



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: April 08, 2015

Jurisdiction: City of Sandy

Local file no.: 15-001 DCA

DLCD file no.: 001-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 04/07/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 38 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.: 001-15 {22636}
Received: 4/7/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Sandy

Local file no.: **15-001 DCA**

Date of adoption: 4/6/2015 Date sent: 4/7/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

- Yes: Date (use the date of last revision if a revised Form 1 was submitted): 1/16/2015
- No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No
If yes, describe how the adoption differs from the proposal:

The adopted Ordinance includes additional definitions, buffers, and notification requirements.

Local contact (name and title): Tracy Brown, Planning Director

Phone: 503-668-4886 E-mail: tbrown@ci.sandy.or.us

Street address: 39250 Pioneer Blvd City: Sandy Zip: 97055

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- Change from _____ to _____ . _____ acres. A goal exception was required for this change.
- Change from _____ to _____ . _____ acres. A goal exception was required for this change.
- Change from _____ to _____ . _____ acres. A goal exception was required for this change.
- Change from _____ to _____ . _____ acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): _____ .

- The subject property is entirely within an urban growth boundary
- The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Ordinance 2015-02 amends Chapters 17.10, 17.44, and 17.50 related to Medical Marijuana Facilities.

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	. Acres:
Change from	to	. Acres:
Change from	to	. Acres:
Change from	to	. Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: . Acres added: . Acres removed:

Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts:

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

NOTICE OF ADOPTED CHANGE – SUBMITTAL INSTRUCTIONS

1. A Notice of Adopted Change must be received by DLCD no later than 20 days after the ordinance(s) implementing the change has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) as provided in [ORS 197.615](#) and [OAR 660-018-0040](#).

2. A Notice of Adopted Change must be submitted by a local government (city, county, or metropolitan service district). DLCD will not accept a Notice of Adopted Change submitted by an individual or private firm or organization.

3. **Hard-copy submittal:** When submitting a Notice of Adopted Change on paper, via the US Postal Service or hand-delivery, print a completed copy of this Form 2 on light green paper if available. Submit **one copy** of the proposed change, including this form and other required materials to:

Attention: Plan Amendment Specialist
Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

This form is available here:

<http://www.oregon.gov/LCD/forms.shtml>

4. **Electronic submittals** of up to 20MB may be sent via e-mail. Address e-mails to plan.amendments@state.or.us with the subject line “Notice of Adopted Amendment.”

Submittals may also be uploaded to DLCD’s FTP site at

http://www.oregon.gov/LCD/Pages/papa_submittal.aspx.

E-mails with attachments that exceed 20MB will not be received, and therefore FTP must be used for these electronic submittals. **The FTP site must be used for all .zip files** regardless of size. The maximum file size for uploading via FTP is 150MB.

Include this Form 2 as the first pages of a combined file or as a separate file.

5. **File format:** When submitting a Notice of Adopted Change via e-mail or FTP, or on a digital disc, attach all materials in one of the following formats: Adobe .pdf (preferred); Microsoft Office (for example, Word .doc or docx or Excel .xls or xlsx); or ESRI .mxd, .gdb, or .mpk. For other file formats, please contact the plan amendment specialist at 503-934-0017 or plan.amendments@state.or.us.

6. **Content:** An administrative rule lists required content of a submittal of an adopted change ([OAR 660-018-0040\(3\)](#)). By completing this form and including the materials listed in the checklist below, the notice will include the required contents.

Where the amendments or new land use regulations, including supplementary materials, exceed 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

7. Remember to notify persons who participated in the local proceedings and requested notice of the final decision. ([ORS 197.615](#))

If you have any questions or would like assistance, please contact your DLCD regional representative or the DLCD Salem office at 503-934-0017 or e-mail plan.amendments@state.or.us.

