

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 16- 22

AN ORDINANCE AMENDING THE TIGARD DEVELOPMENT CODE (TITLE 18) TO ADOPT TEXT AMENDMENTS TO CHAPTER 18.735 (MARIJUANA FACILITIES) THAT REDUCE SPACING REQUIREMENTS BETWEEN FACILITIES AND CHANGE PERMITTED HOURS OF OPERATION.

WHEREAS, the Tigard City Council directed Planning Division staff to prepare amendments to the Tigard Community Development Code pertaining to spacing requirements between facilities and hours of operation of marijuana facilities within the boundaries of the City; and

WHEREAS, the purpose of amending Chapter 18.735 is to establish compliance with ORS 475B.340, which precludes local jurisdictions from enacting a buffer between retail marijuana facilities of more than 1,000 feet; and

WHEREAS, notice was provided to the Department of Land Conservation and Development at least 35 days prior to the first evidentiary public hearing; and

WHEREAS, notice of the public hearing was given in conformance with Community Development Code Chapter 18.390.060.D; and

WHEREAS, the Tigard Planning Commission held a duly noticed public hearing on August 15, 2016 and recommended by unanimous vote that Council approve proposed code amendment; and

WHEREAS, the Tigard City Council held a public hearing on September 27, 2016 and October 18, 2016, to consider the proposed amendments; and

WHEREAS, the Tigard City Council has considered the Planning Commission recommendation; and

WHEREAS, the Tigard City Council has considered the applicable Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197; applicable federal or state statutes or regulations; applicable Metro regulations; applicable Comprehensive Plan Policies; and applicable provisions of the City's implementing ordinances; and

WHEREAS, the Tigard City Council has determined that the proposed development code amendments are consistent with the applicable review criteria, and approves amendments to the Tigard Community Development Code as being in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Council adopts the findings recommended by the Planning Commission as contained in the September 27, 2016 Staff Report to the City Council, included as

“Exhibit A” to this Ordinance as the basis in support of the corresponding code amendments.

SECTION 2: Council further adopts the staff memo to Council providing additional information, shown as “Exhibit B”, as an additional basis in support of the corresponding code amendments.

SECTION 3: Tigard Development Code (Title 18) 18.735 Marijuana Facilities is amended as shown in “Exhibit C” to this Ordinance.

SECTION 4: This Ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By unanimous vote of all Council members present after being read by number and title only, this 1st day of November, 2016.

Carol A Krager

Carol Krager, City Recorder

APPROVED: By Tigard City Council this 1st day of November, 2016.

John L. Cook
John L. Cook, Mayor

Approved as to form:

[Signature]
City Attorney

Date

11-1-16

**PLANNING COMMISSION
RECOMMENDATION TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



SECTION I. APPLICATION SUMMARY

CASE NAME: REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE

CASE NO.: Development Code Amendment (DCA) DCA2016-00002

PROPOSAL: The City of Tigard proposes legislative amendments to the Tigard Development Code (TDC). The proposed amendments include:

1. Adopt updated Flood Insurance Rate Maps; and
2. TDC amendments:
 - a. Update floodplain regulations (Chapter 18.775 Sensitive Lands) relating to critical facilities and add a severability clause, definitions and conflicting language with the NFIP; and
 - b. Change marijuana facilities (Chapter 18.735) spacing requirements between facilities from 2,000 feet to 1,000 feet.

APPLICANT: City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223

ZONES: Citywide

LOCATION: Citywide

APPLICABLE REVIEW CRITERIA: Statewide Planning Goals 1 (Citizen Involvement), 2 (Land Use Planning), 7 (Areas subject to Natural Disasters and Hazards), and 9 (Economic Development); ORS 475B (Cannabis Regulation); METRO's Urban Growth Management Functional Plan Titles 3, and 8; Comprehensive Plan Goals 1.1.2, 2.1.2, 2.1.3, 2.1.6, 2.1.11, 2.1.23, 7.1.7, 7.1.8 and 7.1.9; and Tigard Development Code Chapters 18.380 and 18.390

SECTION II. PLANNING COMMISSION RECOMMENDATION

Planning Commission recommends approval by ordinance of the proposed development code text amendments (Attachment 1) with any alterations as determined through the public hearing process. Additionally, that City Council directs staff to investigate Tigard's participation in the Community Rating System;

SECTION III. BACKGROUND INFORMATION AND PROJECT SUMMARY

Required Regulatory Changes and FEMA Firm Map Update

The purpose of the Required Regulatory Changes and FEMA Firm Map Update Project is to update the Sensitive Lands Chapter (Section 18.775) with the required Federal Emergency Management Agency (FEMA) requirements, adopt the updated Flood Insurance Rate Maps and amend the Marijuana Facilities Chapter (Section 18.735) with reduced spacing requirements. A brief summary of the National Flood Insurance Program and the proposed changes is provided below.

