
- (ix) Sweek Pond Natural Area Park
- (x) Tualatin Commons
- (xi) Tualatin Commons Park
- (xii) Tualatin Community Park

(c) School; as defined in Chapter 31 of the Tualatin Development Code;
and

(d) Library.

(3) A marijuana facility cannot be located within 2,000 feet, measured from the nearest property line, of any other marijuana facility.

(4) A marijuana facility cannot exceed 3,000 square feet in size.

(5) A marijuana facility must be located in a permanent building and may not be located in a trailer, shipping container, cargo container, tent, motor vehicle, or other non-permanent structure.

(6) A marijuana facility that is a retail sales or medical dispensary marijuana facility is prohibited from co-locating with any other marijuana facility.

(7) Drive-through marijuana facilities are prohibited.

Section 80.070 Marijuana Facility Operating Restrictions.

(1) Retail sales and medical dispensary marijuana facilities are restricted to the following operating hours:

(a) The hours of operation that a retail sales marijuana facility may be open to the public is between 10:00 a.m. and 8:00 p.m. of the same day.

(b) The hours of operation that a medical dispensary marijuana facility may be open to registry identification cardholders is between 10:00 a.m. and 8:00 p.m. of the same day.

(2) All marijuana facilities must comply with the following operating restrictions:

(a) Comply with the restrictions on edible marijuana as provided in TDC 80.100;

(b) All marijuana odors and other objectionable odors must be confined to levels undetectable at the property line;

(c) Primary entrances must be located on street-facing facades and clearly visible from a public or private street; and

(d) Outdoor storage of merchandise, plants, or other materials is prohibited.

Section 80.100 Edible Marijuana. Marijuana facilities that produce, process, wholesale, distribute, transfer, or sell edible marijuana must comply with the following provisions:

(1) All edible marijuana must be individually wrapped at the original point of preparation.

(2) Labeling must be distinctly and clearly legible on the front of the package and must include:

- (a) a warning that the contents contain marijuana;
- (b) a statement that the contents are not a food product; and
- (c) a statement emphasizing that the product is to be kept away from children.

(3) Packaging of edibles must be in child-resistant packaging.

(4) Packaging that makes the product attractive to children or imitates candy is prohibited.

(5) Retail sale of edible marijuana products must be behind a commercial counter or in an enclosed display case.

Section 80.200 Butane Extraction. The production of marijuana extracts through the use of butane is prohibited.

Section 80.300 Homegrown Marijuana.

(1) Persons growing homegrown marijuana must comply with all applicable State law requirements.

(2) Homegrown marijuana cannot be grown in the front yard of any property in a residential planning district and must comply with the following:

(a) Be fully screened from view on all sides; and

(b) Be located at least 10 feet away from all property lines and 25 feet away from all adjacent residences on neighboring properties.

(3) No person may produce, process, keep, or store homemade marijuana extracts.

Section 80.400 Violations.

(1) Any person who violates any provision of this Chapter commits a civil infraction and is subject to a fine of up to \$1,000. Each violation, and each day that a violation continues, is a separate civil infraction.

(2) The civil infraction procedures in Tualatin Municipal Code Chapter 7-01 apply to the prosecution of any violation of this Chapter.

Section 9. The Council adopts as its findings the *Analysis and Findings* set forth in Exhibit 1, which is attached and incorporated by reference.

Section 10. Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance remains in full force and effect.

Adopted by the City Council this 23 Day of March, 2015.

CITY OF TUALATIN, OREGON

BY  _____
Mayor

APPROVED AS TO FORM

BY  _____
City Attorney

ATTEST:

BY  _____
City Recorder

Exhibit 1 to Ordinance 1379-15

PTA-15-01: ANALYSIS AND FINDINGS

MARIJUANA FACILITIES

Plan Text Amendment 15-01 (PTA-15-01) proposed definitions and reasonable time, place and manner restrictions of marijuana facilities by amending the Tualatin Development Code.

