



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

IN THE MATTER OF PLANNING COMMISSION FILE NO. CUP)
2016-001 LOCATED AT 806 S. PACIFIC HWY [MAP NO. 38-1W-25B)
TAXLOT 2600], THE CITY OF TALENT PLANNING)
COMMISSION FINDS THE FOLLOWING:) ORDER

1. The Planning Commission held a properly noticed public hearing on this matter on March 24, 2016;
2. The Planning Commission asked the Community Development Director to present a staff report and a proposed final order with findings and recommendations;
3. At the public hearing evidence was presented and the public was given an opportunity to comment;
4. The Commission found that a small-scale State regulated recreational cannabis wholesale business is similar in nature to other wholesale operations which are allowed in accordance with Section 8-3D.450 of the Talent Zoning Code;
5. The Commission found that the proposed application, with conditions in all other respects complied substantially with the criteria for approval in 8-3D.4 and 8-3L.2 of the Talent Zoning Code.

The Talent Planning Commission approves the Conditional Use Permit (CUP 2016-001) with the following conditions of approval:

GENERAL CONDITIONS:

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

PRIOR TO CERTIFICATE OF OCCUPANCY:

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

Occupancy, install all necessary improvements to meet the building code of the new occupancy group.

5. Submit plans for and install an appropriate air filtering and ventilation system to confine odors on the premises. Plans for the necessary air filtering and ventilation system shall be submitted to the Building Official for review and approval prior to installation.
6. Provide Community Development with a complete copy of the approved State wholesale license including all conditions, prohibitions and a list of names of all owners, operators and employees. The names of all owners, operators and employees and their background checks shall be provided to Community Development on an annual basis as part of the business license application.
7. Provide Community Development a waste management plan in accordance with OAR 845-025-7750 detailing how solid and hazardous waste along with wastewater will be disposed or provide documentation that a waste management plan has been approved as part of the OLCC licensing process.

PRIOR TO ISSUANCE OF ANNUAL BUSINESS LICENSE:

8. Provide Community Development with a complete copy of all financial records subject to audit, consistent with Ordinance 14-875-O.

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

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

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

B. Wholesale establishments other than those listed above (See Section 8-3D.403 (F)).

FINDING: The subject parcel is zoned Commercial Highway (CH) which allows wholesale establishments. The proposed use is a small scale recreational cannabis wholesale business. **The provisions of this section have been met.**

8-3L.244 GENERAL CRITERIA FOR APPROVAL

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

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

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

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

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

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

FINDING: As stated in the findings for 8-3L.150 below, the proposed use is located within a newly constructed building that received site development plan approval in 2014. Only minimal site development review is necessary to ensure the site can accommodate the required parking and to determine if additional buffering is required. **The provisions of this section have been met subject to conditions of approval.**

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

FINDING: The proposed wholesale business is subject to OLCC rules. As proposed, the wholesale operation will be a low-impact business that is not open to the general public and does not resell directly to a consumer. The applicant has proposed that the business will be conducted on a "by appointment only" basis and will not conduct retail transactions.

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

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

FINDING: The proposed use is within an existing warehouse building designed to accommodate wholesale uses and will not create capacity issues for the public facilities in the

area, therefore additional SDCs will not be assessed. As a general condition of approval, no uses other than wholesale operations shall be conducted in Suite D of the subject parcel without additional conditional use permit review. **The provisions of this section have been met subject to conditions of approval.**

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

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

Section 8-3L.215 of the Talent Zoning Code authorizes the Planning Commission to grant or deny conditional uses and shall impose any conditions which are necessary to ensure compliance and to protect the health, safety or general welfare of the community.

Considering that wholesaling is similar in nature to that of retail sales the conditions of Section 8-3L.246(I) shall apply and are addressed below. **The provisions of this section have been met.**

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

FINDING: The existing building was built in 2015 and was approved as a S-1 Moderate Hazard occupancy. Jackson County Fire District 5 has recommended that a list of products be provided and the need for a change of occupancy be determined by the State Fire Marshall. If a change of occupancy is determined as necessary, a fire, life and safety inspection may be required. As a condition of approval, the applicant shall, prior to Certificate of Occupancy, provide Community Development a complete list of products to be wholesaled or stored onsite. Upon review by the Jackson County Fire District 5 Fire Chief or the Building Official, if it has been determined that a fire, life and safety inspection and/or a change of occupancy is required, the applicant shall prior to Certificate of Occupancy, install all necessary improvements to meet the building code of the new occupancy group. **The provisions of this section have been met subject to conditions of approval.**

8-3L.246 SPECIAL STANDARDS GOVERNING CONDITIONAL USES

Certain conditional uses shall meet the following standards:

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

straight line measurement in a radius extending for specified distance or less in every direction from any point on the boundary line of a residential zone, public or private park or from an existing public or private elementary, secondary or career school primarily attended by minors.

