



UNOFFICIAL

Tualatin Planning Commission

MINUTES OF October 15, 2020

TPC MEMBERS PRESENT:

William Beers, Chair
Mona St. Clair, Vice Chair
Commissioner Alan Aplin
Commissioner Janelle Thompson
Commissioner Daniel Bachhuber
Commissioner Ursula Kuhn
Commissioner Mitch Greene

STAFF PRESENT

Steve Koper
Tabitha Boschetti
Erin Engman

1. CALL TO ORDER AND ROLL CALL:

Chair Beers called the meeting to order 6:30 PM and reviewed the agenda. Roll call was taken.

2. ANNOUNCEMENTS AND PLANNING COMMISSION COMMUNICATION

None.

3. REVIEW OF MINUTES:

Chair Beers asked for approval of the TPC minutes dated September 17, 2020. MOTION by Commissioner Aplin. SECONDED by Commissioner Thompson to approve the minutes as amended. MOTION PASSED 7-0.

4. ACTION ITEMS

Cannabis Code Update Plan Text Amendment Recommendation (PTA 20-0003)

Chair Beer presented the item noting that the Planning Commission is being asked to make a recommendation to Council on draft amendments to Chapter 80 - Cannabis Regulations of the TDC. The proposed text amendments can be found in the packet.

Erin Engman, Associate Planner, presented the staff report on the draft amendments. Ms. Engman reiterated that the discussion would be regarding updates to Chapter 80 of the TDC. Ms. Engman provided an overview of the presentation which included

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background, the proposed text amendment, and concluded with a recommendation for the Planning Commission.

The background on this item is that marijuana business were legalized in the State of Oregon in 2014. In 2015, Tualatin adopted regulations that limited cannabis facilities to industrial zones, and imposed buffers that further restricted the cannabis facilities to a small section on the west industrial side of the city.

Ms. Engman noted that the proposed amendments were made based on direction from the City Council, which included verbal community input. Before providing this direction, the City Council directed staff to brief the community and solicit some input on the proposed changes. Staff held a webinar on September 16th to discuss these changes with interested citizens and to answer their questions. Since this time, staff has received a handful of comments, largely against the changes being examined tonight, and in contrast to the verbal input received by Council. Ms. Engman noted that this discrepancy may stem from a perceived stigma of supporting cannabis on the record.

Ms. Engman presented a slide that showed the areas in which cannabis facilities are currently allowed, noting that they are limited to a small portion of western industrial Tualatin – a triangular shaped area north of Tualatin-Sherwood Road. Ms. Engman further explained that some of the changes that Council directed staff to look into were to allow cannabis facilities in some commercial zones. The plan text amendment is looking to expand retail cannabis sales to Office Commercial, Neighborhood Commercial, Recreation Commercial, General Commercial, Mid-Rise Office Commercial, Commercial Medical Center, and Mixed Use Commercial districts.

Ms. Engman noted that the Council also wanted to look at decreasing some of the buffers. The proposed buffers parks, residential zones, schools and libraries are now being examined at 1,000 feet whereas currently they're 3,000 feet. Further, the buffer between cannabis facilities themselves would be decreased from 2,000 feet to 1,000 feet. Lastly, the Council wanted to look at removing limitations on facility size. Currently, they are capped at 3000 square feet. With the proposed amendments, it would allow a bit more opportunity for siting of cannabis facilities and for dispensaries, particularly in the “antler” area in the north part of Tualatin, near Bridgeport Village and on the eastern side of I-5 along our border with Lake Oswego. The location for other uses allowed in the industrial zones around Tualatin-Sherwood Road would expand quite considerably.

Ms. Engman concluded her presentation by stating that based on the direction received by Council, staff is asking the Planning Commission to recommend approval of the proposed amendments. Ms. Engman noted that the Commission may alternatively forward a recommendation of approval with additional changes or recommendation of denial.

Chair Beers asked where or not any neighboring jurisdictions have restrictions that would impact a mirror of potential cannabis business in Tualatin.

