



## STAFF REPORT

**To:** City Council

**From:** Planning Department

**Date:** April 18, 2016

**Subject:** Community Development Code Amendment 004-15: Recreational Marijuana Facilities

---

### **Requested City Council Action:**

Approve the first reading of the attached draft ordinance on Community Development Code (CDC) amendments for Recreational Marijuana Facilities, schedule the second reading and approval of the ordinance on May 3, 2016, and approve an effective date of May 16, 2016 if the second reading is approved.

### **Background:**

The Planning Commission public hearing on the proposed amendments opened on November 10, 2015, was continued to December 9<sup>th</sup>, and was continued again to January 13, 2016. On each date, the Commission received oral testimony: a total of four parties testified with questions regarding the proposed amendments. During testimony and Commissioners' discussion, several issues were raised:

- Need for clear and objective language regarding odor mitigation measures
- Applicability of odor mitigation to all industrial facilities
- Appropriateness of 100-foot buffer from residential zones
- Consistency of zoning among industrial marijuana facilities (producers, processors, wholesalers and testing laboratories)
- Appropriateness of allowing outdoor production in the City
- Need for clarification on the difference between medical and recreational retail proximity buffers

Planning Commission also requested that City Council be advised regarding the amendments. A Council work session was held on December 1<sup>st</sup> to review the concepts of the proposed regulations. Council's responses and directions were incorporated into revisions in the proposed language, which was approved by Planning Commission and recommended to City Council on January 13, 2016 with adoption in Planning Commission Order No. 8166.

On February 16, 2016, City Council held a second work session on the proposed amendments to review the Commission's recommended language and to consider possible revisions. The Council's concerns focused on three issues:

- What width buffer is appropriate between industrial facilities and residential, mixed use, urban center and institutional zones?
- Given the State definitions of “indoor” vs. “outdoor” production, and the resulting possibility that lighted agricultural buildings could be considered “indoor” production, should the City consider structural design standards in connection with this use?
- Should recreational marijuana facilities be allowed in the I-S Industrial Sanctuary zone?

Buffer Width: At the February 16<sup>th</sup> work session, Staff described the different impacts of the two alternative buffers, citing tables in the staff report. Staff also cited the research requested by the Planning Commission: no information was available regarding distance as odor mitigation for marijuana production. Planning Commission had recommended a 100-foot buffer and their findings stated there had been no evidence submitted into the record which indicated that increased buffer width accomplished the stated purposes better. Councilors agreed that 100-foot buffer was sufficient, and that odor complaints could be addressed through Code Enforcement.

Agricultural Buildings: As mentioned by staff at the work session, restrictions on building types may be contrary to the provisions of the Building Code. Councilors also asked several questions regarding lighting, efficacy of odor control, and appearance of agricultural buildings. Based partially on concerns about agricultural buildings, Councilors agreed that this use should not be permitted in the I-S Industrial Sanctuary zone.

Discussion then moved to the desirability of allowing agricultural buildings in the I-P Industrial Park zone. Councilors discussed the extensive area of the I-P, the presence of several major employers, and the possible “chilling” effect that construction of new agricultural buildings might have on future investments. Councilors generally agreed that the I-G General Industrial zone, which is concentrated southwest of downtown, along Tualatin Valley Highway, and on some properties on and around Hillsboro Airport, was a more appropriate zone for this use.

Finally, Councilors did support making allowances in the Code for allowing production in existing agricultural buildings: staff estimates that there are less than 10 of these buildings on industrial sites in the city.

Following the work session, staff reviewed several options, and finally concluded that there are other avenues available to address Council’s concerns. In particular, House Bill 3400 (passed by the Legislature in 2015) grants the City authority to regulate the “time, place and manner” under which recreational marijuana facilities operate.

Staff therefore recommends that industrial marijuana facilities be regulated by requiring that views into the production areas, and visibility of light from the production areas, be prohibited from the building exteriors. These “performance standards” will address concerns about the appearance of industrial facilities and their potential impacts on adjacent properties. These standards are discussed further in the proposed revisions section of this staff report.

Facilities in the I-S Industrial Sanctuary zone: At the December 1<sup>st</sup> work session, Planning staff noted Council’s perception that marijuana facilities are inconsistent with the City’s intent for development in the I-S Industrial Sanctuary zone, and are also inconsistent with public expectations for development in the newly-adopted North Hillsboro Industrial Renewal Area Plan. At the February 16<sup>th</sup> work session, I-S also appeared to be the zone of most concern among Councilors. For these reasons, recreational marijuana facilities are recommended by

Planning staff to be Not Permitted in the I-S zone. This provision is consistent with the Planning Commission's recommendation from January.

**Proposed Revisions to Planning Commission recommendation:**

As mentioned above, staff has concluded that the provisions of House Bill (HB) 3400 may be the best means to address the issues raised in the February 16<sup>th</sup> work session, since this legislation the City authority to regulate the "time, place and manner" under which recreational marijuana facilities operate. In this case, the City can require performance standards for marijuana production to occur indoors within buildings that preclude views into the production areas and visibility of light from the production areas from building exteriors. These standards are supportable based on evidence in the record of concerns regarding impacts of marijuana production on adjacent property values, potential public safety concerns about theft and violence associated with marijuana grows, and potential nuisance aspects related to odor and light pollution.

After consultation with the Building Official, the City Attorney, and the Economic Development Director, Planning staff recommends that the draft language from the Planning Commission regarding industrial marijuana facilities be revised as summarized in the table on the following page.

