



August 13, 2014

To: Washington County Planning Commission

From: Andy Back, Manager   
Planning and Development Services

Subject: **PROPOSED LAND USE ORDINANCE NO. 792 - An Ordinance Amending the Community Development Code to allow for the Operation of Medical Marijuana Facilities within Unincorporated Areas of Washington County**

### STAFF REPORT

**For the August 20, 2014 Planning Commission Hearing**  
*(The public hearing will begin no sooner than 7:00 pm)*

#### I. STAFF RECOMMENDATION

Conduct the public hearing; recommend engrossment of Ordinance No. 792 to the county Board of Commissioners (Board) to include the changes described in this staff report.

#### II. OVERVIEW

Oregon Senate Bill 1531 gives local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries, including the ability to impose a moratorium for a period of time. Ordinance No. 792 proposes to amend to the county's Community Development Code (CDC) to allow Medical Marijuana Dispensaries as a Special Use within certain land use districts within unincorporated Washington County.

Ordinance No. 792 also proposes to repeal Ordinance No. 781, which prohibits distribution of medical marijuana and its derivatives in unincorporated Washington County, including use of any building, structure, location, premises, or land for the business or sale of such products. Ordinance No. 781 is effective through May 1, 2015.

**Department of Land Use & Transportation · Planning and Development Services**  
**Long Range Planning**

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### III. BACKGROUND

The Oregon Medical Marijuana Act (Ballot Measure 67) was adopted by voters in the November 1998 general election, and amended in the 1999, 2005, and 2007 legislative sessions (OAR 333-008-0000). The Oregon Health Authority was assigned rulemaking authority for its implementation and administration. The act did not seek to change civil and criminal laws governing use of marijuana for non-medical purposes. Rather, it was intended to allow Oregonians with debilitating medical conditions to use small amounts of marijuana without fear of civil or criminal penalties, when advised by a doctor. Qualified patients were required to either grow their own medical marijuana or designate an individual to grow it for them. Medical marijuana dispensaries began to operate throughout Oregon, existing in what is widely considered a legal “gray area.”

In 2013, Oregon House Bill 3460 required the Oregon Health Authority to develop and implement a process to register medical marijuana facilities.

Senate Bill 1531, signed into law by Governor Kitzhaber on March 19, 2014, amended Oregon's medical marijuana dispensary law. It allows local governments to adopt ordinances that impose reasonable regulations on operation of medical marijuana facilities, with reasonable regulation described as including “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.” The bill also allowed for temporary prohibition of medical marijuana dispensaries, subject to adoption of a moratorium ordinance by May 1, 2014. Ordinance No. 781, adopted on April 22, 2014 and effective May 22, 2014, implemented such a moratorium within unincorporated areas of Washington County until May 1, 2015.

#### ***Ordinance Notification***

Ordinance No. 792 and an accompanying summary were mailed to citizen participation organizations (CPOs) and interested parties on July 15, 2014. A display advertisement regarding the proposed ordinance was published in *The Oregonian* and *Hillsboro Argus* newspapers on August 1, 2014. Individual Notice 2014-13 describing proposed Ordinance No. 792 was mailed to 434 people on the General Notification List on August 6, 2014. A copy of this notice was also mailed to the Planning Commission at that time.

### IV. ANALYSIS

#### **Current Status**

According to information released by the state as of July 22, 2014, the Oregon Health Authority has approved 158 medical marijuana dispensary applications statewide. Additionally, 49 provisional licenses have been granted (allowing dispensary operation after installation and state approval of a security system).

Of the 158 licensed dispensaries in Oregon, 133 have allowed the Health Authority to release their names and locations, three of which are located within unincorporated Washington County. Confidentiality provisions in the law, however, make it difficult to know where the remainder of licensed or provisionally licensed dispensaries are located. All provisional licenses are confidential. The three known approved dispensaries within unincorporated Washington County propose to operate from leased space on Canyon Road (one) and Tualatin Valley Highway (two). Others may exist in Washington County and the state continues to issue licenses. To what extent, if any, a license to dispense medical marijuana is a property right remains an open question. The initial ability to dispense medical marijuana was granted by the Legislature and the Legislature has also empowered local governments to regulate dispensaries under certain circumstances.

