

South Portland City Council  
***Position Paper of the City Manager***

***Subject:***

**ORDINANCE #10-17/18 – Amending Chapter 27, “Zoning regarding Recreational Marijuana in the Western Avenue Commercial Corridor (WACC); the West End Neighborhood Center (WNC) Zone; the West End Residential District (WR) and the Meeting House Hill Community Commercial (MHCC) Zone. Passed first reading on November 6, 2017. ROLL CALL VOTE. Passage requires majority vote.**

***Position:***

When Ordinance #6-17/18 (dated September 18, 2017) and Substitute Ordinance #7-17/18 (dated September 18, 2017) were enacted, neither addressed the use of Recreational Marijuana in the recently created zones (*i.e.* West End Avenue Commercial corridor (WACC), West End Neighborhood Center (WNC), West End Residential District (WR), and Meeting House Hill Community Commercial (MHCC)). Staff is bringing this ordinance forward to address the affected sections in Chapter 27, “Zoning,” regarding this matter.

Planning Director Tex Haeuser will be present at Wednesday’s meeting to answer any questions.

***Requested Action:***

Council passage of Ordinance #10-17/18.

  
City Manager



**To:** Scott Morelli, City Manager  
**From:** Tex Haeuser, Planning Director   
**Cc:** Joshua J. Reny, Assistant City Manager and Economic Development Director  
Mary Perry, Executive Assistant  
Michele Howard, Administrative Assistant  
**Date:** November 24, 2017  
**Re:** **Planning Board Public Hearing on Proposed Marijuana Zoning Ordinance #2—Addition of Marijuana Uses to the Four Most Recently Created Zoning Districts**

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### **Planning Board Recommendation**

A. Dowling motioned to recommend that the City Council adopt the proposed marijuana zoning amendments as contained in Ordinance #10-17/18. W. Laidley seconded; (6-1) (Boudreau).

### **Public Notice**

Notice of the Planning Board's November 21st hearing on these zoning amendments appeared in legal advertisements in the Portland Press Herald on November 8th and 14th, 2017. Notices were also posted on the City's website, at City Hall, and at the Public Libraries. In addition, notices were emailed to the Conservation Commission, Planning Board, and City Council.

### **Additional Amendments**

The City Council gave final approval on November 6, 2017, to zoning amendments permitting adult marijuana establishments and to associated licensing amendments. However, the marijuana zoning ordinance did not include four new zoning districts that were approved around, or, in the case of the new West End zones, at the same time as the marijuana amendments. The zoning districts in question are the:

- West End Residential District (WR)
- West End Neighborhood Center District (WNC)
- Western Avenue Commercial Corridor District (WACC)
- Meetinghouse Hill Community Commercial (MHCC)

The attached zoning amendments update the City's marijuana zoning by adding marijuana uses (and controlled environment agriculture) to each of the four new zones. As these zones are all in Mixed-Use Residential zoning districts, they all add marijuana testing facilities as permitted uses, on the one hand, and controlled environment agriculture, marijuana products

manufacturing facilities, and marijuana stores as special exceptions on the other. This is consistent with the framework of the adopted marijuana ordinance.

The City Council gave first reading approval to these amendments, unanimously, on November 6<sup>th</sup>.

### **Draft Planning Board Hearing Minutes**

#### **Item #7. PUBLIC HEARING – Zoning Text Amendment-- Addition of Marijuana Uses to the Four Most Recently Created Zoning Districts**

The Planning Board will make a recommendation to the City Council on proposed amendments to the Zoning Ordinance regarding adult marijuana establishments and controlled environment agriculture in the recently created West End Residential, West End Neighborhood Center, Western Avenue Commercial Corridor and Meetinghouse Hill Community Commercial zoning districts.

Notice of the Planning Board's November 21st hearing on these zoning amendments appeared in legal advertisements in the Portland Press Herald on November 8th and 14th, 2017. Notices were also posted on the City's website, at City Hall, and at the Public Libraries. In addition, notices were emailed to the Conservation Commission, Planning Board, and City Council.

