



**BEFORE THE TALENT PLANNING COMMISSION
STATE OF OREGON, CITY OF TALENT**

IN THE MATTER OF PLANNING COMMISSION FILE NO. CUP)
2016-004 LOCATED AT 630 S. PACIFIC HWY [MAP NO. 38-1W-25B)
TAXLOT 2801], THE CITY OF TALENT PLANNING)
COMMISSION FINDS THE FOLLOWING:) ORDER

1. The Planning Commission held a properly noticed public hearing on this matter on October 27, 2016;
2. The Planning Commission asked the Community Development Director to present a staff report and a proposed final order with findings and recommendations;
3. At the public hearing evidence was presented and the public was given an opportunity to comment;
4. The Commission found that the addition recreational cannabis sales is a separate use from the existing medical cannabis sales operation and is allowed in accordance with Section 8-3D.450 of the Talent Zoning Code;
5. The Commission found that the proposed application, with conditions in all other respects complied substantially with the criteria for approval in 8-3D.4, 8-3L.2 and 8-3M.2 of the Talent Zoning Code.

The Talent Planning Commission approves the Conditional Use Permit (CUP 2016-004) with the following conditions of approval:

GENERAL CONDITIONS:

1. No uses other than retail operations shall be conducted on the subject parcel without additional conditional use permit review.
2. Onsite consumption or use of marijuana products or tobacco are prohibited.
3. Security bars shall not be allowed on any portion of the exterior of the building, nor shall they be installed on the interior of the building if they are visible from the outside.

PRIOR TO ISSUANCE OF BUSINESS LICENSE:

4. Provide Community Development a complete list of products to be sold or stored onsite. Upon review by the Jackson County Fire District 5 Fire Chief or the Building Official, if it has been determined that a fire, life and safety inspection and/or a change

of occupancy is required, the applicant shall prior to Certificate of Occupancy, install all necessary improvements to meet the building code of the new occupancy group.

5. Submit plans for and install an appropriate air filtering and ventilation system sufficient to confine odors on the premises or provide evidence from a licensed professional that the existing air filtering and ventilation system is adequate to meet the intent of the standard. Plans for the necessary air filtering and ventilation system shall be submitted to the Building Official for review and approval prior to installation.
6. Provide Community Development with a complete copy of the approved State retail license including all conditions, prohibitions and a list of names of all owners, operators and employees. The names of all owners, operators and employees and their background checks shall be provided to Community Development on an annual basis as part of the business license application.
7. Provide Community Development a waste management plan in accordance with OAR 845-025-7750 detailing how solid and hazardous waste along with wastewater will be disposed or provide documentation that a waste management plan has been approved as part of the OLCC licensing process. The applicant shall install any required waste management facilities necessary to meet the requirements of OAR 845-025-7750.
8. Permanently mark one (1) additional parking space as proposed on the approved site plan.
9. Install one bicycle space for every ten (10) motor vehicle parking spaces. Sheltered bicycle parking is recommended.

PRIOR TO ISSUANCE OF ANNUAL BUSINESS LICENSE:

10. License provide Community Development with a complete copy of all financial records subject to audit consistent with Ordinance 14-875-O.

IT IS HEREBY ORDERED THAT the Talent Planning Commission approves with conditions the requested conditional use permit to operate a retail cannabis business based on the information presented in the Staff Report and Findings of Fact below:

In the following, any text quoted directly from City codes appears in *italics*; staff findings appear in regular typeface.

8-3D.450 BUILDINGS AND USES SUBJECT TO CONDITIONAL USE REVIEW

The planning commission may grant or deny a conditional use permit in accordance with the procedure and provisions set forth in Article 8-3L.2.