Notice checklist. Include all that apply:

- Completed Form 2
- A copy of the final decision (including the signed ordinance(s)). This must include city *and* county decisions for UGB and urban reserve adoptions
- The findings and the text of the change to the comprehensive plan or land use regulation
- If a comprehensive plan map or zoning map is created or altered by the proposed change:
 - A map showing the area changed and applicable designations, and
 - Electronic files containing geospatial data showing the area changed, as specified in [OAR 660-018-0040\(5\)](#), if applicable
- Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change

ORDINANCE NO. 2015-02

AN ORDINANCE AMENDING CHAPTERS 17.10, 17.44, AND 17.50 OF THE SANDY MUNICIPAL CODE RELATED TO MEDICAL MARIJUANA FACILITIES AND DECLARING AN EMERGENCY.

Whereas, Chapter 17.10, Definitions contains a definition for Medical Facility specifically excluding Medical Marijuana Facilities;

Whereas, Sections 17.44.20(B) and 17.50.20(B) specify those uses requiring Conditional Use Permit review prior to approval in the C-2, General Commercial and I-2, Light Industrial Zoning Districts;

Whereas, Ordinance No. 2014-03 adopted by City Council January 21, 2014, effectively prohibits medical marijuana facilities;

Whereas, the Sandy Development Code currently lists "medical facility" as a permitted use and provides a definition, but does not list "medical marijuana facility" or provide a definition for such use;

Whereas, the addition of medical marijuana facilities as a conditional use in the C-2 and I-2 zones ordinance will only apply if the Sandy City Council repeals Ordinance No. 2014-03;

Whereas, although state law currently limits medical marijuana facilities from locating within 1000 ft. of another facility and 1000 ft. from schools, the Sandy City Council wants to further limit these facilities from locating within 1000 ft. of a preschool and a day care facility, places where children congregate;

Whereas, if the council repeals Ordinance No. 2014-03 in the future, medical marijuana facilities (authorized by state law) will be permitted as a conditional use in the C-2 and I-2 Zoning Districts and no other zones.

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

Section 1: 17.10.030 of the Sandy Municipal Code shall be amended to add a definition for "Medical Marijuana Facility" as follows: "A facility registered by the Oregon Health Authority that is allowed 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."

Section 2: 17.10.030 of the Sandy Municipal Code shall be amended to add a definition for "Preschool" as follows: "A facility providing care for children 36 months of age to school age that is primarily educational for four hours or less per day and where no preschool child is present at the facility for more than four hours per day."

Section 3: The definition for "Day Care Facility" found in 17.10.030 of the Sandy Municipal Code "Day Care Facility" shall be replaced with the following language: "A child care facility certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling. Also known as a "Certified Child Care Center" as defined in OAR 414, Division 300."

Section 4: Chapter 17.44, General Commercial, Section 17.44.20(B) of the Sandy Municipal Code shall be amended to add “Medical marijuana facility as a Conditional Use as follows:

B. Conditional Uses:

1. Buildings designed for one or more occupants with more than 60,000 square ft. of gross floor area;
2. Major public facility;
3. Medical marijuana facility
- 3- 4. Planned unit developments, including but not limited, to single-family attached and detached residential and multi-family developments, in conjunction with recreation or supportive commercial facilities. Residential uses are limited to a maximum of 50 % of the total gross acreage;
- 4- 5. Traveler accommodation facilities including campgrounds, overnight travel parks, and recreational vehicle parks;
- 5- 6. Other uses similar in nature.

Section 5: Section 17.44.30 shall be amended to create a new subsection (C) as follows: Special Requirements for Medical Marijuana Facilities

A medical marijuana facility shall be further restricted as follows:

1. In addition to requiring compliance with all State requirements, a medical marijuana facility shall also be located at least 1,000 feet from all of the following uses: another medical marijuana facility, a K-12 school, a preschool and a day care facility;

For purposes of this subsection, distances are measured by a straight line between any point on the boundary line of the real property containing the medical marijuana facility to any point on the boundary line of the real property containing the school, preschool, day care facility, or other medical marijuana facility.

