



May 20, 2015

**LONG RANGE PLANNING  
ISSUE PAPER NO. 2015 - 04**

**County Regulation of Recreational Marijuana**

**Issue**

In October 2014, the Board of Commissioners (“Board”) adopted A-Engrossed Ordinance No. 792, which allowed for the provision of *medical* marijuana dispensaries within certain land use districts in unincorporated Washington County. Standards adopted with the ordinance that regulate medical dispensaries in Washington County are found at Community Development Code (CDC) Section 430-80.

In the November 2014 general election, Oregon voters passed Ballot Measure 91, which will inform the state’s regulation of the *recreational* marijuana industry in Oregon after its legalization on January 1, 2016.<sup>1</sup> The Measure tasks the Oregon Liquor Control Commission (OLCC) with formulating regulations to govern the use, growing, processing and sale of recreational marijuana and requires the agency to approve a license for each of the above uses. Further information on the requirements and elements of Ballot Measure 91 are discussed in the Background section of this Issue Paper.

Washington County has yet to enact regulations governing the growing, processing and sale of recreational marijuana. OLCC rulemaking that will lead to the creation of state law to regulate this new industry is expected no earlier than autumn 2015. Typically, planning staff look to state statute and/or the state’s administrative rules for applicability and guidance when creating local land use regulations. In this case, state rules that will inform county regulations on recreational marijuana will not be formulated in time to enact a county ordinance in 2015.

This issue paper provides background and analysis on pending state regulation of recreational marijuana and considers options for addressing county regulation of recreational marijuana during 2015.

**Recommendation**

Staff recommends filing a land use option in January or February of 2016 that addresses recreational marijuana activity in Washington County, as outlined under Option 1 of this issue paper. For 2015, a Board Interpretation is recommended to provide guidance to planning staff for development applications submitted after legalization of recreational marijuana businesses in January 2016 and prior to the adoption of a county ordinance to address this industry.

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<sup>1</sup> The legal *personal* use of recreational marijuana is allowed at an earlier date. Beginning July 1, 2015, a person 21 years of age or older may possess, process, and use limited amounts of marijuana and marijuana derivatives for personal use pursuant to the ballot measure. See p. 3 of this report.

## **Background**

*Medical Marijuana:* Following the lead of California’s electorate in 1996, voters in Oregon, Washington, and Alaska passed ballot measures in the November 1998 general election that legalized the use of marijuana for medical purposes in their respective states. In response, Oregon passed into law the Oregon Medical Marijuana Act (OMMA) in December 1998 that established a state-controlled permit system providing patients with a qualifying medical condition the legal right to use marijuana, as authorized by a physician.<sup>2</sup> The Act delegated the Oregon Health Authority of the State’s Public Health Division to oversee and administer the state program (Oregon Medical Marijuana Program - OMMP). A key component of the OMMP is the provision of medical marijuana dispensaries, which provide marijuana and marijuana-infused products to patients. In 2013, the passage of Oregon House Bill 3460 required the Oregon Health Authority to develop and implement a process to register medical marijuana dispensaries.

Senate Bill 1531, signed into law by Governor Kitzhaber on March 19, 2014, amended Oregon’s medical marijuana dispensary law. It allowed 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.

A-Engrossed Ordinance No. 792 amended the CDC to allow medical marijuana dispensaries under the CDC’s Special Use Standards within certain land use districts in unincorporated Washington County. It also simultaneously repealed Ordinance No 781. County regulations for dispensaries are found at Section 430-80 of the CDC and regulate hours of operation, entrance lighting, parking, and a distance requirement of 2,000 feet from other dispensaries. Currently there are three licensed medical marijuana dispensaries operating in unincorporated Washington County.

The map included in this Issue Paper as Attachment A shows the location of these three dispensaries, as well as adjacent dispensaries in Hillsboro and Beaverton. The map included as Attachment B illustrates school buffers of one thousand (1000) feet.

*Recreational Marijuana:* Oregon voters approved Ballot Measure 91 on November 4, 2014. The measure allows for the personal possession, cultivation, and use of marijuana and marijuana-derived edible products for people 21 and older, within the limits noted below. Additionally, the measure tasks the Oregon Liquor Control Commission (OLCC) with creating a regulatory and licensing system for the growing, processing, distribution, and sale of recreational marijuana and

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<sup>2</sup> The federal government considers marijuana an illegal substance under the federal Controlled Substances Act of 1970. The US Department of Justice has addressed this discrepancy in law through the August 29, 2013 ‘Cole Memorandum’, which states that it is “not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers.”

marijuana derivatives. The provisions of Measure 91 are separate from and did not amend elements of the OMMA.

