



## PLANNING COMMISSION MEETING

Tuesday, January 27, 2015

6:30 p.m.

Council Chambers

2<sup>nd</sup> Floor City Hall

1300 NE Village Street

### MEETING AGENDA

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1. **CALL TO ORDER:** 6:30 p.m.
2. **CITIZENS WISHING TO SPEAK ON NON-AGENDA ITEMS**
3. **REVIEW AND ADOPT MINUTES:**
  - January 13, 2015
4. **ELECTION OF OFFICERS**
5. **PUBLIC HEARING**
  - Application 2014-43 ZC Marijuana Facilities & Marijuana Retail Premises
    - Applicable Fairview Municipal Code Criteria:
      - FMC 19.205 Amendments
      - FMC 19.413 Type IV Procedures
      - Comprehensive Plan Policies: Chapter 2, Policy 7.C
6. **STAFF UPDATES**
7. **COMMISSION UPDATES**
8. **TENTATIVE AGENDA**
  - Work Session on February 24, 2015, regarding Blue Lake natural resource buffer.
9. **ADJOURNMENT**

### **NEXT PLANNING COMMISSION MEETING TUESDAY, FEBRUARY 24<sup>th</sup>, 2015.**

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Planning Commission hearings are broadcast live on Comcast Cable Channel 22 and Frontier Cable Channel 33. Replays of the hearing are shown on Comcast Channel 22 and Frontier Channel 33 Saturday at 12:00pm and Monday at 2:00pm, and Comcast Channel 30 and Frontier Channel 39 Wednesday at 7:00pm. Further information is available on our web page at [www.fairvieworegon.gov](http://www.fairvieworegon.gov) or by calling Devree Leymaster, City Recorder, 503-674-6224.

The meeting location is wheelchair accessible. A request for an interpreter for the hearing impaired or for other accommodations for person with disabilities should be made at least 48 hours before the meeting to: Devree Leymaster, 503-674-6224.

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MINUTES  
PLANNING COMMISSION MEETING  
1300 NE Village Street  
Fairview, OR 97024  
Tuesday, January 13, 2015

PRESENT: Gary Stonewall, Chair  
Ed Jones, Vice Chair  
Keith Kudrna  
Jack McGiffin  
Steve Kaufman  
Greg Walczyk  
Julius Arceo

STAFF: Erika Palmer, Development Analyst  
Devree Leymaster, City Recorder

**1. CALL TO ORDER**

Chair Stonewall called the meeting to order at 6:30 PM.

**2. CITIZENS WISHING TO SPEAK ON NON-AGENDA ITEMS**

Chair Stonewall inquired if any person would like to speak on a non-agenda item, hearing none moved to approval minutes.

**3. REVIEW AND ADOPT MINUTES**

Commissioner Kaufman moved to approve the September 23, 2014 minutes and Commissioner Kudrna seconded. The motion passed unanimously.

**4. PUBLIC HEARING**

2014-39-NR

Natural Resource Permit: Port of Portland

Chair Stonewall read the Opening Statement for Quasi Judicial Hearings. Development Analyst Palmer sited the applicable Fairview Municipal Code criteria. No ex parte contact or conflicts of interested were disclosed.

Development Analyst Palmer reviewed the staff report and findings of fact. (*Exhibit A*) The site is part of the Troutdale Reynolds Industrial Park located off 223<sup>rd</sup> Avenue. The applicant is requesting permit approval for major site grading and wetland fill in the north portion of the site and natural resource enhancements and wetland creation in the southern portion of the site. This project is the first phase in creating a general industrial site with the associated wetland mitigation already in place. Following completion of this phase, the next steps i.e. rezoning and development review will be reviewed by the Planning Commission. Staff recommends approval of the application and proposed requests. Applicant has met all applicable criteria.

Port of Portland Representative Steve Bloomquist reiterated the information Development Analyst Palmer presented and the Ports commitment to comply with all conditions of approval from the varying organizations involved with the permit and approval process. He stated the Port accepts Fairview's findings and conditions of approval.