Proposed Revisions to Recommended Regulations on Industrial Marijuana Facilities

Section	Planning Commission Recommendation	Staff Recommendation following February 16 <sup>th</sup> City Council work session
Uses in I-G	All four industrial types permitted	All four types permitted
Uses in I-P	All four industrial types permitted	All four types permitted
Uses in I-S	All four industrial types <u>not</u> permitted.	All four types <u>not</u> permitted
Uses in SC-BP	Production <u>not</u> permitted; Processing, Wholesaling and Testing Labs permitted	Production <u>not</u> permitted; Processing, Wholesaling and Testing Labs permitted
Uses in SCI	Production <u>not</u> permitted; Processing, Wholesaling and Testing Labs permitted	Production <u>not</u> permitted; Processing, Wholesaling and Testing Labs permitted
Special Use standards for buildings	<u>Outdoor Production Prohibited</u> . Recreational Marijuana production facilities shall take place only within an enclosed building.	<u>Facility Construction Requirements</u> . (All types) Only within existing buildings or in newly constructed buildings as provided in paragraphs a-c below: <ul style="list-style-type: none"> <li>a. I-G: either in existing buildings or in new buildings; both subject to compliance with paragraph c below.</li> <li>b. I-P, SC-BP, and SCI: either in existing buildings, or in new buildings of either tilt-up concrete or concrete masonry unit (CMU) construction; both subject to compliance with paragraph c below.</li> <li>c. For production facilities, views into the production area from the exterior of the building are prohibited. Views of interior lighting in the production area from the building exterior are also prohibited.</li> </ul>
<i>Uses Sections Summary</i>	<i>Allows all industrial uses in the I-G and I-P zones; allows some uses in the SC-BP and SIC zones; prohibits all industrial uses in the I-S zone</i>	<i>Allows all industrial uses in the I-G and I-P zones; allows some uses in the SC-BP and SIC zones; prohibits all industrial uses in the I-S zone</i>
<i>Standards Section Summary</i>	<i>Specifies only enclosed buildings, which could include agricultural buildings</i>	<i>Allows location in existing buildings or new construction in the I-G and I-P zones, but new construction in I-P, SC-BP, and SCI zones required to be concrete.</i>  <i>Views into the production area from the exterior of building are prohibited, and visibility of interior light in the production area from the building exterior is also prohibited.</i>

Planning Staff's recommendation is based on the following factors:

- Consistent with the Planning Commission's recommendation, marijuana production facilities would be allowed only in the I-G General Industrial and I-P industrial Park zones, not in the I-S Industrial Sanctuary or the light rail industrial zones.
- In the I-G zone, flexibility would be provided for industrial marijuana facilities to occupy either existing buildings or new construction. This would allow existing, out-of-date buildings to be repurposed and refurbished, and new buildings to be built in the southwest industrial area and in older industrial parks elsewhere in the City. Both refurbishment and new construction would be subject to the process and standards of the Development Review process.
- In the I-P zone, flexibility would be provided for industrial marijuana facilities to occupy either existing buildings or new construction, but new construction would be limited to concrete or cement masonry units (CMU) construction only. This ensures that new development is consistent with the City's intent for well-designed, highest quality development, and ensures construction of "use neutral" buildings which enhance property values on nearby properties and better enable conversion to other higher value uses in the future. Again, both refurbishment and new construction would be subject to the process and standards of the Development Review process.
- In both the I-G and I-P zones, prohibition of visibility into the production area, and visibility of production area lighting, from the building exterior interior, assures that the buildings will have no outward appearance of their use. These standards respond to concerns raised by the City Council and by the public, and fall into the "time, place and manner" rules allowable under HB 3400.
- Within the SC-BP Station Community Business Park and SCI Station Community Industrial zones, production facilities would not be permitted. Wholesale facilities and testing laboratories could occupy either existing buildings or new construction, but new construction would be limited to concrete or cement masonry units (CMU) construction only, subject to the process and standards of the Development Review process.
- In the I-S zone, recreational marijuana facilities would not be permitted. This provision is consistent with the Planning Commission's recommendation.

**Additional Recommended Revisions:**

Planning staff recommends two additional minor changes in the Special Uses standards for industrial facilities:

- Under Odor Mitigation Measures Required, location of exhaust outlets: delete the requirement that exhaust outlets be 3 feet from exterior walls: Building Department staff believe this requirement is ambiguous and difficult to implement. Planning staff are confident that the other requirements are cumulatively sufficient to mitigate odor impacts.

- Under Waste Security Measures Required: add a new subsection allowing applicants to propose an alternative waste security system, provided they can demonstrate that the alternative system will equally or better render waste unusable than the required grinding, mixing, and disposal system.

**Cost:**

Staff time and City Attorney time.

**Recommendation:**

Planning staff recommends that City Council approve the first reading of the attached draft ordinance on Community Development Code (CDC) amendments for Recreational Marijuana Facilities on April 18<sup>th</sup>, and schedule the second reading and approval of the ordinance on May 3, 2016. If the second reading is approved, staff recommends an effective date of May 16, 2016. The draft ordinance included the changes discussed in this staff report, and also includes updated findings reflecting Council deliberation after the Planning Commission made its recommendation.