Amendments are proposed to the following chapters:

- Chapter 31 General Provisions;
- Chapter 60 Light Manufacturing;
- Chapter 61 General Manufacturing;
- Chapter 64 Manufacturing Business Park;
- Chapter 80 Marijuana Facilities

Background

The City of Tualatin proposes legislative amendments to the Tualatin Development Code (TDC) to establish reasonable time, place and manner regulations for marijuana facilities. Proposed changes include new definitions added to Section 31.060 Definitions; Creating a new Chapter 80 Marijuana Facilities which regulates such aspects as hours of operation, buffer distances from Residential Planning Districts, residential uses, schools, park and libraries, buffers from other facilities and off site odor standards, edible marijuana, butane extraction and homegrown marijuana; adding marijuana facilities as an allowed use in Light and General Manufacturing and the Manufacturing Business Park Planning District (Chapters 60,61 and 64).

The Analysis and Findings presented here pertain only to the Plan Text Amendment proposed to amend language in the Tualatin Development Code.

Plan Amendment Criteria (TDC Section 1.032)

The approval criteria of the Tualatin Development Code (TDC), Section 1.032, must be met if the proposed PTA is to be granted. The plan amendment criteria are addressed below.

1. Granting the amendment is in the public interest.

The State of Oregon has a legislative history dating back to 1998 which has progressively allowed the growing, production, and use of marijuana and marijuana products.

Legislative History

November 1998 - Ballot Measure 67, the Oregon Medical Marijuana Act, was approved by Oregon voters.

August 2013 - The Oregon Health Authority developed a process to register medical marijuana dispensaries under HB 3460.

March 2014 - Senate Bill 1531 reaffirms the existing home rule authority of local governments to adopt reasonable regulations regarding the hours of operation, location, and manner in which medical marijuana dispensaries are operated. Additionally, jurisdictions were allowed to enact a moratorium on dispensaries set to expire May 1, 2015.

April 2014 - The City of Tualatin adopted Ordinance No. 1373-14 which placed a moratorium on medical marijuana facilities until May 1, 2015.

November 2014 - Oregon voters approved Ballot Measure 91 to legalize the use and possession of recreational marijuana on July 1, 2015. Measure 91 creates four types of licenses: producers, processors, wholesalers and retailers. The measure also recognizes that local governments can adopt reasonable time, place and manner regulations of the nuisance aspects of businesses that sell marijuana to consumers.

FINDING: Under Article XI, section 2 of the Oregon Constitution, the City has “home rule” authority to adopt regulations relating to marijuana and marijuana facilities, the time, place and manner regulations. The ability to regulate marijuana facilities was reaffirmed in both SB 1531 and Measure 91.

The current Tualatin Municipal Code (TMC) and Tualatin Development Code (TDC) do not allow marijuana facilities as a use in any planning district. Given the statewide authorization of both medical and recreational marijuana and its related businesses, the lack of regulations causes legal uncertainty about whether and under what circumstances marijuana facilities could be located in the City. City regulations are needed to clarify this uncertainty and establish which planning districts marijuana facilities can be located in and under what restrictions they may operate.

The City hired Riley Research Associates to conduct a Public Opinion Survey among Tualatin residents to gauge their level of support for Marijuana Dispensaries (Attachment 104). While the poll found that a majority of those surveyed supported both medical and recreational dispensaries, the polling also revealed recommendations for time, place and manner regulations.

The City Council has discussed this topic at several meetings over the past year expressing an interest in regulating marijuana uses. In February 2014 and April 2014 the discussion centered around moratoriums on marijuana uses. In August 2014 they received an update on

other Oregon cities' marijuana regulations. Finally, on October 27, 2014, the Council received a briefing on the results from the Public Opinion Survey conducted by Riley Research Associates (Attachment 104).

Based on the laws changing at the State level regarding marijuana uses, the public opinions gathered through a City sponsored research survey and the discussions of elected officials it is in the public's interest to grant this amendment.

Granting the amendment is in the public interest.

Criterion "1" is met.

2. The public interest is best protected by granting the amendment at this time.

FINDING: The City of Tualatin adopted Ordinance No. 1373-14 which created the city-wide moratorium on marijuana facilities. This was authorized by Article XI, section 2 of the Oregon Constitution and SB 1531. The moratorium is set to expire on May 1, 2015 at which time certain marijuana businesses could operate. However, neither the TMC nor TDC allows marijuana facilities as permitted use in any City planning district. Given the statewide authorization of both medical and recreational marijuana and its related businesses, the lack of City regulations causes legal uncertainty about whether and under what circumstances marijuana facilities could be located in the City. City regulations are needed to clarify this uncertainty and establish which planning districts marijuana facilities can be located and under what restrictions they may operate.

