

MEMORANDUM

TO: City Council; Mayor Strimling
FROM: Staff Marijuana Implementation Working Group
DATE: August 28, 2018
RE: Marijuana Caregiver Moratorium and Marijuana Implementation Plan

Staff is proposing a temporary moratorium on marijuana caregiver retail stores, manufacturing facilities, and testing facilities. This moratorium is intended to give the Council time to adopt zoning, licensing, and other regulatory requirements for these types of uses in order to ensure that they are developed and located in such a manner so that potential adverse impacts are mitigated and they are located appropriately. This moratorium does not impact lawfully operating caregiver operations, and does not prohibit new caregivers who are not operating a retail store, manufacturing facility, or testing facility. The moratorium also does not impact dispensaries or their operations.

By way of background, sales of medical marijuana were authorized by popular vote in November of 2009. Since that time, state statutes and regulations have filled out the requirements for patients, caregivers, and dispensaries. Under the state regulatory scheme, dispensaries are highly regulated, limited in number state-wide, and have always been subject to local municipal control. In fact, the City has had zoning regulations relating to dispensaries and cultivation for dispensaries in place for many years.

Caregivers, by statute, were intended to be smaller than dispensaries. They are limited to serving only five patients and are limited in the number of plants that they can grow. However, they have also historically been much less regulated by the state, and local authority to regulate caregivers has been unclear. The City does not have any caregiver-specific zoning or regulation.

Within the past few years, some caregivers have begun to operate their businesses as retail stores by “cycling” their fifth patient. Caregiver processing facilities have also cropped up, including bakeries, extraction facilities, and similar manufacturing uses. The legality of these uses in the City is questionable, but the City has not taken enforcement action absent clear guidance from the state on its authority. Along with the expansion of unregulated caregiver operations have come increased odor complaints, fire and life safety violations stemming from the operations themselves, the use of dangerous extraction procedures, and other threats and adverse impacts on neighborhoods.

On July 7, 2018, the state legislature overrode the Governor’s veto on two bills impacting medical marijuana caregivers. The bills expand allowable caregiver operations; impose additional licensing and restrictions on those operations; and specifically give municipalities the authority to regulate most caregiver operations. In light of this explicit green light from the legislature to regulate caregivers, municipalities all over the state have been imposing moratoria to allow them time to develop thoughtful regulations governing these types of uses. For those same reasons, staff recommends a similar moratorium in the City of Portland.

Moving forward with regulating both caregivers and adult-use (recreational) marijuana, staff will be presenting proposed zoning first. Staff has received many calls from potential investors and business operators about anticipated zoning for both types of uses, and staff recommends acting on this aspect of the regulation first to give some guidance to the public and to these investors and operators. The proposed zoning will be presented to the City Council first at a workshop, will then go to the Planning Board for consideration and recommendation, and then back to the Council for a full vote.

At the same time, staff is working on a draft regulatory scheme for licensing and regulating caregiver operations. Staff anticipates that proposed ordinances will be ready for review at either a Council workshop or committee meeting this fall, however the Council would prefer to handle this.

Although staff anticipates recommending a similar regulatory scheme for both caregiver and adult-use operations, it does not expect to bring any recommendation for adult-use licensing and regulation forward until after the state promulgates rules and finalizes its licensing process. One reason for this is that the City will not be able to license any adult-use operations until the state licensing is in place. The other reason is that the City does not want to be duplicative of, or in conflict with, whatever regulations the state will put in place.