



November 9, 2020

**Analysis and Findings for
PTA 20 -0006**

Project: Chapter 80 – Cannabis Facilities Update
Applicant: City of Tualatin

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I. INTRODUCTION

A. Applicable Criteria

Applicable Statewide Planning Goals; Divisions 9 and 12 of the Oregon Administrative Rules; applicable Goals and Policies from the City of Tualatin Comprehensive Plan; applicable Sections of the City of Tualatin Development Code, including Section 33.070 (Plan Amendments).

B. Project Description

Under Article XI, section 2 of the Oregon Constitution, the City has “home rule” authority to adopt regulations relating to cannabis and cannabis facilities. The Tualatin Development Code (TDC) contains time, place, and manner restrictions on cannabis facilities in Chapter 80, established by Ordinance 1379-15. Presently, such facilities are limited to the Light Manufacturing (ML), General Manufacturing (MG), and Manufacturing Business Park (MBP) planning districts.

The scope of the proposed legislative amendments include:

- Replacing reference to the term “marijuana” with the term “cannabis”;
- Allowing retail cannabis businesses to locate in certain commercial zones;
- Reducing the required minimum separation distance from 3,000 to 1,000 feet between cannabis business and: schools, libraries, parks, and residential zoning district;
- Reducing the required maximum separation distance from 2,000 to 1,000 feet between one cannabis business and another; and
- Removing facility size limitation on cannabis business.

City staff held an informational webinar on September 16, 2020 with community members to discuss the potential changes to cannabis regulations, solicit input, and answer questions. The presentation, community input, and questions and answers are provided herein as attachments.

C. Exhibit List

1. Webinar presentation
2. Community Input Received
3. Chapter 80 questions and answers

II. FINDINGS

A. Oregon Statewide Planning Goals

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.

Finding:

Legislative amendments are subject to the public notification requirements specified in TDC 32.250, which include newspaper notice of the City Council hearing. Citizen involvement efforts specific to this application include an informational webinar held on September 16, 2020, social media engagement, and a public meeting held by the Tualatin Planning Commission on October 15, 2020. Additionally, interested parties were informed that public testimony may be received during the City Council hearing scheduled for the subject text amendment PTA 20-0006 on November 9, 2020. Council member will receive community input, as well as the webinar related questions and answers in their hearing packet. Each form of engagement is described in detail below.

Informational Webinar:

City staff engaged Tualatin residents, stakeholders wishing to stay up-to-date on cannabis regulation, Community Involvement Organizations (CIOs), Western Oregon Dispensary, and Tualatin Together to solicit comments and invite participation in the informational webinar by e-blast and social media updates. Interested parties were asked to submit questions ahead of the webinar, so that responses could be addressed during the presentation. Staff also answered additional questions raised during the webinar. The presentation, community input, and questions and answers are provided as Attachments 1-3.

Social Media:

Media related to cannabis regulation and the informational webinar were posted to the City of Tualatin's Facebook, Instagram, and Twitter pages on September 3, 6, 11, 15, and 22, 2020. Public comments received as part of this effort have been shared in Attachment 2.

Planning Commission Meeting:

A virtual public meeting was held on October 15, 2020 to comply with social distance efforts mandated by Executive Order 20-12. The zoom meeting was posted to the City of Tualatin's website and open to the public. The Tualatin Planning Commission serves as the committee for citizen involvement in the Land Conservation and Development Commission planning process. They review, advise, and make recommendations to City Council on matters affecting land use planning. A recommendation for the City Council to amend the subject PTA 20-0006 to remove commercial zoning districts was made at this meeting. No public commentary was received.

Public Notice:

The Oregon Department of Land Conservation and Development (DLCD) was notified of subject amendments on October 2, 2020 in accordance with the minimum number of days required by ORS Chapter 197. A Notice of Hearing was emailed to identified stakeholders, CIOs, and the school district on

October __. The Notice of Hearing was also published in the Tualatin Times and posted on two City property locations on October 22, 2020.

The proposed amendments conform to Goal 1.

Goal 2 – Land Use Planning

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.

[...]