Commissioner Kaufman requested clarification regarding the potential use of herbicides close to the river and wetlands. Mr. Bloomquist replied herbicide will only be used after the site is

stripped and in compliance with Department of State Lands (DSL) and Army Corp of Engineers for effective blackberry removal. All protocols to prevent it from entering the water ways will be complied with. Vice Chair Jones commented the regulations for how and when herbicides can be used are already in place. Development Analyst Palmer noted herbicide use is documented in the DSL permit and conditions of approval.

Commissioner Kudrna moved to close the public hearing and Commissioner Kaufman seconded. Public Hearing was closed. Commission discussion: Commissioner Kudrna commented a 3-year approval may not be enough and he would support a 4-yr approval. It is a massive and environmentally sensitive project; wants to see it done right.

Commissioner Kudrna moved to approve application 2014-39-Natural Resource Permit with the findings and conditions and Commissioner Kaufman seconded. The motion passed unanimously.

AYES: 7

NOES: 0

ABSTAINED: 0

**5. STAFF UPDATES**

Development Analyst Palmer reported the VA project is moving forward. Grading, erosion control, and foundation permits have been issued and staff anticipates the permit application for the building shell soon. Staff is reviewing permit applications for 4 new residential homes in the Wind River Subdivision on Depot Street and expects 4 more in the next few weeks. The Planning Commission annual report to City Council is due in February. Chair Stonewall agreed to attend the February 18 City Council meeting to present the report.

**6. COMMISSION UPDATES**

None.

**7. TENTATIVE AGENDA – January 27, 2014**

Type IV Legislative Hearing – Development Code Amendment. Review proposal to allow as a Conditional Use Medical Marijuana/Marijuana Retail Facilities in Light Industrial Zone.

**8. ADJOURNMENT**

Meeting adjourned by consensus at 7:12 PM.

Gary Stonewall, Chair

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Devree A. Leymaster  
City Recorder

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Date: \_\_\_\_\_

# EXHIBIT A



JANUARY 13, 2015

## City of Fairview

Planning Commission  
Application #2014-39-NR

## Application

The Port of Portland request the Planning Commission to consider a Natural Resource Permit to allow site grading, wetland fill, and natural resource enhancements in anticipation of future site development.

### The work will include:

- ➔ Site grading & planting within wetlands on south portion of site (enhancement)
- ➔ Re-grading, realignment of Sundial Channel for stormwater conveyance, drainage, flood control, water quality and to serve as onsite mitigation.
- ➔ Filling of wetlands on north side of lot to create development site
- ➔ Access road construction

### Specific Requests Include:

- ➔ Approval of a 3-year land use decision
- ➔ Preliminary approval of upland buffer setback in relation to future wetland area and development lot. This would also include approval of 20% of this buffer area to be used for stormwater management purposes (per Department of State Lands)
- ➔ Confirm access across and a 15 ft. setback from the south-edge of toe drain on northern portion of the site
- ➔ Use of heavy machinery & herbicide if needed.

## Notices/Referrals:

Notice sent to property owners within 250 ft.

Notice sent to Gresham Outlook

Site was posted

Sent to: City of Fairview Public Works Departments; Gresham Fire; Multnomah County Transportation Department; Columbia Slough Watershed Council; City of Troutdale; and Multnomah County Drainage District

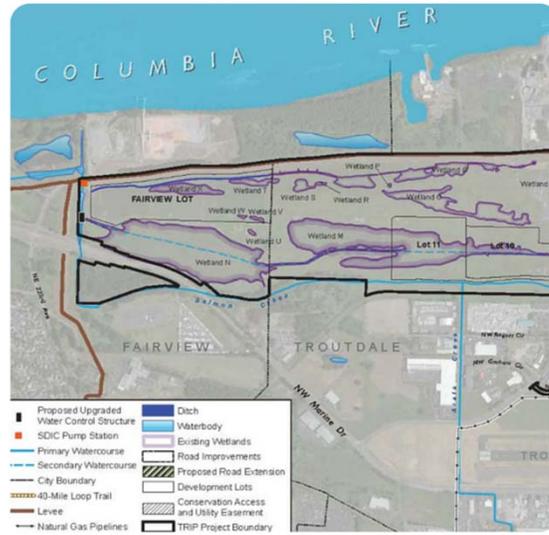
The City has received 3 comments

- 1) Multnomah County Transportation Department (Exhibit C)
- 2) City of Fairview Public Works Department (Exhibit C)
- 3) Multnomah County Drainage District (Exhibit C)