**T. Haeuser** introduced the item and stated that City Council gave final approval on the zoning amendments permitting adult marijuana establishments and on licensing amendments that will help regulate them on November 6<sup>th</sup>. However, the marijuana zoning ordinance did not include four new zoning districts: the West End Residential District (WR), West End Neighborhood Center District (WNC), Western Avenue Commercial Corridor District (WACC), and Meetinghouse Hill Community Commercial (MHCC). The first three are new zones approved as part of the West End Master Plan process and the last was for the block along Cottage Road approaching Pillsbury.

To be complete, there is a proposed addendum, in a way, to update marijuana zoning by adding marijuana uses and controlled environment agriculture in these four districts. The zones are in Mixed-Use Residential zoning districts, so they will add marijuana testing facilities as permitted uses and controlled environment agriculture, marijuana products manufacturing facilities, and marijuana stores as special exceptions. This matches the framework of the adopted marijuana ordinance.

The Comprehensive Plan has no specific guidance either for or against adult use/retail marijuana.

Council gave first reading approval to these amendments on November 6<sup>th</sup> and they are scheduled for final action on December 4<sup>th</sup>. The Planning Board is asked to make a recommendation to Council. Staff recommendation is in favor for the zoning amendments to be complete.

#### PUBLIC HEARING OPEN

**Russ Lunt, Brigham St.**, said they have done a wonderful job done with these. He thinks it's great to make them special exceptions. He's against it but it is here.

**Frank Bathe, 446 Western Ave.**, wondered if this is zoned for his area because he is in the business of changing convenience stores into natural food stores, and the hemp business could be part of that. He wondered if there's anything he could do tonight or if it's down the line.

**K. Carr** said tonight is about the inclusion of four new districts in the marijuana ordinances. His plaza is within these.

**T. Haeuser** showed this on the map. He said Mr. Bathe is in the CS zone and that will allow a number of marijuana establishments. Ultimately, nothing will get underway until the state completes their part.

**M. DeRose** asked what is happening with medical marijuana.

**T. Haeuser** said medical was not the subject of this current zoning effort. They touched on it in the course of work because there's a phenomenon of medical marijuana cultivation occurring in warehouses similar to what's coming for adult cultivation. They also potentially have a zone change application by private person to enable a storefront medical marijuana facility. It would be like a medical marijuana dispensary but without cultivation and not as large so that the caregiver could see clients and provide information and product in a professional office setting versus someone's house. This type of ordinance has been accepted in Brunswick and a couple other places. What will happen is this person will propose it for the zone their property is in and that will bring the question of whether or not Council wants to extend to other zones.

**M. DeRose** asked what rules will apply—medical marijuana or recreational. One is draconian and one is less so. **T. Haeuser** isn't sure at this point.

**M. DeRose** said it's an issue that has to be addressed. Medical marijuana people are up in arms because the state has become stricter. It seems that there are parallel universes.

**T. Haeuser** said when they put the ordinance together, he combined medical and recreational marijuana into one performance standard section. Without the work on medical, he had it leave it as it was before. He thinks that's the other shoe to drop on this issue.

**L. Boudreau** said that in an effort to be consistent with her last vote, she will vote against this. She thinks South Portland is being a bit cavalier. Having been on the Board for years through controversial issues, as much as the City voted for this, being able to participate in the use of marijuana legally is different than having it within 1000 or 500 feet of your home. She thinks many people will be surprised when that takes place. She will vote against this and she realizes Council has approved it all anyway.

PUBLIC HEARING CLOSED

**A. Dowling** motioned that the Planning Board make a positive recommendation to the City Council that they adopt the proposed marijuana zoning amendments as contained in Ordinance #10-17/18.