The production and sale of marijuana items becomes legal on January 1, 2016. Possession and home cultivation by adults 21 and older becomes legal on July 1, 2015. After this date, individuals 21 and older will be able to possess:

- up to eight ounces of marijuana and grow up to four marijuana plants in their households;
- up to 16 ounces of solid homemade marijuana products;
- up to 72 ounces of liquid homemade marijuana products; and
- up to an ounce of marijuana in public.

Measure 91 recognizes four types of marijuana-related business activities that will require a license from the OLCC: producers (growers), processors, wholesalers, and retail businesses. An individual or business may have one or more licenses depending on the extent of their business activity.

Local options for recreational marijuana regulation are found in Sections 58 through 62 of Measure 91. Most relevant is Section 59, which states the following:

*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.*

This language is similar to the local regulatory provision for medical marijuana dispensaries found in SB 1531.

Also relevant is the local ‘opt-out’ option. Section 60 of the ballot measure allows for the prohibition of recreational marijuana operations if a petition signed by not less than ten percent (10%) of registered voters is submitted to the local jurisdiction 60 days before an election. If these requirements to opt-out are met, a ballot measure to preclude “the operation of licensed premises” would be presented for a vote.

The OLCC will issue state regulations for recreational marijuana businesses later this year. This rulemaking will result in applicable statutory and administrative rule language required to be in place before licenses for the above business activities can be issued.

### **Analysis**

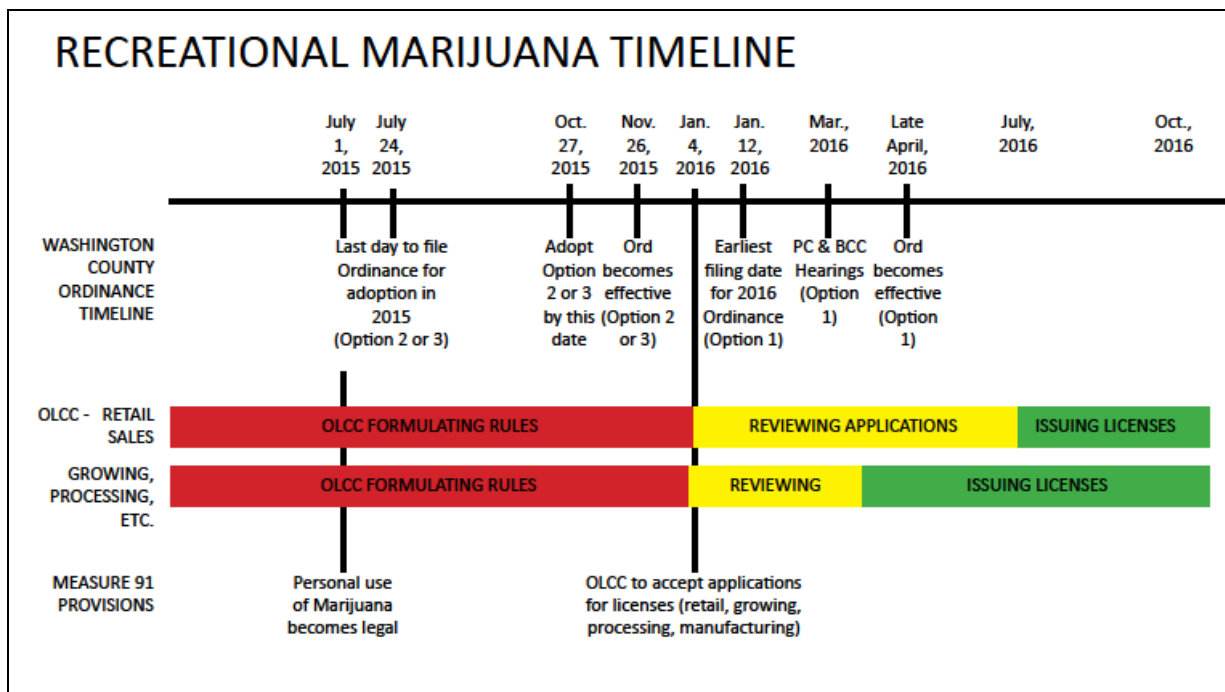
As noted above, the county has regulations in place for medical marijuana dispensaries but has yet to enact regulations applicable to recreational marijuana use and recreational marijuana businesses in Washington County.