2. In addition to the requirements of Chapter 17.22, Notices, notice shall be provided to property owners within 1,000 feet, excluding street right-of-way, of the building or development site of the proposed medical marijuana facility;
3. Hours of operation shall be limited to between 10 a.m. and 8 p.m.;
4. Entrances and off-street parking areas shall be well lit and not visually obscured from public view;

Section 6: Chapter 17.50, Light Industrial, Section 17.50.20(B) of the Sandy Municipal Code shall be amended to add “Medical marijuana facility” as follows:

B. Conditional Uses:

1. Automotive fueling station;
2. Concrete or asphalt batch plant;
3. Convenience market/store of less than 2,500 gross square feet
4. Drive-up/drive-in/drive-through (drive-up windows, kiosks, ATM, restaurants, car wash, quick vehicle servicing, and similar uses);
5. Major public facility;
6. Medical marijuana facility

6. 7. Stand-alone retail uses of less than 5,000 gross square feet;
- 7-8. Other uses similar in nature.

Section 7: Section 17.50.40 shall be amended to create a new subsection (D) as follows: Special Requirements for Medical Marijuana Facilities

A medical marijuana facility shall be further restricted as follows:

1. In addition to compliance with all State requirements for location, a medical marijuana facility shall also be located at least 1,000 feet from all of the following uses: another medical marijuana facility, a K-12 school, a preschool, and a day care facility;

For purposes of this subsection, distances are measured by a straight line between any point on the boundary line of the real property containing the medical marijuana facility to any point on the boundary line of the real property containing the school, preschool, day care facility, or other medical marijuana facility.

2. In addition to the requirements of Chapter 17.22, Notices, notice shall be provided to property owners within 1,000 feet, excluding street right-of-way, of the building or development site containing the proposed medical marijuana facility;
3. Hours of operation shall be limited to between 10 a.m. and 8 p.m.;
4. Entrances and off-street parking areas shall be well lit and not visually obscured from public view;

Section 8: All preschools, K-12 schools and day care facilities, in addition to other requirements the development code imposes on these uses, must locate at least 1000 feet from any medical marijuana facility authorized pursuant to the development code and state law. Distances are measured by a straight line between any point on the boundary line of the real property containing the medical marijuana facility to any point on the boundary line of the real property containing the school, preschool or day care facility. Subject to Section 7 of this ordinance, the council authorizes the city manager or his designee to codify these restrictions on preschools, K-12 schools and day care facilities by adding consistent language in the development code.

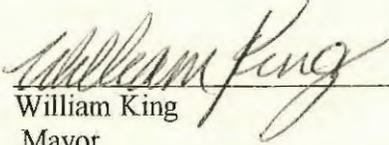
Section 9: A medical marijuana facility will only exist as a conditional use in the C-2 and I-2 zoning districts and no other zoning districts if the city council repeals Ordinance No. 2014-03. Therefore, the amendments in Sections 1 - 8 of this ordinance will only be effective if Ordinance No. 2014-03 is repealed and the amendments will not be codified until that time.

Section 10: Findings supporting this ordinance are attached as Exhibit A.

Section 11: All remaining provisions of the Sandy Comprehensive Plan and Title 17 of the Sandy Municipal Code are reaffirmed in their entirety.

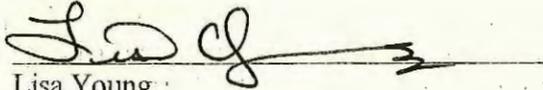
Section 12: In order to protect the peace, health and welfare of the City of Sandy, its residents and its visitors, the city council declares the existence of an emergency and, therefore, this ordinance is effective immediately upon its enactment by the council.

THIS ORDINANCE IS ADOPTED BY THE COMMON COUNCIL AND APPROVED BY THE
MAYOR THIS 6th DAY OF APRIL, 2015.