## Site Location



## Existing Conditions



## Review Criteria

Fairview Municipal Code: Title 19 Development Code

FMC 19.25 Agricultural Holding Zone

FMC 19.100 Culturally Sensitive Lands

FMC 19.105 Flood Plain Overlay

FMC 19.106 Natural Resource Protection

FMC 19.413.030 Type III Procedures

## Findings



FMC 19.25 Agricultural Holding Zone



FMC 19.100 Culturally Sensitive Lands

- Site investigations have been conducted in accordance with Oregon State Historic Preservation (SHPO)
- Any future mitigation measures will be undertaken by the Port, US Army Corps of Engineers (USACE), SHPO, and the appropriate Tribes

Application meets applicable code language

## Findings



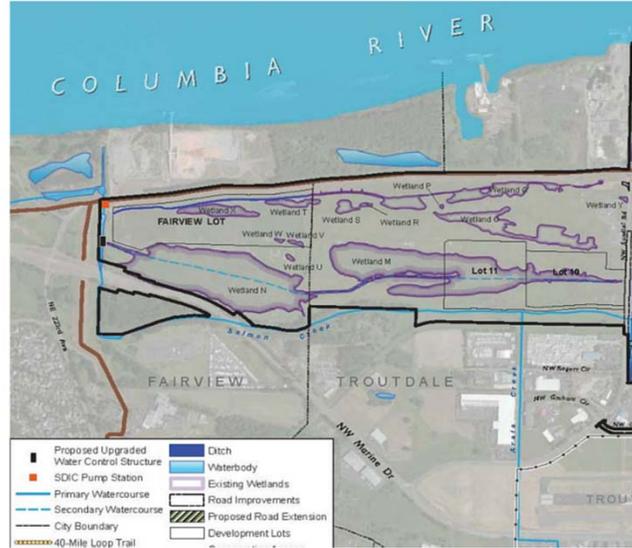
FMC 19.105 Floodplain Overlay

- Project a permitted use
- Provided a Cut/Fill Balance Report
- Project will increase flood storage capacity by 82,000 cubic yards

Application meets applicable code language

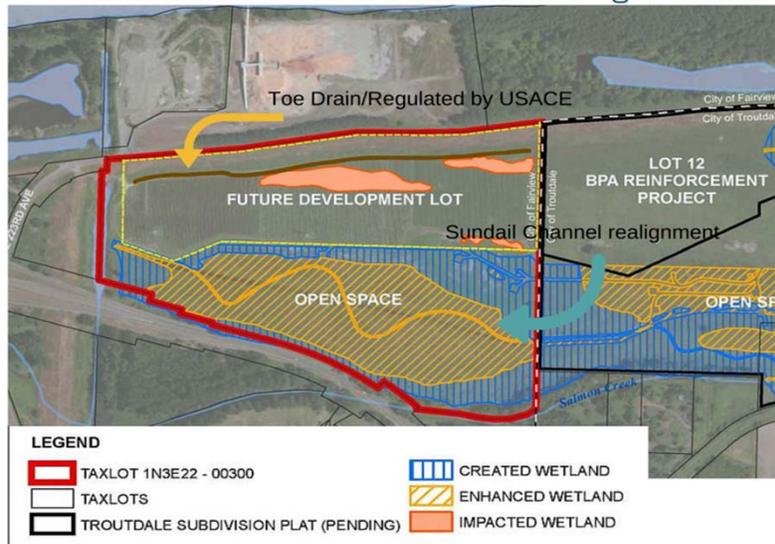
# Findings

## FMC 19.106 Natural Resource Regulations



# Findings

## FMC 19.106 Natural Resource Regulations





## Alternatives

- 1 Approve application based on the findings of compliance with City regulations.
- 2 Modify the findings, reasons, or conditions and approve the request as modified.
- 3 Deny the application based on the Commission's findings
- 4 Continue the Public Hearing to a date certain if more information is needed.