Respectfully submitted,

CITY OF HILLSBORO PLANNING DEPARTMENT



Deborah A. Raber AICP  
Senior Project Manager

Attachments: Draft ordinance with two exhibits

**ORDINANCE NO. \_\_\_\_\_**

**COMMUNITY DEVELOPMENT CODE AMENDMENT 004-15:  
RECREATIONAL MARIJUANA FACILITIES**

AN ORDINANCE AMENDING SEVERAL SECTIONS OF HILLSBORO COMMUNITY DEVELOPMENT CODE NO. 6094, AS AMENDED, ESTABLISHING REQUIREMENTS FOR RECREATIONAL MARIJUANA FACILITIES.

WHEREAS, the voters of the State of Oregon, in November 2014, approved the legalization of recreational marijuana, and

WHEREAS the Oregon Legislature approved House Bill 3400, authorizing the licensure of five types of recreational marijuana facilities within the State, and further authorizes the Oregon Liquor Control Commission to establish rules for the operation and regulation of such facilities, and

WHEREAS, the Oregon Liquor Control Commission has prepared administrative rules (Oregon Administrative Rules 845-025) which include specific regulations for five types of recreational marijuana facilities: producers; processors; testing laboratories; wholesalers; and retailers, and

WHEREAS, the administrative rules adopted by the Oregon Liquor Control Commission do not include specific land use requirements, and

WHEREAS, the City has received inquiries regarding siting of recreational marijuana facilities in commercial and industrial zones within the City, and

WHEREAS, recreational marijuana production, processing, wholesaling, testing laboratories and retailing are not currently included in the Community Development Code, and

WHEREAS, Community Development Code Sections 12.80.140 and 12.70.060 authorize the Planning Commission to initiate Community Development Code text amendments, and

WHEREAS, the Planning Commission initiated amendments to add zoning regulations for recreational marijuana facilities through approval of Order No. 8162 on October 14, 2015, and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments on November 10 and December 9, 2015 and on January 13, 2016, and received public testimony regarding the amendments, and

WHEREAS, the City Council held a work session on December 1, 2015, and provided direction to the Planning Commission, which was incorporated into the draft language, and

WHEREAS, the Planning Commission found that the proposed amendments were “desirable, appropriate and proper” based on supporting findings, and therefore adopted Order No. 8166 recommending City Council approval of the amendments, and

WHEREAS, the City Council held a second work session on the proposed amendments on February 16, 2016 and directed that changes be made to the language recommended by the Planning Commission; and

WHEREAS, the City Council finds that the proposed amendments as revised after the February 16, 2016 work session are “desirable, appropriate and proper” based on the supporting findings attached as Exhibit B.

NOW, THEREFORE, THE CITY OF HILLSBORO ORDAINS AS FOLLOWS:

Section 1. Community Development Code Ordinance No. 6094 as amended, is recommended to be further amended by the City Council with the changes shown in Exhibit A attached to this Ordinance.

Section 2. The City Council’s adoption includes the findings attached as Exhibit B.

Section 3. This ordinance shall be effective from and after May 16, 2016, following its passage and approval by the Mayor.

First approval of the Council on this 18<sup>th</sup> day of April, 2016.

Second approval and adoption by the Council on this 3<sup>rd</sup> day of May, 2016.

Approved by the Mayor this 3<sup>rd</sup> day of May, 2016.

---

Jerry Willey, Mayor

ATTEST: \_\_\_\_\_  
Amber Ames, City Recorder

## EXHIBIT A

### COMMUNITY DEVELOPMENT CODE AMENDMENT 004-15: RECREATIONAL MARIJUANA FACILITIES

Language proposed to be added shown in ***bold italic*** typeface;

Language proposed to be deleted shown in ~~overstrike~~ typeface.

Unchanged language omitted for brevity except where necessary for context

Explanatory notations not included in ordinance shown in *[bracketed highlighted italics]*.

#### **Section 12.01.500 Definitions**

***Cannabinoid.*** Any of the chemical compounds that are the active constituents of marijuana.

***Consumer.*** An adult person who purchases, acquires, owns, holds or uses marijuana items for a purpose other than resale.

***Horticultural Activities.*** Activities including, but not limited to, orchard keeping and vegetable or flower gardening, which may be conducted for either household consumption and enjoyment or in connection with a home occupation or residential business. Horticultural activities do not include *either* keeping of livestock as defined in Hillsboro Municipal Code (HMC) Subchapter 6.20, *or recreational marijuana facilities as defined in this Section.*

***Marijuana.*** The plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. Marijuana does not include industrial hemp as defined in ORS 571.300.

***Marijuana Waste.*** The unwanted part or parts of a marijuana plant including but not limited to, trimmings, shake, stems, remnants, by-products or any other vegetative elements of a marijuana plant that a generator wishes to dispose of. Marijuana waste for the purposes of this Code does not include part or parts of a marijuana plant that have been treated or contaminated with solvents, or other chemicals that would be considered household hazardous waste or hazardous waste.

#### ***Recreational Marijuana Facilities***

***Processing.*** A building or structure used in whole or in part for processing recreational marijuana as defined in Chapter 614, Oregon Laws 2015 as the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts, and which is licensed by the Oregon Liquor Control Commission. Processing does not include packaging or labeling. Marijuana processors are classified as ***Industrial: Manufacturing and Production*** as described in Section 12.10.320.

***Production.*** A building or structure used in whole or in part for producing recreational marijuana as defined in Chapter 614, Oregon Laws 2015, as the manufacture, planting, cultivation, growing or harvesting of marijuana, and which is licensed by the Oregon Liquor Control Commission. Producing does not include drying or cultivation of immature plants received from a producer, or the cultivation and growing of an immature marijuana plant by a processor, wholesaler, or retailer if that party purchased or otherwise received the plant from a licensed producer. Marijuana producers are classified as ***Industrial: Manufacturing and Production*** as described in Section 12.10.320.