Currently, an appointed Measure 91 Rules Advisory Committee (RAC) is drafting state rules expected to inform local jurisdictions on the regulation and enforcement of the recreational marijuana industry. Final rules need to be in place before January 4, 2016 when applications for marijuana-related business licenses will be accepted by OLCC. Language within Measure 91 will obviously be instrumental in guiding rulemaking; however, statewide listening sessions held by the OLCC over the last several months have raised implementation and enforcement

questions that the measure does not address. Some concerns include to what extent (if any) the medical marijuana and recreational marijuana programs should overlap; the extent of a local jurisdiction’s ability to regulate time, manner, and place provisions; lack of guidance for packaging and testing standards; and the role and impact of recreational marijuana as a Department of Agriculture-recognized farm crop. Final rulemaking is expected to address the lack of clarity for these issues and more.

In addition to rulemaking by the RAC, a number of bills have been introduced in this year’s legislative session that address elements of either medical marijuana or recreational marijuana. Senate Bill 844 is currently the most active marijuana-related bill in the legislature. The bill addresses the regulation of medical marijuana and currently has multiple amendments to the introduced bill. Some, all or none of these amendments may get included in the final (engrossed) bill. Additional changes are possible in the House should a final bill pass the Senate. This fact – and the early state of rulemaking for recreational marijuana – illustrate that the regulatory environment for the medical and recreational marijuana industries is still in flux and likely will remain so through at least the summer.

The graphic below shows OLCC’s projected timeline for rulemaking as well as county ordinance dates under the options presented in this paper.



Cities in Washington County: Regulations

On March 19, 2014, Senate Bill (SB) 1531 became effective statewide. This bill allowed local governments to adopt regulations for the operation of medical marijuana facilities in their jurisdictions. The bill also gave cities and counties the option of creating a temporary prohibition of medical marijuana dispensaries, if the moratorium was adopted by ordinance prior to May 1, 2014. All Washington county cities voted to place a moratorium on medical marijuana dispensaries within their jurisdictions. The city moratoriums were generally adopted in April 2014 and were typically for a one-year period. Because of these expiring moratoriums on siting

medical marijuana dispensaries, cities throughout the county have recently revisited marijuana regulation. Some cities limited their ordinance work only to medical dispensaries. However, Tualatin and Beaverton have recently adopted ordinance language that does not distinguish between medical and recreational facilities and Tigard has adopted regulations that address public and non-public facilities.

Table 1 lists recent medical marijuana ordinance efforts of the larger cities in the county. The state requires a minimum of a one thousand foot (1000) buffer around schools from all medical marijuana facilities. Included in the table are additional jurisdictional buffers enacted by cities.

**Table 1**

| <b>Cities</b>            | <b>Ordinance Adoption</b> | <b>Medical, Recreational or Both?</b> | <b>Buffer Regulations</b>   |
|--------------------------|---------------------------|---------------------------------------|---|
| <b>Hillsboro</b>         | April 2015                | Medical                               | 1000 ft. from schools/parks/plazas. 2000 ft. from other med. dispensaries.  |
| <b>Beaverton</b>         | January 2015              | Single Set of Regulations for Both    | 1000 ft. from schools.  |
| <b>Tigard</b>            | April 2015                | Single Set of Regulations for Both    | Marijuana facilities - public (sales): 2000 ft. buffer between facilities & 500 ft. from library/park/residential. Facilities - non-public use (grow/processing): 500 ft. from library/parks/residential. 1000 feet from schools. |
| <b>Tualatin</b>          | April 2015                | Single Set of Regulations for Both    | 3000 ft. from residential and schools, parks and libraries. 2000 ft. from other dispensaries. Cannot co-locate. Packaging restrictions. Must be in permanent building and be 3000 sq. ft. or less.                                |
| <b>Forest Grove</b>      | April 2015                | Medical                               | 1000 ft. from schools.  |
| <b>Sherwood</b>          | May 2015                  | Medical                               | 1000 ft. from schools/parks/plazas. 1000 ft. from other med. dispensaries.  |
| <b>Washington County</b> | October 2014              | Medical                               | 2000 ft. from any other medical marijuana dispensary. 1000 ft. from schools.  |

Options to Regulate Recreational Marijuana in 2015:

Upon completion of OLCC rulemaking in late 2015, the state Department of Land Conservation and Development is expected to adopt statutory language governing the recreational marijuana industry. This is too late to provide guidance to staff for this year's ordinance work. However,

the county can still move forward this year with CDC amendments in anticipation of pending regulation.