The Oregon Health Authority formalized temporary rules on March 31, 2014 related to regulating medical marijuana products and the time, place, and manner in which medical marijuana facilities may operate. These new dispensary regulations include the following:

- Must be located in an area zoned for commercial, industrial, mixed use, or agricultural use;
- May not be located at the same address as a marijuana grow site;
- Not allowed within 1,000 feet of a primary or secondary school;
- Not allowed within 1,000 feet of another dispensary;
- A city or county may adopt ordinances that impose reasonable regulations including restrictions on hours of operation, location (zone/land use district), and how marijuana may be dispensed; and
- A city or county may adopt an ordinance that applies a moratorium on medical marijuana dispensaries, provided adoption occurred by May 1, 2014.

#### Outreach Efforts

Outreach undertaken during preparation of Ordinance No. 792 included discussions with:

- Washington County Sheriff's Office
- Washington County Department of Health and Human Services
- Planning Commission work session briefing
- A representative of a state-approved medical marijuana facility located on Tualatin Valley Highway
- Staff from the Cities of Hillsboro, Beaverton, Tigard, Tualatin, and Clackamas County.

Staff also considered testimony given at the Planning Commission and Board hearings on the medical marijuana moratorium.

While staff notes that a mix of approaches have been considered by various jurisdictions, including defining medical marijuana facilities as a retail use (Hillsboro and Clackamas County),

and the implementation of additional buffers around schools, parks, residential areas, and public buildings (Tigard, Hillsboro, Portland), staff is not aware of any local jurisdictions who have formally adopted time, place and manner regulations as of the date of writing this report.

#### Options for Regulation

Subsequent to the outreach described above, staff considered the following four options for regulating the operation of medical marijuana dispensaries within unincorporated Washington County:

1. Prohibition;
2. Define medical marijuana dispensaries as a retail use, and therefore allowed anywhere retail uses are permitted;
3. Allow medical marijuana dispensaries as a permitted use within defined land use districts; and
4. Allow medical marijuana dispensaries as a special use within defined land use districts, subject to special use restrictions on time, place and manner.

The only option that allows the county to address the issues identified during outreach efforts, and to allow the application of reasonable restrictions pursuant to Senate Bill 1531, was the fourth option. Staff is therefore recommending that medical marijuana dispensaries be allowed as a special use, and that special use regulations be adopted to apply specified restrictions.

#### Allowed Land Use Districts

Staff recommends that the establishment of medical marijuana dispensaries be allowed as a Type II use within specified commercial and industrial land use districts in unincorporated Washington County Staff.

Specifically, staff recommends that medical marijuana dispensaries be allowed to locate within the following districts since these land use districts are intended to provide the community with retail, service, and business type establishments on a medium-to-large scale:

- Community Business District (CBD)
- Transit Oriented Retail Commercial District (TO:RC)
- Transit Oriented Business District (TO:BUS)
- Transit Oriented Employment District (TO:EMP)
- Neighborhood Commercial Mixed Use District North Bethany (NCMU NB)

Further, staff recommends medical marijuana dispensaries be allowed within the General Commercial (GC), Industrial (IND), and Rural Commercial (R-COM) districts to create additional options for the location of medical marijuana facilities in urban and rural areas, as well as to accommodate an existing facility within the IND district. Medical marijuana dispensaries are proposed to be limited in size in these districts, as discussed below.

Special Use Regulations

Special use regulations are proposed to be included in CDC Section 430 to address specific time, place, and manner concerns that have been raised through the hearings process and discussions with the Sheriff's Office, as follows:

A. All State requirements must be met.

Prior to issuing land use permits for the operation of a medical marijuana dispensary, an applicant shall demonstrate compliance with State requirements, and be required to maintain State certification at all times. State regulations provide that medical marijuana dispensaries are not allowed within 1,000 feet of a primary or secondary school, or another dispensary, among other requirements.

B. Hours of operation shall be limited to between 8:00 a.m. and 10:00 p.m.

Limits potential impacts to surrounding residents and businesses associated with late night and continuous operation, including noise, lighting, and traffic generation. The 10:00 p.m. closing time corresponds with the Oregon Liquor Control Commission liquor store hours.

C. Entrances and off-street parking areas for the medical marijuana dispensary shall be well-lit and not visually obscured from public view/right-of-way.

Addresses concerns raised by the Washington County Sheriff's Office regarding the ability of law enforcement officials, the public, and dispensary staff to monitor on-site activity, and to provide safe access for medical marijuana program patients.

D. In the Industrial (IND), General Commercial (GC), and Rural Commercial (R-COM) Land Use Districts, the maximum allowed gross floor area for a Medical Marijuana Dispensary is 3,000 square feet.