## Conclusion & Recommendation

Staff finds that the proposed application meets the requirements of the City Code with conditions, and recommends approval of the natural resource permit subject to the Conditions of Approval.



## PLANNING COMMISSION STAFF REPORT EXHIBIT "A" FINDINGS OF FACT

**Public Hearing Date:** January 27, 2015  
**Date of Report:** January 20, 2015  
**Application Number:** 2014-43-ZC Marijuana Facilities & Marijuana Retail Premises

**Application/Proposal:** To consider an amendment to Fairview Municipal Code (FMC) Section 19.80, Light Industrial (LI) District to allow as a conditional use Medical Marijuana Facilities and Marijuana Retail Premises licensed and authorized under state law.

**Applicant:** City of Fairview

**Comprehensive Plan Designation:** Light Industrial (LI)

**Zoning Designation:** Light Industrial (LI)

**Notice:** Notice was published in the Gresham Outlook on January 17, 2015, in accordance with FMC 19.413.040, Type IV procedures (legislative).

At the time of this report, the City has not received any written comments.

**Applicable Review Criteria:** Approval of an ordinance text or map amendment shall be based on the following criteria per FMC 19.205: Amendments

*FMC: 19.205.020, Criteria*

- A. The amendment will not interfere with the livability, development or value of other land in the vicinity of site-specific proposals when weighted against the public interest in granting proposed amendment.
- B. The amendment will not be detrimental to the general interests of the community.
- C. The amendment will not violate the land use designations established by the comprehensive land use plan and map or related text

- D. The amendment will place all property similarly situated in the area in the same zoning designation or in appropriate complementary designations without creating inappropriate “spot zoning”.

This is a Type IV application per FMC 19.413. Type IV matters are considered by the Planning Commission with final decisions made by City Council. The recommendation by the Planning Commission shall be based on the consideration of the following factors:

*FMC 19.413.040(G), Type IV Procedures*

1. Statewide planning goals and guidelines
2. Comments from applicable federal or state agencies
3. Applicable intergovernmental agencies
4. Applicable Comprehensive Plan policies

*Comprehensive Plan Policies: Chapter 2, Policy 7.C*

- C. Revisions having little significance beyond the immediate area of the change (minor revisions) will be based on special studies or other information that justifies the public need for the change.

**Application Narrative/ Background/Location**

**Narrative:** The Planning Commission is to consider an amendment to Fairview Municipal Code (FMC) Section 19.80, Light Industrial (LI) District to allow as a conditional use medical marijuana facilities and marijuana retail premises licensed and authorized under state law.

If the Planning Commission recommends this amendment to the City Council for consideration and adoption, it would not be codified into the Development Code unless or until the City Council repeals Ordinance 05-2014.

**Background:** The City Council adopted Ordinance 05-2014 on February 5, 2014 that effectively prohibits medical marijuana facilities and marijuana retail premises within the City. In order to receive a business license within the City of Fairview a business must be in compliance with the U.S. Controlled Substances Act. This means that medical marijuana or marijuana retail premises cannot receive a City business license unless or until Ordinance 05-2014 is repealed.

A medical marijuana facility is a dispensary registered by the Oregon Health Authority, to receive marijuana or immature marijuana plants and transfer that marijuana to a patient or a patient’s caregiver if the patient or caregiver has an Oregon Medical Marijuana Program card.

Measure 91 passed by voters on November 4, 2014, will legalize and regulate the possession and sale of marijuana for recreational use. Starting July 1, 2015, Measure 91 allows the personal use and possession of recreational marijuana under Oregon law; the Oregon Liquor Control Commission (OLCC) will begin taking license applications for the retail sale of recreational marijuana (in addition to other licenses to produce and process marijuana) on January 4, 2016. Measure 91 designates the OLCC as the state agency that will implement the terms of the initiative. For the purposes of this Code amendment “marijuana retail establishments” will include any licensee under M91 who is licensed by OLCC to produce, process, or sell wholesale or retail marijuana.

