



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

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[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



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

Date: January 05, 2016

Jurisdiction: City of Mill City

Local file no.: 2015-06

DLCD file no.: 003-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 01/04/2016. 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 51 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](mailto:plan.amendments@state.or.us)



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

<b>FOR DLCD USE</b>
File No.: 003-15 {24064}
Received: 1/4/2016

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 Mill City

Local file no.: **2015-06**

Date of adoption: 12/22/2015      Date sent: 1/4/2016

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): 09/28/2015

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 proposal is the same as submitted, with minor typographical/scrivener corrections.**

Local contact (name and title): Stacie Cook, MMC, City Recorder

Phone: 503.897-2302

E-mail: [scook@ci.mill-city.or.us](mailto:scook@ci.mill-city.or.us)

Street address: PO Box 256, 444 1<sup>st</sup> Avenue

City: Mill City, OR

Zip: 97383-

## 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:

Add conditional use permit requirements for location of recreational and medical marijuana facilities within the City of Mill City. Ordinance sets time, manner and place restrictions and complies with state law.

Highway Commercial Zone:

Sections 17.24.020 - Permitted Uses, 17.24.030-Uses subject to Site Review, 17.24.040 - Conditional Uses

Section 17.52.030.F - Add conditional use requirements for 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:
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Location of affected property (T, R, Sec., TL and address):

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

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.

Adopting Ordinance 384 including the Notice of Decision.

# ORDINANCE NO. 384

## AN ORDINANCE AMENDING TITLE 17 - MILL CITY ZONING CODE

WHEREAS, the Planning Commission recommends the City Council adopt regulations in the Mill City Zoning Code in Title 17 to comply with HB 3400 and establish time, manner and place restrictions for marijuana facilities that may locate in the City of Mill City; and

WHEREAS, the Planning Commission held a public hearing on November 17, 2015 to consider the amendments and recommends the City Council adopt the proposed amendments; and

WHEREAS, the City Council held a public hearing on December 8, 2015; and

WHEREAS, on December 8, 2015 the City Council concurred with the Planning Commission recommendations;

NOW, THEREFORE, the City Council of the City of Mill City hereby ordains as follows:

**SECTION 1.** Section 17.52.020.C of the Mill City Municipal Code is hereby added to read as follows:

**17.24.020 Uses permitted outright.**

In a CH zone, the following uses and their accessory uses are permitted outright:

- C. The replacement of one commercial enterprise by another. If the zoning official determines that the proposed use or development meets the criteria under Section 17.24.025(B) (Actions subject to the Oregon Highway 22-Access Management Plan), then a site plan review shall be required.

**SECTION 2.** Section 17.24.030 of the Mill City Municipal Code is hereby amended to read as follows:

**17.24.030 Uses permitted subject to site plan review.**

Any commercial use permitted in the CC zone is also permitted in the CH zone, subject to the provisions of Section 17.24.025, and subject to site plan review by the planning commission as specified in Section 17.24.050 of this chapter. The following activities require site plan review.

- A. The establishment of a new commercial enterprise on a lot which previously had been vacant, used only for a residential use, or used for another purpose;
- B. The construction of a building to house a commercial enterprise, unless that building is clearly accessory to the commercial operation and has a floor area of six hundred (600) square feet or less;
- C. The expansion of an existing commercial structure by over fifty (50) percent of the floor area, or six hundred (600) square feet, whichever is least;

- D. The replacement of one commercial enterprise by another if the zoning official determines that the proposed use or development meets the criteria under Section 17.24.025(B) (Actions subject to the Oregon Highway 22-Access Management Plan).

**SECTION 3.** Section 17.24.04 of the Mill City Municipal Code is hereby amended to read as follows:

**17.24.040 Conditional uses permitted.**

In a CH zone the following uses and their accessory uses may be permitted subject to provisions in Section 17.24.025 of this chapter, the site plan review requirements in Section 17.24.050 of this chapter and the provisions in Chapter 17.52 of this title.

- A. Public utility facility.
- B. Medical marijuana processor, medical marijuana dispensary, recreational marijuana processor and recreational marijuana wholesale or retail outlet.

**SECTION 4.** Section 17.52.030.F of the Mill City Municipal Code is hereby added to read as follows:

**17.52.030 Standards governing conditional uses.**

In addition to the standards of the zone in which the conditional use is located the other standards of this title, and the city public works design standards as adopted by the city council, conditional uses shall meet the following standards.

- F. Medical Marijuana and Recreational Marijuana Facilities.
  - 1. Application Requirements. In addition to all standard required application materials and application fees, an applicant for a medical marijuana producer, processor, medical marijuana dispensary, recreational marijuana producer, processor and recreational marijuana wholesale or retail outlet shall submit the following information:
    - a. A narrative description of the type, nature and extent of the business.
    - b. Proposed days and hours of operation.
    - c. Certification that the facility has met applicable requirements of the city's zoning code, including sign code requirements.
    - d. Evidence the applicant has applied for appropriate licenses and/or registration with the Oregon Liquor Control Commission and Oregon Health Authority.
  - 2. Definitions
    - a. *Marijuana*. Marijuana means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. As used in this chapter, "marijuana" or "medical marijuana" also refers to marijuana

dried, produced, processed, kept, stored, delivered, transferred, dispensed or otherwise provided for the exclusive benefit of and use by a person to mitigate the symptoms or effects of a person's debilitating medical condition as defined in ORS 475.302.

