



# CITY OF BROWNSVILLE

## **Council Meeting**

Tuesday – September 19<sup>th</sup>, 2017

**Special Session      7:00 p.m.**

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**CITY OF BROWNSVILLE**

**Special Meeting**

City Hall – Council Chambers  
Tuesday, September 19<sup>th</sup>, 2017

**AGENDA**

**Special Session**

**7:00 p.m.**

- 1) CALL TO ORDER
- 2) ROLL CALL
- 3) PLEDGE OF ALLEGIANCE
- 4) ADDITIONS OR DELETIONS TO AGENDA
- 5) PUBLIC HEARINGS:
  - A. 221 W. Bishop Way – Marijuana Facility Medical to Recreational
- 6) COUNCIL DISCUSSION
- 7) GENERAL DISCUSSION
- 8) ADJOURN

This Agenda is a list of the subjects anticipated to be considered at the meeting, but the Council may consider additional subjects as well. The location of the meeting is accessible to physically challenged individuals. Should special accommodations be needed, please notify City Administrator S. Scott McDowell at (541) 466-5880 in advance. Thank You.



# City Administrator Report

September 19<sup>th</sup>, 2017

**From:** S. Scott McDowell  
**To:** Mayor & Council  
**Re:** Special Meeting

## **Why a special meeting?**

The Planning Commission denied the conditional use application as filed by Mr. Randy Simpson for a recreational marijuana facility at 221 W. Bishop Way. When an application is denied, an applicant may appeal the decision of the Planning Commission to Council if they choose. The City received a valid appeal request from Mr. Simpson and Ms. Ashford within the required timeframe.

## **What is Council's role?**

Council will review all of the information and testimony as presented at the meeting on Tuesday, September 19<sup>th</sup>, 2017 and make a decision on whether or not a recreational marijuana facility will be allowed to operate at 221 W. Bishop Way.

## **What is in this packet?**

You will find the full public record from the Planning Commission hearing for the Simpson application. The original application, the Staff report, unofficial minutes from the meeting and the reconvening, Planning Commission Chair Gary Compton's research, a letter from Pastor Kelly Williams. You will find the appeal from Mr. Simpson & Ms. Ashford which led to this special meeting, an e-mail received from Mr. Don Lyon and an e-mail received from Mrs. Alice Tetamore.

## **What about meeting procedures and process?**

Mayor Ware and I have planned a structured meeting for Tuesday under the general direction of City Attorney Ross Williamson and Planning Consultant Dave Kinney that will hopefully allow for a civil discourse. The hearing is a stand-alone meeting which means that the outcome is solely dependent on the will of Council. With that said, you will find the entire public record from the Planning Commission meeting that was held on July 17<sup>th</sup> and continued on July 31<sup>st</sup>, 2017 regarding the Simpson Conditional Use application. Anyone wishing to speak about marijuana is allowed to speak. It does not have to relate directly to the Simpson's application.

If Council should approve the application, the Simpson's would be able to operate recreational sales at their current location at 221 W. Bishop Way.

If Council should deny the application, the Simpson's could appeal Council's decision to the Land Use Board of Appeals (LUBA).

Council members may conduct their own research.

## ***Administrator Report***

I do not wish to recount the history of marijuana in Brownsville. It has been a very long three years spent on this controversial topic and as Mayor Ware recently said, "We have talked it into the ground."

***Administrator's Report***



# City Administrator Report

Attempting to write this report is difficult given the polarizing nature of this topic. Staff has not provided news articles, medical journal articles or any other information for or against marijuana. Staff's position has always been that any member of Council or any member of the Planning Commission have a responsibility to conduct their own research and draw their own conclusions.

There are no easy answers and any guidance I give will be construed either for or against a particular position. However, I think there are some things that should be said.

## The Tax Revenue

Many states, including Oregon, seem willing to legalize marijuana which will drive tax revenue to the coffers of State and local governments. Kevin Sabet, a former advisor to President Obama who was the Senior Advisor of National Drug Control Policy, has written this about the impacts of legalizing marijuana, "Accidents would increase, healthcare costs would rise and productivity would suffer. Legal alcohol serves as a good example: The \$8 billion in tax revenue generated from that widely used drug does little to offset the nearly \$200 billion in social costs attributed to its use." Projections have predicted that for every dollar of revenue generated, marijuana will cost seven dollars in social damage. Do the adverse impacts outweigh the benefit to Americans?

## The State Legalized Marijuana

The State claims the Tenth Amendment of the United State Constitution as the written right to ignore federal law and that states have the authority to legalize. However, Article VI of the Constitution makes it clear that federal law shall be the supreme law of the land and when there is a conflict between state law and federal law, federal law shall prevail.

The City Attorney has said that the State is not breaking federal law, the people growing, selling and supplying the drug are breaking federal law. So, by that logic, are we to infer that the State of Oregon has legalized an illegal activity?

If we use the same logic the State uses to disregard federal law, then cities should be able to use the same legal argument to pursue their own will as granted in the Oregon Constitution.

## **ARTICLE XI SECTIONS 1-11a CORPORATIONS AND INTERNAL IMPROVEMENTS**

**Section 2. Formation of corporations; municipal charters; intoxicating liquor regulation.** Corporations may be formed under general laws, but shall not be created by the Legislative Assembly by special laws. The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon. [Constitution of 1859; Amendment proposed by initiative petition filed Dec.13, 1905, and adopted by the people June 4, 1906; Amendment proposed by initiative petition filed June 23, 1910, and adopted by the people Nov. 8, 1910]

The State circumvented cities charter rights as provided by the Oregon Constitution.



The City Charter says this,

## CHAPTER II Powers

### Section 4. Powers of the City.

SHARE

The city has all powers which the constitution, statutes, or common law of the United States or of this state expressly or impliedly grant or allow municipalities as fully as though this Charter specifically enumerated each of those powers.

Oregon Home Rule has been completely overridden by the State of Oregon's actions.

### Section 5. Construction of Powers.

SHARE

In this Charter, no mention of a particular power is exclusive or restricts the scope of the powers which the city would have if the particular power were not mentioned. The Charter shall be liberally construed to the end that the city have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that a city may assume pursuant to state laws or the municipal home rule provisions of the state constitution.

### Getting Legal Drugs in America

In order to be prescribed a legal drug, a person must go to a licensed physician, who in most cases, spent eight years in medical school with a two year residency. The physician examines the person and in some cases requires other tests to determine what drugs, if any, should be administered. When it is finally determined, the physician writes a prescription.

The prescription is then taken to a licensed pharmacist, who has studied six years, to dispense the drug to the person. (This is not to mention that the insurance company also has to authorize the drug prior to it being given to the person.) The legal drug has been through multiple testing by the Federal Drug Administration. All of this is done to protect the end consumer or user of legal drugs.

Now, in legalized marijuana states, a person can simply walk in to a facility that dispenses an illegal drug, has absolutely no medical training, no drug oversight, and sell a consumer a drug that has been proven to cause adverse health conditions by the medical community.

### Conclusion

Many cities seem content following the State's dismissal of federal law. Votes on the matter have been very close in every marijuana election held historically in the State; the primary reason this topic is controversial. Now, you are faced with a decision once again involving marijuana in Brownsville. I certainly do not envy your position. I wish you the best in the outcomes you decide to pursue for the well-being of Brownsville citizens.



# City Administrator Report

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be "SM", written over a faint circular stamp.

S. Scott McDowell



# City of Brownsville

## Planning Commission Meeting

City Hall  
Council Chambers  
Monday, July 17<sup>th</sup>, 2017  
7:00 p.m.

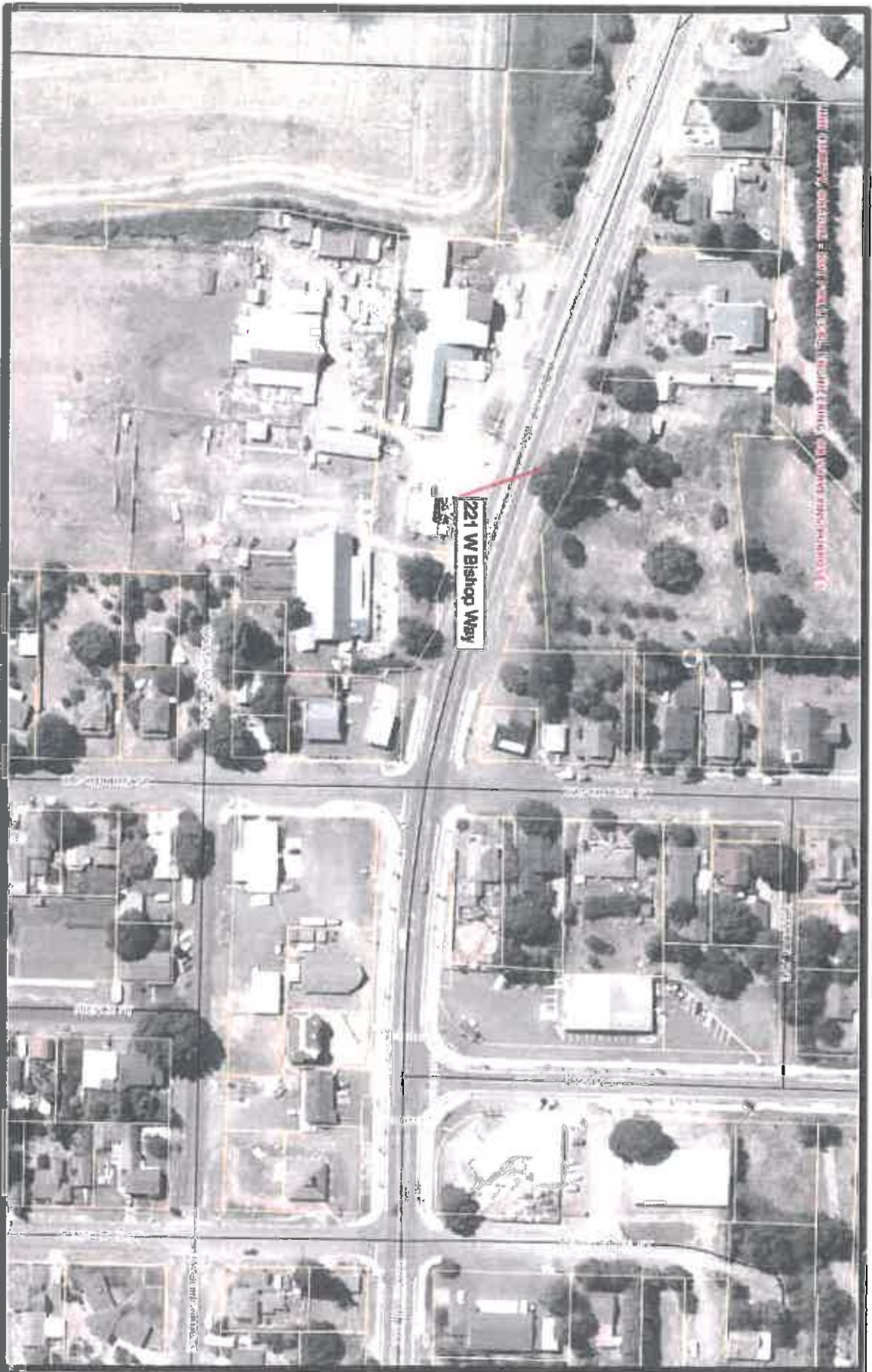
## *Regular Session*

### AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. PUBLIC HEARINGS:  
  
221 W BISHOP WAY– MARIJUANA FACILITY MEDICAL TO RETAIL
5. COMMISSION DISCUSSION
6. MINUTES: JANUARY 23<sup>RD</sup>, 2017
7. STAFF UPDATES
8. ADJOURN

This agenda is a list of topics anticipated to be considered at the meeting. The Planning Commission may add or remove topics as necessary. The location of this meeting is accessible to the physically challenged. If special accommodations are needed, please notify S. Scott McDowell at 541.466.5880 in advance. Thank you.