Table 2 lists three options for Board consideration to address recreational marijuana in 2015. The table is followed by a more detailed discussion of each option.

**Table 2**

| Code Amendment Options   | Ordinance | Ramifications  |
|--|-----------|--|
| <u>Option 1</u> : No ordinance in 2015. Wait for state rulemaking to occur before adopting county regulation of recreational marijuana in 2016.  | 2016      | <ul style="list-style-type: none"> <li>• No county regulations specific to recreational marijuana applications, including growing, processing, wholesale and retail sales.</li> <li>• Board Interpretation likely needed to address early 2016 applications.</li> </ul>  |
| <u>Option 2</u> : Apply existing Time/Manner/Place regulations for medical marijuana to all recreational marijuana operations in 2015.   | 2015      | <ul style="list-style-type: none"> <li>• All recreational marijuana activities, including wholesale, growing, and processing, would be allowed in any of the eight land use districts where medical marijuana dispensaries are currently allowed, including certain commercial districts and transit-oriented districts.</li> <li>• Provides regulatory guidance pending issuance of state regulations.</li> </ul> |
| <u>Option 3</u> : Apply existing Time/Manner/Place regulations for medical marijuana to all recreational marijuana operations. Add new CDC language to allow growing, processing and wholesale operations in Industrial Districts and the General Commercial District in 2015. | 2015      | <ul style="list-style-type: none"> <li>• Wholesale, growing, and processing would be limited to where these activities could locate.</li> <li>• Provides regulatory guidance pending issuance of state regulations.</li> </ul>   |

*Option 1: Do not draft an ordinance for recreational marijuana in 2015.*

This option implicitly acknowledges that it will be some time into 2016 before recreational marijuana business activities will be licensed to operate in Oregon and accordingly postpones drafting county regulations until state regulations are enacted into law.

OLCC staff noted at the March 2014 marijuana study session that recreational marijuana licenses will likely not be issued until April 2016 at the earliest<sup>3</sup> and have further stated that retail sales of recreational marijuana will likely not be possible until the third quarter of 2016.<sup>4</sup> It is still not known what the adopted state regulations governing recreational

<sup>3</sup> OLCC Commissioners Marijuana Study Session. OLCC Central Office. Portland, OR. March 27, 2015.

<sup>4</sup> Tom Towslee. "Moving Forward Under Measure 91: A Marijuana Industry Seminar. Portland, OR. April 10, 2015.

marijuana will entail. Waiting until 2016 to file a land use ordinance related to this industry has the advantage of using state rules to inform our local land use ordinance.

Conversely, the county may receive land use applications for growing and processing recreational marijuana as soon as the OLCC begins to issue licenses for these activities, presumably in spring 2016.

Under this option, county regulations would not be in place that would direct where these activities can locate and under what parameters they can operate until later in the spring. It is conceivable that the county may receive an application to grow or process marijuana in a commercial district or a farm zone, with a request to operate at unusual or long hours. Potential impacts of operating conditions, such as noise, odors or lighting might be difficult to regulate. Setback requirements for regulating marijuana processing facilities would not be in place that could buffer activities from surrounding uses. An additional concern under this option is the possibility that any future county land use standards that are more prescriptive than state law in regulating marijuana may result in the establishment of legal non-conforming uses.

In the period between when final state rules for recreational marijuana are known and when the county adopts relevant CDC amendments, staff would therefore rely for recreational marijuana development applications on the allowances and limits of final state regulations. A Board Interpretation is recommended under this option that could further inform planning staff when processing applications submitted after the legalization of recreational marijuana businesses in January 2016 and prior to the adoption of a county ordinance that adopts code standards for this industry.

A Board Interpretation is a document from the Board of Commissioners that provides direction to staff when the existing language of a county regulation is either ambiguous or not directive for a specific application request. The Interpretations are advisory in nature and non-binding. For the Department of Land Use & Transportation, a Board Interpretation is typically requested for additional clarity on existing development code language. Staff would coordinate with the Board to develop this departmental interpretation to clarify where recreational marijuana facilities can operate and under what conditions, pending final rules from the state.

