



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

IN THE MATTER OF PLANNING COMMISSION FILE NO. CUP)
2016-004, REVOCATION OF A CONDITIONAL USE PERMIT)
LOCATED AT 630 S. PACIFIC HWY [MAP NO. 38-1W-25B) ORDER
TAXLOT 2801], THE CITY OF TALENT PLANNING)
COMMISSION FINDS THE FOLLOWING:)

1. The Planning Commission held a properly noticed public hearing on this matter on January 28, 2020;
2. The Community Development Director presented 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 the revocation of CUP 2016-004 is authorized by TMC 18.155.110;
5. The Commission found CUP 2016-004 is in violation of TMC 3.10 Marijuana Tax.

IT IS HEREBY ORDERED THAT the Talent Planning Commission revokes CUP 2016-004, a conditional use permit to operate a retail cannabis 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.

18.60.050 BUILDINGS AND USES SUBJECT TO CONDITIONAL USE REVIEW

The planning commission may grant or deny a conditional use permit in accordance with the procedure and provisions set forth in TMC 18.155.

D. Retail sales of medical or recreational marijuana.

FINDING: The subject parcel is zoned Commercial Highway (CH) and has allowed medical marijuana dispensaries marijuana in the zone since December 5, 2014 subject to TMC 18.155, Conditional Uses. Grateful Meds began selling limited recreational marijuana products to consumers over the age of 21 in February 2016 after OLCC implemented the recreational marijuana retail sales program. At that time, staff had

determined that retail operations by both State and local definitions were not taking place prior to December 5, 2014 when revisions to the City's Zoning Code were adopted, and since the sales of retail marijuana had not been approved through a conditional use permit review, the use was being conducted in violation of the City zoning code. Once the conditional use permit review allowing the recreational retail sales of marijuana was approved, the sales of recreational marijuana was allowed to continue as a conditional use.

18.150.050 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;*

FINDING: The purpose of the CH zoning district is to accommodate businesses and trade oriented towards automobile and truck usage. The existing use is an expansion of a medical marijuana facility to a retail marijuana dispensary. The use is a State regulated business that meets the intent of the zoning district. The use is allowed as a conditional use to ensure compatibility with the surrounding properties and to ensure continued compliance with the Talent Municipal Code. Since the approval of the Conditional Use permit in November 2016, the business has had two business license violations and a violation of TMC 3.10, Marijuana Tax.

As stated in TMC 18.155.110, Termination of a Conditional Use, a conditional use:

“May be revoked or modified by the Planning Commission, after a 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 the approval of the application.*
- D. The use is in violation of any provision of this title or of any other applicable statute, ordinance or regulation. [Ord. 817 § 8-3L.280, 2006.]*

As demonstrated in the attached timeline, Grateful Meds, operating under CUP 2016-004 has had multiple violations of the Talent Municipal Code. The first violation was noticed to the business owner on November 3, 2016 when outstanding conditions of the CUP approval had not been met. The second violation of the TMC was noticed on March 15, 2017 when the City was notified by the Oregon Health Authority that Grateful Meds was not registered to operate through OHA's Oregon Medical Marijuana Program in violation

of ORS 457B.450(1)(b). In June 2017, the business owner was notified again of violations from November 2016 as well as a new violation for not maintaining a City business license.

Following the resolution of the above stated issues, the City of Talent Finance Department notified Community Development of two new violations. In April 2019, Community Development issued a first notice of violation for not obtaining a City business license and for delinquent tax payments, both violations of the TMC. Notices of these violations were sent via certified mail to various address on file for the business. In November 2019 a citation was issued by Community Development for delinquent taxes.

Included with the staff report for this proposed final order is a timeline of violations and conversations that have taken place over the past two years. The timeline includes multiple conversations the Finance Department staff had with representatives of the business. Beginning in April 2019 staff was advised multiple times by representatives of the business that the delinquent taxes would be paid, and the violations would be resolved. To date, none of the violations have been resolved.

After review of TMC 18.155.110, Termination of a Conditional Use, it was determined that the next course of action would be the revocation of the conditional use. Consistent with the provisions of TMC 18.155.110, a Conditional Use Permit may be revoked or modified by the Planning Commission, after a public hearing if the use is in violation of any provision of this title or of any other applicable statute, ordinance or regulation of the City.

The violations (past and present) of the TMC are as follows:

TMC 3.10 Marijuana Tax

- Violations of TMC occurred in 2017, 2018 and in 2019. Total outstanding taxes exceed \$4,000 (not including penalties and interest)

TMC 3.10.030 Collection.

The consumer shall pay the tax to the marijuana retailer at the time of the purchase or sale of the marijuana item. Every marijuana retailer shall collect the tax from the consumer at the time of the sale of a marijuana item. The tax collected by the marijuana retailer shall be held in trust by the marijuana retailer for payment to the city. The marijuana retailer shall remit the tax to the tax administrator. The tax administrator is authorized to exercise all supervisory and administrative powers with regard to the administration, collection and enforcement of the tax authorized by this chapter. [Ord. 921 § 3, 2016.]

TMC 5.01 Business Licenses

- Violations of TMC have occurred each year since the Conditional Use was approved by the Planning Commission.

TMC 5.01.030 Business license required.

No person, for himself or as an agent or employee of another, shall do business within the city unless:

A. Such business has been duly licensed within this chapter; and

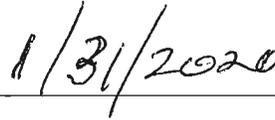
B. The license is valid at the time of the transaction. [Ord. 698 § 3.]

This revocation 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.



Derek Volkart
Planning Commission Chair

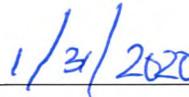


Date

ATTEST



Zac Moody
Community Development Director



Date