B. Retail sales of medical or recreational marijuana.

FINDING: The subject parcel is zoned Commercial Highway (CH) and has allowed medical dispensaries or recreational sales of marijuana in the zone since December 5, 2014 subject to

Section 8-3L.2 of the Talent Zoning Code. The applicant maintains that the retail sales of cannabis has occurred at this location since the medical marijuana dispensary opened in October 2014 in accordance with Oregon Medical Marijuana Program (OMMP) regulations and that retail sales of medical cannabis was neither allowed nor disallowed in the Talent Zoning Code at the time the business began operations. However, the OMMP program at that time did not allow for “retail” sales of medical cannabis to the general public, and only allowed for reimbursement. OAR 845-025-1015 defines a retailer as:

(47) “A marijuana retailer licensed by the Commission (Oregon Liquor Control Commission).”

In 2014 when the applicant began operating the medical marijuana facility, the OMMP disallowed the sales of marijuana for a profit and retail licensing by the Commission was not available. Operators of a medical marijuana facility were only able to be reimbursed by patients for the cost of supplies and utilities associated with the production of his or her medical marijuana; the Act did not allow reimbursement for labor or any other costs.

Additionally, Section 8-3B.220(H) of the Talent Zoning Code defines a retail use as:

1. *Establishments involved in the **sale, lease, or rent of new or used products to the general public for personal or household consumption** and establishments involved in the sale of personal services, hospitality services, or product repair services to the general public.*

When the medical marijuana facility operations were approved in 2014, it was to serve only a limited population of OMMP card holders, and because of this is not classified as a pre-existing retail operation.

The applicant stated that Grateful Meds began selling limited recreational marijuana products to consumers over the age of 21 in February 2016 after OLCC implemented the recreational marijuana retail sales program. Since Staff has determined that retail operations by both State and local definitions were not taking place prior to December 5, 2014 when revisions to the City’s Zoning Code were adopted, and since the sales of retail marijuana has not been approved through a conditional use permit review, the use is being conducted in violation of the City zoning code. Once the conditional use permit review allowing the recreational retail sales of marijuana has been approved, the sales of recreational marijuana may be continued. **The provisions of this section have been met subject to conditions of approval.**

8-3L.244 GENERAL CRITERIA FOR APPROVAL

In judging whether or not a conditional use permit shall be approved or denied, the Planning Commission shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable. A conditional use may be granted only if:

- A. *The proposed use is consistent with the City of Talent Comprehensive Plan.*

FINDING: The proposed use is consistent with the intent of the uses allowed on a property with a commercial Comprehensive Plan Designation. **The provisions of this section have been met subject.**

- B. *The proposed use is consistent with the purpose of the zoning district.*

FINDING: The purpose of the CH zoning district is to accommodate businesses and trade oriented towards automobile and truck usage. Tourist trade and heavy commercial or light industrial uses can also be accommodated in this zone. The proposed use is the addition of recreational sales of marijuana allowed as a conditional use in the CH zone. The proposed use has met or can meet the conditional use requirements of 8-3L.2 with conditions of approval. **The provisions of this section have been met subject to conditions of approval.**

- C. *The proposed use and development is found to meet the required findings of 8-3L.150, "Required Findings for Approval of Plan," set forth for approval of a site development plan review.*

FINDING: As stated in the findings for 8-3L.150 below, the proposed use is located within an existing building. Only minimal site development review is necessary to ensure the site can accommodate the required parking and to determine if additional buffering is required. **The provisions of this section have been met subject to conditions of approval.**

- D. *The proposed use will not adversely affect the livability, value, and appropriate development of abutting properties and the surrounding area, compared to the impact of uses that are permitted outright. Testimony of owners of property located within two hundred and fifty (250) feet of the boundaries of the property in question shall be considered in making this finding.*

FINDING: The proposed addition of recreational sales of marijuana is subject to OLCC rules consistent with or stricter than the existing medical marijuana dispensary. As proposed, the retail operation will be a low-impact business similar in nature to other local retail businesses. Unlike the pre-existing medical use which is limited to only OMMP card holders, recreational sales will be open to the general public.

