



PLANNING COMMISSION MEETING

Tuesday, February 10, 2015

6:30 p.m.

Council Chambers

2nd Floor City Hall

1300 NE Village Street

MEETING AGENDA

1. **CALL TO ORDER:** 6:30 p.m.
2. **CITIZENS WISHING TO SPEAK ON NON-AGENDA ITEMS**
3. **REVIEW AND ADOPT MINUTES:**
 - January 27, 2015
5. **PUBLIC HEARING**
 - Continuance of 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 Fairview Lake natural resource buffer.
9. **ADJOURNMENT**

NEXT PLANNING COMMISSION MEETING TUESDAY, FEBRUARY 24th, 2015.

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 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.



MINUTES
PLANNING COMMISSION MEETING
1300 NE Village Street
Fairview, OR 97024
Tuesday, January 27, 2015

PRESENT: Gary Stonewall, Chair
Ed Jones, Vice Chair
Keith Kudrna
Jack McGiffin
Steve Kaufman

ABSENT: Greg Walczyk
Julius Arceo

STAFF: Allan Berry, Public Works Director
Erika Palmer, Development Analyst
Heather Martin, City Attorney
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 Kudrna moved to approve the January 13, 2015 minutes and Commissioner Kaufman seconded. The motion passed unanimously.

4. ELECTION OF OFFICERS

Commissioner Kaufman moved to appoint Vice Chair Jones as Chair and Commissioner Kudrna seconded. The motion passed unanimously.

Commissioner Kudrna moved to appoint himself as Vice Chair and Commissioner Kaufman seconded. The motion passed unanimously.

5. PUBLIC HEARING

2014-43-ZC Marijuana Facilities & Marijuana Retail Premises

Chair Stonewall read the Opening Statement for Legislative Land Use Hearings.

Development Analyst Palmer reviewed the staff report. The passage of Measure 91 (M91) will legalize and regulate marijuana for personal recreational use beginning July 1, 2015. It does not contain language prohibiting location, but it does allow local governments to impose reasonable time, place, and manner restrictions. Staff proposes limiting the location of retail establishments similar to medical facilities. Location of either type of facility would require a Conditional Use Permit and location would be limited to an area within the Light Industrial (LI) zone with a 1,000 ft. buffer from schools. This ordinance will not be codified into the Development Code unless or until the City Council repeals Ordinance 5-2014, which requires a business to be in compliance with the U.S. Controlled Substances Act in order to receive a business license to operate within the city. This means medical or retail facilities cannot receive a business license

until Ordinance 5-2014 is repealed. Development Analyst Palmer reviewed the criteria evaluation and decision making considerations for the proposal and alternatives presented.

City Attorney Martin reiterated Ordinance 5-2014 requires compliance with federal law which would in effect prohibit either medical or retail facilities within the city. If the city is unable to apply Ordinance 5-2014 and it is repealed by court order than the city can codify this proposed ordinance and impose reasonable time, place, and manner restrictions. The language in the proposed ordinance is in sync with the language in the original medical dispensary law. M91 does not have similar language. There are many legislative bills regarding these issues coming forward in the next session.

Commissioner Kaufman asked why the LI zone area was chosen and the Corridor Commercial zone excluded. Development Analyst Palmer replied similar criteria for retail was applied as for medical i.e. 1,000 feet from schools.

Commissioner McGiffin inquired if medical and recreational locations could be separated. City Attorney Martin replied the proposed approach is to align the dispensary law with M91, which allows recreational use, and utilize the rights of local governments to set reasonable location restrictions. Chair Stonewall summarized with the passage of M91 we may not be able to prohibit recreational retail sites, but we can establish some regulation.

Vice Chair Jones proposed including language to limit the proximity a recreational retail and medical dispensary could locate. The current state law is not clear on whether recreational and medical could operate within the same location. The city could regulate by adding language to 19.80 to specify medical or retail, but not both.