The National Flood Insurance Program (NFIP) is a federal program that was established in 1968 through the passage of the National Flood Insurance Act and administered by FEMA. The programs allow owners of properties within the Special Flood Hazard Area (SFHA)—also sometimes described as the 100-year floodplain—to obtain federally-backed insurance for their properties in jurisdictions that have adopted land use regulations for development in the floodplain. In addition to providing insurance, the NFIP identifies and maps the Nation's floodplains, known as the Flood Insurance Rate Map (FIRM) which results from a Flood Insurance Study. The FIRM is an official map on which FEMA has delineated both the SFHA and other flood zones within a community. The FIRM is used in determining a jurisdiction's floodplain regulations, whether a property owner is required to obtain flood insurance as well as the insurance rate.

Floodplain boundaries do not stay constant but rather undergo change over time due to effects of erosions, development impacts, vegetation removal and other factors. To account for floodplain boundary changes, FEMA periodically adjusts the SFHA maps used by local jurisdictions. The City of Tigard does not conduct floodplain inventories and relies on FEMA for the determination of the SFHA boundary. FEMA periodically amends the regulatory requirement of the NFIP through updates to the local FIRM and a corresponding Flood Insurance Study Report. Prior to amending the FIRM and/or developing new or revised floodplain requirements as part of the NFIP updates, FEMA coordinates with local jurisdictions to determine local flood area conditions. The FIRM updates must be adopted and effective within 6 months of FEMA's Letter of Final Determination. On May 4, 2016 FEMA notified the City of Tigard of the final flood elevation determinations on the FIRM for properties in the City of Tigard within the SFHA. FEMA's notification gave the City a 6-month timeline to adopt the FIRM and associated floodplain regulations by ordinance.

The NFIP's Community Assistance Program provides communities with technical assistance to ensure that the community is adequately enforcing its floodplain management regulations. This is done through a Community Assistance Visit (CAV). If any administrative problems or potential violations are identified during a CAV the community will be notified and given the opportunity to correct those administrative procedures and remedy the violations to the maximum extent possible within established deadlines. The City of Tigard received a Community Assistance Visit (CAV) Narrative in September of 2014 that identified deficiencies in the City's current floodplain regulations that are required to be adopted in order to be in compliance with NFIP requirements.

FEMA requires that this ordinance with the proposed text amendments to TDC 18.775 and updated Flood Insurance Rate Maps be adopted and in effect by November 4, 2016 in order for the City of Tigard to remain a participant in NFIP.

Staff received an email on August 10, 2016 from Roxanne Pilkenton; FEMA requesting additional changes to Chapter 18.775. The identified changes are required in order to be in compliance with the NFIP. Prior to the Planning Commission public hearing, staff incorporated the following:

1. Required definitions (18.775.040.R); and
2. removed the entire section 18.775.020.A. 1 through 10, leaving language requiring a CWS stormwater connection permit; and
3. disclaimer of liability (18.775.040.S); and
4. greater restriction (18.775.404.T)

The email also identified section 18.775.020.B and 18.775.020.C to be in direct conflict with the NFIP. Staff stated at the Planning Commission public hearing that FEMA has been contacted for further clarification on these two items and that staff will propose any necessary changes to the City Council at the public hearing.

Proposed Amendments

Amend the Tigard Development Code Sensitive Lands Chapter (TDC 18.775) as proposed:

- Text Amendments to Chapter 18.120 (Definitions) to establish new definitions for “Critical facility” and “Special Flood Hazard Area”
- Text Amendments to Chapter 18.120 (Definitions) to amend the definition for “Floodway” as defined by FEMA
- Text Amendments to Chapter 18.120 (Definitions) to remove the definition for “Floodplain” which is replaced by “Special Flood Hazard Area”.
- Text Amendments to Chapter 18.775 (Sensitive Lands) to replace the term “floodplain” with “Special Flood Hazard Area”
- Text Amendments to Chapter 18.775 (Sensitive Lands) to amend the date of the updated Flood Insurance Study and accompanying Flood Insurance Rate Map dated November 4, 2016
- Text Amendments to Chapter 18.775 (Sensitive Lands) to establish new regulations for the construction of new critical facilities
- Text Amendments to Chapter 18.775 (Sensitive Lands) to include a severability clause.
- Text Amendments to Chapter 18.775 (Sensitive Lands) to remove No. 1 through 10 listed in 18.775.020.A.
- Text Amendments to Chapter 18.775 (Sensitive Lands) to include additional definitions.
- Text Amendments to Chapter 18.775 (Sensitive Lands) to include a disclaimer of liability.
- Text Amendments to Chapter 18.775 (Sensitive Lands) to include a greater restriction section.