- b. Marijuana processing site. Marijuana processing site means an entity registered with the Oregon Health Authority to process marijuana.
  - c. Marijuana processor. Marijuana processor means an entity licensed by the Oregon Liquor Control Commission to process marijuana.
  - d. Marijuana producer. Marijuana producer means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.
  - e. Marijuana retailer. Marijuana retailer means an entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.
  - f. Marijuana wholesaler. Marijuana wholesaler means an entity licensed by the Oregon Liquor Control Commission to purchase items in this state for resale to a person other than a consumer.
  - g. Medical marijuana dispensary. Medical marijuana dispensary or medical marijuana facility means a facility that is registered with the Oregon Health Authority and that sells, distributes, transmits, gives, dispenses or otherwise provides medical marijuana to a person with a registry identification card. A facility includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.
3. Time, place and manner requirements.
- a. Location:
    - i. May not be located closer than 1000' from a medical marijuana dispensary or marijuana wholesale or retail sales outlet.
    - ii. May not be located closer than 1000' from a public elementary or secondary school or a private or parochial elementary or secondary school.
    - iii. May not be located closer than 1000' from Kimmel Park, 500' from Hammond Park or 500' from Mill City Falls Park.
    - iv. May not be located closer than 500' from the Oregon Connections Academy school property at 833 NW Santiam Boulevard.
    - iv. Distance measured from the exterior property boundary of the school or park property to the exterior boundary of the property on which the business is located.
  - b. Operating Hours: The business may be open to the public between the hours of 9:00 a.m. to 7:00 p.m.
  - c. Business License: Obtain a business license from the City and comply with local regulatory, business operating and tax requirements.
  - d. Odors. The facility must use an air filtration and ventilation system, which to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that

of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

- e. Lighting. Facilities must provide and maintain adequate outdoor lighting over each exterior exit and in the parking lot serving the facility.
- d. State Registration and Licensing: Obtain and continuously maintain any required license from the Oregon Liquor Control Commission (OLCC) and comply with Oregon Health Authority (OHA) registration requirements.
- e. Comply with zoning, building, fire code and state licensing requirements.

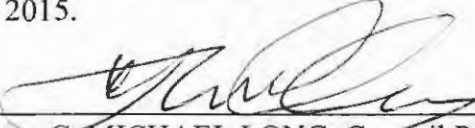
**SECTION 5. Severability.** The provisions of this ordinance are severable. If a section, sentence, clause, or phrase of this ordinance is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this ordinance.

This Ordinance read for the first time by title only on the 8<sup>th</sup> day of December 2015.

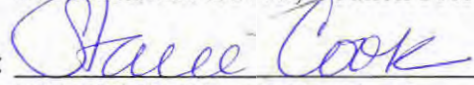
This Ordinance read for a second time by title only on the 22<sup>nd</sup> day of December 2015.

This Ordinance passed on the 22<sup>nd</sup> day of December 2015 by the City Council and executed by the Council President this 22<sup>nd</sup> day of December 2015.

Date: 12-23-15

By:   
C. MICHAEL LONG, Council President

Date: 12-23-15

Attest:   
STACIE COOK, MMC, City Recorder

APPROVED AS TO FORM

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

By: \_\_\_\_\_  
JAMES L. McGEHEE, City Attorney



## City of Mill City

P.O. Box 256  
Mill City, Oregon 97360  
Phone: 503-897-2302 ♦ Fax: 503-897-3499  
Email: scook@ci.mill-city.or.us

### Corrected Notice of Decision – January 4, 2016

December 9, 2015

Stacie Cook, MMC  
City Recorder  
City of Mill City  
PO Box 256  
Mill City, OR 97360

**RE: Notice of Decision Approving Amendments to the Mill City Zoning Code**  
Marijuana Facilities – Time, Place and Manner Requirements  
File No. 2015-06

Dear Stacie:

On Tuesday, December 8, 2015 the City Council held a public hearing on the Planning Commission's proposal to amend the Mill City Zoning Code to time, place and manner restrictions for marijuana facilities. The City Council **approved** the proposal and on December 22, 2015 adopted Ordinance No. 384 amending the Zoning Code. The effective date of the Ordinance is January 22, 2016, thirty days after execution by the Mayor.

#### **A. Findings and Conclusions:**

The City Council concluded the proposal complies with the application requirements and decision criteria for a legislative amendment to the Mill City Zoning Code.

During the City Council's deliberation, the City Council discussed proposed amendments to Section 17.52.030.F.3.a which establishes location requirements for marijuana facilities. This section states:

3. Time, place and manner requirements.
  - a. Location:
    - i. May not be located closer than 1000' from a medical marijuana dispensary or marijuana wholesale or retail sales outlet.
    - ii. May not be located closer than 1000' from a public elementary or secondary school or a private or parochial elementary or secondary school.
    - iii. May not be located closer than 1000' from Kimmel Park, 500' from Hammond Park or 500' from Mill City Falls Park.
    - iv. May not be located closer than 500' from the Oregon Connections Academy school property at 833 NW Santiam Boulevard.



- iv. Distance measured from the exterior property boundary of the school or park property to the exterior boundary of the property on which the business is located.

The Planning Commission's rationale was explained to the City Council during the hearing. State law prohibits the location of recreational marijuana facilities closer than 1000' from another marijuana facility or from schools, as described in subsections 3.a.i and 3.a.ii.

As allowed by the City's home rule authority, the Planning Commission recommended marijuana facilities not be located close city parks Under the City's or the Oregon Connections Academy facilities, because these are also places where children and families gather and use on a regular basis.