The applicant's statement addresses only medical and retail sales operations. No food product manufacturing, repackaging or growing of products or lab testing facilities have been approved as part of this conditional use permit. As a general condition of approval, no uses other than retail or medical sales operations shall be conducted in the building on the subject parcel. **The provisions of this section have been met subject to conditions of approval.**

- E. *All required public facilities have adequate capacity to serve the proposal. System Development Charges will be assessed at the time a building permit is issued. Additional SDCs will be assessed for change in use that are more intense than a pre-existing use.*

FINDING: The proposed use is within an existing building built in 1991 and was recently reconstructed to accommodate the proposed retail use. The proposed use will not create capacity issues for the public facilities in the area, therefore additional SDCs will not be assessed. As a general condition of approval, no uses other than retail or medical sales of marijuana or marijuana products shall be conducted on the subject parcel without additional conditional use permit review. **The provisions of this section have been met subject to conditions of approval.**

- F. *The site size, dimensions, location, topography, and access are adequate considering such items as the bulk, coverage or density of the proposed development; the generation of traffic; environmental quality impacts; and health, safety or general welfare concerns.*

FINDING: The proposed addition of retail marijuana sales does not increase the site size, building dimensions, location, topography or generate a significant increase in traffic. Considering the proposed retail business is cannabis related, concerns of environmental quality impacts, health, safety and general welfare must be addressed.

Section 8-3L.215 of the Talent Zoning Code authorizes the Planning Commission to grant or deny conditional uses and shall impose any conditions which are necessary to ensure compliance and to protect the health, safety or general welfare of the community. Section 8-3L.246(I) shall apply and is addressed below. **The provisions of this section have been met subject to conditions of approval.**

- G. *The City of Talent has adequate firefighting equipment to protect the structure, as verified by the Talent Fire Chief, or arrangements have been or will be made by the developer to insure that adequate equipment will be available before the occupancy of the building for any use.*

FINDING: The existing building was built 1991 and the current occupancy rating was recently changed to mercantile. Jackson County Fire District 5 has recommended that other businesses handling marijuana related products provide a list of products onsite to determine if the State Fire Marshall requires a change of building occupancy. If a change of occupancy is determined as necessary, a fire, life and safety inspection may be required. As a condition of approval, the applicant shall, prior to Certificate of Occupancy, provide Community Development a complete list of products onsite. Upon review by the Jackson County Fire District 5 Fire Chief or the Building Official, if it has been determined that a fire, life and safety inspection and/or a change of occupancy is required, the applicant shall prior to issuance of a City business license, install all necessary improvements to meet the building code of the new occupancy group. **The provisions of this section have been met subject to conditions of approval.**

8-3L.246 SPECIAL STANDARDS GOVERNING CONDITIONAL USES

Certain conditional uses shall meet the following standards:

- I. *Retail Sales of Medical & Recreational Marijuana*
1. *Establishments vending medical or recreation marijuana shall be located at least 100 feet from a residential zone, 100 feet from a mixed use building with a residential unit, at least 750 feet from a public or private park and at least 1,000 feet from an existing public or private elementary, secondary or career school primarily attended by minors. For purposes of determining the distance between the establishment and the aforementioned areas, within the specified distance means a straight line measurement in a radius extending for specified distance or less in every direction from any point on the boundary line of a residential zone, public or private park or from an existing public or private elementary, secondary or career school primarily attended by minors.*

FINDING: The subject parcel is approximately 130 feet from a residential zone and more than 1,200 feet from the closest dispensary. The proposed business is more than 800 feet from Chuck Roberts park and no schools are within 1,000 feet.

As proposed, the addition of a retail sales operation will occupy the same cubic space and does not change the overall character of the area. The medical marijuana facility, while not a retail operation open to the public, does in fact have a retail component similar to that of a pharmacy. Considering the similarities in use classification, the addition of a recreational retail within the same building footprint will not adversely affect the surrounding businesses or properties.