Finding:

The Department of Land Conservation and Development (DLCD) has acknowledged the City's Comprehensive Plan as being consistent with the statewide land use planning goals. The Development Code implements the Community Plan; with legislative amendments subject to the Type IV-B process addressed in Chapter 32.250. This process requires that DLCD receive notice of the subject amendments, in accordance with ORS Chapter 197. DLCD was noticed on October 2, 2020. The proposed amendments conform to Goal 2.

Goal 9 – Economy of the State

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

[...]

Finding:

The proposed amendments would expand the areas in which cannabis businesses in Tualatin can operate, thus providing additional economic opportunities. The proposed amendments conform to Goal 9.

B. Oregon Revised Statutes

ORS Chapter 475B Cannabis Regulations

[...]

475B.486 Local time, place and manner regulations.

(1) For purposes of this section, "reasonable regulations" includes:

- (a) Reasonable conditions on the manner in which a marijuana producer that holds a license issued under ORS 475B.070 may produce marijuana or in which a researcher of cannabis that holds a certificate issued under ORS 475B.286 may produce marijuana or propagate immature marijuana plants;**
- (b) Reasonable conditions on the manner in which a marijuana processor that holds a license issued under ORS 475B.090 may process marijuana or in which a researcher of cannabis that holds a certificate issued under ORS 475B.286 may process marijuana;**
- (c) Reasonable conditions on the manner in which a marijuana wholesaler that holds a license issued under ORS 475B.100 may sell marijuana at wholesale;**
- (d) Reasonable conditions on the manner in which a marijuana retailer that holds a license issued under ORS 475B.105 may sell marijuana items;**
- (e) Reasonable limitations on the hours during which a premises for which a license has been issued under ORS 475B.010 to 475B.545 may operate;**

- (f) Reasonable requirements related to the public’s access to a premises for which a license or certificate has been issued under ORS 475B.010 to 475B.545; and
 - (g) Reasonable limitations on where a premises for which a license or certificate may be issued under ORS 475B.010 to 475B.545 may be located.
- (2) Notwithstanding ORS 30.935, 215.253 (1) or 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license or certificate has been issued under ORS 475B.010 to 475B.545 if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not:
- (a) Adopt an ordinance that prohibits a premises for which a license has been issued under ORS 475B.105 from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under ORS 475B.105.
 - (b) Adopt an ordinance that imposes a setback requirement for an agricultural building used to produce marijuana located on a premises for which a license has been issued under ORS 475B.070 if the agricultural building:
 - (A) Was constructed on or before July 1, 2015, in compliance with all applicable land use and building code requirements at the time of construction;
 - (B) Is located at an address where a marijuana grow site first registered with the Oregon Health Authority under ORS 475B.810 on or before January 1, 2015;
 - (C) Was used to produce marijuana pursuant to the provisions of ORS 475B.785 to 475B.949 on or before January 1, 2015; and
 - (D) Has four opaque walls and a roof. [Formerly 475B.340]

Finding:

Ordinance 1379-15, adopted in 2015, established what were deemed to be reasonable restrictions on hours of operation, allowed locations, and design and operational requirements. These restrictions are implemented through Chapter 80 of the Tualatin Development Code, which was established by Ordinance 1379-15. The proposed amendments, which, consistent with ORS 475B, would expand the existing time, place, and manner regulations of Chapter 80 in a way that continues to be reasonable, as well as align the maximum separation distance between cannabis facilities to be compliant with state law. Therefore, the proposed amendments conform to ORS 475B.

E. Tualatin Development Code

Chapter 33: Applications and Approval Criteria

Section 33.070 Plan Amendments

[...]

(2) **Applicability.** [...] Legislative amendments may only be initiated by the City Council.

(3) **Procedure Type.**

(b) **Map or text amendment applications which are legislative in nature are subject to Type IV-B Review in accordance with TDC Chapter 32.**

Finding:

The proposed text and map amendments are legislative in nature and will be processed consistent with the Type IV-B procedures in Chapter 32. City Council directed staff to proceed with the subject

amendments at its September 28, 2020 work session. A pre-adoption noticed was filed with DLCD on October 2, 2020, 38 days before the scheduled hearing. Notice was also published in *The Times* on October 22, 2020, at least 14 calendar days before the hearing. This criterion is met.

[...]

(5) Approval Criteria.

(a) Granting the amendment is in the public interest.