**Location:**

Medical marijuana dispensaries in Oregon must be located in an area zoned for commercial, industrial, or mixed use or as agricultural land. A dispensary may not be located within 1,000 feet of or a school (primary, secondary, or career attended by minors) or another registered dispensary. In addition medical marijuana facilities must install security systems with certain elements, including video surveillance, and alarms; must be a registered business with the Office of Secretary of State; and comply with rules adopted of the Oregon Health Authority.

M91 does not contain any language prohibiting the location of establishments that produce, process, sell or serve marijuana within 1,000 feet of schools but does allow local governments to impose reasonable time, place, and manner restrictions on such establishments. There are several bills that have already been introduced in the Oregon legislature that could restrict where these premises are located.

Staff recommends allowing medical marijuana facilities and marijuana retail establishments as a conditional use in certain parts of the Light Industrial (LI) zone. Most of the LI zone is located more than 1,000 ft. from schools and public parks. There is small portion just north of the Fairview Elementary School within the Light Industrial zone that is less than 1,000 feet from the school. As a result, staff recommends limiting establishments that produce, process, sell or serve recreational marijuana to those areas in the LI zone that are more than 1,000 feet from any school to comport with the same limitations imposed under state law for medical marijuana facilities. The areas that will allow medical marijuana facilities and marijuana retail establishments are shaded in dark Blue (subject area) on the attached Exhibit C, Map of Light Industrial Zone with 1,000 ft. buffer from schools.

**PROPOSED FINDINGS:**

Staff proposes to limit the location where medical marijuana facilities and marijuana retail establishments are allowed to locate within the City. Staff believes that those areas that are more than 1,000 feet from any school in the LI Zone, see Exhibit C, would be an appropriate location for medical marijuana facilities and recreational marijuana retail establishments as a conditional use. This would require owners of these

establishments to obtain a conditional use permit. There are certain uses, which, due to the nature of their impacts on surrounding land uses and public facilities, require a case by case review and analysis – these are identified as “conditional uses.” Conditional Uses are Type III land use decisions that are made by the Planning Commission after a public hearing. Appeals of Type III decisions are reviewed and decided by City Council.

<b>FMC 19.205.020: Amendments</b>
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FMC: 19.205.020, Criteria

- E. The amendment will not interfere with the livability, development or value of other land in the vicinity of site-specific proposals when weighted against the public interest in granting proposed amendment.
- F. The amendment will not be detrimental to the general interests of the community.

***Finding: The proposed amendment will not interfere with the livability, development or value of other land in the vicinity of site-specific proposals when weighted against the public interest in granting proposed amendment. The proposed amendment will allow as a conditional use in those LI zone areas that are more than 1,000 feet from a public or private elementary, secondary or career school attended primarily by minors, medical marijuana facilities and recreational marijuana retail m establishments. . This amendment is only adding an allowed use to this zoning district – it does not add additional regulatory measures to existing uses. A conditional use permit would allow for this use to go through the public hearing process and additional standards may be applied based upon livability, safety, or other impacts that can be mitigated. Such conditions include limiting the hours, days or manner of operation, design features, larger setback areas, additional screening/landscaping, etc. The standards and criteria for conditional uses are found in FMC 19.440.400, Criteria, Standards and Conditions of Approval.***

- G. The amendment will not violate the land use designations established by the comprehensive land use plan and map or related text
- H. The amendment will place all property similarly situated in the area in the same zoning designation or in appropriate complementary designations without creating inappropriate “spot zoning”.

***Finding: The proposed amendment does not violate land use designations established by the comprehensive land use plan, map, or related text. The use is similar to other uses in the Light Industrial zone such as retail trade/services not exceeding 5,000 sq. ft., medical clinics, and other personal services. The proposed amendment does not create inappropriate spot zoning because it is not a zoning map designation amendment.***

**FMC 19.413.040: Type IV Procedures (Legislative)**

FMC 19.413.040.G: Decision Making Consideration: The recommendation by the Planning Commission and the decision by the City Council shall be based on the consideration of the following factors:

1. Statewide planning goals and guidelines
2. Comments from applicable federal or state agencies
3. Applicable intergovernmental agencies
4. Applicable Comprehensive Plan policies

Chapter 2, Policy 7.C

- C. Revisions having little significance beyond the immediate area of the change (minor revisions) will be based on special studies or other information that justifies the public need for the change.