The applicant's statement addresses only retail and medical sales operations. No discussion of food product manufacturing, repackaging or growing of products or lab testing facilities have been approved as part of this conditional use permit. While these uses are allowed, they are subject to conditional use permit approval which requires an additional public hearing and land use application. As a general condition of approval, no uses other than retail or medical sales operations shall be conducted on the subject parcel without additional conditional use permit review. **The provisions of this section have been met subject to conditions of approval.**

2. *No extracts, oils, resins or similar products from marijuana shall be produced on site and the use of open flames for the preparation of any products is prohibited.*

FINDING: In accordance with OAR 845-025-3500 and the provisions of this section, the proposed retail operation shall not produce extract, oils, resins or similar products from marijuana onsite or use of open flames for the preparation of any products.

OAR 845-025-3500 allows the licensed retailer to resell marijuana or a cannabinoid product, concentrate or extract to a marijuana consumers. Considering this allowance, it is likely that these products will be stored onsite in unknown types and quantities and may pose a fire, life and safety risk to other occupants of the building and the surrounding properties. As a condition of approval, the applicant shall, prior to Certificate of Occupancy, provide Community Development a complete list of products to be sold or stored onsite. Upon review by the Jackson County Fire District 5 Fire Chief or the Building Official, if it has been determined that a fire, life and safety inspection and/or a change of occupancy is required, the applicant shall prior to issuance of a City business license, install all necessary improvements to meet the building code of the new occupancy group. **The provisions of this section have been met subject to conditions of approval.**

3. *Marijuana and tobacco shall not be used on property where a sale occurs.*

FINDING: Use of marijuana and tobacco products onsite may have a negative impact on neighboring tenants and their patrons or adjacent property owners. In accordance with this section and OAR 845-025-1230 onsite consumption or use of marijuana products or tobacco where a sale occurs is prohibited. As a general condition of approval, onsite consumption or use of marijuana products or tobacco are prohibited. **The provisions of this section have been met subject to conditions of approval.**

4. *Establishment shall have air filtering and ventilation systems that confine odors to the premises.*

FINDING: Storage of marijuana products onsite may have a negative impact on neighboring tenants and their patrons or adjacent property owners. To reduce the impacts on the aforementioned group and to ensure compliance with the provisions of this section, the applicant shall prior to issuance of a City business license submit plans for and install an appropriate air filtering and ventilation system to confine odors on the premises. Plans for the necessary air filtering and ventilation system shall be submitted to the Building Official for review and approval prior to installation. **The provisions of this section have been met subject to conditions of approval.**

5. *Minors are not allowed on the premises unless they are a medical marijuana cardholder and accompanied by a parent or guardian.*

FINDING: The proposed retail operation shall comply with OAR 845-025-1230(6)(a) that limits any minor on a licensed premise except as provided in OAR 845-025-1230(7) which states:

- (7) *... a minor, other than a licensee's employee, who has a legitimate business purpose for being on the licensed premises, may be on the premises for a limited period of time in order to accomplish the legitimate business purpose. For example, a minor plumber may be on the premises in order to make a repair.*

The aforementioned OAR restriction shall be a general condition of approval. **The provisions of this section have been met subject to conditions of approval.**

6. *Owners, operators and employees who have been convicted of manufacturing or delivering drugs once in the past five years or twice in their lifetime may not operate or own a medical or recreational marijuana retail establishment.*

FINDING: The proposed retail operation is regulated by OAR 845-025-1000. As a condition of approval, the applicant shall, prior to the issuance of a City business license provide Community Development with a complete copy of the approved State retail license including all conditions, prohibitions and a list of names of all owners, operators and employees. The names of all owners, operators and employees and their background checks shall be provided to Community Development on an annual basis as part of the business license application. **The provisions of this section have been met subject to conditions of approval.**

7. *Prior to operation, background checks for all owners, operators and employees shall be provided to the City. Not providing required background checks for all owners, operators and employees at any time is grounds for revocation of the conditional use permit.*

FINDING: The proposed retail operation is regulated by OAR 845-025-1000. As a condition of approval, the applicant shall, prior to the issuance of a City business license provide Community Development with a complete copy of the approved State retail license including all conditions, prohibitions and a list of names of all owners, operators and

employees. The names of all owners, operators and employees and their background checks shall be provided to Community Development on an annual basis as part of the business license application. **The provisions of this section have been met subject to conditions of approval.**

8. *Establishments shall keep financial records that are subject to audit. (if tax is implemented)*

FINDING: Ordinance 14-875-O allows the City to exercise its right to impose a tax on the sale of marijuana and marijuana infused products in the City of Talent. Ordinance 14-875-O provides details for the duty of every seller liable for the collection and payment of any tax imposed by the City.