If this option is preferred for 2015, a county land use ordinance to regulate recreational marijuana could be filed in January or February of 2016 after the details of the OLCC rules are known. This would enable the Planning Commission and Board to hold ordinance hearings at the earliest possible time of the ordinance season and to consider an ordinance that would be informed by OLCC regulations expected to be finalized at the end of this year.

*Option 2: Apply the existing time/manner/place regulations adopted for medical marijuana to all recreational marijuana business activities.*

This option would provide limited amendments in 2015 to existing county marijuana standards found at CDC Section 430-80. Under this option, retail sales of recreational marijuana would be permitted in the same land use districts where medical marijuana dispensaries are permitted. These districts are:

- North Bethany Mixed Use Neighborhood Commercial
- Transit Oriented Retail Commercial District
- Transit Oriented Employment District
- Transit Oriented Business District
- General Commercial District
- Industrial District
- Community Business District
- Rural Commercial District

Currently, county standards in CDC Section 430-80 specifically address time/manner/place restrictions for medical marijuana dispensaries. This includes a one thousand (1000) separation between marijuana facilities and schools, operating hours from 8:00AM to 10:00PM, and entrances and off-street parking areas that are well-lit and not visually obscured from public view. Additionally restrictions include a 2000 foot buffer between medical marijuana dispensaries and a building size limit of 3000 square feet in the Industrial (IND), General Commercial (GC), and Rural Commercial (R-COM) Land Use Districts.

Under this option, all recreational marijuana facilities would operate under these same limitations, with the existing code language amended to reflect all marijuana facilities and not just dispensaries. This option would not attempt to regulate growing and processing activities beyond the limitations noted above, allowing these activities in the same land use districts where public retail sales would be allowed.

This allowance does raise some concerns. The county may not wish to allow growing and processing activities in commercial and transit-based districts. The same may be true of wholesale marijuana operations, which will also be allowed as a legal operating business after January 4, 2016. Each of these recreational marijuana activities has their own unique operating conditions that require consideration of potential impacts to surrounding uses. The non-conforming use issue noted above would also apply under this option as well.

*Option 3: Apply the existing time/manner/place regulations adopted for medical marijuana to recreational marijuana business activities. Include new code language that addresses where marijuana growing, processing, and wholesale activities can occur.*

As with Option 2, this option would provide limited amendments in 2015 to existing county marijuana standards found at CDC Section 430-80. Under this option, retail sales of recreational marijuana would be permitted in the same land use districts where medical marijuana dispensaries are permitted. Additionally, new language would be added to this code section that limits marijuana growing and processing facilities to the Industrial District within the UGB and Rural Industrial District outside the UGB. Wholesale marijuana sales operations would be allowed only in these two districts and the General Commercial District.

In conferring with staff, County Sheriff Pat Garrett indicated that at a minimum his agency would like to see the county's existing regulations for medical marijuana applied to recreational marijuana sales facilities as well. Sheriff Garrett further recommended that – for ease of enforcement and reduction of potential impacts - marijuana growing and processing facilities should be located solely in the county's industrial areas.