FINDING: The proposed wholesale business is unlike a conventional retail operation. OAR 845-025-1015 defines a marijuana wholesaler as

A person who purchases marijuana items in this state for resale to a person other than a consumer.

As proposed, no resale of marijuana products will be directly to a consumer as part of this wholesale operation, therefore the provisions of this section do not apply. **The provisions of this section are not applicable.**

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

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

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

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

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

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

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

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

FINDING: The proposed wholesale operation is not a medical marijuana facility, but shall comply with OAR 845-025-1230(6)(a) that limits any minor on a licensed premise except as provided in OAR 845-025-1230(7) which states:

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

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

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

FINDING: The proposed wholesale operation is not a medical or recreational marijuana facility but is regulated by OAR 845-025-1000. As a condition of approval, the applicant shall, prior to the issuance of Certificate of Occupancy provide Community Development with a complete copy of the approved State wholesale license including all conditions, prohibitions and a list of names of all owners, operators and employees. The names of all owners, operators and employees and their background checks shall be provided to Community Development on an annual basis as part of the business license application. **The provisions of this section have been met subject to conditions of approval.**

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

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

license application. **The provisions of this section have been met subject to conditions of approval.**

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

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

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

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

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

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

8-3L.247 CONDITIONS AND RESTRICTIONS

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

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

FINDING: The subject parcel is zoned Commercial Highway (CH) and is adjacent to Single Family – Manufactured Housing (RS-MH) zoning to the southwest. Vegetative buffering has been installed in this area as a condition of approval for SPR 2014-003. Furthermore, there

are no external components to the proposed expansion of use, therefore additional buffering is not necessary. **The provisions of this section have been met.**

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

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

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

FINDING: The purpose of the CH zoning district is to accommodate businesses and trade oriented towards automobile and truck usage. The proposed use is a small scale wholesale and State regulated business that meets the intent of the zoning district. The proposed use is allowed as a conditional use to ensure compatibility with the surrounding residential neighborhood and has met or can meet the conditional use requirements of 8-3L.2 with conditions of approval. **The provisions of this section have been met subject.**

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

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

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

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

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

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

- F. *The following are arranged so that traffic congestion is avoided, pedestrian and vehicular safety, solar access, historic sites, and the public welfare and safety are protected, and there*

will be no adverse effect on surrounding property:

3. *parking and loading facilities;*

FINDING: The proposed wholesaling use is located in the same building and suite that the other warehousing uses takes place.

Based on ZON 2016-005 use classification review, there are twenty three (23) total off-street parking spaces available on-site, and no additional on-street parking. Suite D is estimated to have approximately 1,325 sq. ft. of gross floor area (g.f.a.). Table 540-1 “Parking Requirements By Use,” in 8-3J.540 indicates that Industrial uses most closely fits the proposed use; Industrial uses require one space per 700 sq. ft. of g.f.a. Therefore, two parking spaces are required for the use proposed by the applicant. The existing uses onsite utilize twenty on parking spaces, leaving two (2) available for the proposed use. **The provisions of this section have been met.**

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

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

(1) A licensee must:

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

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

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

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

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

As a condition of approval, the applicant shall, prior to occupancy provide Community Development a waste management plan in accordance with OAR 845-025-7750 detailing how solid and hazardous waste along with wastewater will be disposed or provide documentation that a waste management plan has been approved as part of the OLCC licensing process. **The provisions of this section have been met subject to conditions of approval.**

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

FINDING: The proposed wholesale use is consistent with the intent of the Commercial Comprehensive Plan designation. The existing building was built in 2015 in accordance with the approved site development plan review (SPR 2014-003). The wholesale use, as proposed,

does increase the intensity of the approved use and does not require additional public facilities or service improvements. **The provisions of this section have been met.**

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

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

Eric Heesacker
Planning Commission Chair

Date

ATTEST

Zac Moody
Community Development Director

Date