Ms. Engman replied that staff had not conducted a comparative analysis at this time and offered to provide additional research.

Chair Beers suggested that we probably need that, or the Council will so as to get a full picture.

Steve Koper, Assistant Community Development Director, asked Chair Beers to clarify or expand on that question a little more, so that staff can understand what information is being sought.

Chair Beers responded that looking on the north area of Tualatin, do any neighboring jurisdictions have any rules right now about buffer zones for cannabis facilities that would be beyond their own borders? Chair Beers and the planning staff discussed whether or not other jurisdictions can regulate the location of cannabis businesses and came to the tentative conclusion that other jurisdictions cannot regulate land uses outside of their own borders.

Commissioner Aplin asked whether the proposed amendments would apply in Basalt Creek where there are properties that are outside of the City but could potentially be annexed.

Mr. Koper responded the red buffers that are shown that end up landing outside of city limits are just for illustrative purposes and don't have any regulatory effects beyond our city. As to Basalt Creek, there is a small area in the Business Park zoning that isn't currently buffered and could potentially allow facilities, once the property is annexed to the City.

Commissioner Thompson asked about the public comments and why was this topic brought up by the Council given that the public comments and input that were shared with the Planning Commission were mostly against the proposed changes.

Ms. Engman responded that her understanding is that the City Council had been approached by various people representing dispensaries, and possibly citizens who were in support.

Mr. Koper added that Council directed staff to relook at this topic, and they appear to be in favor of it. In the most recent work session with the Council, several Councilors indicated that they've had discussions with people that haven't necessarily resulted in testimony. Overall they believe that there is support in the community for the reduction of the buffers. Mr. Koper added that Commissioner Thompson's observation that there is not facial support for the amendments is accurate.

Commissioner Green noted that he had attended a City Council in January or February in which a lobbyist had requested that the City Council to reduce the limits. Commissioner Green believed that the lobbyist may have they threatened lawsuits, or implied lawsuits if the regulations did not change and expressed concern that this may have been driving the proposed changes.

Mr. Koper stated that he could not guess or speculate on exactly what is driving the changes, but that may have been raised as a possibility – if a city's restrictions are so limited, that they effectively don't allow the use then there is the potential opening for a lawsuit. That would ultimately be a question for the City Attorney to advise the Council on of whether or not they think that would materialize. What we've heard, is that there are several members of the Council that appear to support reducing the buffers for other reasons not related to that potential.

Commissioner Thompson stated that she had done some of her own research and that it appears that Lake Oswego and Wilsonville have both banned cannabis and thus they don't have any regulations. Commissioner Thompson expressed hesitation to recommend changes based on concerns around a potential lawsuit when there is no evidence that there was a potential for one.

Commissioner Bachhuber asked whether the current code is in compliance with state law.

Mr. Koper responded that the only regulation that was not current in compliance is the separation buffer between facilities. Tualatin's current code requires 2,000 feet, so facilities can't be closer than 2,000 feet from each other, whereas state law imposes a maximum of 1,000. So Tualatin's buffer can't be any great than 1,000 feet. The proposed amendments include an amendment that would bring our code into compliance.

Commissioner Green asked to clarify that the state regulations set minimum guidelines, but the local municipalities are, are allowed to increase it.

Mr. Koper responded that with the exception of the maximum distance between facilities, that is true, and that the state has a minimum distance of 1,000 feet from schools, but everything else is essentially open for individual jurisdictions to regulate as they see fit.

Commissioner Aplin asked for clarification on the term facility and whether that means both dispensary and the growing and that there's no distinction between what a facility is.

Ms. Engman referenced the Development Code's definition which state that a cannabis

facility means that commercial or public use or structure where cannabis is produced, processed, wholesaled, retailed, distributed, transferred, sold or consumed and registered with the Oregon Health Authority or the Oregon Liquor Control Commission. Ms. Engman noted that the way the code is written, the industrialized processing would be limited to the industrial zones, and then retail sales would be open to the commercial zones and industrial zones.

Chair Beers asked staff for an example of a current location of Neighborhood Commercial zoning.