Marijuana Change Legislative Background

In November 2014, Oregon became the fourth state in the nation to legalize recreational marijuana. Prior to this, legal marijuana activity was limited to the state medical marijuana program. Below is a brief summary of legislative history on marijuana followed by the proposed changes to the City’s marijuana regulations.

- August 14, 2013 - Governor signs HB3460, which requires the Oregon Health Authority to develop and implement a process to register medical marijuana dispensaries so that patients could legally purchase medical marijuana. Under this bill, dispensaries cannot be within 1,000 feet of a school, 1,000 feet of another dispensary, and must be located within an industrial, commercial, or mixed-use zone.
- March 19, 2014 – Governor signs SB1531 which authorizes local governments to adopt reasonable regulations regarding the hours of operation; location; and manner in which medical marijuana dispensaries are operated. SB1531 also states that a local jurisdiction may enact an ordinance declaring a one-year moratorium on dispensaries.
- November 4, 2014 - Oregon voters approved Ballot Measure 91 to legalize the use and possession of recreational marijuana on July 1, 2015. The law also directs the Oregon Liquor Control Commission to tax, license, and regulate recreational marijuana through a licensing system to be established by January 2016. The measure did not make any changes to the existing medical marijuana system.

April 21, 2015- City of Tigard Ordinance No 15-07 was adopted, which established time, place and manner restrictions on Marijuana Facilities through the creation of new chapter in the TDC titled Marijuana Facilities (TDC 17.735), which applied to both medical and recreational marijuana.

June 30, 2015 - Governor signs HB3400A which authorizes local government to regulate commercial recreation marijuana regulations; establishes the requirement of a Land Use Compatibility Statement (LUCS); recognizes marijuana as a farm crop; requires OLCC to create a seed-to-sale tracking system; and establishes provisions for state and local taxation. **HB3400A also prohibits local jurisdictions from requiring a distance buffer of greater than 1,000 feet between stated-licensed retail marijuana facilities.**

Proposed Amendments

The proposed amendment to the Marijuana Facilities Chapter (18.735) changes the spacing requirements between marijuana facilities from 2,000 feet to 1,000 feet (TDC 17.735.040.C.3.b). This change is a result of House Bill (HB) 3400A, which precludes local jurisdictions from enacting a larger spacing requirement than 1,000 feet.

SECTION IV. APPLICABLE CRITERIA, FINDINGS AND CONCLUSIONS

STATEWIDE PLANNING GOALS AND GUIDELINES

State planning regulations require cities to adopt and amend Comprehensive Plans and land use regulations in compliance with the state land use goals. Because the proposed Code Amendments have a limited scope and the text amendments address only some of the topics in the Statewide Planning Goals, only applicable Statewide Goals are addressed below.

Statewide Planning Goal 1 – Citizen Involvement:

This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

FINDING: This goal has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390.060 (Type IV Procedures). Notices were sent by US Postal Service on July 28, 2016 to affected government agencies and the latest version of the City's interested parties list. A notice was published in the Tigard Times newspaper prior to the hearing. Project information and documents were published to the City website prior to the public hearing. A minimum of two public hearings will be held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided. This goal is satisfied.

Statewide Planning Goal 2 – Land Use Planning:

This goal outlines the land use planning process and policy framework.

FINDING: The Department of Land Conservation and Development (DLCD) has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. The Development Code implements the Comprehensive Plan. The Development Code establishes a process and standards to review changes to the Tigard Development Code in compliance with the Comprehensive Plan and other applicable state requirements. As discussed within this report, the applicable Development Code process and standards have been applied to the proposed amendment. This goal is satisfied.

Statewide Planning Goal 7 – Areas Subject to Natural Disaster:

This goal requires jurisdictions to protect development in places subject to natural hazards.

FINDING: The Department of Land Conservation and Development has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. The proposed text amendments create a land use control that will buffer land uses and protect development in places subject to natural hazards.

