FOREST GROVE OREGON

A place where families and businesses thrive.

Date: May 2, 2022

To: Planning Commission

From: Amy Kreimeier (AICP), Senior Planner
Bryan Pohl, Community Development Director

Re: Development Code Topics

BACKGROUND: The purpose of this work session is to review possible amendments to the Development Code (DC). They are being drafted per the Commission's direction, as responses to citizen requests, and to address code omissions or inconsistencies.

Following the work session, draft amendments will be prepared as per the Commission's direction, and scheduled for public hearing.

MARIJUANA RETAILERS

The Commission has expressed a desire to amend requirements for marijuana retailers to address concerns related to the proliferation of marijuana retailers within the community. There are five marijuana retailers currently operating within the city. Marijuana retailers are concentrated within an approximately 7 block area between Highway 47 to the east and Douglas St. to the west. Four retailers are located on Pacific Ave. and one retailer is located on 19th Avenue. The location of a marijuana retailer is restricted by a site's proximity to a school and the zoning of the property.

Retailers may be permitted in the CC, NMU, TC, & TCT zones with the approval of a Conditional Use Permit (CUP). DC Section 17.8.1100 requires all marijuana retailers obtain a conditional use permit. In the NMU zone, retailers must also be within a Village Center of an approved Mixed Use Planned Development. There is currently no NMU zoned land with an approved Village Center. Therefore, retailers are currently limited to sites commercially zoned CC, TC, & TCT. All land with these zoning designations is generally located along the Pacific Avenue, 19th Avenue, and Main Street corridor which may account for the current concentration of marijuana retailers along Pacific and 19th Avenues.

There is some ambiguity in the code as to whether marijuana retailers could be permitted in residential zones. Note 10 in Table 3-2 Residential Zones: Use Table states that:

> *[10] A neighborhood store, limited to a size of 2,000 square feet, is permitted with approval of a conditional use permit. No retail outlet regulated by the Oregon Liquor Control Commission - other than those operating under an Off-Premises Sales License - is allowed in any residential zone district. Stores must be located along a collector street.*

This note could be interpreted to permit marijuana retailers in residential zones provided they meet the stated requirements. Staff recommends eliminating this note from Table 3-2.

Additionally, the location of a marijuana retailer is further restricted by a site's proximity to a school. Commercial marijuana retailers are currently prohibited from locating within 1,000 feet of any school. This applies to any licensed public or private elementary or secondary school, from kindergarten to twelfth

grade, that meets the definition of a school under O.R.S. 339.020 or O.R.S. 339.030(1)(a). It does not apply to pre-schools. Medical marijuana retailers are prohibited from locating within 1,000 feet of any school and within 1,000 feet of any other medical marijuana retailer. These restrictions were taken from state requirements in effect at the time the City's marijuana regulations were adopted which is why there are differing requirements for medical and commercial retailers. There are no medical retailers in the city.

A question to consider is whether commercial marijuana retailers should be prohibited from locating within 1,000 feet of another commercial marijuana retailer. Commissioner Nakajima has expressed that she would like to see such a requirement while Commissioner Redwine has mentioned aligning City requirements for retailers with those of the City of Hillsboro. The City of Hillsboro does require 1,000 feet of separation between marijuana retailers.

Staff conducted an analysis applying a 1,000 ft. buffer to existing retailers and found that no retailers would currently meet a separation requirement. However, any new separation requirement would only be applicable to new retailers. Existing retailers would be permitted to remain in their current locations. Permitted locations for new retailers would be very limited when also factoring in school buffers.

Question – Should commercial marijuana retailers be restricted from locating within 1,000 feet of other commercial marijuana retailers?

Question – Should note 10 from Table 3-2 Residential Zones: Use Table be removed?

Another question is whether to continue requiring approval of a CUP for marijuana retailers. Conditional uses are subject to review because they may have adverse effects on the environment, overburden public services, change the desired character of an area or create nuisances. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose conditions to address identified concerns, or to deny the use if the concerns cannot be resolved.

Marijuana retailers are considered a retail use and are permitted in commercial zones. To date there have been no issues regarding their operations which have put a burden on public services or be considered a nuisance. They exist and operate similar to other retail uses. Marijuana retailers are required to comply with code requirements for development and operation requirements and no conditions have been placed on the operations of any existing retailer beyond what the code dictates. In order to receive a state license, a marijuana retailer must demonstrate compliance with state regulations which are replicated in City Code. Requiring a CUP appears redundant.