Ms. Engman indicated that we have land designated as such in the Basalt Creek area but that the zone is a placeholder.

Mr. Koper clarified that the part of the Basalt Creek area that is zoned Neighborhood Commercial is adjacent to the Horizon School and would not allow cannabis businesses due to the 1,000 foot buffer from residential areas and schools.

Commissioner Aplin noted that he appreciated Chair Beers' inclusion of the 2015 Planning Commission minutes. He noted that the previous Council had determined that the existing locational restrictions would still allow for one or more cannabis businesses to be sited. Commissioner Aplin shared his perspective that it would be best for cannabis businesses to be sited in the industrial area rather than towards the entrance of the City near the Bridgeport Village area.

Commissioner Thompson concurred with Commissioner Aplin that locating businesses along I-5 in the north area of the City were not appropriate.

Vice Chair St. Clair asked why the City's didn't simply ban cannabis businesses in the first place in 2015.

Commissioner Aplin and Thompson indicated their belief that the previous Council had intentionally excluded it to a small area rather than banning outright. Chair Beers further noted that a poll commissioned at the time had indicated about 60 percent support for siting dispensaries in Tualatin.

Commissioner Thompson asked to have staff show the public comments.

Ms. Engman noted that there were approximately eight pages of commentary. Mr. Koper added that there were a few comments that were submitted after the Planning Commission packet.

Commissioner Bachhuber asked how many total cannabis facilities could be sited in Tualatin.

Ms. Engman noted that a market study had not been done to determine how many additional facilities beyond the approximately three that are assumed to be possible within the existing zoned areas. She suggested that perhaps two to three could be added to the north commercial area. Mr. Koper concurred.

Commissioner Aplin suggested that the Commission forward a recommendation that the amendments include a modification that the north area of the City be removed from consideration as a potential area in which cannabis businesses could be cited and that they only be allowed in the industrial area.

Vice Chair St. Clair concurred.

Mr. Koper stated that the Commission could make a recommendation of approval with the commercial area removed.

Commissioner Thompson expressed her concern about businesses being sited near Hazelbrook Middle School.

Commissioner Kuhn asked to see the existing versus proposed changes. She asked for clarification as to how the commercial zones were added in.

Mr. Koper noted that the changes in the ordinance were based on Council direction and did not include staff initiated changes. Mr. Koper also mentioned that there are some industrial areas in the north part of the City in which cannabis facilities could be allowed if only commercial zones were excluded.

Commissioner Thompson wanted further information about where the buffers would be applied in the north area of the City.

Mr. Koper noted that the Council is expecting the Planning Commission's recommendation on November 9, 2020, and that is the direction from Council. Thus, the Commission would need to make a recommendation at this meeting and there would not be more time to return to the Commission with more information.

Commissioner Thompson expressed hesitation in making a change without evidence of support for making that change.

Commissioner Green concurred.

Vice Chair St. Clair stated that at a minimum, the maximum separation distance would need to be changed.

Mr. Koper noted that this provision would simply not be enforced and there is not necessarily a need to change the code at this time solely based on this part of the code.

Chair Beers noted that some of the testimony was hard to evaluate due to not being able to know whether or not the commentary was provided by people who live in Tualatin or were anonymous. Chair Beers would like comments that are vetted.

Commissioner Thompson MOTION to reject based on not enough evidence to support the changes.

Commission Kuhn noted that the City Council asked for changes but the input is unclear. However, it is not clear what the detriment of supporting the Council's proposed regulations would be.

Chair Beers concurred and noted that the changes were mainly bringing the buffers to meet the state law minimums. It makes sense to strip out Neighborhood Commercial due to the nature of its location, for clarity sake.

Commissioner Bachhuber expressed support for the proposal – including Chair Beers' suggestion of removing Neighborhood Commercial zoning – and that cannabis should be regulated equally with tobacco and alcohol use, particularly owing to the fact that cannabis has potential medical uses.

Commissioner Thompson reiterated her MOTION to reject based on a lack of evidence.