Subsections 3.a.iii and 3.a.iv establish a 500' distance from the Mill City Falls Park, Hammond Park and Oregon Connections Academy. The 500' radius from the first three locations was established to ensure marijuana facilities are located a reasonable distance from these parks and educational facilities. The attached map, that was included in the findings and staff report shows that the 500' distance ensures there are a number of properties within the Highway Commercial (CH) zone where a marijuana facility may be located.

Subsection 3.a.iii establishes a 1000' foot distance from Kimmel Park. Kimmel Park is located across the North Santiam River from the City's 7<sup>th</sup> Street Park facility and recreational trail. The Planning Commission included a 1000' distance from Kimmel Park because it encompasses an area surrounding both parks and provides a more uniform boundary, as shown on the attached map.

The Planning Commission's recommendation avoids the adoption of "exclusionary zoning" provisions where marijuana facilities would be prohibited from locating in Mill City because all available commercially zoned properties are too close to parks and educational facilities. The map shows there are a number of properties in the Highway Commercial (CH) zone where a marijuana facility may be located.

**B. Conditions of Approval:**

The City Council did not impose any conditions of approval.

**C. Right of Appeal:**

Any person aggrieved by this decision may file an appeal with the Oregon Land Use Board of Appeals (LUBA) in accordance with LUBA's appeal deadlines and filing requirements. The Notice of Intent to Appeal and required fees must be filed at LUBA within 21 days after the land use decision becomes final as described by OAR 661-010-0010.

Sincerely,



David W. Kinney  
Planning Consultant for the City of Mill City

Encl. Ordinance Amending the Mill City Zoning Code re: Time, Manner and Place Requirements for Marijuana Facilities

cc: Mill City Planning Commission

**David W. Kinney**  
*Community Development Consultant*  
791 E. Hollister St., Stayton, OR 97383  
Office: (503) 769-2020 Cell: (503) 551-0899  
Email: [dwkinney@wvi.com](mailto:dwkinney@wvi.com)

**December 8, 2015**

**To: Mayor Thorin Thacker and City Councilors**

**From: Chairman Gay Stuntzner & Members of Mill City Planning Commission  
David W. Kinney, Planning Consultant**

**In RE: Title 17 – Zoning Code Amendments  
Time, Manner and Place Requirements for Marijuana Facilities**

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**Issue:**

The Planning Commission asked staff to develop proposed code amendments to the Mill City Zoning Code to address time, manner and place restrictions for marijuana facilities. The proposed code amendments are drafted to comply with HB 3400 adopted by the Oregon Legislature and be consistent with the city's zoning code.

These zoning rules will only apply if marijuana facilities are permitted inside the city limits of Mill City. If voters decide at the November 2016 election that marijuana facilities will not be permitted, then the regulations are moot. The proposal is a legislative amendment to the Zoning Code. If marijuana facilities are allowed by voters, then they may be located in the Highway Commercial (CH) zone along Hwy 22, in the areas shown on the enclosed map. They must be located at least 1000' from a Santiam Canyon School property, 1000' feet from Kimmel Park, 500' from Hammond/Mill City Falls Parks and 500' from the Oregon Connections Academy site on Hwy 22.

**Proposed Amendments:**

Chapter 17.24 Highway Commercial Zone

- 17.24.020 Allows replacement of one commercial enterprise with a new commercial enterprise. No site plan review is required. If a proposed use reaches threshold requirements for traffic generation, then a site plan review may be required by the zoning official. This is a housekeeping amendment to clarify the code requirements.
- 17.24.030 A site plan review is required for a new commercial use if the lot that has been vacant, used only for residential uses or a non-commercial use. This is a housekeeping amendment.
- 17.24.040 Marijuana facilities are added as a conditional use.
- 17.52.030 Time, Manner and Place requirements are added for marijuana facilities.

**Staff and Planning Commission Recommendation:** Approval

The staff recommends approval as a housekeeping measure in order to comply with state requirements for marijuana facilities and clean up inconsistencies in the code related to commercial uses along Hwy 22.

**Planning Commission Hearing and Recommendation:**

Two public hearings are required for a legislative amendment to the zoning code. The first hearing was held by the Planning Commission on November 17, 2015. No members of the public testified on the proposed code amendments. After the public hearing the Planning Commission recommended approval.

**City Council Hearing and Decision:**

The second hearing is before the City Council. Amendments to the Zoning Code must be adopted by Ordinance.

City Council Public Hearing	December 8, 2015	Regular Council Meeting
City Council Adoption of Ordinance	December/January	Regular Council Meeting

**Options:**

The City Council may:

- (1) Approve the code amendments as submitted,
- (2) Modify and approve code amendments as modified,
- (3) Reject the code amendments.

**Motions:**

Approval: Motion to adopt legislative amendments as proposed (as modified) to the Mill City Zoning Code to establish time, manner and place restrictions for marijuana facilities inside the City of Mill City.

Modify: Motion to modify the proposed legislative amendments to the Mill City Zoning Code as follows: (describe changes) and to direct the Planning Consultant to prepare a revised ordinance prior to the next regularly scheduled meeting of the City Council.

Enclosures: Recommended Code Amendments  
Map showing where Marijuana Facilities may be located

November 18, 2015

To: Mayor Thacker and City Councilors

From: Mill City Planning Commission

RE: Proposed Time, Manner & Place Restrictions for Marijuana Facilities.

The Planning Commission held a public hearing on November 17, 2015 to consider amendments to the City of Mill City zoning code.

The Planning Commission recommends the City Council adopt time, manner and place restrictions for marijuana facilities in advance of the November 2016 election when citizens will vote on whether or not on a ballot measure to either permit or ban marijuana facilities in the City.