**W. Laidley** seconded; (6-1) (L. Boudreau opposed).



CITY OF SOUTH PORTLAND

LINDA C. COHEN  
Mayor

SCOTT T. MORELLI  
City Manager

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

EMILY F. SCULLY  
City Clerk

**IN CITY COUNCIL**

**ORDINANCE #10-17/18**

THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine," be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

District One  
CLAUDE V. Z. MORGAN

District Two  
KATHERINE W. LEWIS

District Three  
EBEN C. ROSE

District Four  
LINDA C. COHEN

District Five  
ADRIAN T. DOWLING

At Large  
MAXINE R. BEECHER

At Large  
SUSAN J. HENDERSON

**CHAPTER 27**

**ZONING**

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**ARTICLE VI. RESIDENTIAL DISTRICTS (CONT.)**

**WEST END RESIDENTIAL DISTRICT (WR)**

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**Sec. 27-602. Permitted uses (WR).**

The following uses shall be permitted in the West End Residential District (WR):

- (j) Personal services.
- (k) Farmers' market subject to the provisions of Sec. 27-1580.
- (l) Marijuana testing facility.

**Sec. 27-603. Special exception uses (WR).**

The following uses are permitted as special exceptions according to the provisions of Article XIV of this Chapter in the West End Residential District (WR):

• • •

- (g) Accessory buildings and uses including roof-mounted solar energy systems, small- scale ground-mounted solar energy systems, and telecommunication antennas, except that such telecommunication antennas may not be placed on exempt towers.
- (h) Telecommunications tower subject to the provisions of Sec. 27-1551.
- (i) Marijuana products manufacturing facility.
- (j) Marijuana store.
- (k) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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**ARTICLE VIII. MIXED USE/COMMERCIAL DISTRICTS**

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**WEST END NEIGHBORHOOD CENTER DISTRICT (WNC)**

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**Sec. 27-842. Permitted uses (WNC).**

The following uses shall be permitted in the West End Neighborhood Center District (WNC):

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- (m) Places of assembly.

(n) Farmers' market subject to the provisions of Sec. 27-1580.

(o) Marijuana testing facility.

**Sec. 27-843. Special exception uses (WNC).**

The following uses are permitted as special exceptions according to the provisions of Article XIV of this Chapter in the West End Neighborhood Center District (WNC):

• • •

(c) Accessory dwelling units subject to the provisions of Sec. 27-1576 *et seq.*

(d) Funeral homes.

(e) Marijuana products manufacturing facility.

(f) Marijuana store.

(g) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 *et seq.* and the pesticide restrictions in Chapter 32.

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**WESTERN AVENUE COMMERCIAL CORRIDOR DISTRICT (WACC)**

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**Sec. 27-852. Permitted uses (WACC).**

The following uses shall be permitted in the Western Avenue Commercial Corridor District (WACC):

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(k) Multifamily residential alone and as part of a mixed use development.

(l) Charitable and philanthropic organizations.

(m) Marijuana testing facility.

**Sec. 27-853. Special exception uses (WACC).**

The following uses are permitted as special exceptions according to the provisions of Article XIV of this Chapter in the Western Avenue Commercial Corridor District (WACC):

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- (l) Restaurants open 24 hours.
- (m) Telecommunications tower subject to the provisions of Sec. 27-1551.
- (n) Marijuana products manufacturing facility.
- (o) Marijuana store.
- (p) Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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**MEETINGHOUSE HILL COMMUNITY COMMERCIAL MHCC**

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**Sec. 27-862. Permitted Uses (MHCC).**

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- (f) *Other:*
  1. Accessory uses, including but not limited to accessory energy generation facilities.
  2. Multiple/Mixed uses.
  3. Studios for artists and craftspeople.
  4. Marijuana testing facilities.

**Sec. 27-863. Special ~~E~~exceptions uses (MHCC).**

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(b) *Commercial:*

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2. Motor vehicle repair shops provided that no unlicensed vehicles, or junked or wrecked vehicles will be permitted to be parked or stored on the premises, and no trucks, trailers, or buses will be permitted to remain parked upon the premises unless being worked upon or being serviced by employees of the shop.
3. Farmers' markets subject to the provisions of Sec. 27-1580 et seq.
4. Marijuana store.

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(f) Other:

1. Marijuana products manufacturing facility.
2. Controlled environment agriculture subject to performance standards that include, but are not limited to, the design standards in Sec. 27-1572 et seq. and the pesticide restrictions in Chapter 32.

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Fiscal Note: Less than \$1,000

November 6, 2017