# 221 W Bishop Vicinity Map



This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this informational should review or consult the primary data and information sources to ascertain the usability of the information



# 221 W Bishop Way Location Map

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City Hall

255 N. Main Street • P.O. Box 188

Brownsville, OR 97327 • 541.466.5666

Fax 541.466.5118 • TT/TDD 800.735.2900

Fee: 750.00

**Commercial Conditional Use Application**

**APPLICANT INFORMATION**

Name of Applicant: Randy Simpson Phone: 541 466 3115

Mailing Address: 29055 Sheep Head Rd, Brownsv, Ilg, OR 97327

Applicant is: \_\_\_\_\_ Legal Owner \_\_\_\_\_ Contract Purchaser \_\_\_\_\_ Agent \_\_\_\_\_ Renter

**DESCRIPTION OF SUBJECT PROPERTY**

Legal Owner: Greg Hopla Phone: 541 619 4941

Mailing Address: 217 W. Bishop Way Brownsvilk, OR, 97327

Taxlot No: 309985 Township Brownsville Range 228<sup>th</sup> Hwy Section E Block Bishop

Address of Property: 221 West Bishop way Brownsville, OR 97327

General Location: Fronting Old Video Store Side of 221 W. Bishop way  
Name or Number of Road

**DESCRIBE THE PROPOSED CONDITIONAL USE**

Recreational / medical Marijuana Dispensary

**EXISTING CONDITIONS**

Zone: Commercial Comprehensive Plan Designation Light Industrial (LI)  
~~221 W. Bishop Way~~

Present Use of Property Medical Marijuana Dispensary

Is the property serviced by city sewer and water? yes

**SUPPORTING REASONS FOR A CONDITIONAL USE REQUEST**

The Brownsville Zoning Ordinance, Section 7.010 specifies criteria that must be addressed before granting a conditional use. Applicants must respond to the following criteria (refer to your site plan where appropriate):

- 1. The proposal is consistent with the applicable policies of the Comprehensive Plan, the applicable provisions of the zoning ordinance and other applicable policies, regulations, and standards adopted by the City of Brownsville.

*We follow ordinances*

- 2. The location, size, design and operating characteristics of the proposal will have minimal adverse impact on the livability, value, or appropriate development of abutting properties and surrounding area, considering such factors as:

A. Location, size, and bulk of buildings.

*Will blend in with Kirks Ferry Trading Post, will look historical and blend in with it's surroundings.*

B. Location, size, and design of parking areas.

*Already established and has been cleaned up and restored.*

C. Screening, landscaping, exterior lighting, hours of operation, vehicular access, and similar factors.

Nothing has changed. Minor improvements like planting flowers.

3. The proposal will preserve those historical, archeological, natural, and scenic assets of significance to the community and the surrounding area.

We will preserve and add to the beauty of South historical Brownsville.

4. The proposal will not place an excessive burden on street, sewage, water supply, drainage systems, parks, schools or other public facilities in the area.

Not in any way.

**ATTACHMENTS**

Building is already on location.

1. A site plan, drawn to scale, showing the dimensions and arrangement of the proposed development.
2. Filing Fee.

**STATEMENT**

I (we) hereby certify that the foregoing statements and answers and any other information (such as maps and drawing) attached hereto are true and accurate to the best of my (our) knowledge and belief.

**APPLICANT:**

Randy Simpson      Randy Simpson      5-26-2017  
(Name printed)      (Signature)      (Date)

Gayle Ashford      Gayle Ashford      5-26-2017  
(Name printed)      (Signature)      (Date)

**OWNER:**

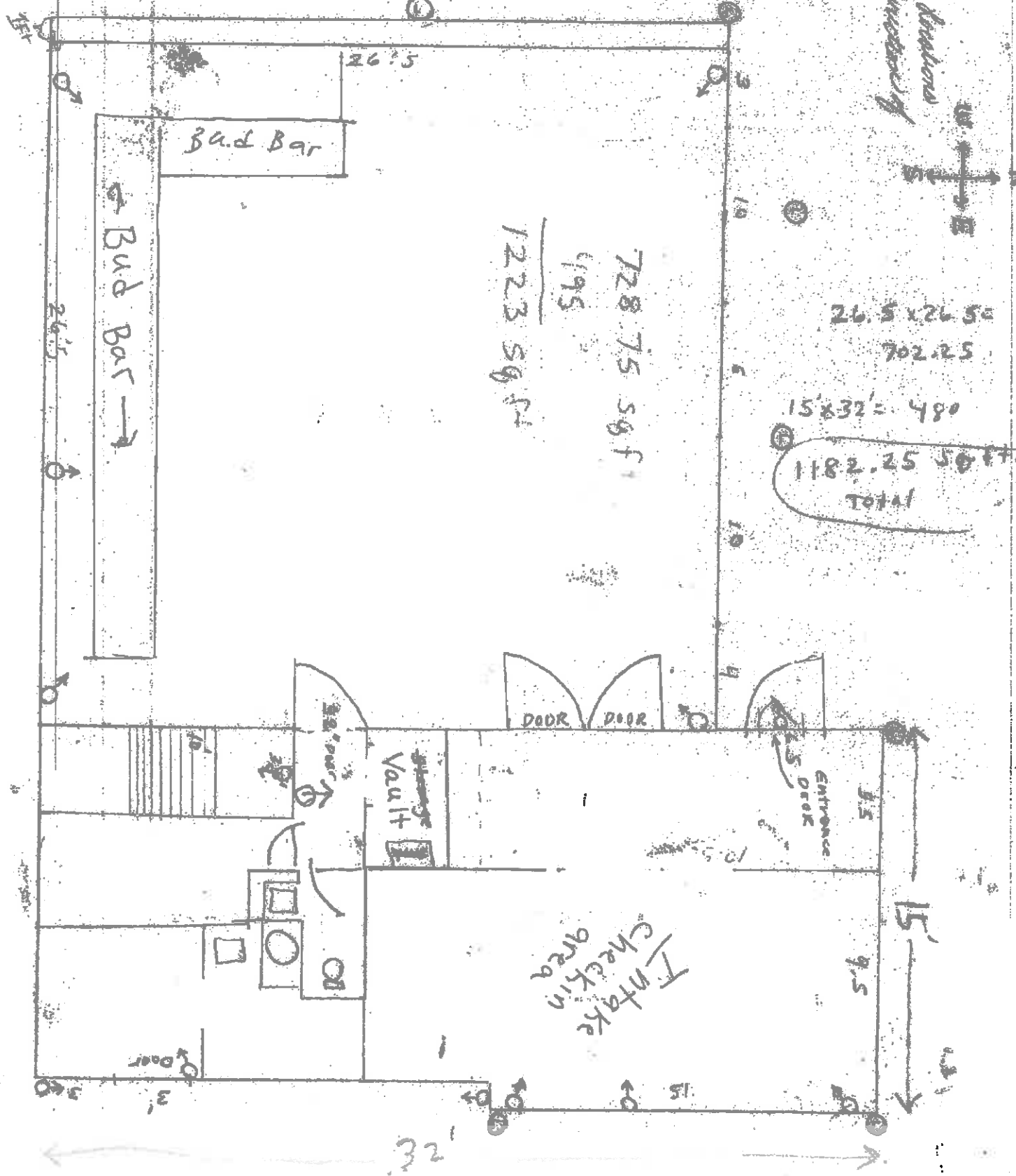
Greg Hopla      Greg Hopla      5-26-17  
(Name printed)      (Signature)      (Date)

Shawn Hopla      Shawn Hopla      5-26-17  
(Name printed)      (Signature)      (Date)

<b><u>FOR CITY USE ONLY</u></b>	
Received By: <u>Jannea Beaver</u>	Date: <u>5/30/17</u>
Fee Received: <u>750</u>	Receipt No: <u>165043</u>
City Administrator _____	

SCALE  
1" = 5'

26 1/2 x 26 1/2

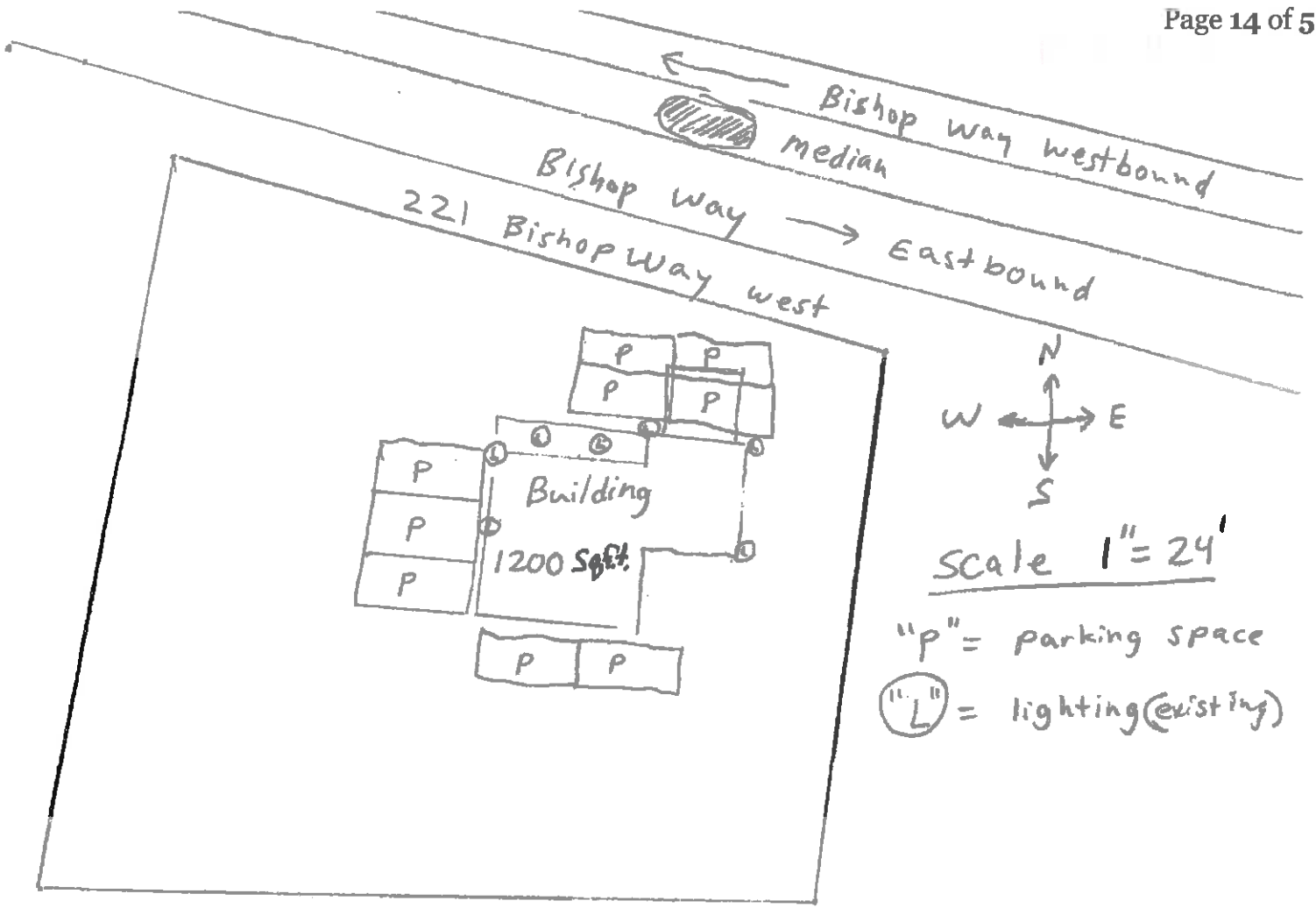


728.75 sq ft  
 495  
 1223.5 sq ft

26.5 x 26.5 =  
 702.25

15 x 32 = 480  
 1182.25 sq ft  
 TOTAL





hours of operation: ~~8 AM~~ 6 PM

- Mon - Sat 11<sup>A</sup> - 17<sup>P</sup>
- Sun 12<sup>A</sup> - 4<sup>P</sup>

Hours may change, but will be in keeping  
 with other surrounding business like  
 Kirk's Ferry, Chevron Gas and Dari Mart

## Conditional Uses Chapter 15.125

- 15.125.010** Authorization to grant or deny conditional uses.  
**15.125.020** Conditions which may be placed on a conditional use permit.  
**15.125.030** Procedure for taking action on a conditional use application.  
**15.125.040** Time limit on permit for conditional use.  
**15.125.050** Standards governing conditional uses.

### **15.125.010 Authorization to grant or deny conditional uses.**

A conditional use listed in this division shall be permitted, altered or denied in accordance with the standards in this chapter. In the case of a use existing prior to the effective date of the ordinance codified in this chapter and classified in this chapter as a conditional use, a change in the use or in lot area, or an alteration of structure, shall conform with the requirements for conditional use and is subject to review, application and fee in the same manner as a newly proposed conditional use. In judging whether or not a conditional use proposal shall be approved or denied, the Planning Commission shall weigh its appropriateness and desirability for the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable. Home occupations are required to obtain a conditional use permit in the event they generate noise, traffic or other factors which reasonably affect neighboring properties in a negative manner. The City Administrator shall make a determination as to whether a conditional use is required. The City Administrator's decision may be appealed to the City Council.