If Voters Allow Marijuana Facilities: If marijuana facilities are allowed in Mill City then zoning regulations are in place and will apply to any marijuana related business that wants to locate in Mill City.

If Voters Ban Marijuana Facilities: If voters do not permit marijuana facilities, then the zoning regulations are “moot”.

The City is considering this ordinance now so it is adopted before the November 2016 election.

**Proposed Changes to the Zoning Code are shown in RED**

## **Chapter 17.24 CH COMMERCIAL HIGHWAY ZONE\***

### **Sections:**

[17.24.010 Applicability.](#)

[17.24.020 Uses permitted outright.](#)

[17.24.025 Actions subject to Oregon Highway 22-Access Management Plan.](#)

[17.24.030 Uses permitted subject to site plan review.](#)

[17.24.040 Conditional uses permitted.](#)

[17.24.050 Site plan review process.](#)

[17.24.060 Lot size and width.](#)

[17.24.070 Height requirements.](#)

[17.24.080 Yard requirements.](#)

[17.24.090 Oregon Highway 22-Access Management Plan conformity.](#)

### 17.24.010 Applicability.

In a CH zone the following regulations shall apply.

### 17.24.020 Uses permitted outright.

In a CH zone, the following uses and their accessory uses are permitted outright:

- A. Any use permitted outright or conditionally in the R-1 or R-2 zone, except for manufactured home park and public utility facility;
- B. A single-family dwelling occupied by the owner, manager, night watchman or caretaker of the commercial establishment may be permitted accessory to the commercial use. If the dwelling is attached to or is an integral part of the building housing the commercial or industrial use, residential lot size and setback requirements may be waived. A manufactured home or recreational vehicle is not permitted as a caretaker residence in a commercial or industrial zone.
- C. The replacement of one commercial enterprise by another. If the zoning official determines that the proposed use or development meets the criteria under Section 17.24.025(B) (Actions subject to the Oregon Highway 22-Access Management Plan), then a site plan review shall be required.**

#### Housekeeping Change:

If an existing business is replaced by another business in the same building, a site plan review is not required.

A site plan review will be required if a new commercial business meets one of the threshold requirements for a site plan review in 17.24.025 or 17.24.030:

- Change from residential to commercial use.
- A 600 sf addition or a new building is constructed.
- Additional parking is required because of the type of use or the size of the project.
- An Access Approach Permit is required from ODOT.
- The project will generate more than 250 daily trips or 25 peak hour vehicle trips per hour (4:00 p.m. to 6:00 p.m.).

### 17.24.025 Actions subject to Oregon Highway 22-Access Management Plan.

- A. In a CH zone, the following actions are subject to review by the city of Mill City and consultation with the Oregon Department of Transportation, in conformance with the applicable provisions of the Oregon Highway 22-Access Management Plan in Mill City:
  - 1. Zoning or plan amendment designation changes;
  - 2. Construction of new buildings;

3. Addition of existing buildings by more than six hundred (600) square feet;
  4. Division or consolidation of property boundaries;
  5. Proposed change in land use (e.g., change from residential to commercial use, or from less intensive to more intensive commercial or industrial use);
  6. Proposed construction or modification of existing parking, driveway, or other site circulation area (paved or non-paved), including changes in circulation between multiple parcels;
  7. Reestablishment of a property's use after discontinuance for two years.
- B. An application for site plan review, as required under Section 17.24.050, and/or an application for land division review under Title 16, as applicable, shall be required when an action in subsection A of this section results in any of the following:
1. Site traffic volume generation increases by more than two hundred fifty (250) average daily trips or twenty-five (25) peak hour trips (trips generated externally for multi-use developments);
  2. Highway operational problems occur or are anticipated as a result of the action;
  3. The action affects a highway approach that does not meet sight distance requirements;
  4. The action affects a highway approach that is not consistent with state highway safety factors, as prescribed under Oregon Administrative Rules. (OAR 734-051-0080(9));
  5. The action causes a ten (10) percent or greater increase in daily use of a highway approach by vehicles exceeding twenty thousand (20,000) pound gross vehicle weight.
- C. An effect in subsection B of this section may be determined by field counts, site observation, traffic impact study, field measurement, crash history, Institute of Transportation Engineer Trip Generation Manual, or information and studies provided by the city or ODOT.
- D. The following actions do not constitute a change of use: modifications in advertising, landscaping, general maintenance, or aesthetics not affecting internal or external traffic flow or safety; or buildout of an approved site plan or multi-phased development within the parameters of a traffic impact study that is less than five years old or where within parameters of the future year analysis of the traffic impact study, whichever is greater, and that is certified by a professional engineer.

(Ord. 353 § 2 Exh. B (part), 2008)

### **17.24.030 Uses permitted subject to site plan review.**

Any commercial use permitted in the CC zone is also permitted in the CH zone, subject to the provisions of Section 17.24.025, and subject to site plan review by the planning commission as specified in Section 17.24.050 of this chapter. The following activities require site plan review.

- A. The establishment of a new commercial enterprise on a lot which previously had been vacant, **used only for a residential use**, or used for another purpose;
- B. The construction of a building to house a commercial enterprise, unless that building is clearly accessory to the commercial operation and has a floor area of six hundred (600) square feet or less;
- C. The expansion of an existing commercial structure by over fifty (50) percent of the floor area, or six hundred (600) square feet, whichever is least;
- D. The replacement of one commercial enterprise by another. ~~Notwithstanding the provisions of subsections A through C of this section,~~ if the zoning official determines that the proposed use or development meets the criteria under Section 17.24.025(B) (Actions subject to the Oregon Highway 22-Access Management Plan), ~~site plan review shall be required.~~

Housekeeping Change: Modify language to be consistent in all sections.