***Retail Sales.*** A building or structure used in whole or in part for retail sales to a consumer of marijuana, cannabinoid products, and miscellaneous items, and which is licensed by the Oregon Liquor Control Commission. Marijuana retailers are classified as Commercial: Retail Products and Services as described in Section 12.10.245.

***Testing Laboratories.*** A building or structure used in whole or in part for testing of marijuana items, and which is licensed by the Oregon Liquor Control Commission. Marijuana testing laboratories are classified as Industrial: Industrial Services as described in Section 12.10.310.

***Wholesale Sales.*** A building or structure used in whole or in part for wholesale sales of marijuana, cannabinoid products, and miscellaneous items to a person other than a consumer, and which is licensed by the Oregon Liquor Control Commission. Marijuana wholesalers are classified as Industrial: Wholesale Sales as described in Section 12.10.360.

**12.23.250 Special Provisions Regarding Uses** *[in the C-G General Commercial zone.]*.

- E. Additional Regulations for Special Uses: The following Retail Products and Services Uses are subject to additional regulations in **Subchapter** 12.40 as noted:
1. Animal Service Facilities: see section 12.40.110;
  2. Day Care Facilities: see Section 12.40.150; and
  3. Medical Marijuana Dispensaries: see Section 12.40.194.
  - 4. Recreational Marijuana Retail Sales: see Section 12.40.218.**

*[Industrial Facilities would not be allowed in the C-G General Commercial zone.]*

**12.23.430 Uses.** *[in the SCC-SC Station Community Commercial – Station Commercial Zone].*

**Table 12.23.430-1:  
Use Categories in the SCC-SC Zone**

Use	Status	Clarifications
Retail Products and Services	P/C L/N	<p><del>Minor Assembly Facilities permitted with Conditional Use approval if maximum primary floor areas &lt; 3000 sq. ft., or maximum IBC occupancy in primary assembly area &lt; 250 persons; subject to additional regulations in Section 12.40.210.</del></p> <p><del>Medical marijuana dispensaries permitted, subject to additional regulations in Section 12.40.194.</del></p> <p><b>See Section 12.23.450 regarding additional regulations on certain uses.</b> Animal service facilities and drive-through facilities subject to additional limitations in Section 12.23.450.</p> <p>Expansions of certain existing Uses Not Permitted: see Section 12.30.900.</p>

(P) Permitted (C) Conditional (L) Limited (N) Not Permitted

**12.23.450 Special Provisions Regarding Uses** *[in the SCC-SC zone.].*

**G. Additional Regulations for Special Uses:** *The following Retail Products and Services Uses are subject to additional regulations in Subchapter 12.40 as noted:*

- 1. Day Care Facilities: see Section 12.40.150;*
- 2. Medical Marijuana Dispensaries: see Section 12.40.194; and*
- 3. Recreational Marijuana Retail Sales: see Section 12.40.218.*

*[Industrial Facilities would not be allowed in the SCC-SC Station Community Commercial – Station Commercial zone.]*

**12.23.530 Uses.** *[in the SCC-MM Station Community Commercial – Multi Modal zone.]*

**Table 12.23.530-1:  
Use Categories in the SCC-MM Zone**

Use	Status	Clarifications
Retail Products and Services	P/L	<p><del>Day Care Facilities permitted subject to additional regulations in Section 12.40.150.</del></p> <p>Medical marijuana dispensaries permitted, subject to additional regulations in Section 12.40.194.</p> <p><i>See Section 12.23.550 regarding additional regulations on certain uses.</i> Some other uses restricted: see Sections 12.23.550 and 12.30.900.</p>

(P) Permitted (C) Conditional (L) Limited (N) Not Permitted

**12.23.550 Special Provisions Regarding Uses** *[in the SCC-MM zone.]*

**G. Additional Regulations for Special Uses:** *The following Retail Products and Services Uses are subject to additional regulations in Subchapter 12.40 as noted:*

- 1. Day Care Facilities: see Section 12.40.150; and*
- 3. Medical Marijuana Dispensaries: see Section 12.40.194.*
- 4. Recreational Marijuana Retail Sales: see Section 12.40.218.*

*[Industrial Facilities would not be allowed in the SCC-MM Station Community Commercial – Station Commercial zone.]*

**12.25.130** Uses. *[in the I-G General Industrial zone.]*

**Table 12.25.130-1:  
Use Categories in the I-G Zone**

Use	Status	Clarifications
Retail Products and Services	P/C/L	Medical marijuana dispensaries permitted, subject to additional regulations in Section 12.40.194. <b><i>Recreational Marijuana Retail Sales permitted, subject to additional regulations in Section 12.40.218.</i></b> See Section 12.25.150 regarding limitations on other uses.
Industrial Service	P / L	<b><i>Recreational Marijuana Testing Laboratories permitted, subject to additional regulations in Section 12.40.218.</i></b>
Manufacturing And Production	P/L/N	<b><i>Recreational Marijuana Production and Processing permitted, subject to additional regulations in Section 12.40.218.</i></b> Storage, use or manufacture of explosive materials not permitted.
Wholesale Sales	P/L	<b><i>Recreational Marijuana Wholesale Sales permitted, subject to additional regulations in Section 12.40.218.</i></b>