Finding:

Under Article XI, section 2 of the Oregon Constitution, the City has “home rule” authority to adopt regulations relating to cannabis and cannabis facilities. The Tualatin Development Code (TDC) contains time, place, and manner restrictions on cannabis facilities in Chapter 80, established by Ordinance 1379-15. The proposed amendments have been made at the direction of Council and are based on input from the community, and therefore, it is in the public’s interest to grant this amendment. This criterion is met.

(b) The public interest is best protected by granting the amendment at this time.

Finding:

As stated in previous findings, the proposed amendments are in the public interest. The Tualatin City Council has determined, based on input from the community, that this public interest is best protected by granting the proposed amendments at this time. This criterion is met.

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

Finding:

Below is a summary of how the proposed amendments conform to applicable objectives of the Tualatin Community Plan:

- Chapter 6 speaks to Commercial Planning Objectives: provide increased employment opportunities and provide shopping opportunities for surrounding communities. The proposed amendments would allow opportunities for cannabis businesses in additional areas of Tualatin, including retail sales in many of Tualatin’s commercial planning districts, which will in turn, support increased employment opportunities as well as shopping opportunities.
- Chapter 10 speaks to Community Design Objectives: 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. The proposed amendments support expansion of business types offered in Tualatin’s commercial districts.

Therefore the proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan. This criterion is met.

(d) The following factors were consciously considered:

(i) The various characteristics of the areas in the City;

Finding:

The proposed amendments have been made at the direction of Council and are based on input from the community. The proposed regulations limit cannabis facilities to certain industrial zones, and in the case of retail cannabis businesses, certain commercial zones additionally. Industrial and commercial zones are characteristically zones in which business uses are allowed. Allowing cannabis businesses in residential zones is not permitted by state law. The proposed amendments would require a 1000 foot buffer from residential zones, parks, libraries, and schools (as required by state law), thus acting to preserve the characteristics of these non-businesses uses in different areas of the City, while at the same time providing areas in which cannabis businesses can be sited. Together, these restrictions demonstrate conscious consideration for the various characteristics of the areas in the City. This criterion is met.

(ii) The suitability of the areas for particular land uses and improvements in the areas;

Finding:

The proposed amendments would allow cannabis retailers in the following commercial zoning districts: Office Commercial (CO), Neighborhood Commercial (CN), Recreation Commercial (CR), General Commercial (CG), Mid Rise/Office Commercial (CO/MR), Medical Center (MC), and Mixed Use Commercial (MUC). The retail sales of goods are common in commercial districts and appropriate in these areas. The proposed amendments would also allow cannabis businesses industrial zoning districts. Sales, storage, distribution, and production are common in industrial zoning districts and appropriate in these areas. Further requirements to limit the siting of cannabis facilities within 1,000 feet of schools, parks, libraries, and residential districts would further ensure that such uses are located in areas of Tualatin that are suitable. This criterion is met.

(iii) Trends in land improvement and development;

Finding:

The proposed text amendments would provide the opportunity for additional locations for the siting of cannabis facilities. This criterion is met.

(iv) Property values;

Finding:

The proposed text amendments would provide the opportunity for additional locations for the siting of cannabis facilities. The actual siting of such businesses would be left up to individual private property owners, and therefore, allowing these uses in additional locations would not impact property values. This criterion is met.

(v) The needs of economic enterprises and the future development of the area; needed right-of-way and access for and to particular sites in the area;

Finding:

The proposed amendments do not impact right-of-way or access requirements. This criterion is not applicable.

(vi) Natural resources of the City and the protection and conservation of said resources;

Finding:

The proposed amendments do not impact requirements for natural resource protection or conservation. This criterion is not applicable.

(vii) Prospective requirements for the development of natural resources in the City;

Finding:

The proposed amendments do not impact requirements for development of natural resources in the City. This criterion is not applicable.

(viii) The public need for healthful, safe, esthetic surroundings and conditions; and

Finding:

The proposed amendments are presented as reasonable time, place, and manner regulations on cannabis facilities, and are intended to, through the application of these regulations, balance siting of said facilities with the public need for healthful, safe, aesthetic surroundings and conditions. This criterion is met.

(ix) Proof of change in a neighborhood or area, or a mistake in the Plan Text or Plan Map for the property under consideration are additional relevant factors to consider.