Commissioner Green SECONDED.

3 in favor (Thompson, Green, Aplin) 4 opposed (Beers, St. Clair, Kuhn, Bachhuber).
Motion FAILS 3-4.

Commissioner Aplin suggests a MOTION that no cannabis uses would be allowed in the north area of the City and only allowed in the western industrial area, as a compromise.

Vice Chair St. Clair SECONDED.

Commissioner Kuhn expressed concern primarily around cannabis uses being located away from the freeway.

Mr. Koper stated that the options were to remove all commercial areas or that there could be uses allowed in industrial areas and a buffer of a certain distance from I-5 that prohibits the use in the north area of the City. It would be up to staff to craft a provision assuming that the Council also concurred.

5 in favor (Aplin, Green, Beers, Bachhuber, St. Clair). 2 Opposed (Kuhn, Thompson).
Motion PASSES 5-2.

Commissioner Bachhuber offered additional comments, noting that he was generally against stigmatizing uses by hiding them away in the industrial area, similar to what he believes was done with food trucks. He is curious to know whether there were seniors and others who were not on public record due to cannabis being stigmatized and were there other sources of information and whether or not there are legitimate concerns around lack of transportation access to the industrial areas.

Vice Chair St. Clair noted the existence of the Tualatin shuttle.

Mr. Koper offered that the Council's proposal had provided access to cannabis facilities by allowing siting in the Bridgeport area. Mr. Koper reiterated that the Council had stated on record that they had heard support although it was in some cases private conversations.

Commissioner Green expressed concern that the Council's proposal was being forwarded in response to pressure from the cannabis industry rather than from its own citizens.

Commissioner Thompson felt nervous about making changes without evidence in the record, and not being reactionary, and being mindful. More input and information is needed.

Chair Beer asked that Commissioner Aplin reopen the original MOTION to amend it such that it excluded all commercial zones and the north area of the City.

Mr. Koper noted that the Planning Commission's recommendation would be presented to the City Council on November 9, 2020.

5. COMMUNICATION FROM CITY STAFF

This is third and final of three sessions at which the Tualatin Planning Commission is being asked to give feedback on draft updates to the Comprehensive Plan, centered on an update to housing and residential growth policies of the Plan, and based on the 2019 Housing Needs Analysis and Housing Strategies. The updates to the Plan also include application of the City's current branding standards and reorganization of its chapters and text.

Tabitha Boschetti, Assistant Planner, presented an overview of the topics for discussion this evening regarding the Housing Element update and noted that staff would return with a formal Plan Text Amendment at the November Planning Commission meeting, and that the Planning Commission recommendation would then presented to Council in December.

The topics for discussion include goals and policies, and remaining Comprehensive Plan

questions. Ms. Boschetti also highlighted additional changes to the housing chapter, including the addition of policy statements around missing middle housing, and also incorporating changes around the 20 year housing supply, and keeping the goals fresh and up to date.

Ms. Boschetti asked for feedback from the Commission.

Commissioner Thompson expressed that she liked the language from Policy 4.3.6 which included having trees to mitigate the impact of industrial uses from residential uses.

Ms. Boschetti stated the entirety of the text of Policy 4.3.6 and that it was largely reiterating text that was found in the Development Code.

Commissioner Thompson wanted to make sure that this was included, or covered in another area.

Mr. Koper noted that Chapter 2 Community Design included a part that was in response to previous Commission Thompson that promote and protect the establishment of trees during the development process. A policy like this can be built on through future Development Code updates and be used to have both protection for residential development and also potentially impacting tree removal in general in the future. Mr. Koper asked to clarify whether there should be a similar statement to 4.3.6 to Chapter 5.

Commissioner Thompson reiterated that she liked the specific language in Policy 4.3.6 and that was the basis for her comments.

Mr. Koper noted that the development processes for residential development and commercial and industrial development are different, but that staff would ensure that the sentiment expressed by Commissioner Thompson was adequately addressed in the Plan.

Commissioner Bachhuber asked whether or not there could be a specific chapter for trees.