(P) Permitted (C) Conditional (L) Limited (N) Not Permitted

**12.25.230** Uses. *[in the I-P Industrial Park zone.]*

**Table 12.25.230-1:  
Use Categories in the I-P Zone**

Use	Status	Clarifications
Industrial Service	P / L	<b><i>Recreational Marijuana Testing Laboratories permitted, subject to additional regulations in Section 12.40.218.</i></b>
Manufacturing And Production	P / L	<b><i>Recreational Marijuana Production and Processing permitted, subject to additional regulations in Section 12.40.218.</i></b> See Section 12.25.250 regarding limitations.
Wholesale Sales	P / L	<b><i>Recreational Marijuana Wholesale Sales permitted, subject to additional regulations in Section 12.40.218.</i></b>

(P) Permitted (C) Conditional (L) Limited (N) Not Permitted

**12.25.330** Uses. *[in the I-S Industrial Sanctuary zone.]*

**Table 12.25.330-1:  
Use Categories in the I-S Zone**

Use	Status	Clarifications
Industrial Service	P / N	Uses listed in Section 12.25.350 Not Permitted.
Manufacturing and Production	P / N	Uses listed in Section 12.25.350 Not Permitted.
Wholesale Sales	P / N	<b><i>Uses listed in Section 12.25.350 Not Permitted.</i></b>

(P) Permitted (C) Conditional (L) Limited (N) Not Permitted

**12.25.350** **Special Provisions Regarding Uses** *[in the I-S Zone]*

D. Industrial Services Uses. The following types of industrial services Uses are not permitted:

1. Building, heating, plumbing and electrical contractors;
2. Extermination services;
3. Fuel oil distribution and solid fuel yards;
4. Heavy truck servicing and repair;
5. Bulk sales of building materials and landscaping materials;
6. Repair and servicing of heavy construction or farm equipment;
7. Tire retreading or recapping;
8. Truck driving schools;
9. Truck stops;

***10. Recreational marijuana testing laboratories.***

E. Manufacturing and Production Uses. The following types of manufacturing and production Uses are not permitted:

1. Concrete and asphalt batch plants;
2. Animal slaughtering and processing;
3. Fossil fuel products manufacturing;
4. Production of soil amendments (fertilizers, pesticides, fungicides, etc.)
5. ***Recreational marijuana production and processing facilities.***

F. Wholesale Sales: ***Recreational marijuana wholesale facilities are not permitted.***

***[Existing subsections F-H to be renumbered as G-I]***

**12.25.430** Uses. *[in the SC-BP Station Community Business Park zone]*

**Table 12.25.430-1:  
Use Categories in the SC-BP Zone**

Use	Status	Clarifications
Manufacturing And Production	L	<i>Recreational Marijuana Processing permitted, subject to additional regulations in Section 12.40.218.</i> See Section 12.25.450 regarding limitations.
Industrial Service	L	<i>Recreational Marijuana Testing Laboratories permitted, subject to additional regulations in Section 12.40.218.</i> See Section 12.25.450 regarding limitations.
Wholesale Sales	L	<i>Recreational Marijuana Wholesale Sales permitted, subject to additional regulations in Section 12.40.218.</i> See Section 12.25.450 regarding limitations.

(P) Permitted (C) Conditional (L) Limited (N) Not Permitted

**12.25.530** Uses. *[in the SCI Station Community Industrial zone].*

**Table 12.25.530-1:  
Use Categories in the SCI Zone**

Use	Status	Clarifications
<b>Industrial Use Categories</b>		
Manufacturing And Production	P / L	<i>Recreational Marijuana Processing permitted, subject to additional regulations in Section 12.40.218.</i>
Industrial Service	P / L	<i>Recreational Marijuana Testing Laboratories permitted, subject to additional regulations in Section 12.40.218.</i>
Wholesale Sales	P / L	<i>Recreational Marijuana Wholesale Sales, subject to additional regulations in Section 12.40.218.</i>

(P) Permitted (C) Conditional (L) Limited (N) Not Permitted

**12.40.170 Home Occupations.**

C. Uses Not Permitted as Home Occupations. The following Uses are Not Permitted as Home Occupations:

1. Auto-body repair and painting;
2. On-going mechanical repair conducted outside of an entirely enclosed building;
3. Junk and salvage operations;
4. Storage and/or sale of fireworks; ~~and~~
5. *Recreational marijuana facilities; and*
56. Any other use with characteristics consistent with Home Occupations but non-compliant with these standards.

**12.40.218 Recreational Marijuana Facilities.**

A. Characteristics. *Five types of recreational marijuana facilities are defined in Section 12.01.500. For purposes of this Code, recreational marijuana facilities must be licensed by the Oregon Liquor Control Commission. A facility not licensed by the Oregon Liquor Control Commission is not permitted in any zone.*

B. Approval Process. *Where permitted, recreational marijuana facilities are subject to approval under Section 12.80.040 Development Review. Applications for Development Review approval shall include detailed responses to the applicable standards listed in this section.*

C. Standards for Recreational Marijuana Production, Processing, Testing Laboratories, and Wholesale Sales Facilities.

1. Facility Construction Requirements. *Recreational marijuana production, processing, testing laboratories, and wholesale sales facilities shall take place consistent with the Use Tables in Section 12.25 and only within buildings compliant with the following standards:*