OAR 845-025-1200 also requires similar record retention and shall be made available for inspection if requested by an employee of the Oregon Liquor Control Commission (OLCC). Considering this OAR requirement, these documents are already required to be retained for a period of three (3) years and pose no additional burden on the applicant. As a condition of approval, the applicant shall, prior to the issuance of an annual City business license provide Community Development with a complete copy of all financial records subject to audit consistent with Ordinance 14-875-O. **The provisions of this section have been met subject to conditions of approval.**

9. *Establishment shall not have security bars and shall not operate a drive-thru facility.*

FINDING: The proposed retail establishment does not identify any drive-thru facilities nor are drive-thru facilities allowed in the CH zoning district.

In accordance with the provisions of this section, security bars are not allowed on any portion of the building. As a general condition of approval, security bars shall not be allowed on any portion of the exterior of the building, nor shall they be installed on the interior of the building if they are visible from the outside. **The provisions of this section have been met subject to conditions of approval.**

8-3L.247 *CONDITIONS AND RESTRICTIONS*

Conditional uses, including those not listed in 8-3L.246 above may be subject to additional standards. In permitting a new conditional use or the substantial alteration of an existing conditional use, the Planning Commission may impose conditions and require the installation of improvements which it considers necessary to conform to the provisions of this Chapter and to protect the best interests of the surrounding area or the City as a whole, and may require guarantees and evidence that such conditions are being or will be complied with. These conditions and improvements may include, but are not limited to, the following:

- J. *Requiring berms, screening, landscaping or other measures to protect adjacent or nearby property and designating standards for their installation and maintenance including, but not limited to a recorded development agreement approved by the City Attorney;*

FINDING: The subject parcel is zoned Commercial Highway (CH) and is not adjacent to a conflicting use or a single family zoning district. The proposed expansion is in an area with

heavy commercial activity and is less intensive than the surrounding uses. There are no external components to the proposed expansion of use that create the need for additional buffering, therefore buffering is not necessary. **The provisions of this section have been met.**

8-3L.150 REQUIRED FINDINGS FOR APPROVAL OF PLAN

After an examination of the site, the Planning Commission shall approve, or approve with conditions the site development plan if all of the following findings are made:

- A. *All provisions of this Chapter and other applicable City ordinances and agreements are complied with;*
- B. *The proposed development will be in conformance with the intent and objectives of the zone in which it will be located;*

FINDING: The purpose of the CH zoning district is to accommodate businesses and trade oriented towards automobile and truck usage. The proposed use is an expansion of a medical marijuana facility which is already retail in nature. The proposed use is a State regulated business that meets the intent of the zoning district. The proposed use is allowed as a conditional use to ensure compatibility with the surrounding properties and has met or can meet the conditional use requirements of 8-3L.2 with conditions of approval. **The provisions of this section have been met subject.**

- C. *All applicable portions of the City comprehensive plan or other adopted plan are complied with;*

FINDING: The proposed use is consistent with the intent of the uses allowed on a property with a commercial Comprehensive Plan Designation. **The provisions of this section have been met subject.**

- D. *The proposed development will be compatible with or adequately buffered from other existing or contemplated uses of land in the surrounding area;*

FINDING: The proposed use will be conducted entirely indoors and with proper interior ventilation and air filtering will have minimal, if any negative impacts on the adjacent tenants, neighboring properties or patrons. Once a proper air filtering and ventilation system has been installed, any compatibility issues will have been mitigated. As a condition of approval, the applicant shall prior to issuance of issuance of a City business license, submit plans for and install an appropriate air filtering and ventilation system to confine odors on the premises. Plans for the necessary air filtering and ventilation system shall be submitted to the Building Official for review and approval prior to installation. **The provisions of this section have been met subject to conditions of approval.**