William King
Mayor

ATTEST:



Lisa Young
City Recorder

Ordinance No. 2015-02
Exhibit A – Findings

1. Goal 1 – Citizen Involvement. The city held a public work session and three public hearings prior to the council’s adoption of Ordinance No. 2015-02. The city council held a work session on November 12, 2014. The planning commission held a public hearing on February 23, 2015. The city council held hearings on March 2 and March 16, 2015. The city council left the record open for additional testimony after its March 16 meeting until March 20 at 12pm. The work session and public hearings were duly noticed in accordance with state law and the city’s development code. Goal 1 is satisfied.
2. Goal 2 – Land Use Planning. Goal 2 requires an adequate factual base to accompany amendments to the development code. An “adequate factual base” requires that “substantial evidence” exist in the entire record to support the decision – that is, evidence that reasonable persons would rely on in making day-to-day decisions. The restrictions the council is placing on medical marijuana facilities that may ultimately locate in Sandy are supported by an adequate factual base.

First, the council disputes that it may not prohibit marijuana dispensaries outright. Indeed, Ordinance No. 2014-03 prohibits them at this time and will continue to do so despite the passage of this ordinance. As a legal matter, if the city has the authority to ban a use it presumably has the authority to restrict it in ways short of a ban.

The opponents question the rationality of requiring a buffer between medical marijuana dispensaries and preschools and daycare facilities. The record includes professional studies that demonstrate: (1) marijuana use is becoming more common amongst adolescents in Colorado (where medical marijuana and dispensaries are legal); (2) marijuana use has negative effects on immature brains, including a higher incidence of psychosis; and (3) medical marijuana is being diverted from registered users to adolescents in substance abuse programs.

During the open record period between the council’s March 16 meeting and March 20 at 12pm, the council received additional testimony regarding the ordinance from various persons. The majority of the testimony supported the council’s current ban on dispensaries and encouraged the council to not allow dispensaries. Some of the testimony was critical of the ordinance, and one letter in particular sought to contradict the studies mentioned above.¹ That letter contained testimony as to why the council should not ban medical marijuana dispensaries and why the council should instead permit them in the city. The author also summarized various studies and provided links to the studies themselves.

With respect to the Mallot letter, the council notes that the author did not request the council to incorporate the linked studies into the record. Even if he had made that request, the council is under no obligation to do so and declines to incorporate the studies cited in the Mallot letter into the record. *Bruce Packing Company, Inc. v. City of Silverton*, 44 Or LUBA 836, 838-39 (2003) (parties in a local land use proceeding may not incorporate documentary evidence by reference; only the local decision maker has the power to incorporate documents by reference into the record); *accord Ramsey v. City of Portland*, 22 Or LUBA 845, 846 (1992); *Hillsboro Neigh. Dev. Comm. v. City of Hillsboro*, 15 Or LUBA 628, 630 (1987).

¹ Letter from Chris Mallot dated March 19, 2015.

Regarding the remainder of the Mallot letter, including the summaries of what Mr. Mallot claims the studies say, the council notes the author has a financial interest in Oregon's medical marijuana industry.² To the extent Mr. Mallot believes the ordinance should allow for more dispensaries in more places in the city than it may allow as currently written, a reasonable person could infer that this desire is motivated by business and profit interests as much as it may be motivated by the wellbeing of others or what is generally in the city's best interest.

At its March 16 meeting, the council also received a memo or press release from the Marijuana Policy Project ("MPP"), submitted from an individual who resides in Gresham and works in the medical marijuana industry. Consistent with the quoted statement at the top of the memo, the MPP's mission includes "[c]hang[ing] state laws to reduce or eliminate penalties for the medical and non-medical use of marijuana."³

Similar to the Mallot letter, the MPP memo includes links to various articles and studies and includes summaries of what the MPP claims those studies say. It is not incumbent upon the council or city staff to retrieve those studies/articles and confirm that MPP has accurately summarized their content.⁴ Indeed, it is not unreasonable to assume that the MPP would summarize those studies in a manner to advance its agenda, particularly because the MPP expressly seeks to make marijuana use legal.