- a. *In the I-G General Industrial zone, either in existing buildings constructed and occupied as of May 16, 2016 or in new buildings; both subject to compliance with paragraph c below;*
- b. *In the I-P Industrial Park zone, the SC-BP Station Community Business Park zone, and the SCI Station Community Industrial zone : either in existing buildings as of May 16, 2016, or in new buildings of either tilt-up concrete or concrete masonry unit (CMU) construction; both subject to compliance with paragraph c below.*
- c. *In the case of production facilities, views from the exterior of the building into the production area are prohibited. Views of interior lighting in the production area from the exterior of the building are also prohibited.*

2. Public Access Prohibited. *Access to an industrial facility shall be limited to employees, personnel, and guests over the age of 21, authorized by the facility operator.*

3. **Security Measures Required**
  - a. *Landscaping shall be continuously maintained to provide clear lines of sight from public rights-of-way to all building entrances.*
  - b. *Exterior lighting shall be provided and continuously maintained consistent with Subsection 12.50.240.C.*
  - c. *Any security bars installed on doors or windows visible from the public right-of-way shall be installed interior to the door or window, in a manner that they are not visible from the public right-of-way.*
4. **Odor Mitigation Measures Required.** *Production and processing facilities shall install and maintain enhanced ventilation systems designed to prevent detection of marijuana odor from adjacent properties or the public right-of-way. Such systems shall include the following features:*
  - a. *Installation of activated carbon filters on all exhaust outlets to the building exterior;*
  - b. *Location of exhaust outlets a minimum of 10 feet from the property line; 3 feet from exterior walls; and 10 feet above finished grade; and*
  - c. *Maintenance of negative air pressure within the facility; or*
  - d. *An alternative odor control system approved by the Building Official based on a report by a mechanical engineer licensed in the State of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.*
5. **Waste Security Measures Required.**
  - a. *Prior to disposal, marijuana waste shall be rendered unusable by either grinding and mixing (at a ratio of at least 1:1) with other compostable materials or yard waste, or by mixing with non-compostable solid waste such as paper, cardboard, plastic, soils, or other approved materials.*
  - b. *Marijuana waste shall be temporarily stored in an indoor container until it is rendered unusable.*
  - c. *Any facility generating marijuana waste shall use the services of a solid waste franchisee or self-haul such materials to a properly licensed and approved solid waste disposal or recycling facility.*
  - d. *An alternative waste security system approved by the Sustainability Program Manager, demonstrating that the alternative system will render marijuana waste unusable equally or better than the required grinding, mixing, and disposal system.*
6. **Proximity Restrictions.** *A recreational marijuana production, processing, testing laboratory or wholesale sales facility shall not be located within 100 feet of any single family residential, multi-family residential, mixed use, urban center or institutional zone. For purposes of this paragraph, the distance specified is measured from the closest points between property lines of the affected properties. In the circumstance*

*where a proximity restriction distance bisects a property, that property's eligibility as a location for a facility shall be determined as specified in Section 12.40.194.C.7.*

**D. Standards for Recreational Marijuana Retail Sales Facilities.**

1. **Public Access Prohibited.** *Access to a retail sales facility shall be limited to employees, personnel, and customers over the age of 21.*
2. **Hours of Operation.** *Retail sales facilities shall operate only between the hours of 10:00 a.m. to 8:00 p.m. Monday through Thursday; and 10:00 a.m. to 10:00 p.m. Friday, Saturday and Sunday. An individual facility may set hours within those specified, but may not be open outside those parameters.*
3. **Security Measures Required.**
  - a. *Landscaping shall be continuously maintained to provide clear lines of sight from public rights-of-way to all building entrances.*
  - b. *Exterior lighting shall be provided and continuously maintained consistent with Subsections 12.50.240.C. and .D.*
  - c. *Any security bars installed on doors or windows visible from the public right-of-way shall be installed interior to the door or window, in a manner that they are not visible from the public right-of-way.*
4. **Mobile or Temporary Businesses Prohibited.** *A retail sales facility may not operate as a mobile or temporary business as defined in the municipal code.*
5. **Drive-in or Drive-Through Facilities Prohibited.** *A retail sales facility shall not have a drive-in or drive-through facility, as defined in Section 12.01.500.*
6. **Proximity Restrictions.** *A retail facility shall not be located within the specified proximity of any of the uses listed below. For purposes of this paragraph, the distance specified is measured from the closest points between property lines of the affected properties.*
  - a. **Schools.** *Within 1,000 feet of a public or private elementary, middle, or high school or other school attended primarily by children under 18 years of age.*
  - b. **Other Retail Facilities.** *Within 1,000 feet of another retail recreational marijuana facility.*
  - c. **Public Plazas and Active Use Parks.** *Within 1,000 feet of a public plaza or active use park. As used in this paragraph, an active use park includes a public park which includes features such as playground equipment, athletic courts or fields, active use water features, or skating or skateboard features.*
  - d. **Medical dispensaries.** *Within 2,000 feet of a medical marijuana dispensary.*
  - e. **Other Uses.** *Within any distance from any other use as specified by state law.*

**EXHIBIT B**  
(Findings)

**COMMUNITY DEVELOPMENT CODE AMENDMENT 004-15:  
RECREATIONAL MARIJUANA FACILITIES**

**Process:**

The proposed amendments were initiated through approval of Planning Commission Order No. 8162 on October 14, 2015. Notice of the amendments was provided to the Department of Land Conservation and Development on October 6, 2015.

The public hearing on the proposed amendments was opened before the Planning Commission on November 10, 2015. The Commission received a staff report dated November 4, 2015. No written testimony was submitted. Oral testimony was received from Anthony George and Jason Phillips of Fine and Dandy Sweets. During the testimony and Commissioners' discussion with Mr. Phillips and Mr. George, several issues were raised. The hearing was continued to December 9<sup>th</sup> and staff was directed to address the issues raised.