- A. The proposal shall be consistent with the applicable policies of the Comprehensive Plan, the applicable provisions of the zoning code and other applicable policies, regulations and standards adopted by the City of Brownsville.
- B. The location, size, design and operating characteristics of the proposal will have minimal adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area, considering such factors as:
- Location, size and bulk of buildings.
  - Location, size and design of parking areas.
  - Screening, landscaping, exterior lighting, hours of operation, vehicular access and similar factors.
- C. The proposal will preserve those historical, archeological, natural and scenic assets of significance to the community and the surrounding area.
- D. The proposal will not place an excessive burden on streets, sewage, water supply, drainage systems, parks, schools or other public facilities to the area. [Ord. 717, 2009; Ord. 644 § 1, 1996; Ord. 618 § 11, 1993; Ord. 567A § 10, 1987; Ord. 504 § 7.010, 1980; 1981 Compilation § 8-5:7.010.]

### **5.125.020 Conditions which may be placed on a conditional use permit:**

In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may impose, in addition to those standards and requirements expressly specified by this division, additional conditions which it finds necessary to enforce the Comprehensive Plan and to otherwise protect the best interest of the surrounding area or the community as a whole. These conditions may include but are not limited to the following:

- A. Limiting the manner in which the use is conducted, including restricting the time a certain activity may take place and establishing restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.
- B. Establishing a special yard or other open space or lot area or dimension.



- C. Limiting the height, size or location of a building or other structure.
- D. Designating the size, number, location and nature of vehicle access points.
- E. Increasing the amount of street dedication, roadway width or improvements within the street right-of-way.
- F. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area.
- G. Limiting or otherwise designating the number, size, location, height and lighting of signs.
- H. Limiting the location and intensity of outdoor lighting and requiring its shielding.
- I. Designating the size, height, location and materials for fences, walls or screening.
- J. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat or other significant natural resources.
- K. Requiring ongoing maintenance of buildings and grounds and specifying procedures for assuring maintenance.
- L. Providing internal property improvements, such as utilities, drainage facilities, streets, curbs, gutters, walkways, parking areas, recreation areas, landscaping, fencing and screening, in order to enhance the area and protect adjacent properties. [Ord. 504 § 7.020, 1980; 1981 Compilation § 8-5:7.020.]

**15.125.030 Procedure for taking action on a conditional use application:**

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

- A. A property owner may initiate a request for a conditional use by filing an application with the City.
- B. Two weeks prior to the Planning Commission hearing, the City Administrator shall post notice of the meeting at City Hall, the post office, and the City library. Twenty days prior to the hearing date, notice of the hearing shall be mailed to all owners of record of property within 200 feet of the exterior boundaries of the property for which the conditional use has been requested. The hearing notice shall also be published in a newspaper of general circulation in the City at least twice within the two weeks prior to the hearing. Failure to receive notice does not invalidate any proceedings in connection with this application. If it is required that a state, federal, local or private agency review the conditional use permit, the agency shall be given a minimum of 20 days to submit its comments.
- C. The Planning Commission shall hold a public hearing on the conditional use application. The hearing shall be scheduled within 60 days after the request for conditional use is received.
- D. Within five days after a decision has been rendered on a conditional use application, the City Administrator shall provide the applicant with written notice of the decision.
- E. An action or ruling of the Planning Commission may be appealed to the City Council as provided in BMC [15.75.020](#). [Ord. 618 § 12, 1993; Ord. 504 § 7.030, 1980; 1981 Compilation § 8-5:7.030.]

**15.125.040 Time limit on permit for conditional use:**

Authorization of a conditional use shall be void after two years or such lesser time as the authorization may specify unless substantial construction has taken place. However, the Planning Commission may extend authorization for an additional period not to exceed one year on request. [Ord. 504 § 7.040, 1980; 1981 Compilation § 8-5:7.040.]

**15.125.050 Standards governing conditional uses:**

In addition to the standards of the zone in which the conditional use is located, and the other standards of this division, conditional uses shall meet the following standards:

**A. Home Occupations.** A decision for approval of a home occupation shall be based on findings related to the following:

1. The building may be constructed, altered, or changed internally to accommodate the requirements of the home occupation, but the external features of the building shall be the same as those of a residence or accessory building and shall in no way be constructed, altered or changed to resemble a commercial or industrial building.
2. There shall be no exterior storage of materials associated with the home occupation.
3. A home occupation may serve as the base or headquarters of any operation, profession, occupation or business which takes place at any location, or uses or employs no more than two persons other than the members of the family residing on the premises, provided the residential character of the building is maintained and does not infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their homes.
4. No home occupation shall be allowed which requires special permits from the Department of Environmental Quality or any other state, federal or local governmental agency having appropriate regulatory jurisdiction related to air or water quality or to noise.
5. Any existing home occupation operating without a conditional use permit issued by the City will be a nonconforming use which may not expand or otherwise operate beyond or above the present level. [Ord. 618 § 14, 1993; Ord. 567A § 9, 1987; Ord. 504 § 7.050, 1980; 1981 Compilation § 8-5:7.050.]



**STAFF REPORT  
CITY OF BROWNSVILLE PLANNING COMMISSION**

**Report Date:** June 28<sup>th</sup>, 2017

**Hearing Date:** July 17<sup>th</sup>, 2017

**PROPOSAL:** CONDITIONAL USE REQUEST TO OPEN A RECREATIONAL MARIJUANA FACILITY WITH LIMITED MEDICAL MARIJUANA SALES IN THE LIGHT INDUSTRIAL ZONE (LI)

**APPLICANT(S)** RANDY SIMPSON & GAYLE ASHFORD  
PO BOX 700  
BROWNSVILLE, OR 97327

**LOCATION:** 221 W BISHOP WAY, BROWNSVILLE, OR 97327  
TAX LOT 0700, T13S, R2W, SECTION 01AA

**ZONING:** LIGHT INDUSTRIAL

**COMPREHENSIVE PLAN DESIGNATION:** COMMERCIAL

**EXHIBITS:** A. LOCATION MAP  
B. VICINITY MAP  
C. APPLICATION AND SITE PLAN  
D. ORDINANCE



## **SUMMARY:**

On January 23<sup>rd</sup>, 2017, the applicants came before the Planning Commission to request permission to operate a medical marijuana facility at 221 West Bishop Way in Brownsville, under the Conditional Use Permit requirements. The Planning Commission granted the request. In addition to a Conditional Use Permit, in order to operate the proposed use, the applicant must be appropriately registered with the Oregon Health Authority and must obtain a City of Brownsville business registration as required by Brownsville Municipal Code sections 15.111.020.B.2 and 5.20.030.A.

On May 26<sup>th</sup>, 2017, the applicants submitted a Conditional Use Permit application to operate a recreational marijuana facility with medical marijuana sales at the same location. In order to operate that proposed use, the applicant must be appropriately registered with the Oregon Liquor Control Commission to sell recreational marijuana & must obtain a City of Brownsville business registration as required by Brownsville Municipal Code sections 15.111.020.B.2 and 5.20.030.A. The subject property is located in the Light Industrial Zone. A recreational marijuana facility is a conditionally permitted use in the Light Industrial Zone. According to the OLCC, if a medical marijuana facility operator is approved for a recreational marijuana license through the OLCC, the OHA registrations must be surrendered. However, medical marijuana stock can be sold on the same premises as recreational marijuana.

## **BACKGROUND:**

Applicant proposes to operate a recreational marijuana facility located at 221 W Bishop Way in Brownsville.

On March 24<sup>th</sup>, 2015, the Brownsville City Council adopted Ordinance No. 751, establishing land use regulations for marijuana facilities in the City of Brownsville. Ordinance No. 751 amended the Zoning in the Brownsville Municipal Code (BMC) to allow registered medical marijuana dispensaries and marijuana retailers as a conditionally permitted use in the Volume Commercial & Light Industrial Zones.

In addition to the regulations adopted by the City of Brownsville, marijuana dispensaries are regulated by the State of Oregon. In order to operate, recreational marijuana dispensaries are required to register with the Oregon Liquor Control Commission. BMC Section 15.111.020 imposes additional conditions on the location of marijuana dispensaries. This staff report and the proposed findings focus on the criteria and conditions located in BMC Chapter 15.125 as well as the additional conditions located in BMC Chapter 15.111.

Surrounding land uses and zoning are as follows:

	<u>Land Use</u>	<u>Zone</u>
North:	Commercial/Residential	Volume Commercial, Medium Density Residential
East:	Commercial	Volume Commercial



South:	Light Industrial/Residential	Medium Density Residential, Light Industrial
West:	Industrial	Light Industrial

None of the property is located within the 100-year flood plain.

### **PROCESS AND CRITERIA**

The applicant's conditional use permit application was deemed complete on May 30<sup>th</sup>, 2017.

On May 30<sup>th</sup>, 2017, within 60 days after the applicant's request for a conditional use was received, in accordance with BMC 15.125.030.C, a letter was sent to the applicant, scheduling a public hearing before the Planning Commission for July 17<sup>th</sup>, 2017. The July 17<sup>th</sup>, 2017 Planning Commission hearing will be held within 60 days of the date applicant's CUP application was deemed complete.

In accordance with BMC 15.125.030.B, on June 28<sup>th</sup>, 2017, at least two weeks prior to the Planning Commission hearing, notice of the hearing was posted at Brownsville City Hall, the Brownsville Post Office and the Brownsville City Library.

In accordance with BMC 15.125.030.B, notice of the Planning Commission public hearing was published in The Brownsville Times, a newspaper of general circulation in the City, twice within the two weeks prior to the hearing, on July 5<sup>th</sup>, 2017, and July 12<sup>th</sup>, 2017.

In accordance with BMC 15.125.030.B, notice of the hearing was mailed on June 28<sup>th</sup>, 2017, to all owners of property located within at least 200 feet from the exterior boundaries of the property for which the conditional use has been requested. The date of mailing of the notice was at least 20 days before the date of the hearing.

As of Monday July 10<sup>th</sup>, 2017, no written public comment has been submitted regarding the applicant's Conditional Use application. All written public comments received after July 10<sup>th</sup>, 2017, will be submitted into the record at the Planning Commission hearing.

### **POSSIBLE ACTIONS BY THE PLANNING COMMISSION**

**In considering the proposed amendments, the Planning Commission may take the following actions:**

1. Leave the public hearing open to a certain date and time to provide additional testimony.
2. Close the public hearing but provide the applicant and public an opportunity to submit additional written testimony by a certain date and time.
3. Close the hearing and make a decision:
  - a. Approval.
  - b. Approval subject to conditions of approval.
  - c. Deny the application.



- 4. Propose Conditions of Approval. If the Planning Commission elects to approve the application, Staff recommends conditions of approval are a part of the decision.

**STAFF RECOMMENDATION**

Upon reviewing the Conditional Use Permit and the proposed findings, the Planning Commission shall determine whether to approve the Conditional Use Permit.

**MOTIONS**

“To adopt the findings entitled FINDINGS REGARDING AN APPLICATION FOR A RECREATIONAL MARIJUANA FACILITY AT 221 W BISHOP WAY, BROWNSVILLE, and **approve** the application for a Conditional Use Permit for a recreational marijuana facility located at 221 W Bishop Way.”

OR

“To **deny** the application to operate a recreational marijuana facility in the Light Industrial Zone, because the application does not fully comply with the conditional use criteria & City of Brownsville comprehensive plan & policies.

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**ATTACHMENTS**

- 1. FINDINGS REGARDING AN APPLICATION FOR A RECREATIONAL MARIJUANA RETAIL FACILITY AT 221 W BISHOP WAY, BROWNSVILLE.