***Findings:***

- 1. Adding medical marijuana facilities and retail establishments as a “conditional use” to certain parts of the Light Industrial zoning district does not conflict with statewide planning goals and guidelines.***
- 2. The city has not received any comments from applicable federal or state agencies.***
- 3. The city has not received comments from applicable intergovernmental agencies.***
- 4. Measure 91 passed by voters on November 4, 2014, will legalize and regulate the possession and sale of marijuana for recreational use – this demonstrates that there is a public need for the change. The proposed amendment of (FMC) Section 19.80, Light Industrial (LI) District would allow Medical Marijuana Facilities and Marijuana Retail Establishments as licensed and authorized under state law, as conditional uses in that zoning district with a buffering requirement of a minimum 1,000 ft. from public and private elementary, secondary, or career schools attended primarily by minors.***

**The proposed amendment would be codified in the Fairview Municipal Code only if and when the Fairview City Council repeals Ordinance 05-2014.**

**ALTERNATIVES**

The Planning Commission has the following decision-making options on the proposed amendment:

- 1. Recommend to City Council approval of Ordinance 01-2015 amending Chapter 19.80 of the Fairview Municipal Code by allowing medical marijuana facilities and recreational marijuana retail establishments as a conditional use in certain areas of the Light Industrial Zone.**
- 2. Modify the findings, reasons, or conditions, and approve the request as modified.**
- 3. Deny the application based on the Commission's findings.**
- 4. Continue the Public Hearing to a date certain if more information is needed.**

**ATTACHMENTS**

- 1) Exhibit "A" Findings of Fact
- 2) Exhibit "B" Ordinance 01-2015
- 3) Exhibit "C" Map of Light Industrial Zone with 1000 ft. buffer from schools.

ORDINANCE NO. 1 - 2015

**AN ORDINANCE AMENDING CHAPTER 19.80 OF THE FAIRVIEW MUNICIPAL CODE BY ALLOWING MEDICAL MARIJUANA FACILITIES AND MARIJUANA RETAIL PREMISES AS A CONDITIONAL USE IN LIGHT INDUSTRIAL ZONE.**

**WHEREAS**, Section 19.80.020 under Table 19.80.020 A of the Fairview Municipal Code (FMC) specifies those uses requiring Conditional Use Permit review prior to approval in the City's Light Industrial (LI) Zoning District; and

**WHEREAS**, Ordinance 05-2014 adopted by City Council on February 5, 2014, effectively prohibits medical marijuana dispensaries and recreational marijuana retail establishments in the City; and

**WHEREAS**, the addition of medical marijuana dispensaries and recreational marijuana retail establishments as a conditional use in certain areas of the LI zone will only apply if the Fairview City Council repeals Ordinance 05-2014; and

**WHEREAS**, if the Council repeals Ordinance 05-2014 in the future, the City desires to regulate the location of medical marijuana dispensaries and recreational marijuana retail establishments (licensed and authorized under state law) by allowing them in certain areas of the LI Zoning District as a conditional use.

**NOW, THEREFORE, THE CITY OF FAIRVIEW ORDAINS AS FOLLOWS:**

**Section 1.** Section 19.80.020 of the Fairview Municipal Code shall be amended as set forth in the attached Exhibit A.

**Section 2** A medical marijuana dispensary and/or recreational marijuana retail establishment will only exist as a conditional use in the Light Industrial zoning district and no other zoning district if the Fairview City Council repeals Ordinance 05-2014. Therefore, the amendments in Section 1 of this ordinance will only be effective if Ordinance 05-2014 is repealed and the amendments will not be codified until that time.