The City Council held a work session on the proposed amendments on December 1, 2015. At the work session, Council reviewed the general concepts of the proposed language and directed that changes be made in several sections.

On December 9<sup>th</sup>, the hearing was reconvened, and the Commissioners received a staff report dated December 2<sup>nd</sup>, which addressed the issues raised at the November hearing and conveyed the direction received from City Council from the December 1<sup>st</sup> work session. No written testimony was submitted. Oral testimony was received from Kathy Houston. Following testimony and discussion from the Commissioners, two additional issues were raised. The hearing was continued to January 13<sup>th</sup>, 2016, and staff was directed to address the issues raised.

On January 13<sup>th</sup>, the hearing was reconvened and the Commissioners received a staff report dated January 6<sup>th</sup>. No written testimony was submitted. Oral testimony was received from Mark Yeckel, regarding use of greenhouses, applicability of the odor mitigation standards to "hoop houses" and the approval process in general.

Following receipt of testimony and discussion, the Commissioners directed Planning staff to revise the draft amendment language in Section 12.40.218.C.2 to limit access to adults 21 years of age and over, with facility operator approval.

In discussion of the 100-foot buffer versus the 200-foot buffer, the Planning Commission found that no testimony had been submitted on this topic and that no empirical data had been provided to suggest that a 200-foot buffer was superior to a 100-foot buffer in providing odor or visual mitigation or in protecting residential property values.

With the change described above, Planning Commission voted to approve Order No. 8166 with Exhibit A (proposed amendment language with 100-foot buffer to residential zones) and Exhibit B (supporting findings).

The City Council held a second work session on the recommended Code amendments on February 16, 2016, to review the Commission's recommended language and to consider possible revisions. The Council's concerns focused on three issues: appropriate buffer width between industrial

facilities and residential, mixed use, urban center and institutional zones; whether agricultural buildings were appropriate in industrial zones; and whether recreational marijuana facilities should be allowed in the I-S Industrial Sanctuary zone. During the work session, a majority of the councilors present determined that a 100-foot buffer was appropriate. However, no conclusions were reached regarding the second and third issues, and staff was directed to return to Council with a recommended solution.

The staff recommendation was presented at the April 18, 2016 Council meeting. The revised language in the recommendation regulates industrial recreational marijuana facilities under the time, place and manner provisions of House Bill 3400. Production facilities would be allowed in two industrial zones: I-G General Industrial; and I-P Industrial Park. Processing, wholesale facilities, and testing laboratories would be allowed in I-G and I-P, and in the SC-BP Station Community Business Park and SCI Station Community Industrial. In all zones, in for production facilities, views into the production areas from the building exterior would be prohibited. Likewise, views of interior lighting in the production area from the building exterior would also be prohibited. In addition, in the I-P, SC-BP, and SCI zones, any new buildings occupied by industrial marijuana facilities must be either concrete or cement masonry unit (CMU) construction.

#### **Public Involvement:**

Notice of the proposed amendments was published in the October 28 and 30, and November 4 and 6 issues of the *Hillsboro Tribune* and the *Forest Grove News-Times* as required by CDC Section 12.70.060.G. Copies of the staff reports were sent to an electronic interested parties list who were notified of the public hearings. The review process was also posted on a page on the Planning Department website.

#### **Language of Proposed Amendments:**

The language of the proposed amendments is included in Exhibit A to this ordinance.

#### **Incorporation of Additional Documents:**

The following documents are hereby included in these findings and incorporated by reference:

- Planning Department staff reports to the Planning Commission dated November 4, 2015, December 2, 2015, and January 6, 2016, with their respective attachments;
- GIS map of 100-foot and 200-foot buffers, with building locations, prepared by Planning staff, presented to the Planning Commission on January 13, 2016, and available from the Planning Department;
- Planning Department staff reports to the City Council dated February 9, 2016 and April 18, 2016, with their respective attachments;
- Planning Department Power point presentations to City Council dated December 1, 2015 and February 16, 2016.

**Compliance with Applicable Criteria (Community Development Code Section 12.80.140.D):**

1. The Community Development Code Amendments (CDCAs) address an issue or issues of concern on a variety of properties or conditions, and is not intended to resolve a property-specific or condition-specific situation.

*The proposed regulations for recreational marijuana facilities will affect multiple zones and locations throughout the city. The regulations concern the time, place and manner under which facilities can operate and address a variety of concerns raised by the Planning Commission and interested parties. This criterion is met.*

2. The CDCAs are consistent with relevant goals and policies of the Hillsboro Comprehensive Plan, any applicable Community Plans, and with the provisions of this Code.

*These amendments are specific to a certain use: Community Plans do not descend to that level of specificity. This portion of the criterion is therefore not applicable.*

*As described in the process and public involvement sections of these findings, the proposed amendments were initiated by the Planning Commission, notice was provided to DLCD and to the public, and public hearings were held to receive testimony. The procedural requirements of Section 12.70.060 have therefore been met.*

The proposed amendments are consistent with the following policies of the Comprehensive Plan:

Economy Policies (A) (5) and (6):

- (5) Commercial land shall be designated in a manner which locates high volume trade activities near major roads, groups a variety of medical facilities and services near hospitals, and groups professional and governmental facilities near the downtown area and major commercial locations.
- (6) A sufficient number of locations should be made available for shopping centers and other commercial activities as the urban area population increases.