In order to implement reasonable time, place and manner regulations when the moratorium ends, the public interest is best protected by granting the amendment at this time.

Granting the amendment at this time best protects the public interest.

Criterion "2" is met.

3. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

The applicable objectives of the Tualatin Community Plan are discussed below:

Chapter 7 Manufacturing Planning Districts

Section 7.040 Manufacturing Planning District Objectives

(2) Light Manufacturing Planning District

Suitable for warehousing, wholesaling and light manufacturing processes that are not hazardous and that do not create undue amounts of noise, dust, odor, vibration, or

smoke. Also suitable, with appropriate restrictions, are the retail sale of products not allowed for sale in General Commercial areas, subject to the Special Commercial Setback from arterial streets and Commercial Services Overlay as generally illustrated in Map 9-5 and specifically set forth in TDC 60.035, and office commercial uses where any portion of a legally created lot is within 60 feet of a CO Planning District boundary.

The following uses within the Light Manufacturing District shall comply with the following size limits established by Metro. Retail sale, retail service and professional service uses shall be no greater than 5,000 square feet of sales or service area per outlet, or not greater than 20,000 square feet of sales or service area for multiple outlets in a single building or in multiple buildings that are part of the same development project...

(3) General Manufacturing Planning District

Suitable for light manufacturing uses and also for a wide range of heavier manufacturing and processing activities. Such areas could be expected to be more unsightly and to have more adverse environmental effects.

(b) The following uses within the General Manufacturing District shall comply with the following size limits established by Metro. Retail sale, retail service and professional service uses shall be no greater than 5,000 square feet of sales or service area per outlet, or not greater than 20,000 square feet of sales or service area for multiple outlets in a single building or in multiple buildings that are part of the same development project.

(4) Manufacturing Business Park Planning District

The purpose of the MBP Planning District is to provide an environment for industrial development consistent with the Southwest Tualatin Concept Plan (accepted by the City in October 2010) and as a Metro-designated Regionally Significant Industrial Area (RSIA) consistent with Metro's Urban Growth Boundary expansion decisions of 2002 and 2004.

The MBP Planning District will be a mix of light industrial and high-tech uses in a corporate campus setting, consistent with MBP Planning District development standards.

FINDING: Marijuana facilities as defined will include commercial or public uses or structures where marijuana is sold, consumed, produced, processed, distributed, or transferred. The retail sale of marijuana is not proposed as a permitted use in General Commercial areas of the City and therefore is suitable for Light Manufacturing, General Manufacturing and Manufacturing Business Park with appropriate restrictions. All remaining types of facilities are appropriate for Light Manufacturing and General Manufacturing such as warehousing, wholesaling or manufacturing processes.

The proposed development standards restrict all marijuana facilities to 3,000 square feet in size and therefore comply with objectives of this Chapter.

Facilities that receive a processor license from the OLCC are businesses that will transform raw marijuana into another product or extract. They are also responsible for packaging and labeling of recreational marijuana. This type of use is not expected to create undue amounts of noise, dust, vibration or smoke; however these facilities may produce an odor and there may be hazardous processes associated with extraction. Proposed development standards require that developments confine all marijuana odors and other objectionable odors to levels undetectable at the property line. Tualatin Valley Fire and Rescue reviews all proposed developments and building permits and therefore will regulate any hazardous processes associated with extraction.

Chapter 10. Community Design

Section 10.020 Design Objectives.

(4) Protect and enhance the City's appeal to tourists and visitors and thus support and stimulate business and industry and promote the desirability of investment and occupancy in business, commercial and industrial properties.

(8) Sustain the comfort, health, tranquility and contentment of residents and attract new residents by reason of the City's favorable environment; and thus promote and protect the peace, health and welfare of the City.

FINDING: The proposed text amendments are intended to protect and enhance the City's appeal to tourists and visitors by providing for additional development standards beyond what is currently required by the Tualatin Development Code in Chapter 73 Design Standards.