Finding:

The proposed amendments are not due to change in a specific neighborhood or area nor are they the result of a mistake in the Tualatin Community Plan or Development Code. This criterion is met.

(e) If the amendment involves residential uses, then the appropriate school district or districts must be able to reasonably accommodate additional residential capacity by means determined by any affected school district.

Finding:

The proposed amendments do not involve residential uses. This criterion is not applicable.

(f) Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules, including compliance with the Transportation Planning Rule TPR (OAR 660-012-0060).

Finding:

Findings addressing the applicable Oregon Statewide Planning Goals were included earlier in this document. Additionally, the proposed amendments will not impact an existing or proposed transportation facility or affect the Transportation Planning Rule. This criterion is met.

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

Finding:

The proposed amendments will remain consistent with Titles 1-14 of the Metro Urban Growth Management Functional Plan as addressed below:

Title 1 – Housing Capacity: *requires a city or county maintain or increase its housing capacity*
The proposed amendments will not impact housing capacity. This title does not apply.

Title 2 – Regional Parking Policy: *repealed*

Title 3 – Water Quality and Flood Management: *protects Water Quality and Flood Management Areas*
Water Quality and Flood Management are addressed in Tualatin Development Code Chapters 70, 71, and 74. No amendments are proposed to these chapters. This title does not apply.

Title 4 – Industrial and Other Employment Areas: *promotes "clustering" of industries that operate more productively and efficiently when in proximity to each other*
Cannabis facilities are currently permitted in the Light Manufacturing (ML), General Manufacturing (MG), and Manufacturing Business Park (MBP) zones and will remain in compliance with this title.

Title 5 - Neighbor Cities and Rural Reserves: *repealed*

Title 6 – Centers, Corridors, Station Communities and Main Streets: *enhancements of these areas as principal centers of urban life via actions and investments*
The proposed amendments will not affect the Central Commercial (CC) planning district, or Tualatin’s downtown core- being the principal center of Tualatin urban life. This title does not apply.

Title 7 – Housing Choice: *implements policies regarding establishment of voluntary affordable housing production goals to be adopted by local governments*
The proposed amendments will not affect housing choice. This title does not apply.

Title 8 – Compliance Procedures: *ensures all cities & counties are equitably held to the same standards*
Tualatin continues to partner with Metro to comply with the Functional Plan. Amendments were shared and posted with DLCD on October 2, 2020- 38 days before the scheduled hearing.

Title 9 – Performance Measures: *repealed*

Title 10 – Definitions

Title 11 – Planning for New Urban Areas: guides planning of areas brought into the UGB

The proposed amendments will not affect current regulation for land eligible for annexation into the City of Tualatin. Cannabis facilities are currently a permitted use for Manufacturing Business Park eligible land in Tualatin’s Planning Area Boundary (located along the southwest city boundary). This title does not apply.

Title 12 – Protection of Residential Neighborhoods: protects existing residential neighborhoods from pollution, noise, crime, and provides adequate levels of public services

The proposed amendments would continue to prohibit cannabis facilities from locating in residential zones, as well as providing a 1,000 foot buffer between such uses and residential zones.

Title 13 – Nature in Neighborhoods: conserves, protects and restores a continuous ecologically viable streamside corridor system integrated with upland wildlife habitat and the urban landscape

Natural resources are addressed in Chapter 72 of the Tualatin Development Code. No amendments to this chapter are proposed under this application. This title does not apply.

Title 14 – Urban Growth Boundary: prescribes criteria and procedures for amendments to the UGB

No amendments are proposed to the UGB under this application. This title does not apply.

- (h) 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.**

Finding:

The proposed amendments will not impact an existing or proposed transportation facility, nor affect vehicle trip generation. This criterion does not apply.

- (i) Granting the amendment is consistent with the objectives and policies regarding potable water, sanitary sewer, and surface water management pursuant to TDC 12.020, water management issues are adequately addressed during development or redevelopment anticipated to follow the granting of a plan amendment.**

[...]

Finding:

The City of Tualatin is presently served with utilities such as potable water, sanitary sewer, and stormwater management. The proposed amendments will not impact public utility facility policies. Any development action to support cannabis facilities will require a land use application, at which time compliance with objectives and policies pertaining to these issues would be addressed in greater detail. This criterion is met.