Ultimately, the council is aware conflicting evidence exists concerning marijuana and its effect on human health, child development, crime, quality of life, etc. However, when confronted with conflicting evidence, the council may privilege evidence it finds more persuasive and rely on that evidence in making a decision, even if other persons would have arrived at the opposite conclusion based upon other evidence. As the Oregon Court of Appeals stated:

In reviewing for substantial evidence, the court is not permitted to substitute its judgment for that of the city or to reweigh the evidence; it must simply decide whether the record contains substantial evidence to support the decision . . . There is substantial evidence to support a finding when, viewing the record as a whole, a reasonable person could make the finding. *Baker v. City of Woodburn*, 190 Or App 445, 455, 79 P3d 901, 907 (2003).

Based on the evidence in the record, the council finds the three studies described in the third paragraph of this section, as well as the Oregonian articles discussed below, to be more persuasive than other competing evidence. The evidence the council finds more persuasive is generally from third-parties without any obvious bias for or against marijuana and its legal status. The council relies on this evidence to support its determination that it is reasonable to buffer medical marijuana

² The council acknowledges that Mr. Mallot also has a personal interest in medical marijuana, as described in his testimony to the council and through a separate letter his spouse submitted during the open record period. In summary, Stefani Mallot has a chronic illness that she treats with medical marijuana. The council has no reason to believe that marijuana does not help Mrs. Mallot in managing her illness. However, it also appears that the Mallots themselves grow the marijuana Mrs. Mallot uses. As such, it is not clear what direct benefit potential dispensaries in Sandy would provide to Mrs. Mallot in managing her illness.

³ <http://www.mpp.org/about/mission-statement.html>

⁴ The council declines to incorporate the articles and studies cited in the MPP letter into the record.

dispensaries, if ultimately permitted in the city, from preschools and day care facilities, to limit their hours of operation and to limit their operation to the I-2 and C-2 zoning districts.

Goal 2 is therefore satisfied.

3. Goal 3 – Agricultural Lands. Goal 3 applies to rural lands outside of incorporated cities. Therefore, it does not apply to Ordinance No. 2015-02.
4. Goal 4 – Forest Lands. Goal 4 applies to rural lands outside of incorporated cities. Therefore, it does not apply to Ordinance No. 2015-02.
5. Goal 5 – Natural Resources. Goal 5 seeks “[t]o protect natural resources and conserve scenic and historic areas and open spaces.” The city has complied with Goal 5 through previously adopted ordinances and code provisions, including regulations limiting development near locally significant wetlands and requiring open space in conjunction with certain types of land development. This ordinance, imposing land use restrictions on state authorized medical marijuana facilities, does not implicate Goal 5.
6. Goal 6 – Land, Air and Water Quality. Goal 6 requires the city “[t]o establish policies to maintain and improve the quality of the air, water, and land resources” within Sandy. The city has complied with Goal 6 through previously adopted ordinances and code provisions, including erosion control provisions, requiring development to be set back from various waterways, limiting development in flood-prone areas and encouraging multi-modal travel in and around Sandy that reduces residents and visitors’ reliance on automobiles. This ordinance, imposing land use restrictions on state authorized medical marijuana facilities, does not implicate Goal 6.
7. Goal 7 – Natural Hazards. Goal 7 requires the city “[t]o protect people and property from natural hazards.” The city has complied with Goal 7 primarily through its “Flood and Slope Hazard” overlay zone. This ordinance, imposing land use restrictions on state authorized medical marijuana facilities, does not implicate Goal 7.
8. Goal 8 – Recreation. Goal 8 instructs the city “[t]o satisfy the recreational needs” of Sandy residents and visitors “and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.” The city has complied with Goal 8 through previously adopted ordinances and code provisions and through existing facilities. These include a variety of parks within Sandy’s jurisdiction, including Sandy River Park, a 124-acre undeveloped passive use park that abuts Cedar Creek and the Sandy River. This ordinance, imposing land use restrictions on state authorized medical marijuana facilities, does not implicate Goal 8.
9. Goal 9 – Economy of the State. Goal 9 requires the city “[t]o provide adequate opportunities . . . for a variety of economic activities vital to the health, welfare, and prosperity” of Sandy’s residents. In the context of this code amendment, the council finds it has complied with Goal 9 by conditionally permitting medical marijuana facilities in two zones: the C-2 General Commercial zone and the I-2 Light Industrial zone.