Limits the amount of IND, GC, and R-COM land utilized for medical marijuana dispensaries in order to address concerns regarding the use of industrial land for retail type uses. This limitation models the 3,000 square foot gross floor area limit for new retail type uses currently found in Regionally Significant Industrial Areas (RSIA) established in Title 4 of the Metro Urban Growth Management Functional Plan. In addition, the above limitation assists applicants in the R-COM District to demonstrate that the facility will remain small in size, as required by CDC Section 352-3.2.B.

E. In addition to State requirements for location, Medical Marijuana Dispensaries must be located:

1) At least 2,000 feet away from any other registered Medical Marijuana Dispensary.

Due to the long linear nature of most commercial and industrial centers within unincorporated Washington County, including for example along Tualatin Valley Highway, Beaverton-Hillsdale Highway, and Canyon Road, concerns have been raised by the Washington County Sheriff's Department and Washington County Health and

Human Services about the potential for a high concentration of medical marijuana dispensaries to establish in certain areas of unincorporated Washington County. This requirement seeks to limit the concentration of dispensaries in such areas, by increasing the separation of dispensaries over and above the State standard of 1,000 feet.

- 2) At least 1,500 feet away from any light rail station platform.

Restricts the location of medical marijuana dispensaries in proximity to light rail station platforms, to address concerns identified by the Washington County Sheriff's Office. The Sheriff's Office has concerns that station platforms located close to medical marijuana dispensaries may experience increased criminal activity and distribution of illegal and "gray market" marijuana.

Note that all distances are measured by a straight line between any point on the boundary line of the real property containing a Medical Marijuana Dispensary to any point on the boundary line of the real property containing another Medical Marijuana Dispensary or any point on the boundary line of a station platform.

*Additional restrictions considered*

In addition to the above special use restrictions, staff also considered the imposition of additional buffers around daycare facilities, parks, and residential areas. In the case of daycare facilities, additional buffers were not included due to difficulty identifying the location of such uses, family day care facilities being exempt from land use permit requirements pursuant to CDC Section 201-2.14 and ORS 657A.280, making enforcement impractical and unreasonable. Parks and residential areas were not included, since initial mapping showed that inclusion of such buffers covered almost all commercial, industrial, and mixed use districts within unincorporated Washington County, effectively creating a prohibition which may be considered unreasonable regulation.

***Public Comment***

Prior to the completion of this staff report, several emailed comments were received regarding the provision of medical marijuana dispensaries within unincorporated Washington County. Each of these emails requested that the county adopt regulations to provide reasonable access to medical marijuana dispensaries for those in need of such prescribed medication. This ordinance addresses those requests by allowing medical marijuana dispensaries as a permitted use.

**Summary of Proposed Changes**

Ordinance No. 792 Staff proposes to amend the following sections of the Community Development Code:

- Section 313 – Community Business District (CBD)
- Section 314 – General Commercial District (GC)
- Section 320 – Industrial District (IND)
- Section 352 – Rural Commercial District (R-COM)

- Section 375 – Transit Oriented Districts (TO:RC, TO:BUS, TO:EMP)
- Section 390-14 – Neighborhood Commercial Mixed Use District North Bethany (NCMU NB)
- Section 430 - Special Use standards
- Repeal of Ordinance No. 781, an ordinance that imposed a temporary moratorium on the business and sale of medical marijuana as provided by SB 1531.

Sections of the Community Development Code are amended to reflect the following:

**1. Section 313 – COMMUNITY BUSINESS DISTRICT (CBD)**

**313-3 Uses Permitted Through a Type II Procedure**

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313-3.40 Medical Marijuana Dispensary - Section 430-80.

**2. Section 314 – GENERAL COMMERCIAL DISTRICT (GC)**

**314-3 Uses Permitted Through a Type II Procedure**

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314-3.45 Medical Marijuana Dispensary - Section 430-80.

**3. Section 320 – INDUSTRIAL DISTRICT (IND)**

**320-3 Uses Permitted Through a Type II Procedure**

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320-3.20 Medical Marijuana Dispensary - Section 430-80.

**4. Section 352 – RURAL COMMERCIAL DISTRICT (R-COM)**

**352-3 Uses Which May Be Permitted Through a Type II Procedure**

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352-3.1 Permitted Uses:

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DD. Medical Marijuana Dispensary - Section 430-80.