## Exhibit 1

# FINDINGS REGARDING AN APPLICATION FOR A RECREATIONAL MARIJUANA RETAIL FACILITY AT 221 W BISHOP WAY, BROWNSVILLE

## FINDINGS

### PROCEDURES

1. The applicant's conditional use permit application was deemed complete on May 30<sup>th</sup>, 2017.
2. On May 30<sup>th</sup>, 2017, within 60 days after the applicant's request for a conditional use was received, in accordance with BMC 15.125.030.C, a letter was mailed to the applicant, scheduling a public hearing before the Planning Commission for July 17<sup>th</sup>, 2017. The July 17<sup>th</sup>, 2017 Planning Commission hearing was held within 60 days of the date applicant's CUP application was deemed complete.
3. This staff report was made available to the public on July 10<sup>th</sup>, 2017.
4. In accordance with BMC 15.125.030.B, on June 28<sup>th</sup>, 2017, at least two weeks prior to the Planning Commission hearing, notice of the hearing was posted at Brownsville City Hall, the Brownsville Post Office and the Brownsville City Library.
5. In accordance with BMC 15.125.030.B, notice of the Planning Commission public hearing was published in The Brownsville Times, a newspaper of general circulation in the City, twice within the two weeks prior to the hearing, on July 5<sup>th</sup>, 2017 and July 12<sup>th</sup>, 2017.
6. In accordance with BMC 15.125.030.B, notice of the hearing was mailed on June 28<sup>th</sup>, 2017, to all owners of property located within at least 200 feet from the exterior boundaries of the property for which the conditional use has been requested. The date of mailing of the notice was at least 20 days before the date of the hearing.
7. As of Monday, July 10<sup>th</sup>, 2017, no written public comments had been submitted regarding the applicant's Conditional Use application. All other written public comment received after July 10<sup>th</sup>, 2017, was submitted into the record at the Planning Commission Hearing.
8. Pursuant to BMC 15.125.030.C, a public hearing on the applicant's conditional use permit application for a recreational marijuana retail facility was conducted on July 17<sup>th</sup>, 2017, before the Brownsville Planning Commission.

### APPLICABLE CRITERIA AND REQUIREMENTS

**Brownsville Municipal Code Chapter 15.125.010 through Chapter 15.125.050 provides procedures and criteria for considering a Conditional Use request.**

#### **BMC 15.125.010**

In judging whether a Conditional Use should be approved, approved with modifications, or denied, the Planning Commission shall weigh the proposal's appropriateness and desirability for the public convenience or necessity to be served against any adverse conditions that would result from



authorizing the particular development at the location proposed. In making its decision, the Planning Commission must adopt Findings of Fact addressing the following decision criteria listed in Chapter 15.125:

1. **The proposal shall be consistent with the applicable policies of the Comprehensive Plan, the applicable provisions of the zoning code and other applicable policies, regulations and standards adopted by the City of Brownsville.**

**Consistency with the Comprehensive Plan:**

***Policy P-L55***

The City of Brownsville shall review all ... conditional uses for the following factors:

- A. Will all public facilities (water, sewer, streets) be built to City standards?

***Finding:*** The proposed recreational marijuana facility will be located in a pre-existing structure which is served by existing public facilities. The applicant is not required to construct any public facilities related to this conditional use permit application.

- B. Will the proposed development adversely impact the surrounding uses?

***Finding:*** The proposed use of the property is similar to the previous use in that the proposed recreational marijuana facility, current medical marijuana facility and the hair salon previously located on the property are considered retail businesses. At this time, empirical evidence that would indicate whether the proposed retail marijuana facility will adversely impact the surrounding uses has not been found for this location.

- C. Will the proposed development adequately meet pedestrian and non-motorized vehicle needs?

***Finding:*** The proposed recreational marijuana facility will be located in a pre-existing structure that was previously used to house a retail business which met pedestrian and non-motorized vehicle needs. The record does not contain any empirical data regarding pedestrian counts and traffic impacts related to medical or recreational marijuana facilities.

- D. Will all private utilities be available to the entire development?

***Finding:*** The proposed recreational marijuana facility will be located in a pre-existing structure which is served by existing utilities.

- E. Will adequate fire protection be available? (Functional hydrants, proper water pressure and vehicle access.)

***Finding:*** The proposed recreational marijuana facility will be located in an area that has adequate emergency vehicle access. Functional hydrants are available in the surrounding area.

- F. Will the proposed development meet all requirements of the zone in which it is located?

***Finding:*** The proposed development meets the zoning requirements of the Light Industrial Zone, in which it is located.

- G. Is landscaping a part of the site plan?

***Finding:*** A landscaping plan is not required for this proposed use.

- H. Is drainage and erosion addressed in the site plan?

***Finding:*** Drainage and erosion issues need not be addressed for this proposed use.





- I. Will the proposed development remove, damage, or be detrimental to any identified historic or prehistoric structure, object, site or city landmark?

**Finding:** The proposed recreational marijuana facility will be located in the vicinity of a historic landmark (Kirks Ferry); both the Kirk's Ferry property and the property where the proposed marijuana facility will be located have the same owner. There is no indication that the proposed marijuana facility will remove, damage, or be detrimental to Kirk's Ferry.

- J. What effect will the proposed development have on existing traffic circulation?

**Finding:** The proposed use of the property is similar to the previous use of the property in that the proposed retail marijuana facility, current medical marijuana facility and the previous hair salon previously located on the property are considered retail businesses. The record does not contain any empirical evidence regarding traffic counts and traffic impacts related to marijuana facilities.

- K. Will the proposed development have a negative visual impact on the community or the immediate vicinity?

**Finding:** The application indicates that there will be no changes made to the exterior of the building. The record does not contain any information indicating that the proposed use will have a negative visual impact on the community or the immediate vicinity.

- L. Can water and sewer lines be extended to the proposed development economically?

**Finding:** The proposed recreational marijuana facility will be located in a pre-existing structure which is served by existing water and sewer lines.

- M. Will sufficient lighting be provided?

**Finding:** The Brownsville Municipal Code does not require that lighting be addressed for this proposed use.

- N. Are there any possible geologic or flood hazards?

**Finding:** The proposed recreational marijuana facility is not located within the 100 year flood plain. There is no indication that other specific geologic or flood hazards will threaten the proposed marijuana facility.

Staff finds that the applicant's proposal is consistent with the applicable policies of the Brownsville Comprehensive Plan.

### **Consistency with the Zoning Ordinance**

#### ***BMC 15.111.020***

The Brownsville Municipal Code Chapter 15.111.020.A(2) provides that a marijuana retailer is a conditionally permitted use in the Light Industrial (LI) & Volume Commercial (VC) Zone.

#### ***Finding:***

The applicant currently operates a medical marijuana facility and is proposing to operate a recreational retail marijuana facility at 221 W Bishop Way; a property which is located in the Light Industrial Zone. The applicant has properly applied for a conditional use permit to operate a recreational retail marijuana facility in the Light Industrial Zone.



**BMC 15.111.020.B**

Brownsville Municipal Code Chapter 15.111.020.B states that in addition to complying with the provisions of BMC Chapter 15.125, a recreational retail marijuana facility must also comply with the following conditions:

1. At the time a conditional use application for a Marijuana Use is filed, the Marijuana Use may not be located:
  - a. Within 1,000 feet of public or private elementary, secondary, or career school; or
  - b. Within 1,000 feet of a public library; or
  - c. Within 1,000 feet of a public park, playground, recreational facility, or athletic field; or
  - d. Within 1,000 feet of another Marijuana Use; or
  - e. Within 100 feet of real property zoned LDR, MDR, HDR or OTC.
2. A Marijuana Use must possess a valid business registration in accordance with Title 5 of the Brownsville Municipal Code, Section 5.20 Business Registration.

**Finding:**

Staff finds that the recreational retail marijuana facility located at 221 W Bishop Way will not be located within 1,000 feet of: 1) a public or private elementary, secondary or career school; 2) a public library; 3) a public park, playground, recreational facility or athletic field; or 4) another Marijuana Use as defined in BMC 15.111.010. Staff further finds that the marijuana facility located at 221 W Bishop Way will not be located within 100 feet of real property zoned LDR, MDR, HDR or OTC. Staff finds that the applicant is eligible to apply for and receive a City of Brownsville Business Registration.

**2. The location, size, design and operating characteristics of the proposal will have minimal adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area, considering such factors as:**

- A. Location, size and bulk of buildings.**
- B. Location, size and design of parking areas.**
- C. Screening, landscaping, exterior lighting, hours of operation, vehicular access and similar factors.**

**Finding:**

The Applicant stated the characteristics of the proposed business will blend in with Kirk's Ferry Trading Post, will look historical and will fit in with the rest of the town.

Brownsville Municipal Code Chapter 15.115.020.B states:

**B. Commercial type of development and number of parking spaces:**



B. Commercial type of development and number of parking spaces:

General retail or personal service	1 per 200 sq. ft. floor area
Furniture or appliance store	1 per 500 sq. ft. floor area
Auto, boat or trailer sales, or nursery	1 per 1,000 sq. ft. floor area plus 1 per 2 employees
Barber shop or beauty shop	1 per 100 sq. ft. floor area
General, professional or banking office	1 per 300 sq. ft. floor area
Medical or dental office or clinic	1 per 200 sq. ft. floor area
Eating or drinking establishment	1 per 100 sq. ft. floor area

Applicant has provided a parking plan for the proposed retail use that meets the above criteria for General retail or personal service at 1 parking space per 200 square ft. of floor area.

Applicant proposes hours of operation to be Monday through Saturday 11 a.m. – 7 p.m. & Sunday noon – 4 p.m. Applicant states hours may change but will be in keeping with other surrounding businesses like Kirk’s Ferry, Chevron Gas, & Dari Mart.

The application does not indicate any new construction or exterior changes to the existing building.

Staff finds that minimal adverse impact on the livability, value or appropriate development of abutting properties and surrounding areas can be considered somewhat subject as there is really no way to tell how surrounding areas will be affected until the recreational marijuana facility is in operation.

**3. The proposal will preserve those historical, archeological, natural and scenic assets of significance to the community.**

***Finding:***

The Applicant provides the following statement regarding the proposal:

*“We will preserve the historical aspects of South Brownsville and add to the beauty”.*

The proposal does not indicate there will be any exterior changes to the existing building that will affect criteria #3.

**4. The proposal will not place an excessive burden on streets, sewage, water supply, drainage systems, parks, schools or other public facilities to the area.**

***Finding:***

The property will be served by City water and sewer. There are no schools or parks in close proximity to the proposed use that will be affected.

The proposed use will not place an excessive burden on streets, sewage, water supply, drainage systems, parks, schools or other public facilities to the area.



### **RECOMMENDED CONDITIONS OF APPROVAL**

If the Planning Commission elects to approve this request, Staff recommends the following condition(s) of approval:

1. Applicant shall comply with all requirements of applicable laws, ordinances and development regulations, including Uniform Building Code requirements and State regulations.
2. The applicant may not expand or otherwise operate beyond or above the proposed level without additional review by the Planning Commission or committee appointed by the Planning Commission.
3. The applicant shall comply with the provisions of the sign code if signage is used.
4. As there is currently no data available to determine the impact of surrounding uses (business or residential), Staff, two Planning Commission members, along with the applicants, shall conduct an annual review of the proposed use. If it is found that the proposed use negatively impacts the adjacent properties, the Planning Commission may revoke the Conditional Use Permit.
5. Conditional Use Permit is non-transferable and does not run with the property.



## Planning Commission Minutes

July 17<sup>th</sup>, 2017

Members of the Planning Commission met this day in regular session at City Hall, Brownsville, Oregon at 7:00 p.m.

**Present:** Commissioners Don Andrews, Gary Compton, Tricia Thompson, Josh Kometz, Bryan Wyant, Mike McDaniel, Scott McDowell, & Administrative Assistant Elizabeth Coleman.

**Absent:** Commissioner Wingren.

**Public:** Randy Simpson, Gayle Ashford, Debbie Jensen, Greg Coffman, Tammi Morrow, Kelly Williamson, Bryan Bradburn.

**Presiding:** Gary Compton.

The Pledge of Allegiance was recited.

The meeting was called to order at 7:00 p.m.

### PUBLIC HEARINGS

#### **221 W Bishop Way – Medical to Recreational Marijuana Facility**

Chair Compton explained the required statutory statement regarding appeals. Commission Chair Compton asked if there were any conflicts of interest, biases, or ex parte contact. There were none.

One letter in opposition was submitted into public record.

Chair Compton explained the process of the hearing. Mrs. Coleman summarized the staff report; Mr. Simpson & Ms. Ashford came before the Planning Commission on January 23<sup>rd</sup>, 2017 to request approval of a Conditional Use Permit to operate a medical marijuana facility in the Light Industrial Zone. The application was approved at that hearing.