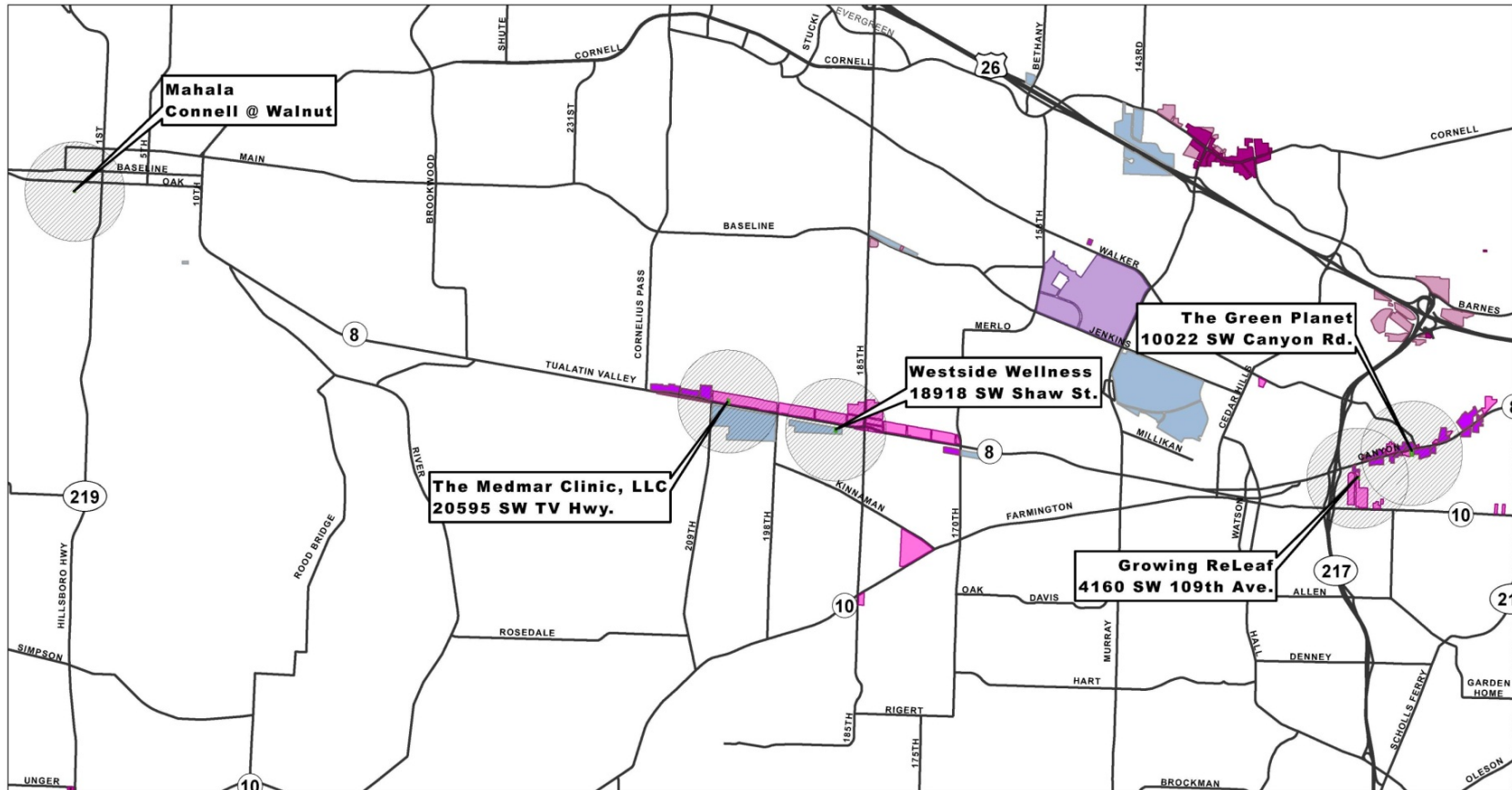
Without being overly prescriptive, this option provides a measure of regulation for recreational marijuana activities until the OLCC issues state rules in 2016 that can inform a more comprehensive consideration of marijuana regulations at the county level, should the Board decide to revisit this issue next year.

### **Summary**

This Issue Paper presents three possible options for the Board to consider prior to directing staff whether to draft potential ordinance language in 2015 specific to recreational marijuana activity. It is probable that pending state regulations for both recreational and medical marijuana will be more directive than the previous laws regulating medical marijuana dispensaries. Some of these regulations will likely address land use. For this reason, staff believes it will be necessary to revisit marijuana regulation in Washington County during the 2016 ordinance season.

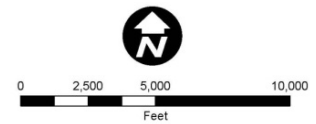
Staff recommends filing a land use ordinance in January or February of 2016 that addresses recreational marijuana activity in Washington County, as outlined under Option 1 of this issue paper. For 2015, a Board Interpretation is recommended to provide guidance to planning staff for development applications submitted after legalization of recreational marijuana businesses in January 2016 and prior to the adoption of a county ordinance to address this industry.