#### **17.24.040 Conditional uses permitted.**

In a CH zone the following uses and their accessory uses may be permitted subject to provisions in **Section 17.24.025 of this chapter, the site plan review requirements in Section 17.24.050 of this chapter and the provisions** in Chapter 17.52 of this title.

- A. Public utility facility.
- B. Medical marijuana processor, medical marijuana dispensary, recreational marijuana processor and recreational marijuana wholesale or retail outlet.**

New Language to Require a Marijuana Facility to obtain a conditional use permit from the City before opening.

## **Chapter 17.52 CONDITIONAL USES**

### **Sections:**

[17.52.010 Purpose of conditional use procedure.](#)

[17.52.020 Authorization to grant or deny conditional use permit.](#)

[17.52.030 Standards governing conditional uses.](#)

[17.52.040 Procedure for taking action on a conditional use application.](#)

[17.52.050 Building permits for an approved conditional use.](#)

[17.52.060 Time limit on an approved conditional use application.](#)

[17.52.070 Termination of a conditional use.](#)

[17.52.080 Limitation on conditional use requests.](#)

#### **17.52.010 Purpose of conditional use procedure.**

A conditional use is a use of land or a structure which is normally appropriate, desirable, or necessary in a zone where it is permitted, but which, by virtue of a feature of that use, could create a problem within the area such as excessive height or bulk, congestion, a potential nuisance, or a health or safety hazard. It is the intent of this chapter to provide standards and procedures so that uses which are classified as conditional can fit into a particular zone in a manner so that the best interests of surrounding property, the neighborhood, and the city are safeguarded.

#### **17.52.020 Authorization to grant or deny conditional use permit.**

Conditional uses listed in this title may be permitted, altered or enlarged upon by authorization of the planning commission in accordance with the standards and procedures set forth in this chapter.

- A. In taking action on a conditional use permit application the planning commission may either approve or deny the application. A decision by the planning commission may be appealed to the city council as outlined in Section 17.64.050 of this title.
- B. The decision to approve or deny a conditional use shall be based on the following criteria.
  - 1. Development of the property as proposed in the application is generally compatible with existing development on abutting properties and in the surrounding neighborhood. It is also generally compatible with possible future development of the property in the surrounding neighborhood as indicated in the comprehensive plan. This criteria does not apply to manufactured home parks;
  - 2. The proposed development site has the physical characteristics needed to support the use considering factors such as steepness of slope and septic suitability;
  - 3. The proposed development will not unduly affect the capacity of current public facilities, including streets and utility systems;
  - 4. The proposed development is consistent with the goals and policies in the comprehensive plan.
- C. In approving a conditional use permit application, the planning commission may impose, in addition to those standards and requirements expressly specified by this title, additional conditions which the planning commission considers necessary to protect the appropriate development and best interests of the surrounding property, the neighborhood, and the city as a whole. These conditions may include, but are not limited to, the following.
  - 1. Increasing the required lot size, lot width, or yard dimensions;
  - 2. Limiting the height, size or location of a building or other structure;
  - 3. Controlling the location and number of vehicle access points;
  - 4. Increasing the street width;
  - 5. Increasing the number of required off-street parking or off-street loading spaces;
  - 6. Requiring fencing, screening, landscaping or other facilities to protect adjacent or nearby property;
  - 7. Limiting the number, size, location of lighting of signs;
  - 8. Designating sites for open space or outdoor recreation areas;
  - 9. Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor;
  - 10. Setting a time limit for which the conditional use is approved;
  - 11. Providing internal property improvements such as utilities, drainage facilities, streets, curbs, gutters, walkways, parking areas, landscaping, fencing, screening, or recreation areas in order to enhance the area and to protect adjacent or nearby property;
  - 12. Other conditions necessary to permit the development of the city in conformity with the intent and purpose of this title and the policies of the comprehensive plan;
  - 13. The standards for manufactured home parks expressly specified in Section 17.52.030(B) cannot be exceeded in taking action on a conditional use application.
- D. In the case of a use existing prior to the effective date of the ordinance codified in this title and classified in this title as a conditional use, the change in use or in lot area or the alteration or enlargement of the structure shall conform with the requirements for conditional use.



- E. The planning commission may require that the applicant for a conditional use furnish the city with a performance bond or similar contractual arrangement of up to the value of the cost of the improvement to be guaranteed by such bond, in order to assure that the conditional use is completed according to the plans as approved by a person designated by the city council.
- F. The planning commission may require that an applicant for a conditional use enter into a contractual agreement with the city to assure that the applicant will provide streets, curbs, gutters, sidewalks, and water, sewer, and drainage facilities that meet city standards.

**17.52.030 Standards governing conditional uses.**

In addition to the standards of the zone in which the conditional use is located the other standards of this title, and the city public works design standards as adopted by the city council, conditional uses shall meet the following standards.

- A. Height. In any zone, a building which is classified as a conditional use may exceed the height restriction of the zone in which the property is located, provided the increase in building height does not interfere with or detract from nearby property and provided further that the building is set back from the property line an additional one foot for each two feet of building height.
- B. Standards for a Manufactured Home Park. Each application for a manufactured home park as a conditional use shall meet the following requirements.  
**[NOT INCLUDED TO SAVE SPACE]**
- C. Standards for Nursery Schools, Pre-schools, Kindergartens or Similar Facilities.  
**[NOT INCLUDED TO SAVE SPACE]**
- D. Standards for Parking Lots in a Residential Zone Intended to Serve Uses in a Commercial Zone.  
**[NOT INCLUDED TO SAVE SPACE]**
- E. Standards for a Wireless Telecommunications Tower (WCF).  
**[NOT INCLUDED TO SAVE SPACE]**

New Section Added for Marijuana Facilities to require time, manner and place restrictions. Language is consistent with State Law.