In May 2017, the applicants submitted an application to change from a Medical Marijuana facility to a Recreational Marijuana retail store, with limited medical marijuana sales. Chair Compton gave the applicant an opportunity to speak about the application. Mr. Simpson stated their request to change to an OLCC licensure with the limited sales and that the City would receive tax revenue from the recreational facility. Commissioner Andrews asked if the recreational store would replace the medicinal; Mr. Simpson stated the recreational side will go through the Oregon Liquor Control Commission, but OMMP cardholders will be able to purchase marijuana tax free. Chair Compton asked for clarification as to the quick change from a medical marijuana facility to recreational retail.



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Mr. Simpson stated that all along they wanted to open a medical facility but right away it became a business decision; to stay medical wasn't a very good decision. There aren't that many cardholders around that are their customers. He stated they are turning away more customers that don't have cards. Ms. Ashford added that you have to be 21 to enter a recreational facility, and 18 for a medical card. Ms. Ashford also added that OLCC will soon be overseeing the medical marijuana program and are in the process of eliminating that program.

By July 2018, everything will be under OLCC and medical dispensaries will be eliminated. There will still be cardholders under OHA who will be able to purchase marijuana tax free from recreational facilities. Ms. Ashford said they are doing good enough business as medical but the OLCC is basically saying everyone is going to have to go "rec" and that's the bottom line. The applicants stated they are having a lot of requests from people in the community to open a recreational facility so they don't have to drive to other cities and want to see Brownsville get the revenue from it and to see the business thrive.

Commissioner Wyant asked if marijuana can be grown at home, why the need for a facility? Mr. Simpson explained that not everyone has a green thumb or wants to hassle with keeping the plants alive. Comments on the 3% tax the City will receive versus impaired driving concerns surfaced and Chair Compton reminded all that an opportunity to ask questions and clarify or rebut answers would be offered later in the hearing.

Chair Compton summarized the applicants reasoning for the request; OLCC is making changes that will require the change of use. Mr. Simpson added that the OLCC wants to put growing and marijuana sales under one jurisdiction. OHA will still be involved with issuing cards to cardholders and caregivers but will not have a separate grower/sales funnel for medical. Commissioner Andrews asked if one could buy recreational, why is there a need for a medicinal card, the applicants explained it basically depends on the cardholder's usage and whether it's worth paying up to \$500 for a medical card or paying the 20% recreational tax.

Mr. Simpson mentioned the OLCC rules are generally more lax than the medical side. Medical requires records to be kept for a minimum of three years, whereas Recreational records can't be kept for more than 24 hours. The recreational side is more strict in dosages and the amount that can be purchased at one time. Concentrates and edibles are half the dosage of medical. The applicants explained by 2018 the OMMP will only be handling the registration of cardholders and caregivers, the OLCC will handle all growers and sales. All licensed medical will be required to conform to OLCC regulations. Cardholders that want to grow for themselves must live in properly zoned areas. There will be no grower to patient relationship, only caregiver to patient.

Chair Compton opened the floor to those in opposition of the application. Mr. Bradburn of Washington Avenue spoke as a concerned citizen interested in the potential impact a recreational shop may have on the surrounding neighborhood and home businesses in those neighborhoods. Currently, he has a neighbor who is growing a number of plants and when they were harvested last year, the odor was strong enough that he had



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to keep his windows closed in the heat of summer. He and his wife are concerned that their 4-year old daughter is smelling the odor. If opening a licensed facility in town will alleviate the need for home based grows, providing a funnel for individuals to purchase their medical or recreational marijuana, he would be in favor, however, if home based grows will not be restricted, he opposes the application. Chair Compton explained the narrow focus of the hearing, which is for the recreational facility, and encouraged Mr. Bradburn to contact the Sheriff's Department, Linn County Health Department, politicians, etc. Mr. Bradburn spoke to the fact that the Planning Commission should consider the factors of approving or denying the application and the impact on the community.

Mr. Coffman of Fields Court spoke in favor of the application. Mr. Coffman is a disabled veteran with chronic pain and uses cannabis only as a sleep aid. As his medical care is provided by the Federal government he is not allowed to have an OMMP card. He drives out of the area to a recreational facility. Mr. Coffman said good points were made but it would greatly benefit him and others with similar circumstances if a facility were located in Brownsville.

Ms. Williams of Templeton Street spoke in opposition of the application. Ms. Williams did not feel the proposal was in the best interest of the community, specifically children and youth. Ms. Williams works with youth several times a week and does not want them to think marijuana is safe because it's legal, and expressed concern that packaging would be interesting to minors. She hoped there would be some packaging stipulations placed on the use if the Planning Commission approved the application. Ms. Williams said as a nurse for 12 years she saw marijuana being used infrequently but effectively in managing sleeping, mood & pain but is opposed to recreational use due to the negative effects upon the brain in young people under 21. Ms. Williams also mentioned a neighbor grows marijuana in their backyard and the odor is offensive.

Chair Compton provided the applicant an opportunity for rebuttal. Ms. Ashford stated the age for alcohol is 21 years and studies show alcohol is much more dangerous for development of the brain than marijuana. OLCC is extremely strict on packaging, naming/shape of product, and child resistance. Gummies cannot be in the shape of bears or any shape attractive to children. Mr. Simpson mentioned that a number of people at the giveaway in July 2015 said they hoped marijuana would help their medical condition. Within the next week, hundreds of people said how marijuana was helping their condition; although people are buying it recreationally, they are using it medicinally.

Chair Compton closed the public portion of the hearing for Commission discussion and reminded the Commission that if a question comes up for the applicant from the public a decision to re-open the public hearing will need to be made. Chair Compton explained the criteria used to determine the final decision for a Conditional Use application.

Chair Compton explained he voted in favor of the medical marijuana facility in January 2017, but had some concerns about the recreational side. Chair Compton reviewed the criteria language provided in Chapter 15.125.010 that states, "**In judging**



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**whether or not a conditional use proposal shall be approved or denied, the Planning Commission shall weigh its appropriateness and desirability for the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria either met, can be met by observance of conditions, or are not applicable.”**

His interpretation was the criteria is two-fold in that the Planning Commission is directed to weigh the appropriateness of the proposal against adverse conditions (surrounding area) as well as other criteria such as lighting, building size, parking, etc. Chair Compton also referred to page 6 (Policy P-L55, Finding B) where staff addresses the question of whether the proposed criteria will adversely affect the surrounding uses, stating no empirical evidence had been found to determine the effect of a retail marijuana facility at the proposed location.

Chair Compton provided documentation from the Journal of American Medicine Association in 2016 that provided data regarding the number of incidents involving children, poison control and hospitalization since the legalization of marijuana in Colorado. He was interested to see that research showed the annual calls to a poison center and hospitalizations involving children had increased. Chair Compton felt the empirical data was provided by the Colorado numbers; based on that data, allowing recreational facilities did provide a potential adverse risk to children. Chair Compton was in favor of medical marijuana facilities, but does not feel the application meets the standard regarding adverse conditions and is not in favor of a recreational facility based on the information he found and local cases.

Commissioner Andrews inquired about the Colorado numbers; the increase appeared to be due to poor packaging and poor child supervision; 51% of the cases were from edible product consumption. The applicants stated that the OLCC now requires child resistant containers. Ms. Ashford then stated they do not carry edible products. Commissioner Kometz mentioned that as of two weeks ago, edibles in the shape of gummi bears were indeed being sold at a recreational marijuana site controlled by OLCC.

Commissioner McDaniel expressed concern about the study; numbers are not always accurate. Commissioner Thompson mentioned staff provides information in the reports based on the Brownsville Municipal Code, procedures & policies for Commissioners to base their decisions. Based on the findings provided in the staff report, the application meets the City code. Mr. McDowell went back to the absence of empirical evidence and how the State and Federal governments have said it takes five years to gather that evidence to provide accurate studies. Additionally, the Controlled Substance Act is still being violated on a Federal level. In this case, code criteria and empirical evidence are on the same plane in that both provide unclear guidance.

Chair Compton recalled the most recent Planning Commission discussion that involved potential adverse effects; the CUP for a coffee roasting home occupation brought up the concern of odor and the applicant was required to provide mitigation to alleviate





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that issue. In his interpretation of the adverse portion of the code, the potential adverse effects on children in the community outweigh the appropriateness of the Conditional Use application. Commissioner Andrews went over the portion of the staff report that addressed the policies of the comprehensive plan and the four criteria and found the applicant to meet all those requirements.

Commissioner Wyant was concerned about the proposal being less than one thousand feet from a public park or playground. Although Blakely Park is considered a pocket park and is considered exempt under that definition by the Park Master Plan, it is also a playground for children; he is still opposed. Commissioner Thompson touched on Mr. McDowell's comments on the accuracy of data & long-term studies involving marijuana facilities, and concluded that the application still met the City requirements.

Commissioner McDaniel re-iterated the importance of not basing the decision on moral judgment and felt the application met the City requirements. Commissioner Andrews hoped that his concern about the adverse effect on children would be addressed with the tightening of OLCC's regulations; if the OLCC was not working toward this end as the applicants' stated, he would be opposed to the application.

Commissioner Kometz said although he had softened his views on medical marijuana, it is still against Federal law; he is opposed to a recreational facility. This brought the discussion to three in favor of and three opposed to the application. Mr. McDowell explained that in this case, the Commission could take an official vote and if the vote was still 3-3 a reconvene may be necessary. The meeting could be tabled, the seventh member of the commission would be provided with the information and could be present to vote. The hearing would still be open. The commission could make a decision at that next meeting.

Chair Compton asked if further discussion would be beneficial; Commissioner Wyant was still very concerned about the public park, playground definition. He asked for more clarification on the definition. Chair Compton came back to the adverse impact on children and the regulations OLCC will be placing on packaging in July of 2018. Commissioner McDaniel also inquired about the definition of the parks. Discussion ensued. Commissioner McDaniel asked if staff could go back and clarify the definition of parks with the attorney for this use: Mr. McDowell said staff could certainly check back with the attorney to clarify the playground definition. Commissioner Kometz requested a vote, Chair Compton asked for a vote by show of hands; Commissioners Thompson, Andrews, & McDaniel were in favor, Commissioners Kometz, Compton, & Wyant were opposed. *Commissioner Andrews made a motion to table the meeting until a seventh member could be present, Commissioner McDaniel seconded and the motion passed unanimously.* The hearing was closed at that time.

### **January 23<sup>rd</sup>, 2017 Minutes**

*Commissioner Andrews moved to approve the minutes of January 23<sup>rd</sup>, 2017, Commissioner Kometz seconded and the motion passed unanimously.*

### **Dedicated City Email Addresses**



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In an effort to provide ease of email receipts and responses, Mr. McDowell asked the Commission if anyone would prefer a dedicated email address for city business only. The Commission decided a dedicated email address would not be necessary.

### **Accessory Structures**

A few years ago, the Planning Commission addressed some issues around accessory structures on lots with or without a primary structure. Over the years, there have been a number of instances where sheds, shops, barns, etc. have been built without setbacks, ending up on other people's lots, lived in as primary residences, etc. In very limited instances accessory structures are allowed on a lot without a primary use.

Council has been working on some general policy in terms of RV's. The same issue came about that RV's, rather than homes, were being lived in. RV's were being rented out, domestic violence calls to the Sheriff's Department increased. Council passed an ordinance that RV's could not be lived in for an extended period. That ordinance has not been adhered to by several people; Council is currently in the process of making some changes. An RV permit can be obtained for up to six months if a person has an active building permit.

Chair Compton had some questions around the true definition of an accessory structure and the limitations placed on lots without a primary use. Discussion ensued. Chair Compton & Commissioner Andrews will work with Mr. McDowell & Mrs. Coleman on some language around this issue and will bring their findings back to the Commission for review. The Commission can then decide to forward a request to Council for an update to the ordinance.

### **Dollar General**

The Dollar General, a retail store, is very interested in locating to Brownsville on a Volume Commercial property north of the Veterinary Clinic on Main Street. A retail store is an Outright Permitted Use in the Volume Commercial Zone and is not required to come before the Planning Commission for a public hearing. All Outright Permitted Uses are still reviewed by planning, public works, engineering, legal, and any other state, local, and county agency necessary to complete the development. Commissioner Andrews asked about road access; the Linn County Road Department reviews that portion of the development.

### **Depot Avenue Planned Unit Development**

Plans for a Planned Unit Development at end of Depot Avenue has been submitted to the City for review. A PUD is considered a Conditional Use and will come to the Planning Commission for a public hearing. The Budget Committee & Council approved a \$50,000 budget for a Buildable Lands Inventory to expand or designate additional Volume Commercial & Light Industrial lands. Staff will be working with planning consultant Dave Kinney & Linn County on this project.

There being no further business to discuss, the meeting was adjourned at 8:40pm.

