

CITY OF MADRAS
Request for Planning Commission Action

Date Submitted: March 20, 2018
Agenda Date Requested: April 4, 2018
To: Madras Planning Commission
From: Nicholas Snead, Community Development Director
File: TA-18-1
Subject: **Proposed Text Amendments to City of Madras Zoning Ordinance (No. 864) and Recreational Marijuana Time, Place and Manner Ordinance (No. 892).**

TYPE OF ACTION REQUESTED: (Check One)

- Formal Action/Motion** **No Action - Report Only**
 Other

OVERVIEW:

In October of 2016 the City of Madras adopted Zoning (Ord. No. 864) and Time, Place, and Manner (Ord. No. 892) regulations for Recreational Marijuana. Since then staff has become aware, through an opinion from the City Attorney, that Recreational Marijuana dispensaries do not have a requirement to be located on properties that are located at least 1,000 feet from another property where a Recreational or Medical Marijuana dispensary is located. It is the Community Development Director's opinion that the City's Recreational Marijuana Advisory Committee intended to require Recreational Marijuana Dispensaries to be located on properties that are located at least 1,000 feet from another property where a Recreational or Medical Marijuana dispensary is located. Accordingly, staff has requested the City Attorney to draft the necessary amendments to Ordinances 864 and 892 (attached) to require Recreational Marijuana dispensaries to be located on properties that are located at least 1,000 feet from another property where a Recreational or Medical Marijuana dispensary is located.

At the April 4, 2017 Planning Commission meeting the Commission will hold a legislative public hearing to consider the proposed text amendments to Ordinances No. 864 and 892. The public hearing will also provide the opportunity for the public to comment on the proposed text amendments. The City has provided notice of the April 4, 2018 Planning Commission public hearing in the February 21, 2018 Madras Pioneer in accordance with City of Madras Zoning Ordinance No. 864, Articles 8 and 9. Furthermore, the City has issued notice of the April 4, 2014 public hearing to all properties in the City of Madras that are zoned C-1, C-2, and C-3 as required by ORS 227.186.

Planning Commission Action

The Planning Commission will hold a legislative public hearing on April 4, 2018 at 7:00 pm at which time staff will provide an overview of the proposed text amendments (i.e. staff report). Following the staff report, the Planning Commission will accept public comments. At the conclusion of the public comments, the Planning Commission may deliberate on the proposed text amendments to Ordinances No. 864 and 892. Staff recommends that the Planning Commission approve the proposed text amendments to Ordinance No. 864 and 892 and forward the proposed text amendments to the City Council for consideration. However the Planning Commission may take either of the following actions:

- Approve the proposed text amendments as presented
- Approve the proposed text amendments with modifications as specified by the Planning Commission
- Deny the proposed text amendments as presented
- Continue the public hearing to a date, time, and location certain.

DOCUMENTATION:

ATTACHMENT A: Draft Text Amendments to Ordinances No. 864 and 892.

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission approve the proposed text amendments to Ordinance No. 864 and 892 and forward the proposed text amendments to the City Council for consideration.

MOTION FOR PLANNING COMMISSION ACTION:

I move that the Planning Commission approve the proposed text amendments to Ordinance No. 864 and 892 and forward the proposed text amendments to the City Council for consideration.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MADRAS AMENDING ORDINANCE NO. 870, AN ORDINANCE ESTABLISHING TIME, PLACE, AND MANNER REGULATIONS CONCERNING MEDICAL MARIJUANA DISPENSARIES.

WHEREAS, the City of Madras (“City”) has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, on April 28, 2015, City adopted Ordinance No. 870 (the “TPM Ordinance”) to establish certain time, place, and manner regulations concerning medical marijuana dispensaries; and

WHEREAS, on October 11, 2016, City adopted Ordinance No. 892 (the “RMJ Ordinance”) to establish certain time, place, and manner regulations concerning recreational marijuana producers, processors, wholesalers, laboratories, and retailers; and

WHEREAS, under the TPM Ordinance, a medical marijuana dispensary may not be located within 1,000 feet of another dispensary; and

WHEREAS, City desires to impose consistent spatial requirements between recreational marijuana retailers under the RMJ Ordinance and medical marijuana dispensaries under the TPM Ordinance; and

WHEREAS, the Madras City Council (the “Council”) finds it necessary to amend the TPM Ordinance to impose a spatial requirement prohibiting a dispensary from being located within 1,000 feet of a recreational marijuana retailer.

NOW, THEREFORE, the City of Madras ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Purpose. The purpose of this Ordinance No. ____ (this “Ordinance”) is to amend the TPM Ordinance to prohibit a medical marijuana dispensary from locating within 1,000 feet of a recreational marijuana retailer.
3. Amendment. Section 6.10 of the TPM Ordinance is amended to read in its entirety as follows:

“6.10 Dispensary Location. A dispensary must not be located (a) at the same address as a marijuana grow site, (b) within 1,000 feet of the real property comprising a public or private elementary, secondary, and/or career school attended primarily by minors, (c) within 1,000 feet of another dispensary, (d) within 1,000 feet of a recreational marijuana retailer licensed under ORS 475B.105, and/or (e) in any area and/or zone not expressly permitted under City’s land use code (including, without limitation, Ordinance No. 864, as amended). ‘Within 1,000 feet’ means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point on the boundary line of the real property on which the dispensary is sited.”

4. Miscellaneous. This Ordinance is hereby made part of the TPM Ordinance. The provisions of the TPM Ordinance that are not amended or modified by this Ordinance remain unchanged and in full force and effect. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. The provisions of this Ordinance are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors. Nothing in this Ordinance affects the validity of any criminal or civil enforcement actions commenced prior to the adoption of this Ordinance; all City ordinances existing at the time that such actions were filed will remain valid and in full force and effect for purposes of those actions.