These development standards include:

- hours of operations;
- location of primary entrances facing public or private streets;
- location in a permanent building;
- prohibiting outdoor storage;
- prohibiting drive-through facilities;
- buffers from residential land;
- buffers between facilities

Additionally, the proposed text amendments are intended to sustain the comfort, health, tranquility and contentment of residents. Marijuana businesses can have an adverse impact to residential areas. Businesses containing usable marijuana have greater security issues compared with the average business. Additionally, there is concern that marijuana-related businesses can negatively impact neighborhood character due to increased crime, such as the increased potential for robberies and burglaries. In addition, marijuana businesses increase transitory traffic that is not conducive to neighborhoods. Therefore, in order to

sustain the comfort, health, tranquility, and contentment of residents, a large buffer between marijuana facilities and residential areas is necessary. By requiring marijuana facilities to be located at least 3,000 feet from residential areas, the adverse impacts of marijuana facilities are mitigated.

In addition, placing regulations on home grow uses that require plants to be grown 10 feet away from property lines, 25 feet away from residences on neighboring properties and limiting growing to back yards sustains the comfort, health, tranquility and contentment of residents.

The proposed development standards allow the development of marijuana facilities within the City in a manner that is compatible with surrounding land uses and public facilities.

The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

Criterion "3" is met.

4. The following factors were consciously considered:

The various characteristics of the areas in the City.

FINDING: The characteristics of manufacturing and commercial areas were considered in preparation of the text amendments. Medical marijuana facilities are only allowed by state law in commercial, industrial, mixed use, or agricultural land (ORS 475.314). Based on input from the Tualatin Planning Commission and the Tualatin City Council, the downtown area was not recommended as an appropriate location for marijuana facilities given that businesses with usable marijuana have greater security issues and can increase the potential for criminal activity, such as robberies and burglaries. After applying a 3,000 foot buffer to residential areas and excluding commercial planning districts that are found in or near the downtown area, manufacturing planning districts were left as viable opportunities excluding Manufacturing Park (Tualatin Development Code Chapter 62).

Infrastructure such as roads, water lines and sanitary sewer lines in the Manufacturing Park Planning District were built with tax increment financing. The purpose for doing this was to open new lands for employment and industry and over the last 26 years it has accommodated 35 new employers and 2,200 jobs. Therefore, the City strives to maintain this area for high tech or other campus style industrial development.

Based on the above findings, the City finds that the characteristics of the various areas of the City that best suit proposed uses are in the Light and General Manufacturing and Manufacturing Business Park Planning Districts.

The suitability of the area for particular land uses and improvements.

FINDING: Marijuana facilities are suitable to Light, General and Business Park Manufacturing districts because they are typically removed from places where minors congregate such as schools and libraries. These are industrial lands that are deemed appropriate for medical marijuana dispensaries according to ORS 475.314 and the City intends to equally apply regulations to recreational marijuana retailers as defined in Measure 91.

Trends in land improvement and development.

FINDING: As described above in the background statement the State of Oregon has progressively moved toward a legalized status of marijuana possession and facilities. The proposed text amendment is intended to be adaptive to the new marijuana economy as business and property owners try new and unknown business models.

Property Values.

FINDING: The proposed text amendment is intended to create minimum compliance standards to prevent or mitigate potential negative impacts to property values that could result from marijuana related business activity.

The needs of economic enterprises and the future development of the area.

FINDING: As described above, the proposed text amendment is intended to be adaptive to the new marijuana economy as business and property owners try new and unknown business models.

Needed right-of-way and access for and to particular sites in the area.

Not applicable.

Natural resources of the City and the protection and conservation of said resources.

Not applicable.

Prospective requirements for the development of natural resources in the City.

Not applicable.

And the public need for healthful, safe, aesthetic surroundings and conditions.

FINDING: The proposed text amendments are intended to protect the public need for healthful, safe, aesthetic surroundings and conditions. Marijuana businesses can have an

adverse impact to areas. Businesses containing usable marijuana have greater security issues compared with the average business. Additionally, marijuana businesses can result in increased crime, such as the increased potential for robberies and burglaries. By providing for appropriate distance buffers from residential areas and between facility locations in order to prevent or reduce hazards associated with a cash only business, a product with a strong black market value, and the exposure of a controlled product to minors, the text amendment protects the public need for healthful, safe, aesthetic surroundings and conditions.

Proof of change in a neighborhood or area.

FINDING: The City does not assert proof of change in a neighborhood or area.

Mistake in the Plan Text or Plan Map.

FINDING: There is no mistake in the Plan Text or Plan Map.

The above factors were consciously considered.

Criterion "4" is met.

5. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

Because the PTA does not result in a change to plans or development regulations that would impact school facility capacity, Criterion "5" is not applicable.

6. Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

Of the 19 statewide planning goals, staff determined three Goals are applicable.

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

FINDING: This goal will be met by complying with Tualatin Development Code 1.031 Notice Requirements for Plan Amendments. A notice was published in the Tualatin Times 10 City business days prior to the public hearing. Notices were posted in two conspicuous places within the City and a notice was sent to designated representatives of recognized Citizen Involvement Organizations.

The Tualatin Planning Commission held a public meeting on February 19, 2015. This public meeting gave citizens and members of the public an opportunity to comment on the proposed

text and the Planning Commission considered these comments when making a recommendation to the City Council. A public hearing before the City Council will occur tonight (March 9, 2015), during which the public can give input on the proposed amendment. All work session agendas and minutes are available to the public through the City website.

The City sought input from the public in the form of a public opinion survey the results of which were presented to the City Council during a work session on October 27, 2014.

This Goal is satisfied.

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

The Department of Land Conservation and Development (DLCD) has acknowledged the City’s Comprehensive Plan as being consistent with the statewide planning goals. The Development Code implements the Community Plan and both pieces combine to make the Comprehensive Plan. The Community Plan establishes a process and standards to review changes to the Tualatin Development Code in compliance with the Community Plan and other applicable state requirements. As discussed above under Criteria “3”, the applicable Community Plan standards have been applied to the proposed amendment.

This Goal is satisfied

Goal 6, “Air, Water, and Land Resources Quality”, states, “To maintain and improve the quality of the air, water and land resources of the state.

The Department of Land Conservation and Development (DLCD) has acknowledged the City’s Comprehensive Plan as being consistent with the statewide planning goals. The proposed text amendments create a development standard that will buffer land uses and prevent or mitigate off-site impacts that could lead to conflicting impacts upon air resources.

This Goal is satisfied

Article XI, Section 2 of the Oregon Constitution.

The City of Tualatin has “home rule” authority over the civil affairs of its City. The City’s regulations of marijuana business are consistent with this home rule authority, as well as state land use laws.

Applicable Provisions of the Oregon Medical Marijuana Act

Initially adopted by State ballot measure in 1998, the Oregon Medical Marijuana Act (ORS 475) governs the production, distribution, and use of medical marijuana within the State of

Oregon. In March 2014, the Oregon Legislature amended ORS 475 under Senate Bill 1531 which restates the already existing ability of local governments to impose reasonable regulations on the operation of medical marijuana facilities under home rule authority.

SECTION 2. Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, “reasonable regulations” includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

FINDING: 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. Senate Bill 1531 does not define “reasonable” therefore the City has relied on existing regulations in the Tualatin Development Code and proposed regulations from other cities and counties in the state. The proposed amendments allow facilities in three manufacturing zones located in the western portion of the City. Proposed language is included as Attachment 102 and a map with 3,000 foot buffers from residential districts is included as Attachment 101.

Based on the findings above, the City finds that the proposed text amendment is consistent with the Oregon Medical Marijuana Act.

Applicable Provisions of the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (Measure 91)

On November 4, 2014 Oregon voters approved ballot Measure 91 (Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act) to legalize the use and possession of recreational marijuana on July 1, 2015. The law also directs the Oregon Liquor Control Commission to tax, license, and regulate recreational marijuana. Section 59 of the act specifically authorizes local governments seeking to impose reasonable time, place, and manner restrictions in order to address adverse community impacts.

SECTION 59. Authority of cities and counties over establishments that serve marijuana. (1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.

FINDING: 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. The City regulations are consistent with existing reasonable regulations in the Tualatin Development Code and reasonable regulations relating to marijuana, including regulations from other cities and counties in the state. The proposed amendments allow facilities in three manufacturing zones located in the western portion of the City. Proposed language is included as Attachment 102 and a map with 3,000 foot buffers from residential districts is included as Attachment 101.

As described below and in the purpose statement of the proposed text, the intent of proposed amendments is to prevent or mitigate possible adverse community impacts associated with marijuana facilities. These include but are not limited to the following:

- (1) Protect the general health, safety, property, and welfare of the public;
- (2) Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby properties that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
- (3) Prevent or reduce criminal activity that may result in harm to persons or property;
- (4) Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
- (5) Minimize impacts to the City's public safety services by reducing calls for service.

Based on the findings above, the City finds that the proposed code text amendment is consistent with Measure 91 (Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act).