- E. *That no wastes, other than normal water runoff, will be conducted into City storm and wastewater facilities;*

FINDING: No new structures are being proposed and the existing and proposed uses do not produce any exterior waste other than normal water runoff. **The provisions of this section have been met.**

F. *The following are arranged so that traffic congestion is avoided, pedestrian and vehicular safety, solar access, historic sites, and the public welfare and safety are protected, and there will be no adverse effect on surrounding property:*

3. *parking and loading facilities;*

FINDING: The proposed retail use is located in the same building as the medical marijuana facility. Both uses are classified as retail and the building square footage is not being increased, therefore the existing parking requirements for the proposed use do not change.

However, in September 2016, Staff was notified by the Oregon Department of Transportation that one (1) of the required parking stalls was located in the State highway right-of-way. The applicant was notified of the encroachment issue and advised to resubmit a corrected site plan demonstrating that the parking requirements could be met onsite without using the public right-of-way.

As required, the applicant submitted a revised site plan identifying the required five (5) parking stalls, including the one (1) required ADA stall. As a condition of approval, prior to issuance of City Business license, the applicant shall permanently mark the additional parking space in accordance with the approved revised plan.

Additionally, the site does not currently have the required bicycle parking, as a condition of approval the applicant shall, prior to issuance of City business license, install one bicycle space for every ten (10) motor vehicle parking spaces. Sheltered bicycle parking is recommended. **The provisions of this section have been met subject to conditions of approval.**

7. *noise generation facilities and trash or garbage depositories.*

FINDING: The proposed retail operation is handling products that are age restricted. Any cannabis waste produced by the operation shall be disposed of in accordance with OAR 845-025-7750 Waste Management which states the following:

(1) A licensee must:

(a) Store, manage and dispose of solid and liquid wastes generated during marijuana production and processing in accordance with applicable state and local laws and regulations which may include but are not limited to:

(A) Solid waste requirements in ORS 459 and OAR 340 Divisions 93 to 96;

(B) Hazardous waste requirements in ORS 466 and OAR 340, Divisions 100 to 106; and

(C) Wastewater requirements in ORS 468B and OAR 340, Divisions 41 to 42, 44 to 45, 53, 55 and 73.

(b) Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.

As a condition of approval, the applicant shall, prior to issuance of a City business license provide Community Development a waste management plan in accordance with OAR 845-025-7750 detailing how solid and hazardous waste along with wastewater will be disposed or provide documentation that a waste management plan has been approved as part of the OLCC licensing process. Prior to issuance of a City business license, the applicant shall install any

required waste management facilities necessary to meet the requirements of OAR 845-025-7750. **The provisions of this section have been met subject to conditions of approval.**

- G. *The applicant has made any required street and other needed public facility and service improvements in conformance with the standards and improvements set forth in this Chapter and the applicable portions of the City Subdivision Code, or has provided for an adequate security arrangement with the city to ensure that such improvements will be made.*

FINDING: The proposed retail use is consistent with the intent of the Commercial Comprehensive Plan designation. The existing building was built in 1991 in accordance with the regulations in effect at the time of development. The retail use, as proposed, increases but does not require additional public facilities or service improvements. **The provisions of this section have been met.**

This approval shall become final 14 days from the date this decision and supporting findings of fact are signed by the Chair of the Talent Planning Commission, below. A Planning Commission decision may be appealed to the Hearing's Officer within 14 days after the final order has been signed and mailed. An appeal of the Hearing's Officer decision must be submitted to the Land Use Board of Appeals within 21 days of the Hearing Officer's decision becoming final.

Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the City to respond to the issue precludes an action for damages in circuit court.

Felicia Hazel
Planning Commission Chair

Date

ATTEST

Zac Moody
Community Development Director

Date