Ms. Boschetti stated that she was aware of examples, such as having trees and tree removal addressed as part of environment regulations.

Mr. Koper noted there were reasons to consider tree retention as separate from environmental protection due to the fact that tree retention can include removal and replanting as a design element even though there is also an element.

Ms. Boschetti concluded that some of the comments could feed into future code updates. Mr. Koper concurred and noted that there is potentially an opportunity to

address other topics from the Tualatin 2040 policy priorities, to look at a greater more overall Comprehensive Plan update.

Ms. Boschetti asked if there were additional questions.

Vice Chair St. Clair asked about Chapter 9. Policy 9.2.3 – when would the City of Tualatin extend sewer service into another City.

Ms. Boschetti explained that through access to Tualatin sewer service acted as a carrot to encourage annexation to those who might want to take advantage of city services, because generally annexation is required before that access is provided.

Chair Beers opined that the reverse was being considered – Wilsonville was potentially going to provide sewer to Tualatin at some point in the planning process though it ultimately did not.

Mr. Koper offered that there are instances in which sewer might be provided to another city through a contract. We would probably not want to eliminate this provision either way since it provides an option.

Ms. Boschetti concluded her presentation and noted that there would be opportunity for any final comments in November.

6. FUTURE ACTION ITEMS

Mr. Koper provided the Commission with an update on the Plan Text Amendment for single-family homes in the Basalt Creek area that the Planning Commission had provided a recommendation on in September. The final amendment was approved by Council at their last meeting, after three meetings, and requires the developer to provide at least 20 percent of attached single family units in a development and in exchange up to 80 percent of units in a development could be detached single family. A Conditional Use Permit for a small lot subdivision would still be required. In addition, 5 percent of the gross site area of a development would need to be dedicated to either tree preservation and/or open space. Mr. Koper noted that the clearer language being developed through the current Comp Plan amendments could have made support of this provision easier. Lastly, the applicant was able to have the desired reduction from 4,500 square feet to 3,000 square feet for minimum lot sizes.

Commissioner Aplin asked whether these requirements would apply to both potential large developments in the specific area of Basalt Creek.

Mr. Koper said that it would apply to both.

Chair Beers asked whether or not the minimum lot sizes were fixed in the code or

determined through the Conditional Use Permit process.

Mr. Koper replied that the standards were fixed in the code but noted that the Commission would have opportunity to review the appropriateness of tree removal or the extent of open space and recreational area provided. The Commission would also look at other community concerns.

Mr. Koper mentioned two future items that would be under consideration in November:

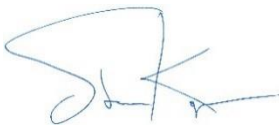
- A decision on a Conditional Use Permit for the Banfield Vet clinic located in the former Avanti restaurant space in the commercial building directly south of the City Offices.
- A recommendation on the Plan Text Amendment implementing the Housing Element and other Comp Plan updates that have been reviewed and commented on by the Commission over the past few months.

Mr. Koper also mentioned that in December, initial work on a Housing Production Strategy which would look at code and financial support for missing middle housing, which is from the recently passed House Bill 2003, a companion to House Bill 2001, requiring cities to make code changes to accommodate missing middle housing in single family residential areas.

Mr. Koper lastly mentioned a conversation with a colleague in Sherwood regarding their ongoing Comprehensive Plan update, which includes updates to the entirety of the Plan. Sherwood's work is part of a larger project that included visioning and was done by a consultant. In Tualatin, visioning was done most recently in 2014, and then further refined in 2019 through the Policy Priorities that were completed as part of the Tualatin 2040 project. Staff's recommendation would be to plan to first conclude the upcoming Development Code update work required by House Bill 2001 and companion House Bill 2003 work, and then determine what the next steps for a Comp Plan update would be at that point based on budget availability for consultant support and the overall priorities of the Planning Commission and Council in the future.

7. ADJOURNMENT

MOTION by Commissioner Thompson, to adjourn at 7:53 p.m.



Steve Koper, Assistant Community Development Director