ATTEST:



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Elizabeth E. Coleman  
Administrative Assistant

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Gary Compton  
Commission Chair



## Planning Commission Minutes

July 31<sup>st</sup>, 2017

Members of the Planning Commission met this day in regular session at City Hall, Brownsville, Oregon at 7:00 p.m.

**Present:** Commissioners Don Andrews, Gary Compton, Tricia Thompson, Josh Kometz, Bryan Wyant, Mike McDaniel, Scott McDowell, & Administrative Assistant Elizabeth Coleman.

**Absent:** Commissioner Wingren.

**Public:** Randy Simpson, Gayle Ashford, Kelly Williamson, Rob Wingren.

**Presiding:** Gary Compton.

The Pledge of Allegiance was recited.

The meeting was called to order at 7:00 p.m.

### PUBLIC HEARINGS

#### **221 W Bishop Way – Medical to Recreational Marijuana Facility Re-Convene**

Chair Compton re-convened the meeting from July 17<sup>th</sup>, 2017. Mr. McDowell reviewed the details of the last meeting. Commissioner Wingren was not in attendance at the July 17<sup>th</sup> meeting due to unforeseen circumstances. In order to participate in the discussion and vote at the July 31<sup>st</sup> meeting, Commissioner Wingren would be provided with all documentation the Commission had to make a decision, including audio and written notes. Mr. Wingren would have until 5:00 p.m. on the hearing date to obtain the information. Mr. McDowell also explained that the Chair could open the public portion of the meeting at any time.

Mr. McDowell reported out on the attorney's clarifying answer to how the definition of a playground fits in with the proposed use (marijuana facilities locations in the City limits and the 1,000ft rule), in regard to Chapter 15.111 Marijuana Uses. Brownsville Municipal Code 15.111.020 C (3) states **"Public park, playground, recreational facility, or athletic field" means a park, playground, recreational facility, or athletic field that is owned or operated by a government entity or nonprofit organization and that is open to the general public excluding mini parks or pocket parks as defined in the City's Parks Master Plan.**

The attorney confirmed the Park Master Plan is a stand-alone document and the definitions provided within override other general definitions provided from additional sources (Merriam-Webster Dictionary, etc.). The City's Park Master Plan defines Blakely Park as a mini or pocket park; though the Park is within 1,000 ft. of the proposed use, it is excluded by definition, allowing the marijuana facility to be located at 221 W Bishop Way. Therefore, the application does meet that portion of the code. The attorney explained the rationale in this determination that a city should not and cannot zone a use



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out of town. This was the logic used in determined the ordinance language.

Mr. McDowell explained the process for Chair Compton to open the discussion and for the Commission to proceed with a vote. If the vote still ends in a 3 – 3 decision the application will be considered a denial. The applicants can appeal the Planning Commission’s vote to City Council within 15 days of receiving the Notice of Decision. The City Council would hold a hearing and could uphold the Planning Commission’s ruling or overrule it.

Chair Compton stated that he had contact with several commissioners after the July 17<sup>th</sup> hearing. Chair Compton asked Commissioner Andrews for his interpretation of a portion of the code. Commissioner Wyant asked Chair Compton if he was allowed to question the definition of playgrounds as a Commissioner, Compton felt he was within the bounds of his role, as he was attempting to interpret the code and rules to make a decision. Commissioner Thompson emailed Chair Compton to ask if conditions could be placed on the use of edibles; Chair Compton said he would have to research that information. Mr. McDowell sent an email to remind the Commission not to talk to the public, friends, or family about the hearing. Mr. McDowell appreciated the efforts of the Commission and how this delicate situation has been handled to date. Contact should be limited to staff in terms of ex parte contacts. Important to remember for the future.

Chair Compton said he was open to considering approval of the application with a condition that edibles are not sold, based on the research that showed a 52% increase in poison control calls involving children in Colorado relating to edibles. Commissioner Andrews re-iterated the Planning Commission’s responsibility; to be consistent and use the four criteria provided to make decisions, not personal opinions, outside influences, etc. The only questionable criteria he could see was the adverse conditions and surrounding uses. The application meets the zoning code and applicable policies of the comprehensive plan. The Commission discussed at great length the interpretation of “adverse conditions” and whether or not an adverse condition outweighs the appropriateness of the proposed application. The Planning Commission has the ability to base a decision on adverse conditions; according to legal counsel, however, that decision may not provide enough strength to hold up in the appeal process to the Land Use Board of Appeals.

Chair Compton again brought up the past hearings where the adverse conditions/criteria aspect was applied; the coffee roaster and the dog grooming/kennel/boarding/daycare applications both considered adverse conditions related to surrounding uses (neighboring houses). The Planning Commission placed a condition on the dog grooming application where a one-year review was required to determine the impact on the neighbors (complaints of barking, odor, disturbing the peace, etc.) and a filtration system was required for the coffee roaster.

Commissioner Thompson suggested granting the conditional use permit to allow the recreational facility with the condition that edibles could not be sold. Mr. McDowell stated the applicant could voluntarily decide not to sell edibles but according to legal counsel, there are conditions of approval that can be placed on a use and those that



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cannot; this would be considered an undue condition. Discussion ensued. Commissioner McDaniel took into consideration the possible adverse effects on neighboring properties and values; he is now opposed to the recreational facility in Brownsville. Commissioner Wyant said the facility is still within 1,000 feet of a playground and although the state is allowing, this is still against federal law. Commissioner Kometz was also still opposed. Commissioner Thompson spoke to the fact that edibles are sold in a number of marijuana stores in the area; not having one in Brownsville will not change whether or not parents are going to be responsible with their edibles. The applicant has met the criteria required.

Chair Compton offered a vote for those in favor of opening the public portion of the hearing; it was unanimous. Chair Compton gave the applicants the opportunity to speak. Mr. Simpson felt the vote in November 2016 allowing marijuana facilities should have made it easy for the Commission approve the CUP. To him the discussion is irrelevant, other than what Commissioners Andrews & Thompson were saying.

They meet the requirements and Brownsville approved marijuana facilities in November by three votes. Mr. Simpson stated that a number of people do not like to smoke, especially the older generations; tinctures and “medibles” are taken instead. Mr. Simpson said if there were problems with edibles and children in the surrounding areas (Albany, Lebanon, Corvallis) it would be all over the news. That has not happened. The state says you have to allow it somewhere in Brownsville. Ms. Ashford said edibles could be being sold now and no one would know the difference. Medical edibles are twice as strong and a child would be in very bad shape if the medibles were taken. Recreational edibles are half as strong. Ms. Ashford contacted the OLCC and edibles are not sold in gummy shapes or attractive candy shapes. They are following all guidelines, local and state, should not be punished for someone else’s irresponsibility.

Ms. Ashford reiterated that cardholders only have to be 18 years of age, where recreational users have to be 21. OLCC is much more strict than medical. It’s all going OLCC, so it will be more closely regulated. The City of Brownsville has to provide reasonable zoning and by restricting the use by pocket park or by what they sell is going to result in a lawsuit against the City of Brownsville. Ms. Ashford stated that is not a threat just stating a fact. The City is not being reasonable. They have met all the City and State criteria. They were considered a model as far as bookkeeping & tracking product. We (Planning Commission, City) should be proud of what they are doing, closing down the black market. We (Planning Commission, City) should be ashamed of ourselves for placing these types of restrictions when they are simply trying to help their community.

Mr. Wingren had stepped down from the dais to speak as a citizen. Mr. Wingren apologized for missing the last meeting, he had a family emergency. He had been researching the pros and cons of the application and concluded the criteria is fairly boilerplate. The question came up as to whether or not the application is an asset to the community. He felt people were pulling in personal opinions, rather than sticking with the criteria. The majority of the Brownsville voters approved marijuana. Mr. Wingren said there is a lot of personal responsibility when it comes to edibles, no matter what kind of medication one is taking. It’s not possible to regulate every household to make sure they are locking up their medication, liquor cabinets, etc.



## Planning Commission Minutes

One condition that Mr. Wingren would like to see is how signage and advertising is represented. The OLCC doesn't allow balloon blowups, spinning signs on street corners. He doesn't think neon signs should be allowed either. The Planning Commission did extensive work to find the best location for marijuana facilities and if the Commission is now saying this isn't the place for it, we (Planning Commission) didn't do our jobs. He would like to see a Conditional Use to allow the facility for a year. If he was a voting member, he would vote yes.

Commissioner Thompson asked if the one-year condition could be placed on the CUP. As with the dog grooming/kennel, that condition would be allowed. Mr. McDowell responded to the Commission that as Mr. Simpson said, the State says marijuana facilities are legal. The City also must provide due process. The applicants will be required go through the appeal process if the application is denied. If Council upholds the Commission's decision, Mr. Simpson & Ms. Ashford can then appeal the Council's decision to the Land Use Board of Appeals. According to the attorney, it is very likely that LUBA will approve the application to allow the change from medical to recreational at 221 Bishop Way. At the same time, the Planning Commission has the right to look at the criteria the way they see fit. Discussion ensued.

Commissioner Andrews reiterated that if the Commission bases its decision on personal opinion, that is going outside the required criteria. Chair Compton again likened the review criteria for the application and the potential adverse impacts to the surrounding area to the coffee roaster and dog grooming/kennel; some people don't like the smell of coffee and some people don't mind dogs barking. The Planning Commission tried to be as scientific in their decision making as possible in both of those cases. Chair Compton was strongly in favor of medical marijuana, however, he found information that provided some scientific evidence showing a negative impact on children in terms of recreational marijuana. Discussion ensued.

Chair Compton closed the public portion of the meeting. *Commissioner Andrews moved to approve the application and include recommended conditions of approval, Commissioner McDaniel seconded. The vote was 4 – 2 against the application. Commissioners Kometz, Compton, McDaniel, & Wyant voted against. Commissioners Thompson & Andrews voted in favor. Mr. McDowell explained the process of appeal.*

### **Front Door Orientation – New Construction**

There are a number of lots in town that are deeper than they are wide. This configuration makes it difficult to fit some homes, a manufactured home for instance, lengthwise on the lot, where the front door can face the street. Aside from the aesthetic side of front door orientation, it is essential that 911 emergency response teams are able to easily see the three-digit address on the house. Currently, the Brownsville Municipal Code does not have an ordinance or any reference to the orientation or the architectural front of a home. Staff would like the Planning Commission to allow a revision of the Brownsville Municipal Code to require front door orientation or an architectural front that faces the street. *Chair Compton made a motion for Staff to draft an ordinance that*



## Planning Commission Minutes

*requires front door orientation or an architectural front to face a City street. Commissioner Kometz seconded and the motion passed unanimously.*

### General Information

There has been some consternation around the potential location of a Dollar General retail store in the Volume Commercial Zone. Dari Mart, Brownsville Body Shop, Chevron, Dr. Glenn Dentistry, & Bishop Royale are all located in the Volume Commercial Zone. Retail stores and businesses such as those are considered an Outright Permitted Use and do not require a hearing in front of the Planning Commission. They do, however, require local, county, State, Federal (if necessary) reviews. Currently, the Dollar General is working to complete requirements set forth by Planning, Public Works, Linn County Road Department, FEMA, DSL, Army Core of Engineers, etc. The City and County have required a HEC-RAS Study (Hydraulic Study) where they will provide proof the development will have no impact on the floodplain.

Mr. McDowell & Mrs. Coleman met with Cross Development, representative for the Dollar General and requested a softer look with brick, rather than a metal building. Cross Development was agreeable to the suggestion. The current sign ordinance allows internally lit signs, and that was not negotiated. Commissioner Thompson was pleased that the developer was open to the change in the texture of the building. There was some discussion about working with the developer of Dollar General to install signage that was more in line with the historical aspects of town. Discussion ensued.

There being no further business to discuss, the meeting was adjourned at 8:16pm.

ATTEST:

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Elizabeth E. Coleman  
Administrative Assistant

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Gary Compton  
Commission Chair



## Conditional Uses Chapter 15.125

- 15.125.010** Authorization to grant or deny conditional uses.  
**15.125.020** Conditions which may be placed on a conditional use permit.  
**15.125.030** Procedure for taking action on a conditional use application.  
**15.125.040** Time limit on permit for conditional use.  
**15.125.050** Standards governing conditional uses.