Eliminating the requirement for a CUP would not eliminate the ability to review applications. The code requires a site development review for any change of use of an existing site and new construction would require both design review and site development review, both of which are a Type II procedure. Compliance with code requirements and location verification could occur during these reviews rather than a more costly and time-consuming CUP, Type III procedure.

Question – Should marijuana retailers be required to obtain a conditional use permit?

Additionally, staff suggests revising the development code to replace the word "marijuana" with "cannabis". Cannabis has become the professionally accepted term for marijuana since the code was last updated in 2016. This change is in line with updates at the state level and the Oregon Liquor & Cannabis Commission terminology.

GRAVEL PARKING LOTS

Staff has been approached about permitting gravel parking lots for various permanent land uses in the city. The code requires that "except for single-family and duplex residences, all areas used for the parking and/or storage and/or maneuvering of any vehicle, boat and/or trailer shall be improved with asphalt or concrete surfaces according to the same standards required for the construction and acceptance of city streets", DC § 17.8.525.F - *Surfacing*. The only exception to this requirement is for overflow parking areas, which may use pervious alternatives such as "grass-crete" or similar reinforced, drained and seeded hard surface alternatives, DC § 17.8.520.C.

Parking lots are also subject to additional design and maintenance standards including permanent marking of stalls, stormwater management, lighting, landscaping, and continued maintenance. Gravel requires more consistent maintenance to maintain appearance and prevent hazardous conditions. They can quickly degrade due to weather if not properly maintained. The purpose of the parking lot regulations is to establish vehicle parking areas that are appropriately designed to minimize any hazardous conditions on the site and at access points and to improve the appearance of off-street parking, preserving the appearance, character and value of the surrounding neighborhoods. Maintained gravel is considered an impervious surface and would be subject to the same stormwater management design and construction standards.

Another question to consider is whether there are uses or circumstances in which a gravel parking lot would not detract from the appearance of the site or surrounding area or in which the possibility of hazardous conditions would be minimal given the intended use. The City of Hillsboro has provisions to allow for gravel parking lots for major assembly facilities, outdoor storage, telecommunication facilities, and utility facilities while the City of Beaverton may allow gravel parking lots for storage yards in select zones. Gravel parking lots are also commonly seen with horticulture/agriculture uses, cultural institutions, temporary uses such as Christmas tree or pumpkin lots, as well as passive recreational facilities such as parking for trailheads or open space areas.

Question – Should gravel parking lots be permitted?

Question – If gravel parking lots are to be permitted for what uses or in what circumstances should they be permitted?

ENTERTAINMENT-ORIENTED USES

Staff was recently made aware of some inconsistencies regarding the definitions of commercial lodging and entertainment-oriented uses, and the zones in which these uses are permitted. The definitions for these uses are as follows:

> *Commercial Lodging - Residential facilities such as hotels, motels, rooming houses and recreational vehicle parks where tenancy is typically less than one month; may include accessory meeting and convention facilities and restaurants/bars.*
>
> *Entertainment-oriented.*
>
> 1. *Major Entertainment - Facilities such as auditoriums, stadiums, convention centers and race tracks which provide athletic, cultural or entertainment events and exhibits for large groups of spectators.*
>
> 2. *Outdoor Entertainment - Entertainment uses associated with extensive outdoor facilities including miniature golf courses, driving ranges, go cart tracks and shooting ranges.*

3. *Indoor Entertainment - Indoor facilities such as health/fitness clubs, tennis, racquetball and soccer centers, recreational centers, skating rinks, bowling alleys, arcades, indoor shooting ranges and movie theaters.*

Permitted Zones:

USE CATEGORY	NC	CC	NMU	TC-Core	TC-Transition	LI	GI	BIP
COMMERCIAL								
Commercial Lodging	N	L[5]	L[16]	L[4]	L[4]	N	N	N
Entertainment – Oriented:								
- Major Event Entertainment	N	N	N	N	C	N	N	N
- Outdoor Entertainment	N	N	N	N	N	N	N	N
- Indoor Entertainment	N	P	L[15]	P	P	N	N	C

[4] Recreational vehicle parks are prohibited in all districts.
[5] Recreational Vehicle Parks require obtaining a conditional use permit and compliance with the requirements of § 17.5.500 et seq. All other commercial lodging uses are permitted.
[15] Use is only permitted within a Village Center of a Mixed Use Planned Development approved in accordance with § 17.4.300.
[16] Restricted to uses existing as of 03/28/2016.