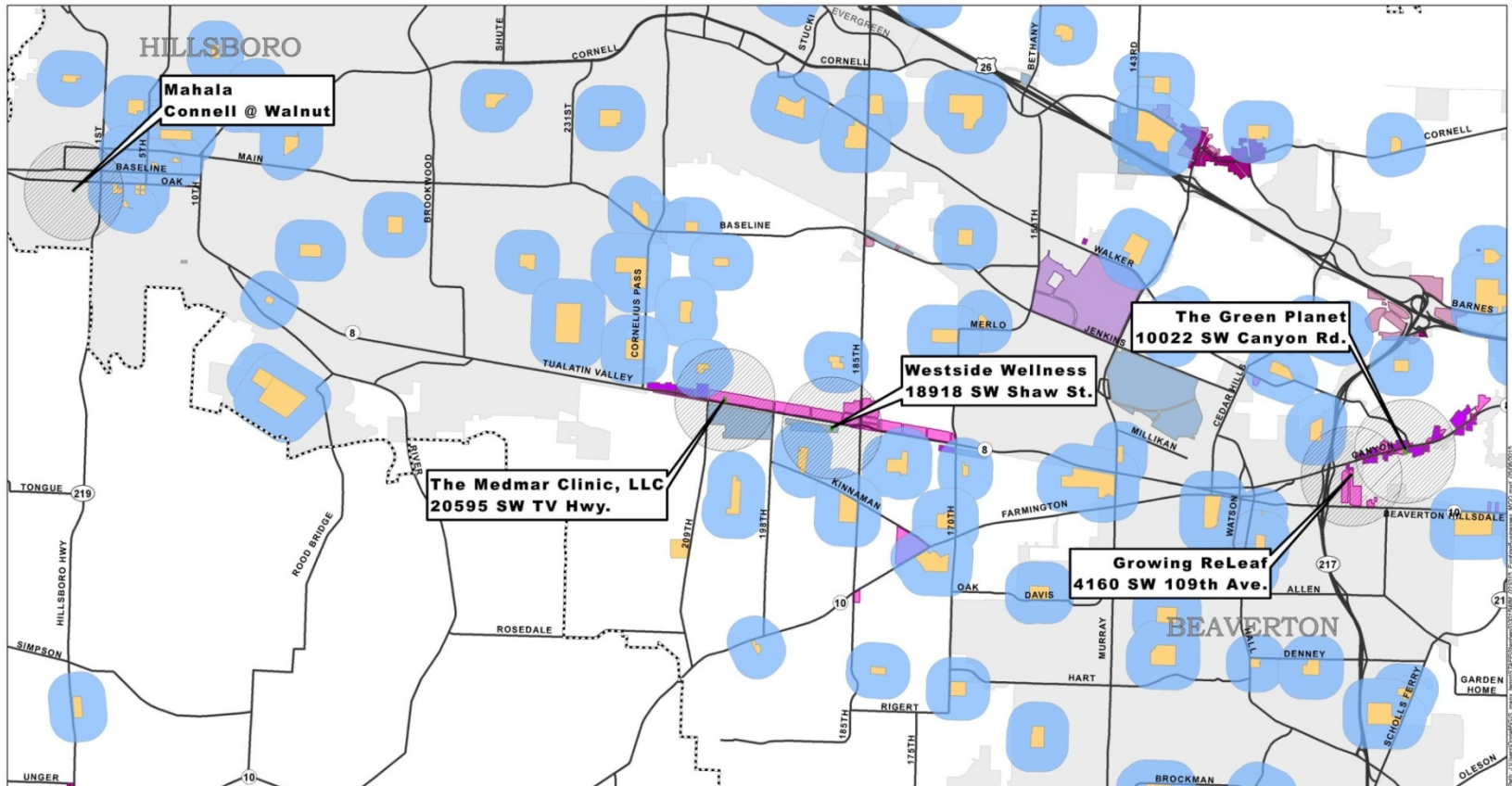
If the Board elects to pursue an ordinance this year, the scheduled filing date for the ordinance is July 10, 2015.



**Medical Marijuana Dispensaries** Updated: 05/08/2015

- |  |   |   |
|--|---|---|
| Medical Marijuana Dispensaries -Approved | Community Business District (183 acres)                   | Transit Oriented (TO): Business (62 acres)          |
| 2000' buffer                             | General Commercial (51 acres)                             | Transit Oriented (TO): Employment (213 acres)       |
|  | Industrial (318 acres)                                    | Transit Oriented (TO): Retail Commercial (28 acres) |
|  | North Bethany Neighborhood Commercial Mixed Use (8 acres) | Rural Commercial (60 acres)                         |





Medical Marijuana Dispensaries Updated: 05/08/2015