**5. Section 375 – TRANSIT ORIENTED DISTRICTS**

**375-7      *Development Limitations for Permitted Uses in Transit Oriented Districts***

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33.      *Medical marijuana dispensaries shall be subject to the standards of Section 430-80.*

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**Attachment A**

Table A. Permitted and Prohibited Uses in Transit Oriented Districts

USE	DISTRICT								
	TO:RC	TO:BUS	TO:EMP	TO:R9-12	TO:R12-18	TO:R18-24	TO:R24-40	TO:R40-80	TO:R80-120
<b>Commercial Uses:</b>		(1)	(2)				(3)	(3)	(3)
Retail Business ≤ 5,000 sq. ft. floor area (23.b.)	II	II	II	N	N	N	III	III	III
Retail Business > 5,000 sq. ft. floor area	II	II	III (4)	N	N	N	N	N	N
Food Market (5)	II or III	II	N	N	N	N	N	N	N
Bulk Product Sales	N	N	N	N	N	N	N	N	N
Hotels	II (6)	II	II	N	N	N	N	N	N
<u>Medical Marijuana Dispensary (33)</u>	<u>II</u>	<u>II</u>	<u>II</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
Motels	N	N	N	N	N	N	N	N	N
***									

abcdef Proposed additions  
~~abcdef~~ Proposed deletions  
*abcdef* Proposed new language

**6. Section 390 – NORTH BETHANY SUBAREA OVERLAY DISTRICT**

**390-14 Neighborhood Commercial Mixed Use District (NCMU NB)**

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**390-14.3 Uses Permitted Through a Type II Procedure**

The following uses are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 390 and Section 430, as well as the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code. Approval may be further conditioned by the Review Authority pursuant to Section 207-5.

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U. Medical Marijuana Dispensary – Section 390-16.15.

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**390-16 Special Use Standards**

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390-16.15 Medical Marijuana Dispensary

A Medical Marijuana Dispensary is a facility, registered by the Oregon Health Authority, that is allowed to receive marijuana or immature marijuana plants and transfer that marijuana to a patient or a patient’s caregiver if the patient or caregiver has an Oregon Medical Marijuana Program card.

Medical Marijuana Dispensaries are permitted subject to the following:

- A. All State requirements must be met;
- B. Hours of operation shall be limited to between 8:00 a.m. and 10:00 p.m.;
- C. Entrances and off-street parking areas for the Medical Marijuana Dispensary shall be well lit and not visually obscured from public view/right of way; and,
- D. In addition to State requirements for location, Medical Marijuana Dispensaries must be located:
  - (1) At least 2,000 feet away from any other registered Medical Marijuana Dispensary; and,
  - (2) At least 1,500 feet away from any light rail station platform.

Distances are measured by a straight line between any point on the boundary line of the real property containing a Medical Marijuana Dispensary to any point on the boundary line of the real property containing another Medical Marijuana Dispensary or any point on the boundary line of a station platform.

## 7. Section 430 – SPECIAL USE STANDARDS

### **430-80 Medical Marijuana Dispensary**

A Medical Marijuana Dispensary is a facility, registered by the Oregon Health Authority, that is allowed to receive marijuana or immature marijuana plants and transfer that marijuana to a patient or a patient's caregiver if the patient or caregiver has an Oregon Medical Marijuana Program card.

Medical Marijuana Dispensaries are permitted subject to the following:

430-80.1 All State requirements must be met;

430-80.2 Hours of operation shall be limited to between 8:00 a.m. and 10:00 p.m.;

430-80.3 Entrances and off-street parking areas for the Medical Marijuana Dispensary shall be well lit and not visually obscured from public view/right of way;

430-80.4 In the Industrial (IND), General Commercial (GC), and Rural Commercial (R-COM) Land Use Districts, the maximum allowed gross floor area for a Medical Marijuana Dispensary is 3,000 square feet; and,

430-80.5 In addition to State requirements for location, Medical Marijuana Dispensaries must be located:

A. At least 2,000 feet away from any other registered Medical Marijuana Dispensary; and,

B. At least 1,500 feet away from any light rail station platform.

Distances are measured by a straight line between any point on the boundary line of the real property containing a Medical Marijuana Dispensary to any point on the boundary line of the real property containing another Medical Marijuana Dispensary or any point on the boundary line of a station platform.