The definition of Commercial Lodging is not encompassing of the many accessory uses that have become standard for many large or destination hotel facilities. It is common for hotels to offer major, outdoor, and/or indoor entertainment facilities including convention space, golf courses, and fitness facilities. These hotels can play host to numerous events throughout the year such as weddings or professional gatherings. These events benefit the city by increased tax revenue and tourism in the area. Yet there is a disconnect in the code between the definitions of Commercial Lodging and Entertainment-oriented uses and the zones in which these uses are permitted.

For example, the definition of Commercial Lodging references convention facilities as an accessory use and is permitted in four commercial zones. Clearly, entertainment facilities were identified as a use associated with Commercial Lodging. However, Major Entertainment, which expressly permits convention facilities, is only permitted in one commercial zone with the approval of a Conditional Use Permit. Additionally, the definition of Major Event Entertainment is inclusive of facilities for large spectator events while Outdoor Entertainment is inclusive of uses with extensive outdoor facilities. This has created ambiguity for both staff and prospective applicants as to how outdoor facilities for large spectator events, such as amphitheaters, would be classified. Staff would suggest amending the definition of Commercial Lodging to permit accessory entertainment-oriented facilities and to amend the definitions of Major and Outdoor Entertainment as follows:

Commercial lodging. Residential facilities such as hotels, motels, rooming houses and recreational vehicle parks where tenancy is typically less than one month; may include accessory meeting, ~~and~~ convention, **and entertainment-oriented** facilities and restaurants/bars.

Major event entertainment. Facilities such as auditoriums, **amphitheaters, concert halls,** stadiums, convention centers and race tracks which provide athletic, cultural or entertainment events and exhibits for large groups of spectators.

Outdoor entertainment. Entertainment uses associated with extensive outdoor facilities **and active recreation** including miniature golf courses, driving ranges, go cart tracks and shooting ranges.

Outdoor facilities provided for the viewing of cultural or entertainment events and exhibits are classified as major event entertainment.

It has also come to Staffs attention that Outdoor Entertainment is not permitted in any zone within the city. Staff suggests amending the use tables to permit Outdoor Entertainment in at least one City zone and to permit Major Event Entertainment in additional zoning districts in the city. Any potential impacts from permitting Entertainment-oriented uses could be addressed and mitigated during the land use review process (Design Review, Site Development Review, or Conditional Use Permit) by way of design changes or approval conditions which regulate operations such as hours or noise.

Potential impacts from permitting Entertainment-oriented uses in conjunction with approved Commercial Lodging could be addressed through the land use review process as well. If Entertainment-oriented uses are to be permitted accessory uses with Commercial Lodging, staff recommends requiring a Temporary Use Permit for events over a certain size. The Temporary Use Permit process would provide the City the ability to implement operational conditions that address commonly cited concerns related to items such as hours, noise control, or overflow parking. This would also provide an extra tool to ensure that Entertainment-oriented uses remain accessory. Staff suggests amending the use tables to require that Commercial Lodging uses obtain a Temporary Use Permit for events of 500 or more spectators or attendees.

Question – Should the definitions of Commercial Lodging and Entertainment-oriented uses be revised?

Question – Should Major Entertainment and Outdoor Entertainment be permitted in additional zones?

Question - Should Commercial Lodging uses be required to obtain a Temporary Use Permit for events of 500 or more spectators or attendees?

MIXED-USE PLANNED DEVELOPMENT

A Councilmember has expressed a desire to make changes to the Mixed Use Planned Development (MUPD) section of the code (DC § 17.4.300 et. al.). MUPD approval is a requirement of development in the Neighborhood Mixed Use (NMU) zone. The NMU zone was established to:

> *Support the development of pedestrian-friendly mixed-use neighborhoods with a diversity in the mix of housing types and neighborhood-scale retail sales and service, office, civic or recreational uses. Most non-residential uses must be located within a "Village Center." The Village Center is intended to serve as the center of the neighborhood, providing convenient access to goods and services as well as "third places" where residents can gather.*

The NMU Zone implements the Comprehensive Plan's Mixed-Use designation. MUPD approval is required in the NMU Zone in order to ensure that the objectives of the Comprehensive Plan are addressed and that sites zoned NMU are developed into pedestrian-friendly mixed-use neighborhoods.