### **15.125.010 Authorization to grant or deny conditional uses.**

A conditional use listed in this division shall be permitted, altered or denied in accordance with the standards in this chapter. In the case of a use existing prior to the effective date of the ordinance codified in this chapter and classified in this chapter as a conditional use, a change in the use or in lot area, or an alteration of structure, shall conform with the requirements for conditional use and is subject to review, application and fee in the same manner as a newly proposed conditional use. In judging whether or not a conditional use proposal shall be approved or denied, the Planning Commission shall weigh its appropriateness and desirability for the public convenience or necessity to be served against any adverse conditions that would result from authorizing the particular development at the location proposed and, to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable. (Home occupations are required to obtain a conditional use permit in the event they generate noise, traffic or other factors which reasonably affect neighboring properties in a negative manner. The City Administrator shall make a determination as to whether a conditional use is required. The City Administrator's decision may be appealed to the City Council.)

- A. The proposal shall be consistent with the applicable policies of the Comprehensive Plan, the applicable provisions of the zoning code and other applicable policies, regulations and standards adopted by the City of Brownsville.
- B. The location, size, design and operating characteristics of the proposal will have minimal adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area, considering such factors as:
- Location, size and bulk of buildings.
  - Location, size and design of parking areas.
  - Screening, landscaping, exterior lighting, hours of operation, vehicular access and similar factors.
- C. The proposal will preserve those historical, archeological, natural and scenic assets of significance to the community and the surrounding area.
- D. The proposal will not place an excessive burden on streets, sewage, water supply, drainage systems, parks, schools or other public facilities to the area. [Ord. 717, 2009; Ord. 644 § 1, 1996; Ord. 618 § 11, 1993; Ord. 567A § 10, 1987; Ord. 504 § 7.010, 1980; 1981 Compilation § 8-5:7.010.]

### **15.125.020 Conditions which may be placed on a conditional use permit:**

In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may impose, in addition to those standards and requirements expressly specified by this division, additional conditions which it finds necessary to enforce the Comprehensive Plan and to otherwise protect the best interest of the surrounding area or the community as a whole. These conditions may include but are not limited to the following:

- A. Limiting the manner in which the use is conducted, including restricting the time a certain activity may take place and establishing restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor.
- B. Establishing a special yard or other open space or lot area or dimension.

Journal of AMERICAN MEDICAL ASSOCIATION

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Original Investigation

ONLINE ONLY

September 6, 2016 ✓

# Unintentional Pediatric Exposures to Marijuana in Colorado, 2009-2015

George Sam Wang, MD<sup>1,2</sup>; Marie-Claire Le Lait, MS<sup>2</sup>; Sara J. Deakyne, MPH<sup>3</sup>; et al

» Author Affiliations

JAMA Pediatr. 2016;170(9):e160971. doi:10.1001/jamapediatrics.2016.0971



Author Interview



Multimedia

**Importance** As of 2015, almost half of US states allow medical marijuana, and 4 states allow recreational marijuana. To our knowledge, the effect of recreational marijuana on the pediatric population has not been evaluated.

**Objective** To compare the incidence of pediatric marijuana exposures evaluated at a children's hospital and regional poison center (RPC) in Colorado before and after recreational marijuana legalization and to compare population rate trends of RPC cases for marijuana exposures with the rest of the United States.

**Design, Setting, and Participants** Retrospective cohort study of hospital admissions and RPC cases between January 1, 2009, and December 31, 2015, at Children's Hospital Colorado, Aurora, a tertiary care children's hospital. Participants included patients 0 to 9 years of age evaluated at the hospital's emergency department, urgent care centers, or inpatient unit and RPC cases from Colorado for single-substance marijuana exposures.

**Exposure** Marijuana.

**Main Outcomes and Measures** Marijuana exposure visits and RPC cases, marijuana source and type, clinical effects, scenarios, disposition, and length of stay.

**Results** Eighty-one patients were evaluated at the children's hospital, and Colorado's RPC received 163 marijuana exposure cases between January 1, 2009, and December 31, 2015, for children younger than 10 years of age. The median age of children's hospital visits was 2.4 years (IQR, 1.4-3.4); 25 were girls (40%). The median age of RPC marijuana exposures was 2 years (IQR, 1.3-4.0), and 85 patients were girls (52%). The mean rate of marijuana-related visits to the children's hospital increased from 1.2 per 100 000 population 2 years prior to legalization to 2.3 per 100,000 population 2 years after legalization ( $P = .02$ ). Known marijuana products involved in the exposure included 30 infused edibles (48%). Median length of stay was 11 hours (interquartile range [IQR], 6-19) and 26 hours (IQR, 19-38) for admitted patients. Annual RPC pediatric marijuana cases increased more than 5-fold from 2009 (9) to 2015 (47). Colorado had an average increase in RPC cases of 34% ( $P < .001$ ) per year while the remainder of the United States had an increase of 19% ( $P < .001$ ). For 10 exposure scenarios (9%), the product was not in a child-resistant container; for an additional 40 scenarios (34%), poor child supervision or product storage was reported. Edible products were responsible for 51 exposures (52%).

★

REG. POISON CENTER

★

**Conclusions and Relevance** Colorado RPC cases for pediatric marijuana increased significantly and at a higher rate than the rest of the United States. The number of children's hospital visits and RPC case rates for marijuana exposures increased between the 2 years prior to and the 2 years after legalization. Almost half of the patients seen in the children's hospital in the 2 years after legalization had exposures from recreational marijuana, suggesting that legalization did affect the incidence of exposures.

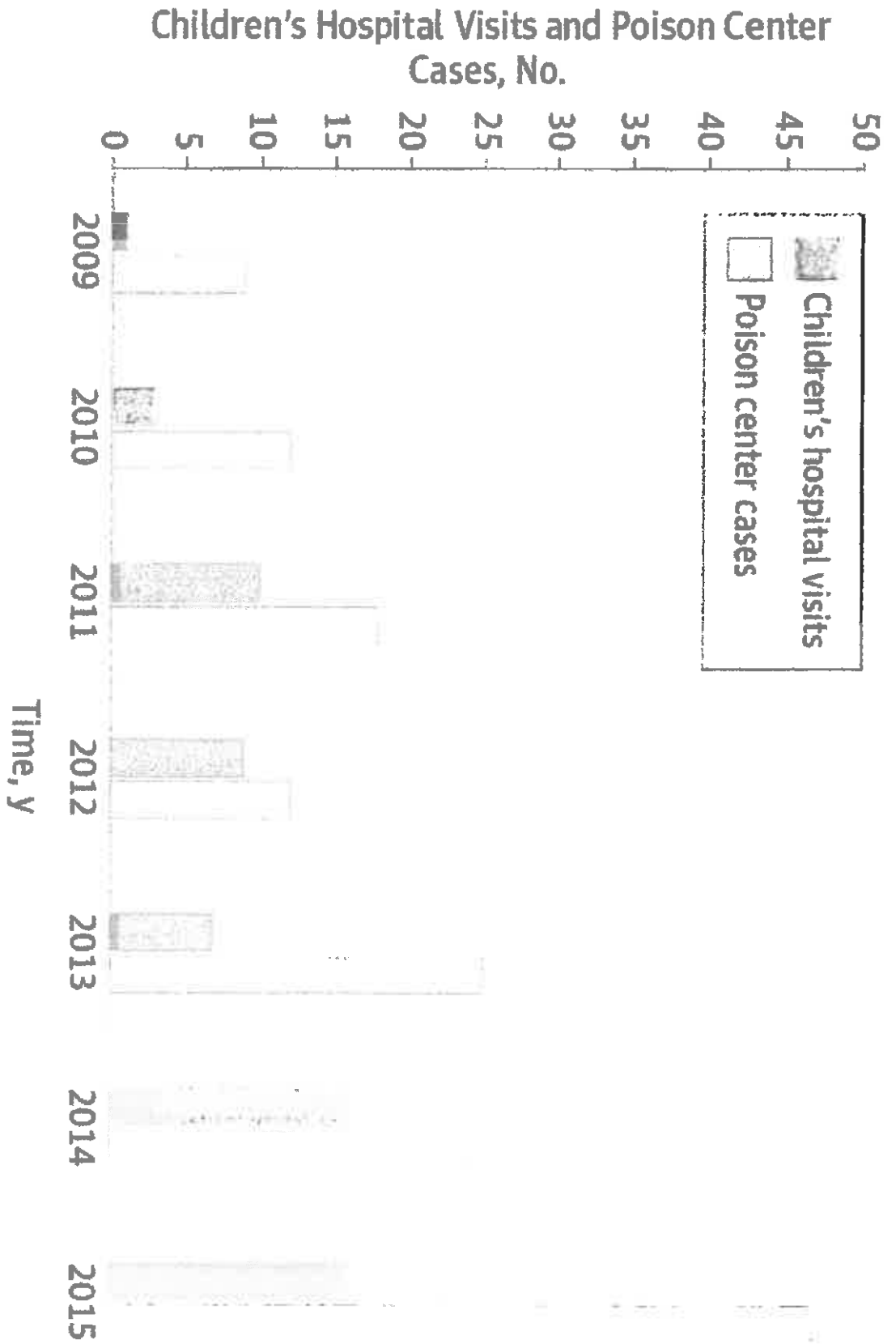
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# Cannabis in Colorado

From Wikipedia, the free encyclopedia

**Cannabis in Colorado** refers to cannabis (legal term marijuana) use and possession in Colorado, United States. The Colorado Amendment 64, which was passed by voters on November 6, 2012, led to legalization in January 2014.<sup>[1]</sup> The policy has led to cannabis tourism.<sup>[2]</sup> There are two sets of policies in Colorado relating to cannabis use: those for medicinal cannabis and for recreational drug use along with a third set of rules governing hemp.<sup>[3]</sup>



Cannabis dispensary in Denver

## Contents

- 1 History
  - 1.1 Prohibition (1917)
  - 1.2 Decriminalization (1975)
  - 1.3 Medical marijuana (2000) ✓
  - 1.4 Recreational marijuana (2012) ✓
- 2 Regulation
  - 2.1 Impaired driving
  - 2.2 State wide effects
- 3 See also
- 4 References
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## History

### Prohibition (1917)

Amidst an early 20th century trend of limiting the drug, Colorado first restricted cannabis on March 30, 1917.<sup>[4][5][6]</sup> In November 1914 Colorado voters approved the 22nd Amendment to the Colorado Constitution, also known as the Prohibition Amendment, prohibiting alcohol beginning January 1, 1916;<sup>[7]</sup> and on December 18, 1917 the Eighteenth Amendment (establishing Prohibition) was proposed by Congress.

Shortly after the 1937 Marihuana Tax Act went into effect on October 1, 1937, the Federal Bureau of Narcotics and Denver Police Department arrested Moses Baca for possession and Samuel Caldwell for dealing. Baca and Caldwell's arrest made them the first marijuana convictions under U.S. federal law for not paying the marijuana tax. Judge Foster Symes sentenced Baca to 18 months and Caldwell to four years in Leavenworth Penitentiary for violating the 1937 Marihuana Tax Act.

### Decriminalization (1975)

In 1975, during a decade-long wave of decriminalization in the country, Colorado decriminalized marijuana.<sup>[8]</sup> A contributing factor was the work on behalf of NORML by Pitkin County Deputy District Attorney Jay Moore, who helped win over the legislature's Republican leadership with arguments as to money wasted on needless enforcement of marijuana laws.<sup>[9]</sup>

## Medical marijuana (2000)

On November 7, 2000, 54% of Colorado voters approved Amendment 20, which amended the State Constitution to allow the use of marijuana in the state for approved patients with written medical consent. Under this law, patients may possess up to 2 ounces of medical marijuana and may cultivate no more than six marijuana plants (no more than three of these mature flowering plants at a time). Patients who are caught with more than this in their possession may argue "affirmative defense of medical necessity" but are not protected under state law with the rights of those who stay within the guidelines set forth by the state.<sup>[10]</sup> Furthermore, doctors, when making a patient recommendation to the state can recommend the rights to possess additional medicine and grow additional plants, because of the patient's specific medical needs. Conditions recognized for medical marijuana in Colorado include: cachexia; cancer; chronic pain; chronic nervous system disorders; epilepsy and other disorders characterized by seizures; glaucoma; HIV or AIDS; multiple sclerosis and other disorders characterized by muscle spasticity; and nausea. Additionally, patients may not use medical marijuana in public places or in any place where they are in plain view, or in any manner which may endanger others (this includes operating a vehicle or machinery after medicating). Colorado medical marijuana patients cannot fill prescriptions at a pharmacy because under federal law, marijuana is classified as a schedule I drug. Instead, patients may get medicine from a recognized caregiver or a non-state-affiliated club or organization, usually called a dispensary. Dispensaries in Colorado offer a range of marijuana strains with different qualities, as well as various "edibles" or food products that contain marijuana extracts. Certain dispensaries also offer patients seeds and "clones" for those who want to grow their own medicine.<sup>[11]</sup>

In April 2013, the Colorado Court of Appeals held in *Coats v. Dish Network* that since marijuana remains against federal law, employers can use that standard rather than state law as a rationale for banning off-the-job worker use, and are not bound by Colorado's Lawful Activities Statute:<sup>[12][13][14]</sup>

The primary question before us is whether federally prohibited but state-licensed medical marijuana use is "lawful activity" under section 24-34-402.5, C.R.S. 2012, Colorado's Lawful Activities Statute. If it is, employers in Colorado would be effectively prohibited from discharging an employee for off-the-job use of medical marijuana, regardless that such use was in violation of federal law. We conclude, on reasoning different from the trial court's analysis, that such use is not "lawful activity."