ADOPTED by the City Council of the City of Madras and signed by the mayor this ____ day of _____, 2018.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

Royce Embanks, Mayor

ATTEST:

Karen J. Coleman, City Recorder

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MADRAS AMENDING ORDINANCE NO. 892, AN ORDINANCE ESTABLISHING TIME, PLACE, AND MANNER REGULATIONS CONCERNING RECREATIONAL MARIJUANA BUSINESSES.

WHEREAS, the City of Madras (“City”) has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, on April 28, 2015, City adopted Ordinance No. 870 (the “MMJ Ordinance”) to establish certain time, place, and manner regulations concerning medical marijuana dispensaries; and

WHEREAS, on October 11, 2016, City adopted Ordinance No. 892 (the “TPM Ordinance”) to establish certain time, place, and manner regulations concerning recreational marijuana producers, processors, wholesalers, laboratories, and retailers; and

WHEREAS, under the MMJ Ordinance, a medical marijuana dispensary may not be located within 1,000 feet of another dispensary; and

WHEREAS, City desires to impose consistent spatial requirements between recreational marijuana retailers under the TPM Ordinance and medical marijuana dispensaries under the MMJ Ordinance; and

WHEREAS, the Madras City Council (the “Council”) finds it necessary to amend the TPM Ordinance to impose certain spatial requirements on retailers by prohibiting each recreational marijuana retailer from being located within 1,000 feet of another retailer and/or medical marijuana dispensary.

NOW, THEREFORE, the City of Madras ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Purpose. The purpose of this Ordinance No. ____ (this “Ordinance”) is to amend the TPM Ordinance to prohibit a recreational marijuana retailer from locating within 1,000 feet of another recreational marijuana retailer and/or medical marijuana dispensary.
3. Amendment. Section 6.9 of the TPM Ordinance is amended to read in its entirety as follows:

“6.9 Business Location. Each retailer must not be located (a) at the same address as any other business except as permitted under Section 6.4(a) of this Ordinance, (b) within 1,000 feet of the real property comprising a public or private elementary, secondary, and/or career school attended primarily by minors, (c) within 1,000 feet of another retailer, (d) within 1,000 feet of a medical marijuana dispensary registered by the Oregon Health Authority under ORS 475B.858, and/or (e) in any area and/or zone not expressly permitted under the zoning ordinance. ‘Within 1,000 feet’ means a straight line measurement in a radius extending for 1,000 feet or less in every direction

from the closest point on the boundary line of the real property on which the retailer is sited.”

4. Miscellaneous. This Ordinance is hereby made part of the TPM Ordinance. The provisions of the TPM Ordinance that are not amended or modified by this Ordinance remain unchanged and in full force and effect. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. The provisions of this Ordinance are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors. Nothing in this Ordinance affects the validity of any criminal or civil enforcement actions commenced prior to the adoption of this Ordinance; all City ordinances existing at the time that such actions were filed will remain valid and in full force and effect for purposes of those actions.

ADOPTED by the City Council of the City of Madras and signed by the mayor this ____ day of _____, 2018.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

Royce Embanks, Mayor

ATTEST:

Karen J. Coleman, City Recorder

Table 3.5-1: Uses in the C-1, C-2 and C-3 Zones

...

- vii. Marijuana Businesses must meet the applicable requirements of Section ~~3.14~~3.15.

...

SECTION 3.15 MARIJUANA BUSINESSES

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C. ADDITIONAL CRITERIA FOR MEDICAL MARIJUANA DISPENSARIES

1. A Medical Marijuana Dispensary must not be located:

(a) at the same address as a Marijuana grow site registered under ORS 4758.420;

(b) within 1,000 feet of the real property comprising a public or private elementary, secondary, and/or career school attended primarily by minors, ~~and/or~~;

(c) within 1,000 feet of another Medical Marijuana Dispensary; and/or

dispensary (d) within 1,000 feet of a Marijuana Retailer except that a business can be operated on the same property under the same ownership as both a Medical Marijuana Dispensary and a Marijuana Retailer. "Within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point on the boundary line of the real property on which the Medical Marijuana Dispensary is proposed to be sited.

...

D. ADDITIONAL CRITERIA FOR MARIJUANA RETAILERS

1. Marijuana Retailers must not be located:

(a) at the same address as another Marijuana Business except as permitted under Oregon law, the Time, Place and Manner Restrictions, and this Zoning Ordinance; ~~or~~

(b) within 1,000 feet of the real property comprising a public or private elementary, secondary, and/or career school attended primarily by minors;

(c) within 1,000 feet of a Medical Marijuana Dispensary except that a business can be operated on the same property under the same ownership as both a Medical Marijuana Dispensary and a Marijuana Retailer; and/or

(d) within 1,000 feet of another Marijuana Retailer. "Within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest

point on the boundary line of the real property on which the Marijuana Retailer is proposed to be sited.

Comparison Details	
Title	compareDocs Comparison Results
Date & Time	2/21/2018 5:13:15 PM
Comparison Time	0.72 seconds
compareDocs version	v4.3.0.48

Sources	
Original Document	[#00922693.DOCX] [v1] retailer separation zoning ordinance amendment.DOCX
Modified Document	[#00922693.DOCX] [v2] retailer separation zoning ordinance amendment.DOCX

Comparison Statistics	
Insertions	5
Deletions	2
Changes	3
Moves	0
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Paragraph Style Changes	0
Character Style Changes	0
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Deletions	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

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Include Moves	Word	False
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
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