However, as currently written an applicant is not required to provide any commercial development in order to receive approval of a proposed MUPD. It is the provision of commercial in conjunction with residential that makes a development mixed-use. Without the commercial development, Comprehensive Plan objectives are not being sufficiently addressed.

The MUPD section of the code uses permissive words such as "need", "propose", and "if any" for many standards, thereby making them preferred but not required. Replacing this language with mandatory words such as "shall" and "provide" will make clear what is optional and what is required. This is necessary to

achieve development as intended in the Comprehensive Plan. Staff proposes to revise the MUPD section of the code to make it clear that commercial development is required as part of any MUPD by removing ambiguous language.

Staff would also propose to permit Emergency Service uses to be constructed in a MUPD outside of the Village Center. Currently only Basic Utilities, Major Utilities Transmission Facilities, Daycare, Home Occupations and Community Recreation are permitted commercial uses outside the Village Center. Emergency Services typically have strict development requirements they must meet in order to comply with State or Federal standards. Allowing any needed Emergency Services to be located outside of the Village Center provides greater flexibility to emergency service providers to develop according their standards and ensure the highest quality of service. The operations of Emergency Services such as fire stations, police stations or ambulance services, are often incompatible with the kind of compact, pedestrian friendly commercial development the Village Center envisions. These uses are more suited to be located on the periphery of such development.

Question – Should the MUPD section of the code be amended to require a commercial development component?

Question – Should Emergency Services uses be permitted outside of the Village Center?

Additionally, while these proposed changes may alleviate some concerns regarding mixed-use development, staff believes a more in-depth review of the MUPD process and NMU zones is warranted. There appear to be numerous factors, both within and outside our control, that are preventing NMU land from being developed as intended. The locations of NMU zoned land, the size of NMU land, and NMU land under multiple ownerships are just some barriers that have been identified by both landowners and developers. Staff is also concerned that the current process and requirements may not reflective of the market needs of mixed-use development and economic trends.

FENCES

Staff has been approached about increasing the permitted fence height for residential uses. The maximum fence height for residential uses permitted by the code is 6 feet but shall be reduced to a height of three-and one-half feet in the required front yard. For residential uses which abut the highway, noise due to vehicle traffic is an increasing nuisance for residents who are limited in their ability to block the noise. Staff recommends permitting a fence height of between 8-10 feet for residential lots the abut the highway.

Question – Should permitted fence height for residential uses which abut highways be increased?

SIGNS & MURALS

The development code is silent on murals. With recent murals erected in the city, there has been questions as to whether a mural constitutes a sign. The City Attorney has also expressed to staff that the current definition for a sign may be inconsistent with state law. Staff proposes to add a definition for mural to the code and to make necessary revisions to the definition of a sign to be consistent with state law. In consultation with the City Attorney, staff proposes the following definitions:

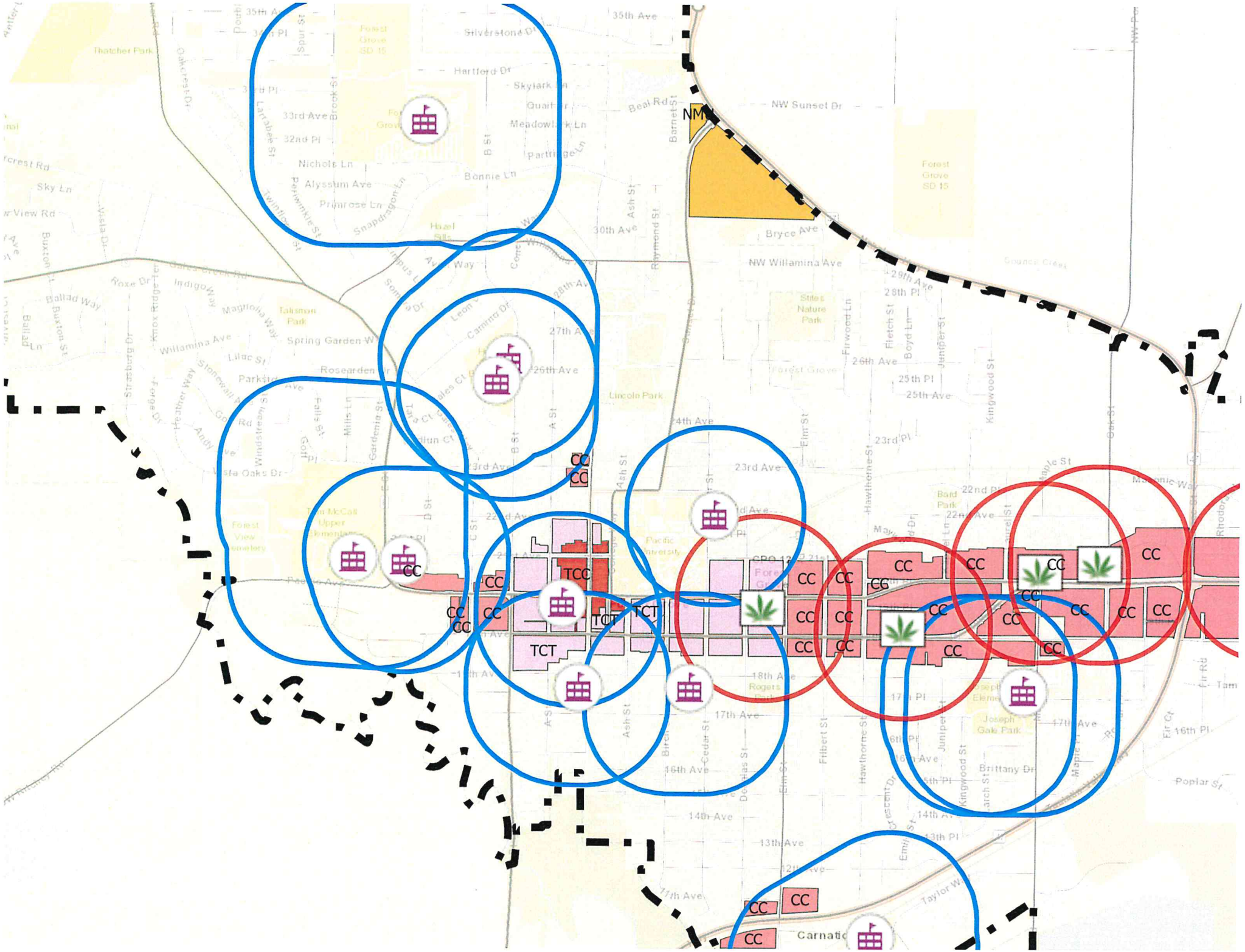
> **MURAL**. A picture painted or affixed directly on a wall.
>
> **SIGN**. Writing, video projection, pictorial representation, illustration, decoration (including material used to differentiate sign copy from its background), emblem, symbol, design, trademark, banner, flag, pennant, captive balloon, streamer, spinner, ribbon, sculpture, statue, or any other figure or character that by reason of its form,

color, wording, symbol, design, or illumination is designed to communicate or enhance the communication of a message and is a building or any part thereof or written, printed, projected, painted, constructed, transmitted or otherwise placed or displayed upon or designed into a supporting structure or upon any material object or device whatsoever.

RECOMMENDATION: Following this meeting, draft text amendments will be developed as per the Commission's direction. Depending on their extent, the draft will either be further reviewed and refined in another work session, or scheduled for public hearing.

Attachments:

1. Cannabis Retailers Map


NW Sunset Dr
NW Willamina Ave
Bryce Ave
35th Ave
30th Ave
28th Ave
28th Pl
27th Ave
26th Ave
25th Pl
25th Ave
24th Ave
23rd Pl
23rd Ave
22nd Pl
22nd Ave
21st Ave
18th Ave
17th Ave
16th Ave
14th Ave
13th Ave
Hartford Dr
Skylark Ln
Meadowlark Ln
Partridge Ln
Nicholl Ln
Alyssum Ave
Primrose Ln
Bonnie Ln
Snapdragon Ln
Periwinkle St
Twinflower St
Larkabee St
Brook St
B St
A St
Ash St
Beal Rd
Barnett St
Raymond St
Elm St
Fir St
Hawthorne St
Juniper St
Kingwood St
Oak St
Cedar St
Hazel St
Birch St
Filbert St
Maple St
Willamina Ave
Spring Garden Way
Rosearden Way
Parkside Ave
Lilac St
Roxe Dr
Indigo Way
Magnolia Way
Talisman Park
Lincoln Park
Stites Nature Park
Forest Grove
Forest Grove SD 15
Thatcher Park
Pacific University
Joseph Gale Park
Brittany Dr
Poplar St
Taylor W
Carnation
NM
CC
TCC
TCT