- F. Medical Marijuana and Recreational Marijuana Facilities.**
  - 1. Application Requirements. In addition to all standard required application materials and application fees, an applicant for a medical marijuana producer, processor, medical marijuana dispensary, recreational marijuana producer, processor and recreational marijuana wholesale or retail outlet shall submit the following information:**
    - a. A narrative description of the type, nature and extent of the business.**
    - b. Proposed days and hours of operation.**
    - c. Certification that the facility has met applicable requirements of the city’s zoning code, including sign code requirements.**

- d. Evidence the applicant has applied for appropriate licenses and/or registration with the Oregon Liquor Control Commission and Oregon Health Authority.

2. Definitions

- a. **Marijuana.** Marijuana means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. As used in this chapter, “marijuana” or “medical marijuana” refers to marijuana dried, produced, processed, kept, stored, delivered, transferred, dispensed or otherwise provided for the exclusive benefit of and use by a person to mitigate the symptoms or effects of a person’s debilitating medical condition as defined in ORS 475.302.
- b. **Marijuana processing site.** Marijuana processing site means an entity registered with the Oregon Health Authority to process marijuana.
- c. **Marijuana processor.** Marijuana processor means an entity licensed by the Oregon Liquor Control Commission to process marijuana.
- d. **Marijuana producer.** Marijuana producer means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.
- e. **Marijuana retailer.** Marijuana retailer means an entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.
- f. **Marijuana wholesaler.** Marijuana wholesaler means an entity licensed by the Oregon Liquor Control Commission to purchase items in this state for resale to a person other than a consumer.
- g. **Medical marijuana dispensary.** Medical marijuana dispensary or medical marijuana facility means a facility that is registered with the Oregon Health Authority and that sells, distributes, transmits, gives, dispenses or otherwise provides medical marijuana to a person with a registry identification card. A facility includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.

3. Time, place and manner requirements.

a. Location:

- i. May not be located closer than 1000’ from a medical marijuana dispensary or marijuana wholesale or retail sales outlet.
- ii. May not be located closer than 1000’ from a public elementary or secondary school or a private or parochial elementary or secondary school.

iii. May not be located closer than 1000' from Kimmel Park, 500' from Hammond Park or 500' from Mill City Falls Park.

iv. May not be located closer than 500' from the Oregon Connections Academy school property at 833 NW Santiam Boulevard.

iv. Distance measured from the exterior property boundary of the school or park property to the exterior boundary of the property on which the business is located.

- b. **Operating Hours:** The business may be open to the public between the hours of 9:00 a.m. to 7:00 p.m.
- c. **Business License:** Obtain a business license from the City and comply with local regulatory, business operating and tax requirements.
- d. **Odors.** The facility must use an air filtration and ventilation system, which to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
- e. **Lighting.** Facilities must provide and maintain adequate outdoor lighting over each exterior exit and in the parking lot serving the facility.
- d. **State Registration and Licensing:** Obtain and continuously maintain any required license from the Oregon Liquor Control Commission (OLCC) and comply with Oregon Health Authority (OHA) registration requirements.
- e. **Comply with zoning, building, fire code and state licensing requirements.**

#### **17.52.040 Procedure for taking action on a conditional use application.**

The procedure for taking action on an application for a conditional use shall be as follows:

- A. A property owner may initiate a request for a conditional use by filing an application with the city recorder, using forms prescribed pursuant to Section 17.64.060 of this title. A filing fee in accordance with the provisions of Section 17.64.070 of this title shall accompany an application for a conditional use.
- B. Before the planning commission may act on a conditional use application, it shall hold a public hearing thereon in accordance with the provisions of Section 17.64.080 of this title.
- C. The city shall provide the applicant with written notice of the decision of the planning commission as outlined in Section 17.64.030 of this title.
- D. Appeals. The decision of the planning commission may be appealed to the city council as outlined in Section 17.64.050 of this title.

#### **17.52.050 Building permits for an approved conditional use.**

Building permits for all or any portion of a conditional use shall be issued only on the basis of the plan for the conditional use as approved by the planning commission. Any proposed change in the approved plan shall be submitted to the planning commission as a new application for a conditional use. Building permits involving an approved conditional use shall not be issued until the appeal period as specified under Section 17.64.050 of this title has passed.

#### **17.52.060 Time limit on an approved conditional use application.**

Authorization of a conditional use shall be void one year after the date of approval of a conditional use application, or such lesser time as the authorization may specify, unless a building permit has been issued and substantial construction pursuant thereto has taken place, or unless a use not involving construction has been initiated in some substantial manner. However, upon written request, the planning commission may extend authorization for an additional period not to exceed one year.

#### **17.52.070 Termination of a conditional use.**

A conditional use may be revoked or modified by the planning commission, after public hearing, on any one or more of the following grounds.

- A. Approval of the conditional use was obtained by fraud or misrepresentation.
- B. The use for which approval was granted has ceased to exist.
- C. The use does not meet the conditions specifically established for it at the time of approval of the application.
- D. The use is in violation of any provision of this title or any other applicable statute, ordinance or regulation.