**Section 3.** This ordinance is effective upon and from 30 days after its enactment by the Council.

Ordinance adopted by the City Council of the City of Fairview, this \_\_\_\_ day of February , 2015

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Mayor, City of Fairview  
Ted Tosterud

ATTEST

**EXHIBIT A**  
(Deletions in ~~strike through~~ and additions in *italics*)

Table 19.80.020.A		
Land Use Types Permitted in the Light Industrial District		
<p>1. Industrial*</p> <p>a. Light manufacture (e.g., electronic equipment, printing, bindery, furniture, and similar goods)</p> <p>b. Laboratories</p> <p>c. Warehousing and distribution</p> <p>d. Mini-warehouse and storage</p> <p>e. Similar uses</p> <p>2. Commercial*</p> <p>a. Automobile-oriented uses (vehicle repair, sales, rental, storage, service; drive-up, drive-in, and drive-through facilities; and similar uses) (CU)</p> <p>b. Delicatessen shop (CU)</p> <p>c. Entertainment (e.g., theaters, amusement uses) (CU)</p> <p>d. Hotels and motels (CU)</p> <p>e. Medical and dental clinics and laboratories (CU)</p>	<p>f. Outdoor commercial uses (e.g., outdoor storage, sales and display) (CU)</p> <p>g. Personal and professional services (e.g., child care, catering/food services, restaurants, Laundromats and dry cleaners, barber shops and salons, banks and financial institutions, and similar uses) (CU)</p> <p>h. Repair services (CU)</p> <p>i. Retail trade and services, not exceeding 5,000 square feet of floor area per building</p> <p>j. Wholesale trade and services, not exceeding 5,000 square feet of floor area per building</p> <p>k. Professional, executive and administrative offices (CU)</p> <p><del>l. Uses similar to those listed above (CU)</del> <i>Medical Marijuana Facilities as authorized and licensed by the Oregon Health Authority and Recreational Marijuana Establishments as authorized and licensed by the Oregon Liquor Control Commission including establishments or premises licensed for the production, processing, or wholesale/retail</i></p>	<p>3. Civic and Semi-Public Uses (CU)*</p> <p>a. Government facilities (e.g., public safety, utilities, school district bus facilities, public works yards, transit and transportation, and similar facilities)</p> <p>b. Utilities (e.g., natural gas, electricity, telephone, cable, and similar facilities)</p> <p>c. Special district facilities (e.g., irrigation district, and similar facilities)</p> <p>d. Trade or commercial schools</p> <p>e. Churches</p> <p>f. Uses similar to those listed above</p> <p>4. Accessory Uses</p> <p>5. Wireless Communication Equipment (CU)*</p>

	<i>sale of marijuana (CU)</i>  <i>m. Uses similar to those listed above (CU)</i>	
Land uses with an asterisk (*) are subject to the standards in FMC <a href="#">19.80.080</a> .  Items with a CU require a conditional use permit subject to the procedure and standards in Chapter <a href="#">19.440</a> FMC, Conditional Use Permits.		