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A request from a Washington County web site user has been made. See the information below:

A request for action for: Board of Commissioners

[mpc4@pdx.edu](mailto:mpc4@pdx.edu) who does not require a response about:

**Issue: Suggestion**

Dear Board of Commissioners,

I am contacting all of you in regards to the access of dispensaries in Washington County. I feel it is to the benefit to the medical patients unable to travel far from their homes, as a result of their condition(s) or the treatment(ts) to their condition(s). Secondly it is beneficial to the ecosystem by allowing medical consumers to spend less gas, resulting in less emissions and less traffic, due to the time it would take to arrive at their destination to be able to obtain the necessary medication(s) for their purposes. Thirdly it would provide safe access and might be the deciding factor in a patient continuing the medical cannabis approach or reverting back to the normative medications provided through rite aid pharmacy. This would reduce the amount of medical cannabis patients from ever attempt to produce their own medicine, because their is an alternative. This is analogous to that of cigarettes, beer, wine, cereal, eggs, and most vegetables all which can be bought at the nearest store to provide safe access, reliability, reasonable prices, jobs and reduced emissions and traffic, and most importantly localized and designated establishments that meet all of the legal requirements.

I do not expect a response; I just would like all of you to take these words into consideration. I trust that the county will make the appropriate decision after viewing all of the pros and cons, by which I mean beyond the scope of what I've listed. As I am sure there is much more that I am not even aware of, and thought I'd just share my humble opinion.

Sincerely,

Michael P. Callaway  
[mpc4@pdx.edu](mailto:mpc4@pdx.edu)

**From:** Pat Garrett  
**Sent:** Wednesday, April 23, 2014 7:51 AM  
**To:** Chris Matthews; County Administrative Office  
**Cc:** Marcy Allie  
**Subject:** RE: Retraction of email sent to Washington County Sheriffs email list

Hi Chris

Fair question, however taking the entire sentence together is factual. True that OHA issues a license for the facility and the PRF, there are no additional requirements to license or regulate others who distribute MJ at the facility. In that way it's clear that dispensaries are not licensed or regulated like pharmacies (pharmacies have many more licensing differences) or places that serve alcohol.

It was good to hear the myriad of citizens last night at the hearing. We'll start working hard with county staff and our jurisdictional partners to craft balanced regulations to enable dispensaries to open in the future.

Thanks again

Sheriff Garrett

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**From:** Chris Matthews [mailto:chris@cascadiancare.com]  
**Sent:** Wednesday, April 23, 2014 1:20 AM  
**To:** County Administrative Office; Pat Garrett  
**Subject:** Retraction of email sent to Washington County Sheriffs email list

It would be great if you could retract the misrepresented information in the email sent asking for people to come support ordinance 781 that says dispensaries are unlicensed and unregulated.

Dispensaries have been licensed since March 3<sup>rd</sup> and you have seen the 30+ pages of regulations.

Products created through potentially flammable or explosive extraction techniques are unregulated. What does this have to do with dispensaries? These are extractions and are not allowed to be made in a dispensary. I will be the first to admit that there have been plenty of idiots making extractions that do not meet the grade for the low level chemistry required. These folks give people who actually know what they are doing a bad name. But at the same time I think this should be removed in the dispensary discussion. Extracts are a vital part of the healing process for many. For people with cancer RSO oil is a lifesaver. RSO in its many different flavors is effective in fighting cancer and epilepsy.

Regarding the 1000 feet from Schools

I know numerous locations in Washington county that there are bars and convenience and liquor stores located directly across the street or next door to school or daycare. People are allowed to drink alcohol in bars so I'm not sure how that is any safer than allowing a dispensary where you are not allowed to use on site.

I urge you to be expedient and lift the moratorium before October. Patients are waiting. The people spoke this evening and I see this moratorium as a failure of government who didn't listen to their citizens

From email sent out to residents by Sheriff Garret

1. Only 6 employees run the whole program for the state
2. Dispensers are unlicensed and unregulated, unlike pharmacies and places that serve alcohol
3. Background checks on only the dispensary operator, but not all employees
4. Products created through potentially flammable or explosive extraction techniques are unregulated (think marijuana extraction explosions in Forest Grove)
5. Locations must be 1,000 feet from schools (3 football fields), but they can be next to playgrounds, transit centers, libraries, parks, etc.
6. Obstacles to effective regulation of marketing, producing, and processing marijuana for sale

Chris Matthews

*Managing Member*

***Cascadian Care Group Llc***

Oregon Medical Cannabis Patient Resource

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Website: <http://www.cascadiancare.com>