The development code guides the council in its determination of where medical marijuana facilities could locate. With respect to the C-1 Central Business District zone, the council notes that the “district is intended to provide the principal focus for civil and social functions within the community. This commercial district is intended for civic uses and to provide all basic services and amenities required to keep the downtown the vital center of our community.” The code further states that “[a]ll development and uses shall be consistent with the intent of the district.”

The council does not believe a marijuana dispensary, medical or otherwise, is a use that is consistent with the intent of the C-1 zone. Marijuana is an illegal drug. While reasonable minds can differ on whether it has medicinal properties, one cannot dispute that the U.S. Controlled Substances Act classifies marijuana as a Schedule I drug. It is a fact that Schedule I is the most tightly restricted category reserved for drugs which have “no currently accepted medical use.”

If the city must eventually permit marijuana dispensaries while the drug remains illegal, the council believes that sales of an illegal product do not belong in a district intended for “civic uses.” The council interprets civic uses as unambiguously lawful uses that provide basic services to all of Sandy’s residents. A marijuana dispensary does not comport with this interpretation. It is not an unambiguously legal use. It does not provide a basic service to Sandy’s residents.⁵ Therefore, the council finds marijuana dispensaries to be inconsistent with the intent of the C-1 zone.

With respect to the C-2 zone, it is intended to offer a wide range of commercial activities and uses. It is the most permissive of the city’s commercial zones and the comprehensive plan seeks to concentrate commercial uses in this zone. If the city must eventually permit marijuana dispensaries while the drug remains illegal, the council believes that sales of marijuana would better fit among the broader mix of uses this zone permits and would not violate the intent of the C-2 zone.

With respect to the I-2 zone, its purpose is “to provide locations in suitable areas for manufacturing and warehousing business, or other commercial uses that do not depend on high visibility.” Medical marijuana dispensaries are commercial uses whose very nature does not depend on high visibility. This is because they cannot serve the general public. As Oregon law makes clear, they may only serve registered Oregon Medical Marijuana Act card holders. A medical marijuana dispensary will depend upon a small subset of customers who are able to locate dispensaries online, in various print

⁵ Those opposed to the ordinance argue the city should regulate medical marijuana dispensaries no differently than pharmacies. There are several problems with this assertion, particularly with respect to the opponent’s desire that the city permit them in the C-1. Pharmacies provide a wide array of over-the-counter and prescription medications to treat a variety of conditions that virtually all of Sandy’s residents will benefit from at various points in their lives. These legal medications are subject to a strict scientific review process that ensures they are safe and effective and that their risks are mitigated to the greatest extent possible and remaining risks are clearly explained to the consumer. See <http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/default.htm>, which the council incorporates by reference into these findings. The opposite is true with respect to marijuana. There is no review process (either at the state or federal level) and the drug remains illegal. Moreover, medical marijuana dispensaries serve a relatively small group of people as opposed to a pharmacy, which all of Sandy’s residents will benefit from at various times. The council believes the C-1 is a zone that should provide legal uses that benefit the vast majority of Sandy’s residents. Therefore, the council finds pharmacies to be a logical use for the C-1, but not medical marijuana dispensaries.

publications and through word-of-mouth. It is highly unlikely that a registered card holder will drive, walk or bike through Sandy in search of a medical marijuana dispensary, and no one presented evidence to the council to explain why they would.⁶

The I-2 zone permits a variety of commercial and retail uses, both outright and conditionally. Opponents suggested that marijuana dispensaries should not be located in the I-2 because they would be hidden and could not be policed as well as if they were in or near downtown. While the council disputes they would be “hidden” – some I-2 land abuts and much of it is directly adjacent to U.S. Highway 26 – even if they were, that does not mean they are incompatible with primary uses in the district. A vice president of a current business in the I-2 believes they *should* be allowed in that zone and would *not* create a problem relative to other business activity.