Chair Stonewall inquired if any person would like to speak in favor of, opposition of, or neutrally. Hearing none, Chair Stonewall closed the public hearing.

Commissioner McGiffin asked if the marijuana bills include funding to supplement police and medical facilities. City Attorney Martin replied not directly, but the state implemented a tax on sales that will be directed back to local governments for public safety. Not clear on how it will work in practice.

With Commission consensus, Chair Stonewall continued the hearing until February 10, 2015 at 6:30 PM to allow time for staff to add language to 19.80 specifying medical or retail, but not both.

5. STAFF UPDATES

Development Analyst Palmer reported the VA Medical Clinic is requesting to change the location of the entry door. It was originally approved off Halsey St., but the interior improvements will prohibit entry from Halsey. The request is a major modification and requires approval by the Planning Commission. It is scheduled for the February 24 meeting. There will also be an introductory discussion regarding the riparian buffer along Fairview Lake at the February 24 meeting.

6. COMMISSION UPDATES

None.

7. TENTATIVE AGENDA – February 10, 2015

- Continue Hearing: 2014-43-ZC Marijuana Facilities & Marijuana Retail Premises

8. ADJOURNMENT

Meeting adjourned by consensus at 7:06 PM.

Gary Stonewall, Chair

Devree A. Leymaster
City Recorder

Date: _____



PLANNING COMMISSION STAFF REPORT ADDENDUM EXHIBIT "A-1" FINDINGS OF FACT

Public Hearing Date: January 27, 2015
Continued to February 10, 2015

Date of Addendum: February 3, 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.

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.

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.

This addendum staff report provides additional findings and language to the proposed ordinance based upon the Planning Commission’s request at the January 27, 2015 public hearing to include language that recognizes the need to adopt regulations based upon

health, safety, and welfare to avoid adverse impacts on the community which may arise from the cultivation and distribution of medical and recreational marijuana. The Planning Commission recommended including language in the proposed development code amendment that would not allow medical and recreational marijuana to be sold or distributed at the same location within the Light Industrial District.

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.

FMC 19.205.020: Amendments

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 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 establishments. Conditional uses due to the nature of their potential impacts on the surrounding land uses and public facilities require a case by case review and analysis. Conditional uses are Type III land use decisions made by the Planning Commission after a public hearing. The City believes requiring a dispensaries and recreational establishments to have a conditional use permit in the Light Industrial zone, and not allowing both medical and recreational marijuana to be sold or distributed at the same location, will minimize adverse effects associated that may impact the health, safety, and welfare of its residents and businesses.

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.

<i>FMC 19.413.040: Type IV Procedures (Legislative)</i>
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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 and would not allow for the sale or distribution of medical and recreational marijuana at the same location.

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. **Continue the Public Hearing to a date certain if more information is needed.**
4. **Deny the application based on the Commission's findings.**

ATTACHMENTS

- 1) Exhibit "A-1" Staff Report Addendum Findings of Fact
- 2) Exhibit "A" Staff Report Findings of Fact, January 20, 2015
- 3) Exhibit "B" Ordinance 01-2015
- 4) Exhibit "C" Map of Light Industrial Zone with 1000 ft. buffer from schools.



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.

FMC 19.205.020: Amendments

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, The City of Fairview recognizes secondary effects associated with the cultivation and distribution of medical and recreational marijuana that may adversely impact the health, safety, and welfare of its residents and businesses. Problems associated with cultivation include offensive odors, trespassing, theft, and violent encounters between growers and persons attempting to steal plants, and fire hazards. Problems associated with medical marijuana dispensaries include increased crime in and about the dispensary/retail establishment, robberies of customers, negative impacts on nearby businesses, nuisance problems, and increased DUII incidents (See "White Paper on Marijuana Dispensaries," California Police Chiefs Association's Task Force on Marijuana Dispensaries, April 2009). Therefore, the City believes requiring a dispensary to locate in the LI zone will minimize these adverse effects to the greatest extent practicable; and