On June 10, 2016 Governor John Hickenlooper signed House Bill 16-1359. This bill stated that the court shall not prohibit the use or possession of medical marijuana as a condition of probation unless the individual is sentenced to probation for a conviction under Article 43.3 of Title 12, C.R.S.; or if the court determines based upon any material evidence that such a prohibition is necessary and appropriate to accomplish the goals of sentencing stated in 18-1-102.5, C.R.S.<sup>[15]</sup>

## Recreational marijuana (2012)

Since the enactment of Colorado Amendment 64 in November 2012, adults aged 21<sup>[16]</sup> or older can grow up to six marijuana plants (with no more than half being mature flowering plants) privately in a locked space, legally possess all marijuana from the plants they grow (as long as it stays where it was grown),<sup>[17]</sup> legally possess up to one ounce of marijuana while traveling,<sup>[18]</sup> and give as a gift up to one ounce to other citizens 21 years of age or older. Any adult in Colorado's territory may possess up to one ounce of marijuana at any time, regardless of whether they are an in-state resident or an out-of-state visitor, as of 2016. Retail concentrate/edible limits are as follows: 8g of retail concentrate will be equal to 1oz of flower, and therefore 800mg of THC in the form of retail edibles will be equal to 1oz of retail flower.<sup>[19]</sup> Consumption is permitted in a manner similar to alcohol, with equivalent offenses prescribed for driving.<sup>[20]</sup> Consumption in public was recently passed in Denver under



# *Brownsville Assembly of God*

P.O. Box 538    Brownsville, OR 97327    541-466-5030    Located at the corner of Hwy 228 & Washburn St. in Brownsville, OR

---

Dear Planning Commission and City of Brownsville,

I am writing to address the issue of a Conditional Use Permit for a Recreational Marijuana Dispensary and limited Medical Marijuana Sales at 221 W. Bishop Way in Brownsville.

As Pastor of the Assembly of God church on the corner of Washburn and Hwy 228, we are only a few blocks from this dispensary. I am opposed to permitting a Recreational Marijuana Dispensary. Please note the following reasons:

1. The risk to the residents of Brownsville. Impaired driving has increased since the legalization of Marijuana. Peter Kissinger, CEO of AAA states that one in six drivers involved in fatal crashes in 2014 had recently used Marijuana.
2. The message to our children and youth. I have worked with the teens of this community for the past 14 years. The idea that Marijuana is safe, and fun is a myth. Marijuana use by teens is dangerous. According to a study from the Massachusetts Chapter of the American Academy of Pediatrics it changes the structure and function of the brain in developing years (up until mid 20's.) There is an increased risk for long-term brain damage and decreased IQ and cognitive function years later. There is a direct connection between Marijuana use and depression, psychosis, and lower motivation.
3. Health risks for children. The packaging and names of Marijuana appeal to children. Common candy names, (such as "Munchy Way, Twixed, KeefKat, Oeo, TriChrome Crunch, Candy Corn Harvest), and flavors,

4. (Girl Scout Cookie...) imply the marketing is targeting children. The American Academy of Pediatrics opposed the legalization of Marijuana and sited this list of damage to children that occurs with use: “negative effects on short-term memory, concentration, attention span, motivation, problem solving, which clearly interfere with learning; adverse effects on coordination, judgement, reaction time, and tracking ability, which contribute substantially to unintentional deaths and injuries...”
5. Health risks for adults choosing to use Marijuana are substantial. The American Lung Association states that there are 33 cancer-causing chemicals contained in Marijuana, and that Marijuana deposits four times as much tar in the lungs as tobacco. It significantly increases the risk of heart disease and stroke.
6. Marijuana uses promotes addiction. It is a fact that it requires more and stronger doses to produce the “high” therefore, the users are more likely to try harder drugs than those who never use marijuana.
7. Personal opinion: I feel that we were deceived in the proceedings leading up to the Conditional Use Permit being approved for “medical” use. In a very short time this has changed to “recreational” use, and I feel the board was manipulated by stories of the help offered to those with medical conditions that might benefit from its use, to open the door to recreational sales in this community.

I value the health and safety of the citizens of Brownsville and oppose the Conditional Use Permit.

Sincerely,

A handwritten signature in cursive script that reads "Pastor Kelly Williams". The signature is written in black ink and is positioned below the word "Sincerely,".

Rev. Kelly Williams



B O P Y



www.ci.brownsville.or.us

**City Hall**  
 255 N. Main Street • P.O. Box 188  
 Brownsville, OR 97327 • 541.466.5666  
 Fax 541.466.5118 • T1/TDD 800.735.2900

August 1<sup>st</sup>, 2017

### NOTICE OF DECISION

**PROPOSAL:** Conditional Use allowing a Recreational Marijuana Facility, with Limited Medical Marijuana sales in the Light Industrial Zone (LI).

**LOCATION:** Tax lot 700, T14S, R3W, Section 01AA; located at 221 W Bishop Way.

**APPLICANT:** Randy Simpson & Gayle Ashford  
 PO Box 700  
 Brownsville, OR 97327


The City of Brownsville Planning Commission conducted a review and public hearing of the above referenced planning action on July 17<sup>th</sup>, 2017. The Planning Commission requested clarification from legal counsel on Brownsville Municipal Code Chapter 15.111.020 B (c) & C (3) regarding public parks & playgrounds. The Planning Commission re-convened on July 31<sup>st</sup>, 2017. Upon consideration of the record and testimony at the public hearing and based upon Findings of Fact as stated in the Staff Report, the Planning Commission voted 4 – 2, resulting in a denial of the proposed Conditional Use Permit.

If you are an affected party and wish to appeal this decision, appeals must be filed in writing within fifteen (15) days from the date of decision with the City Administrator along with the required fee of \$375.00. The following information must be included:

- A. Name and address of the appellant(s).
- B. A reference to the subject development.
- C. A statement of the specific grounds for appeal.
- D. A statement as to how you are an affected party.

Appeals will be accepted only when based upon identified inadequacies, omissions, or errors in the decision's findings and conclusions. Appeals must be filed by 4:30 p.m. on the final day of the appeal period at City Hall, 255 N. Main Brownsville, Oregon, 97327. When the final day of an appeal period falls on a weekend or holiday, the appeal period shall be extended to 1:00 p.m. on the subsequent work day. Brownsville City Hall is open Monday through Friday, 8:30 a.m. to 4:30 p.m.

If no appeal is filed, this Notice of Decision will become effective on August 16<sup>th</sup>, 2017. A copy of this Notice of Decision will be available on that date.

  
 Administrative Assistant



RECEIVED  
City of Brownsville

AUG 09 2017

Clerk \_\_\_\_\_

City Hall

255 N. Main Street • P.O. Box 188  
Brownsville, OR 97327 • 541.466.5666  
Fax 541.466.5118 • TT/TDD 800.735.2900  
Fee: \$375.00  
(1/2 of original cost)

**Application for Appeal to City Council**

Date of Appeal: 8-9-17

An application for an appeal of any planning action must be filed by 4:30 p.m. on the final day of the appeal period at City Hall, 255 N. Main Street, Brownsville, Oregon.

**APPLICANT INFORMATION**

Name Randy Simpson / Gayle Ashford

Address 221 West Bishop way, Brownsville OR 97327

Phone 541 466 9110

ACTION BEING APPEALED: Our conditional use permit  
Denial by the Planning Commission

SPECIFIC GROUNDS AND CRITERIA FOR APPEAL: Denial was based on personal  
opinions. Our facility @ 221 w. Bishop way was approved by maj-  
ority of vote by City residents. Green Cross Dispensary meets all  
of the City criteria and zoning requirements for the  
operation of a recreational Marijuana OLCC approved  
facility.

**STATEMENT AS TO HOW YOU ARE AFFECTED BY THIS DECISION:**

This decision prevents us from operating an olcc  
State and local approved facility and therefore  
is causing us to loose business on a daily basis.

**APPLICANT SIGNATURE(S)**

Name: Randy Simpson Date: 8-9-17

Name: Gayle Ashford Date: 8-9-17

**S. Scott McDowell**

---

**From:** Donald Lyon <phototraveler02@gmail.com>  
**Sent:** Monday, September 11, 2017 9:31 AM  
**To:** Scott McDowell; Don Ware  
**Cc:** gaylelashford  
**Subject:** 9.19 City Council Meeting

**Brownsville City Council--September 19 Meeting**

**Recreational Marijuana sales in Brownsville:** I understand that a vote by the City Council will be held soon whether or not to allow Gayle and Randy Simpson to extend Marijuana sales at their shop from Medical to Recreational. I will not be able to attend the meeting so I would like to make my voice heard to the City Council via this email.

Over several years I have watched the Simpson's jump nimbly through every hoop that the city has put forward. They have spent a considerable amount of money and time in an attempt to be part of building Brownsville into a thriving commercial center. Yet they have been held back by dubious legal definitions and rulings and prevented from operating their business on Main Street. Grudgingly they have been allowed to operate at their Highway 228 location. Now, as the State of Oregon has determined that regulations regarding Medical and Recreational Marijuana sales are to be combined, it seems that the Planning Commission has taken this opportunity to thwart them once again.

The Simpsons have shown themselves to be responsible citizens trying to provide a product deemed legal by the State of Oregon and deemed desirable and beneficial by a large number of the population. Indeed--at one City Council meeting that I attended, those speaking in favor of marijuana sales spoke clearly and knowledgeably with personal experience about the benefits of this drug while those who spoke against seemed motivated by emotions based on outdated information and hearsay with no personal experience.

All drugs have the potential for abuse--witness the current opioid epidemic. Alcohol is the most widely abused and life damaging drug in this country--yet it is sold in the center of town and regulated by law. The fact that one is allowed and the other is not seems due to outdated thinking. I urge the City Council to take this opportunity to correct the wrongful action of the Planning Commission and grant the conditional use permit to the Simpsons.

I could argue for the medical benefits of marijuana, for the right of individuals to consume this drug, for the tax benefits that will accrue to the city but I leave those points to others. I urge the City Council to approve the permit to the Simpsons because it is the right thing to do. Respectfully yours, Donald Lyon

*Donald Lyon, 352 Kirk Avenue, Brownsville, Oregon 97327 USA, tel: 541 654 2052,  
email: [phototraveler02@gmail.com](mailto:phototraveler02@gmail.com)*

**S. Scott McDowell**

---

**From:** Alice Tetamore <rnatetamore@centurytel.net>  
**Sent:** Wednesday, September 13, 2017 8:45 PM  
**To:** McDowell Scott  
**Subject:** Marijuana News

Scott,

You might be interested in this article from World Digital (we subscribe to the World Magazine which provides a balance to other new aganets).

I was thinking about the selling of recreational marijuana in Brownsville.

Alice

## Is this the high school?

The Colorado Department of Education will **spend** \$9.2 million this year on extra nurses, counselors, and social workers to combat marijuana use among students. The grants, spread among 42 public and charter schools, are funded through taxes on pot sales, which are now legal for Coloradans 21 and older. Legalizing marijuana has created a more casual attitude toward the drug, experts say. About 5 percent of Colorado high schoolers smoke marijuana regularly, a figure that's held steady since 2005, according to state public health officials. Although legal marijuana hasn't led to dramatic increases in use by minors, schools are bracing for that potential. "We just want to make sure kids make smarter choices," said Ellen Kelty, interim director of student equity and opportunity for Denver Public Schools. —L.J.

*Author:*

### *Leigh Jones*

Leigh lives in Houston with her husband and daughter. She is WORLD Digital's managing editor and reports on education for WORLD Magazine and WORLD Digital.