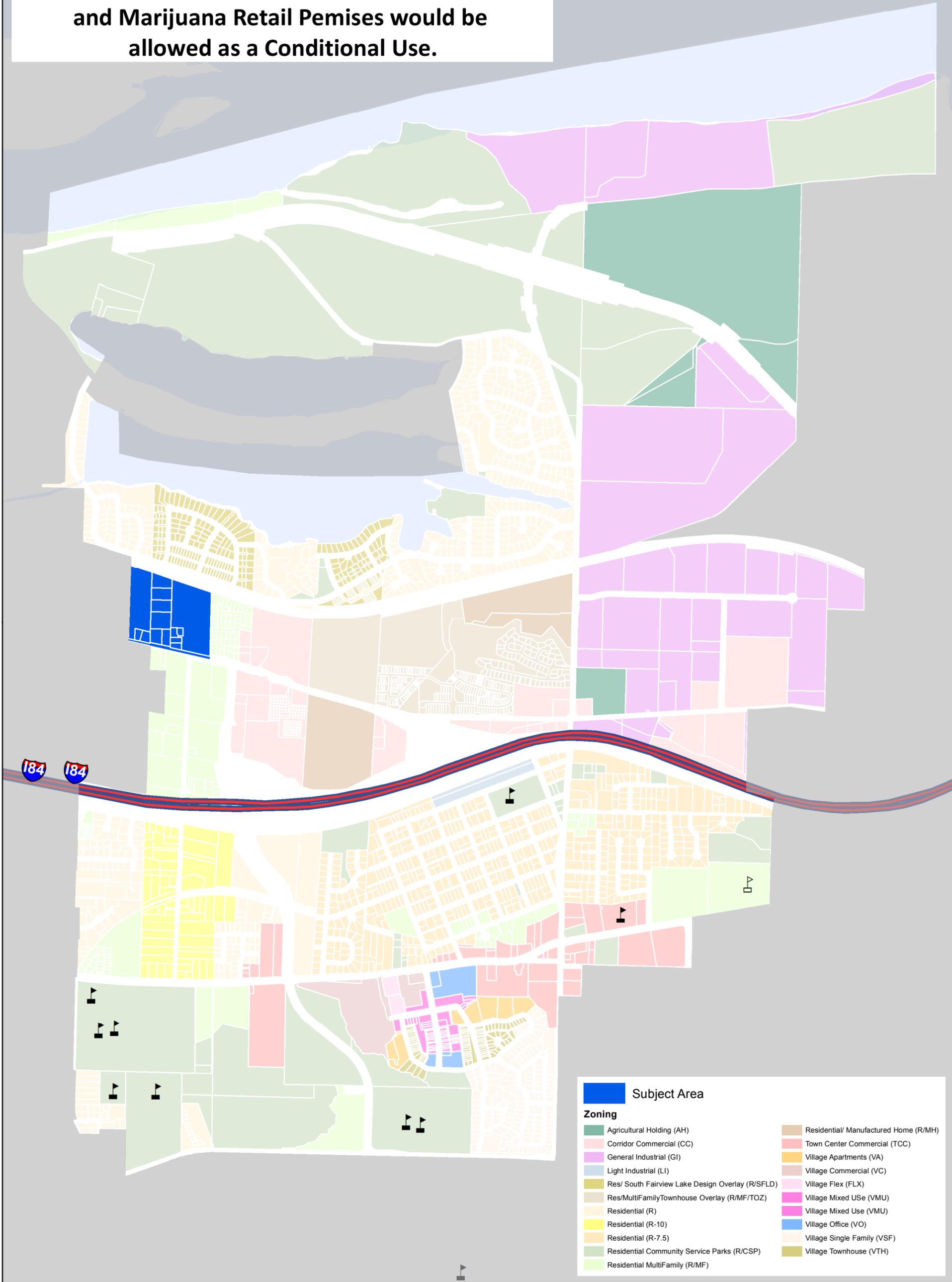
### 19.80.030 Development setbacks

#### D. Other Requirements.

##### 1. Buffering.

- a. A 20-foot minimum buffer zone shall be required between development and any adjacent residential district. The buffer zone shall provide landscaping to screen parking, service and delivery areas, and walls without windows or entries, as applicable. The buffer may contain pedestrian seating but shall not contain any trash receptacles or storage of equipment, materials, vehicles, etc. The landscaping standards in Chapter [19.163](#) FMC may require buffering other situations, as well.*
- b. A 1,000 ft. minimum buffer zone shall be required between real property comprising a public or private elementary, secondary or career school attended primarily by minors and Medical Marijuana Facilities and Recreational Marijuana Establishments licensed and authorized under state law. For purposes of this section “Medical Marijuana Facilities” are those authorized and licensed by the Oregon Health Authority and “Recreational Marijuana Establishments” are those authorized and licensed by the Oregon Liquor Control Commission to produce, process, or sell wholesale/retail marijuana. For purposes of determining the distance between a facility and a school, “within 1,000 feet” means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property comprising an existing public or private elementary, secondary or career school primarily attended by minors.*

**Area where Medical Marijuana Facilities and Marijuana Retail Premises would be allowed as a Conditional Use.**



City of Fairview  
 1300 NE Village Street  
 Fairview, OR 97024  
 (503) 665-7929  
 www.fairvieworegon.gov

Print Date: 01/16/2015



0 575 1,150  
 1 inch = 1,100 feet

This map is for informational purposes only and the City cannot accept responsibility for any errors, omissions, or positional inaccuracy. This map is provided "AS-IS".