WHEREAS, there is also documentation of the negative effects marijuana use has on children and teenagers including evidence that the use of marijuana during critical developmental periods in the still maturing brain may induce persistent alterations in brain structure and brain function ("Long-term consequences of Adolescent Cannabis Exposure on the Development of Cognition, Brain Structure and Function: An Overview of Animal and Human Research," Current Drug Abuse Review, June 1, 2008); increased vulnerability for psychosis in early adolescence ("Cannabis Use and Vulnerability for Psychosis in Early Adolescence," Addiction, January 3, 2013); and increased potential for addiction. As a result, the City recognizes a need to restrict locations to areas that are not immediately accessible by school-aged individuals; and

WHEREAS, there is a need to adopt health, safety, and welfare regulations to avoid adverse impacts on the community which may arise from the cultivation and distribution of medical marijuana; and recreational marijuana.

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. The findings as set forth above in the recitals are hereby incorporated as if fully set forth herein, and shall be used for the purposes of interpreting this Ordinance.

Section 2. Section 19.80.020 of the Fairview Municipal Code shall be amended as set forth in the attached Exhibit A.

Section 3. 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 4. 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

 Mayor, City of Fairview
 Ted Tosterud

ATTEST

 City Recorder, City of Fairview
 Devree Leymaster

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

Table 19.80.020.A		
Land Use Types Permitted in the Light Industrial District		
1. Industrial* a. Light manufacture (e.g., electronic equipment, printing, bindery, furniture, and similar goods) b. Laboratories	f. Outdoor commercial uses (e.g., outdoor storage, sales and display) (CU) g. Personal and professional services (e.g., child care, catering/food services, restaurants, Laundromats and dry cleaners, barber shops and salons, banks and financial	3. Civic and Semi-Public Uses (CU)* a. Government facilities (e.g., public safety, utilities, school district bus facilities, public works yards, transit and transportation, and similar facilities)

<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>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>l. Uses similar to those listed above (CU) <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 sale of marijuana (CU)</i></p> <p><i>m. Uses similar to those listed above (CU)</i></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>
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Land uses with an asterisk (*) are subject to the standards in FMC [19.80.080](#).

Items with a CU require a conditional use permit subject to the procedure and standards in Chapter [19.440](#) 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.*

19.80.080 Special standards for certain uses.

- A. **High Traffic-Generating Uses.** Uses which are likely to generate “significant” levels of vehicle traffic (e.g., due to shipping, receiving, and/or customer traffic) shall require a conditional use permit, in accordance with FMC [19.80.020](#)(A). “Significant traffic” means that the average number of daily trips, or the average number of peak hour trips, on any existing street would increase by 10 percent or greater as a result of the development. The city may require a traffic impact analysis prepared by a qualified professional prior to deeming a land use application complete, and determining whether the proposed use requires conditional use approval. Applicants may be required to provide a traffic analysis for review by Oregon Department of Transportation (ODOT) for developments that increase traffic on state highways. The conditional use permit shall include appropriate transportation improvement requirements, as identified by the traffic analysis, in conformance with Chapter [19.165](#) FMC.
- B. **Wireless Communication Equipment.** Wireless communication equipment, including radio (i.e., cellular), television and similar types of transmission and receiving facilities are permitted, subject to the standards for wireless communication equipment in Chapter [19.245](#) FMC. Wireless communication equipment shall also comply with required setbacks, lot coverage and other applicable standards of the light industrial district.
- C. **Watchperson’s Quarters.** To be occupied by no more than two people, not to exceed 1,000 square feet in size, and such permit shall be renewed annually by the planning commission. In addition, use of the watchperson’s quarters, if approved, would be permitted only as long as the site need exists, with the assumption, rebuttable, that if the concerned area and use was no longer operational, the need would cease and be cause for revocation of permit. (Ord. 6-2001 § 1)
- D. *Medical Marijuana Facilities and Recreational Marijuana Establishments. 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 sale of marijuana may not sell or distribute marijuana at the same location.*

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



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