Ballot Measure 56 Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost. (ORS 227.186)

Section (3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause a written individual notice of a land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

Section (4) At least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

- (9) For purposes of this section, property is rezoned when the city:**
- (a) Changes the base zoning classification of the property; or**
 - (b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.**

FINDING: Measure 56 requires local jurisdictions to notify property owners when a change to a comprehensive plan or zoning ordinance could result in a rezone of property. As stated above, ORS 227.186 (9) defines rezone as a change to the base zoning classification or a change that limits or prohibits previously allowed land uses. The proposed amendments in this application will not change the base zoning classification of any properties. The City of Tualatin does not have a zoning ordinance but instead relies on Planning Districts to implement land use. No Planning Districts are proposed to change as a result of these amendments. Additionally, the proposed amendments do not limit or prohibit currently allowed land uses. Marijuana facilities and marijuana uses are currently not permitted in any Planning District (see, e.g., Tualatin Municipal Code Chapter 9-08). The amendments will actually create new permitted uses in three existing Planning Districts: Light Manufacturing, General Manufacturing and Manufacturing Business Park.

Based on the findings above, the City finds that the proposed amendments will not change the base zoning or limit or prohibit currently or previously allowed land uses in the affected Planning Districts and therefore a Measure 56 notice is not required.

The PTA complies with Goals 1, 2 and 6, and it complies with the Oregon Medical Marijuana Act, Measure 91 and Measure 56. Criterion “6” is met.

7. Granting the amendment is consistent with the Metropolitan Service District’s Urban Growth Management Functional Plan.

Title 4: Industrial and Other Employment Areas

3.07.430 Protection of Industrial Areas

Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit new buildings for retail commercial uses—such as stores and restaurants—and retail and professional services that cater to daily customers—such as financial, insurance, real estate, legal, medical and dental offices—in order to ensure that they serve primarily the needs of workers in the area. One such measure shall be that new buildings for stores, branches, agencies or other outlets for these retail uses and services shall not occupy more than 5,000 square feet of sales or service area in a single outlet, or multiple outlets that occupy more than 20,000 square feet of sales or service area in a single building or in multiple buildings that are part of the same development project, with the following exceptions:

- 1. Within the boundaries of a public use airport subject to a facilities master plan, customary airport uses, uses that are accessory to the travel-related and freight movement activities of airports, hospitality uses, and retail uses appropriate to serve the needs of the traveling public; and**
- 2. Training facilities whose primary purpose is to provide training to meet industrial needs.**

FINDING: The Oregon Medical Marijuana Act, ORS 475.314, requires medical marijuana facilities to locate in land zoned for commercial, industrial, mixed-use, or agricultural land. The City's proposed amendments require a 3,000 foot buffer from residential Planning Districts. This buffer eliminates the ability for marijuana facilities to locate in commercial Planning Districts, and the City does not have agricultural land use designations. The remaining land that is eligible for marijuana facilities as shown on Metro's Employment and Industrial Areas Map as of January 8, 2014, is Industrial Area.

We believe it is acceptable to locate marijuana facilities on land identified by Metro as Industrial for the following reasons:

1. The proposed amendment limits the size of each facility to 3,000 square feet which is below the 5,000 square foot limitation in Metro Code 3.07.430. Additionally, the Oregon Medical Marijuana Act and the City's proposed amendments prohibit co-location of retail and grow sites which means that at no time could there be more than 3,000 square feet of any type of facility on a parcel of land identified as Industrial Area.
2. The proposed amendments also establish a minimum distance of 2,000 feet between marijuana facilities which also limits the possibility of too much industrial land being converted to a retail use.
3. The proposed amendments define marijuana facilities as "a commercial or public use or structure where marijuana is produced, processed, wholesaled, retailed, distributed, transferred, sold or consumed and registered with the Oregon Health Authority (OHA) or the Oregon Liquor Control Commission (OLCC)." It is possible that not all marijuana facilities will be retail and some may be manufacturing uses that fit in a traditional industrial area.

Based on the above findings, the City finds that the proposed amendments continue to protect land identified as industrial by Metro for industrial and employment purposes, and therefore, the amendments comply with Title 4 Industrial and Other Employment Areas.

The PTA complies with Metro's Urban Growth Management Functional Plan. Criterion "7" is met.

8. Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

Because the PTA does not relate to vehicle trip generation, Criterion "8" is not applicable.