Opponents also asserted that medical marijuana dispensaries are incompatible “with an environment that includes heavy truck traffic and outdoor storage of industrial materials” without explaining why. In describing examples of what he believes to be unreasonable locations for a medical marijuana dispensary, the owner of Quality Control Group declares one to be:

[Where] [t]he property is adjacent to or close to land uses that would discourage State licensed medical marijuana patients from visiting the dispensary. For example, it is not reasonable to expect a dispensary to be located in close proximity to a junk yard or any other business working with heavy metals or other industrial materials. Dispensary patients cannot be reasonably expected to patronize such a location.

Assuming this example includes properties in the I-2 zone, no evidence was offered to show why card holders would not travel to an I-2 zoned property to purchase medical marijuana. The zone permits a variety of retail uses, as well as laboratories, indoor and outdoor recreation, group homes and assisted living facilities. The zone is currently home to a microbrewery/restaurant, a financial services firm and a crossfit exercise center. Based on permitted uses within the zone and currently operating commercial uses in the I-2, the council disputes the conclusion that the I-2 is an unreasonable zone in which medical marijuana dispensaries may locate.

With respect to police presence, the council believes it, not opponents to this ordinance, is in the best position to determine whether the Sandy Police Department can adequately serve and protect both a medical marijuana dispensary from crime and the public from any illegal acts connected with or carried on by or near a dispensary.⁷ The council has full faith that the police department can

⁶ A March 16 letter from Brooks Foster, on behalf of Quality Control Group, simply concludes that a medical marijuana dispensary “depends on high visibility.” No reasoning is offered as to why that is the case.

⁷ The council is concerned about the potential for crime in an all cash business such as a medical marijuana dispensary, which is one reason it prefers to ban dispensaries in the city entirely. In addition, the council is concerned about medical marijuana getting onto the black market. As the chair of the Oregon Liquor Control Board recently noted, the state does not regulate the production of medical marijuana and medical marijuana growers already feed the lucrative black market in marijuana sales. See http://www.oregonlive.com/marijuana/index.ssf/2015/02/heavy_marijuana_consumers_like.html and http://www.oregonlive.com/pacific-northwest-news/index.ssf/2015/02/woman_accused_of_attempting_to.html, which the council incorporates into these findings by reference.

protect the public and a dispensary if one is ultimately located in the I-2 zone and no participant demonstrated to the contrary.

For these reasons, the council finds the ordinance satisfies Goal 9.

10. Goal 10 – Housing. The ordinance does not relate to or involve housing or the comprehensive plan’s standards implementing Goal 10 and it does not trigger compliance with any Goal 10-related statute or rule. Therefore, Goal 10 is not applicable.
11. Goal 11 – Public Facilities. The ordinance does not relate to or involve public facilities or the comprehensive plan’s standards implementing Goal 11 and does not trigger compliance with any Goal 11-related statute or rule. Therefore, Goal 11 is not applicable.
12. Goal 12 – Transportation. The ordinance does not relate to or involve transportation facilities or trigger compliance with the transportation planning rule. Therefore, Goal 12 is not applicable.
13. Goal 13 – Energy. The ordinance does not relate to or involve energy saving measures. Other aspects of Sandy’s code and plan address this goal. Therefore, Goal 13 does not apply to the ordinance.
14. Goal 14 – Urbanization. The ordinance does not adopt or amend Sandy’s UGB. Therefore, it does not implicate the comprehensive plan’s provisions regarding Goal 14 or any Goal 14-related statute or administrative rule. Therefore, Goal 14 is not applicable.