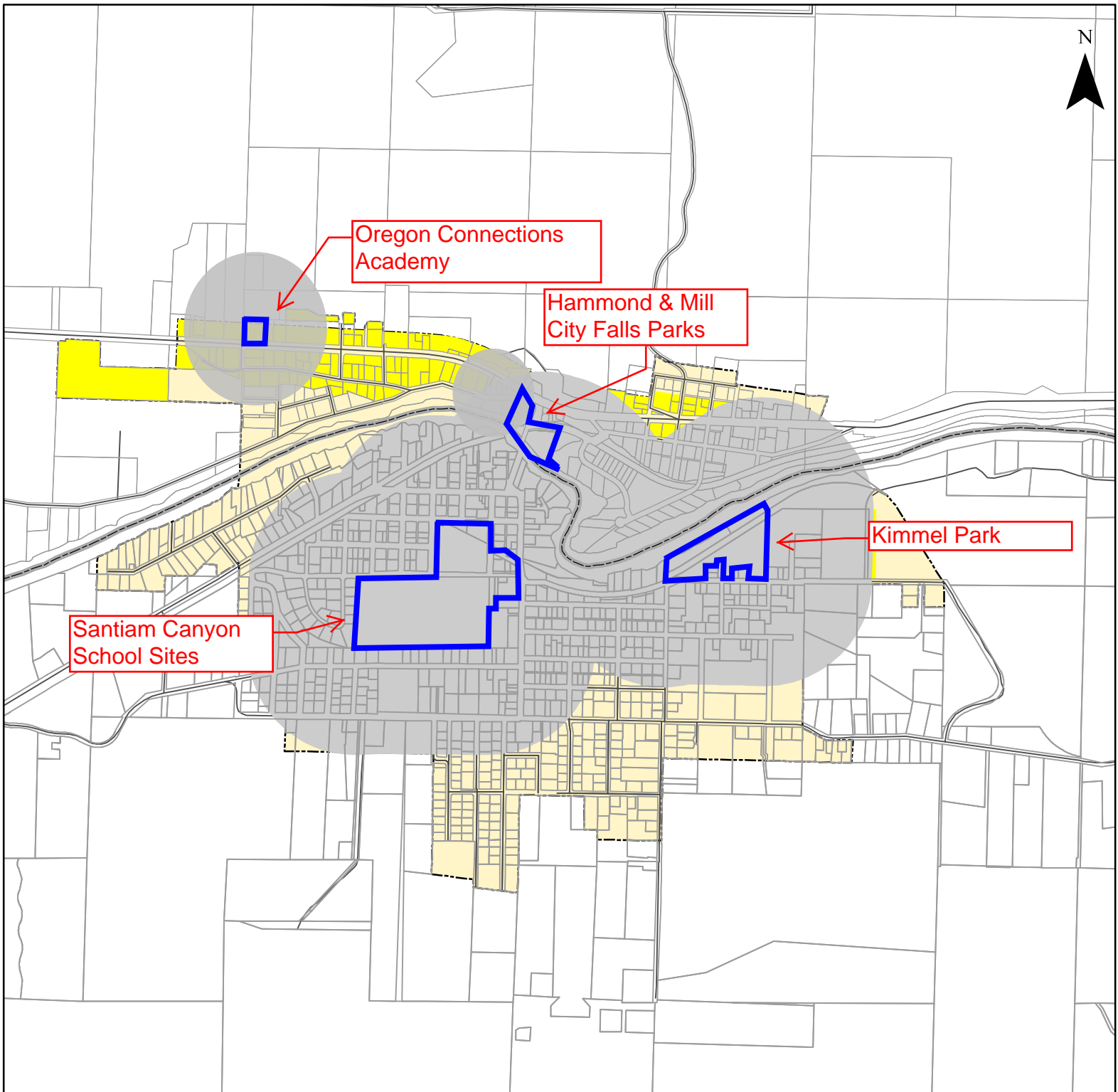
#### **17.52.080 Limitation on conditional use requests.**

No request for a conditional use shall be considered by the planning commission within the one-year period immediately following a denial of such request, except the planning commission may consent to a new hearing, if in the opinion of the planning commission, new evidence of a change of circumstances warrants it.

# HB 3400 Commercial Sites in Mill City, Oregon

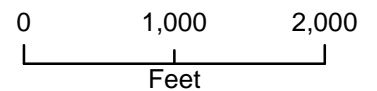
**1000 feet from Schools and Kimmel Park**

**500' from Mill City Falls Park , Hammond Park + ORCA**



## Legend

- Commercial Zone Outside Buffer
- Mill City Parks
- Mill City Schools
- Mill City Roads
- City limits
- County Line



# ORDINANCE NO. 3\_\_\_\_\_

## AN ORDINANCE AMENDING TITLE 17 - MILL CITY ZONING CODE

WHEREAS, the Planning Commission recommends the City Council adopt regulations in the Mill City Zoning Code in Title 17 to comply with HB 3400 and establish time, manner and place restrictions for marijuana facilities that may locate in the City of Mill City; and

WHEREAS, the Planning Commission held a public hearing on November 17, 2015 to consider the amendments and recommends the City Council adopt the proposed amendments; and

WHEREAS, the City Council held a public hearing on December 8, 2015; and

WHEREAS, on December 8, 2015 the City Council concurred with the Planning Commission recommendations;

NOW, THEREFORE, the City Council of the City of Mill City hereby ordains as follows:

**SECTION 1.** Section 17.52.020.C of the Mill City Municipal Code is hereby added to read as follows:

**17.24.020 Uses permitted outright.**

In a CH zone, the following uses and their accessory uses are permitted outright:

- C. The replacement of one commercial enterprise by another. If the zoning official determines that the proposed use or development meets the criteria under Section 17.24.025(B) (Actions subject to the Oregon Highway 22-Access Management Plan), then a site plan review shall be required.