Consistency with the City's Hazard goals and policies are discussed later in this report under applicable policies of the Tigard Comprehensive Plan. This goal is satisfied.

Statewide Planning Goal 9 – Economic Development:

This goal seeks to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

FINDING: The Department of Land Conservation and Development has acknowledged the City's Comprehensive Plan as being consistent with the statewide planning goals. Consistency with the City's Comprehensive Plan Economic Development goals and policies is discussed later in this report under Tigard Comprehensive Plan Goal 9.1 and associated policies. This goal is satisfied.

CONCLUSION: Based on the findings above and the related findings below, staff finds the proposed code amendments are consistent with applicable Statewide Planning Goals.

APPLICABLE PROVISIONS OF THE OREGON CANNABIS REGULATIONS

ORS 475B.340(2): Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110 if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under ORS 475B.110 from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under ORS 475B.110

FINDING: The proposed amendment changes the City's current spacing requirement of 2,000 feet between facilities to 1,000 feet, making the City's code in compliance with the state statute. This requirement is satisfied.

CONCLUSION: Based on the findings above, staff finds that the proposed code text amendment is consistent with the Oregon Cannabis Regulations (ORS 475B).

METRO'S URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN

State planning regulations require cities to adopt and amend Comprehensive Plans and land use regulations in compliance with the state land use goals. Because the proposed Code Amendments have a limited scope and the text amendments address only some of the topics in the METRO's Urban Growth Management Functional Plan, only applicable Titles are addressed below.

Title 3 – Water Quality and Flood Management:

This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

FINDING: The proposed amendment will adopt the newly updated FEMA Flood Insurance Rate Maps, which will allow the City to continue to participate in the National Flood Insurance Program. The proposed floodplain regulation relating to critical facilities will provide protection for development located within natural flood hazard areas. The proposed amendment also includes updated terminology consistent with state and federal laws. This title is satisfied.

Title 8 – Compliance Procedures:

This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

FINDING: This title has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390.060 (Type IV Procedures). Notices were sent by US Postal Service on July 28, 2016 to affected government agencies and the latest version of the City's interested parties list. A notice was published in the Tigard Times newspaper prior to the hearing. Project information and documents were published to the City website prior to the public hearing. A minimum of two public hearings will be held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided. This title is satisfied.

CONCLUSION: Based on the findings above, staff finds that the proposed code amendment is consistent with Metro's Urban Growth Management Functional Plan.

TIGARD COMPREHENSIVE PLAN

State planning regulations require cities to adopt and amend Comprehensive Plans and land use regulations in compliance with the state land use goals and consistent with Comprehensive Plan Goals and Policies. Because the Development Code Amendments have a limited scope and the text amendments address only some of the topics in the Tigard Comprehensive Plan, only applicable comprehensive plan goals and associated policies are addressed below.

Comprehensive Plan Goal 1: Citizen Involvement

Policy 1.1.2: The City shall define and publicize an appropriate role for citizens in each phase of the land use planning process.

FINDING: This policy has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390.060 (Type IV Procedures). Notices were sent by US Postal Service on July 28, 2016 to affected government agencies and the latest version of the City's interested parties list. A notice was published in the Tigard Times newspaper prior to the hearing. Project information and documents were published to the City website prior to the public hearing. A minimum of two public hearings will be held (one before the Planning Commission and the second before the City Council) at which an opportunity for public input is provided. This policy is met.

Comprehensive Plan Goal 2: Land Use Planning

Policy 2.1.2: The City's land use regulations, related plans, and implementing actions shall be consistent with and implement its Comprehensive Plan.

FINDING: As demonstrated in this staff report, the proposed amendments to the Tigard Development Code are consistent with the Tigard Comprehensive Plan. This policy is satisfied.

Policy 2.1.3: The City shall coordinate the adoption, amendment, and implementation of its land use program with other potentially affected jurisdictions and agencies.

FINDING: Copies of the proposed text amendments were sent to affected agencies and were invited to comment on the proposal, as required by Section 18.390.060 (Type IV Procedures) and discussed in Section V of this report. Comments submitted by affected agencies have been incorporated into this report and the proposed amendments. This policy is satisfied.

Policy 2.1.6: The City shall promote the development and maintenance of a range of land use types which are of sufficient economic value to fund needed services and advance the community's social and fiscal stability.

FINDING: The proposed text amendments will enable more marijuana facilities to be located within the City which will result in more taxable economic activity to occur. This policy is satisfied.

Policy 2.1.11: The City shall adopt regulations and standards to protect public safety and welfare from hazardous conditions related to land use activities.