*Recreational marijuana retail sales facilities could be located along Tualatin Valley Highway, on Oak and Walnut Streets southwest of the downtown, on Cornelius Pass Road, and in the Tanasbourne area on Cornell Road, all of which are high traffic areas and provide a variety of options for potential users. The recommended regulations therefore implement these Plan policies.*

Economy Policies (B) (2) and (5):

- (2) Sufficient land shall be designated industrial on the Comprehensive Plan Map to:
  - (a) Attract and accommodate both labor intensive and land intensive industrial activities.
  - (b) Provide areas for different types of industrial developments.
  - (c) Develop a diverse industrial base offering an increasing number of employment opportunities.

- (5) All industries shall meet federal, state and local environmental quality standards.

*Industrial marijuana facilities (producers, processors, testing laboratories and wholesalers) could be located in the historic southwest industrial neighborhood, on the south side of Tualatin Valley Highway, on Cornelius Pass Road, and in the northwest industrial area zoned I-P Industrial Park. These locations provide a variety of options for a new emerging industry with relatively high employment potential. By prohibiting outdoor production, local standards for reduction of odor pollution from this industry will be better achieved. The recommended regulations therefore implement these Plan policies.*

3. The CDCA is consistent with relevant provisions of the Metro Urban Growth Management (UGM) Functional Plan (*Metro Code Chapter 3.07*).

*Title 4 of the UGM Functional Plan calls for the protection of industrial areas by limiting the size and location of new retail uses. The new regulations identify recreational marijuana retail sales as a retail use, and allow them only in one industrial zone: the I-G Industrial - General zone, in which other retail uses are allowed. Recreational marijuana producers, processors, testing laboratories, and wholesale sales are identified as industrial uses, and are permitted in the two industrial zones which have the fewest restrictions on uses. The regulations are therefore consistent with Title 4.*

*The Council finds that industrial recreational marijuana facilities are inconsistent with the City's intent for development in the I-S Industrial Sanctuary zone, and are also inconsistent with public expectations for development in the newly-adopted North Hillsboro Industrial Renewal Area Plan. For these reasons, recreational marijuana facilities are Not Permitted in the I-S zone.*

4. The CDCA is consistent with relevant provisions of the Statewide Planning Goals, the Oregon Administrative Rules (OAR), and Oregon Revised Statutes (ORS):

*Statewide Goal 9 Economy: This goal reads as follows: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens. By providing a variety of locations for industrial and retail facilities for recreational marijuana, the proposed amendments are consistent with this Goal.*

*ORS / Enrolled House Bill 3400: The proposed regulations are consistent with HB3400, which establishes a framework of requirements for recreational marijuana facilities. The regulations are in particular consistent with Sections 33 and 34, since they are "reasonable time, place and manner" regulations intended to mitigate the possibility of adverse impacts documented by the information in the staff reports, these findings, and the findings attached to Ordinance No. 6116 (CDCA 001-14) regarding medical marijuana dispensaries.*

*OAR Division 25, Chapter 845 (Temporary): The proposed regulations are consistent with the definitions in this chapter (Section 30) and with five types of facilities established. The proposed regulations also define each type of recreational marijuana facility as a facility licensed by the Oregon Liquor Control Commission, thereby ensuring that the facility is subject to state regulations as well. The proposed Hillsboro regulations therefore implement the OAR.*

5. The CDCA is deemed by the Review Authority to be desirable, appropriate, and proper.

*The City Council deems the proposed amendments desirable. Information in the staff reports indicates that there is interest among potential operators to locate production and processing facilities in Hillsboro. No opposition testimony was received to these industrial uses. The City Council finds that allowing industrial facilities under the proposed standards will create new economic opportunities in the city while protecting interests of surrounding property owners and the public. The Council further finds it desirable to allow retail facilities in the same locations, and with substantially the same standards, under which medical dispensaries are currently regulated. These regulations have resulted in the establishment of two medical dispensaries, neither has resulted in any reported impacts to their respective neighborhoods.*

*The City Council deems the proposed amendments appropriate. These land use regulations are intended to implement the provisions of State law, and to reflect land use principles such as the following:*

- a. Permitting industrial and retail uses in areas with other like uses, and prohibiting them in areas where like uses are restricted or prohibited;*
- b. In the case of retail uses, reducing the risks of potentially negative, and as yet unknown, impacts on high-intensity pedestrian areas or areas frequented by minors, such as active use parks and plazas, the downtown area, and neighborhood commercial nodes;*
- c. In the case of industrial uses, reducing the risks of potentially negative visual and olfactory impacts through application of buffers from residential zones, requirements for enhanced odor containment; and prohibitions against views into, or light trespass out of, production areas, which will also reduce potentially negative effects on the investment potential of adjacent and surrounding properties;*
- d. In all cases, applying principles of Crime Prevention through Environmental Design (CPTED) and the provisions of the Development Review process under CDC Section 12.80.040 to reduce potential impacts on surrounding properties.*

*The City Council deems the proposed amendments proper for the following reasons:*

- a. The proposed regulations are consistent with the applicable Oregon Revised Statutes and Oregon Administrative Rules;*
- b. The regulations have been developed during a process which allowed adequate time for public education, discussion and deliberation; and*

- c. *The proposed amendments are a prudent and proper “first step” in applying land use regulations to this new land use, the impacts of which are substantially unknown. The Council anticipates future refinement of these regulations as the recreational marijuana market becomes established.*