**SECTION 2.** Section 17.24.030 of the Mill City Municipal Code is hereby amended to read as follows:

**17.24.030 Uses permitted subject to site plan review.**

Any commercial use permitted in the CC zone is also permitted in the CH zone, subject to the provisions of Section 17.24.025, and subject to site plan review by the planning commission as specified in Section 17.24.050 of this chapter. The following activities require site plan review.

- A. The establishment of a new commercial enterprise on a lot which previously had been vacant, used only for a residential use, or used for another purpose;
- B. The construction of a building to house a commercial enterprise, unless that building is clearly accessory to the commercial operation and has a floor area of six hundred (600) square feet or less;
- C. The expansion of an existing commercial structure by over fifty (50) percent of the floor area, or six hundred (600) square feet, whichever is least;

- D. The replacement of one commercial enterprise by another if the zoning official determines that the proposed use or development meets the criteria under Section 17.24.025(B) (Actions subject to the Oregon Highway 22-Access Management Plan).

**SECTION 3.** Section 17.24.04 of the Mill City Municipal Code is hereby amended to read as follows:

**17.24.040 Conditional uses permitted.**

In a CH zone the following uses and their accessory uses may be permitted subject to provisions in Section 17.24.025 of this chapter, the site plan review requirements in Section 17.24.050 of this chapter and the provisions in Chapter 17.52 of this title.

- A. Public utility facility.
- B. Medical marijuana processor, medical marijuana dispensary, recreational marijuana processor and recreational marijuana wholesale or retail outlet.

**SECTION 4.** Section 17.52.030.F of the Mill City Municipal Code is hereby added to read as follows:

**17.52.030 Standards governing conditional uses.**

In addition to the standards of the zone in which the conditional use is located the other standards of this title, and the city public works design standards as adopted by the city council, conditional uses shall meet the following standards.

- F. Medical Marijuana and Recreational Marijuana Facilities.
  - 1. Application Requirements. In addition to all standard required application materials and application fees, an applicant for a medical marijuana producer, processor, medical marijuana dispensary, recreational marijuana producer, processor and recreational marijuana wholesale or retail outlet shall submit the following information:
    - a. A narrative description of the type, nature and extent of the business.
    - b. Proposed days and hours of operation.
    - c. Certification that the facility has met applicable requirements of the city's zoning code, including sign code requirements.
    - d. Evidence the applicant has applied for appropriate licenses and/or registration with the Oregon Liquor Control Commission and Oregon Health Authority.
  - 2. Definitions
    - a. Marijuana. Marijuana means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. As used in this chapter, "marijuana" or "medical marijuana" refers to marijuana dried,

produced, processed, kept, stored, delivered, transferred, dispensed or otherwise provided for the exclusive benefit of and use by a person to mitigate the symptoms or effects of a person's debilitating medical condition as defined in ORS 475.302.

- b. Marijuana processing site. Marijuana processing site means an entity registered with the Oregon Health Authority to process marijuana.
- c. Marijuana processor. Marijuana processor means an entity licensed by the Oregon Liquor Control Commission to process marijuana.
- d. Marijuana producer. Marijuana producer means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.
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- g. Medical marijuana dispensary. Medical marijuana dispensary or medical marijuana facility means a facility that is registered with the Oregon Health Authority and that sells, distributes, transmits, gives, dispenses or otherwise provides medical marijuana to a person with a registry identification card. A facility includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.

3. Time, place and manner requirements.

- a. Location:
  - i. May not be located closer than 1000' from a medical marijuana dispensary or marijuana wholesale or retail sales outlet.
  - ii. May not be located closer than 1000' from a public elementary or secondary school or a private or parochial elementary or secondary school.
  - iii. May not be located closer than 1000' from Kimmel Park, 500' from Hammond Park or 500' from Mill City Falls Park.
  - iv. May not be located closer than 500' from the Oregon Connections Academy school property at 833 NW Santiam Boulevard.
  - iv. Distance measured from the exterior property boundary of the school or park property to the exterior boundary of the property on which the business is located.
- b. Operating Hours: The business may be open to the public between the hours of 9:00 a.m. to 7:00 p.m.
- c. Business License: Obtain a business license from the City and comply with local regulatory, business operating and tax requirements.
- d. Odors. The facility must use an air filtration and ventilation system, which to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary



sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

- e. Lighting. Facilities must provide and maintain adequate outdoor lighting over each exterior exit and in the parking lot serving the facility.
- d. State Registration and Licensing: Obtain and continuously maintain any required license from the Oregon Liquor Control Commission (OLCC) and comply with Oregon Health Authority (OHA) registration requirements.
- e. Comply with zoning, building, fire code and state licensing requirements.

**SECTION 5. Severability.** The provisions of this ordinance are severable. If a section, sentence, clause, or phrase of this ordinance is adjudged by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portions of this ordinance.

This Ordinance read for the first time by title only on the \_\_\_\_\_ day of \_\_\_\_\_ 2015.

This Ordinance read for a second time by title only on the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_.

This Ordinance passed on the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_ by the City Council and executed by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_.

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

By: \_\_\_\_\_  
THORIN THACKER, Mayor

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

Attest: \_\_\_\_\_  
STACIE COOK, CMC, City Recorder

APPROVED AS TO FORM

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

By: \_\_\_\_\_  
JAMES L. McGEHEE, City Attorney