FINDING: The proposed amendment includes the adoption of FEMA's Flood Insurance Rate Maps, which will maintain the City's participation in the National Flood Insurance Program and protect the public welfare for properties located within the SFHA.

Due to requirements by the State of Oregon, the spacing requirement between marijuana facilities is proposed to be reduced from 2,000 feet to 1,000 feet. However, all other buffers from residential areas and parks, and minimum design requirements, will remain in order to protect public safety and welfare from associated marijuana facilities. This policy is satisfied.

Policy 2.1.23 The City shall require new development, including public infrastructure, to minimize conflicts by addressing the need for compatibility between it and adjacent existing and future land uses.

FINDING: The proposed amendments include reducing the buffer between marijuana facilities from 2,000 feet to 1,000 feet between facilities; this is a requirement of the State of Oregon. However, all other buffers from residential areas and parks, and minimum design requirements, will remain in order to ensure compatibility between marijuana facilities subject to state licensing or registration, and adjacent development and public facilities. This policy is satisfied.

Comprehensive Plan Goal 7: Hazards

Policy 7.1.7: The City shall comply with the Federal Emergency Management Agency (FEMA) flood regulations, which include standards for base flood levels, flood proofing, and minimum finished floor elevations.

FINDING: The proposed amendments adopt the newly updated FEMA Flood Insurance Rate Maps, update definitions consistent with federal law, and establish regulations for critical facilities. These proposed amendments are consistent with state and federal laws. This policy is satisfied.

Policy 7.1.8: The City shall prohibit any land form alterations or developments in the 100-year floodplain which would result in any rise in elevation of the 100-year floodplain.

FINDING: The proposed amendments adopt the recently updated FEMA Flood Insurance Rate Maps and regulations for development within the SFHA ensuring that development will not result in any rise in elevation of the 100-year floodplain. This policy is satisfied.

Policy 7.1.9: The City shall not allow land form alterations of development within the 100-year floodplain outside the zero-foot rise floodway unless:

- A. The streamflow capacity of the zero-foot rise and floodway is maintained; and**
- B. Engineered drawings and/or documentation shows there will be no detrimental upstream or downstream effects in the floodplain area.**

FINDING: The proposed amendments adopt the newly updated FEMA Flood Insurance Rate Maps and regulations for development within the SFHA ensuring that development will not be detrimental to the floodplain. This policy is satisfied.

CONCLUSION: Based on the findings above, staff concludes that the proposed code text amendment is consistent with applicable provisions of the Tigard Comprehensive Plan.

APPLICABLE PROVISIONS OF THE TIGARD DEVELOPMENT CODE

Section 18.380: Zoning Map and Text Amendments

18.380.020 Legislative Amendments to this Title and Map

Legislative zoning map and text amendments shall be undertaken by means of a Type IV procedure, as governed by Section 18.390.060G.

FINDING: The proposed amendments are legislative in nature. Therefore, the amendment will be reviewed under the Type IV legislative procedure as set forth in the chapter. This procedure requires public hearings by both the Planning Commission and City Council. This standard is satisfied.

Section 18.380: Decision Making Procedures

18.390.060 Type IV Procedure

G. Decision-making considerations. The recommendation by the commission and the decision by the council shall be based on consideration of the following factors:

- 1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;**
- 2. Any federal or state statutes or regulations found applicable;**

3. Any applicable METRO regulations;
4. Any applicable comprehensive plan policies; and
5. Any applicable provisions of the City's implementing ordinances.

FINDING: Findings and conclusions are provided in this section for the applicable listed factors on which the recommendation by the Commission and the decision by the Council shall be based. This standard is satisfied.

CONCLUSION: Based on the findings above, staff concludes that the proposed code text amendment is consistent with applicable provisions of the Tigard Development Code.

SUMMARY

CONCLUSION: As shown in the findings above, staff concludes that the proposed amendments are consistent with the applicable Statewide Planning Goals; the Oregon Cannabis Regulations (ORS 475B); METRO's Urban Growth Management Functional Plan; applicable Comprehensive Plan goals and policies, and the applicable provisions of the City's implementing ordinances.

SECTION V. AGENCY COMMENTS

City of Portland, City of Beaverton, City of Durham, City of Lake Oswego, City of Tualatin, City of King City, Washington County, METRO, ODOT, Oregon, DLCD, DEQ, ODFW, CWS, Tri-Met, FEMA and Tigard Water District and were notified of the proposed code text amendment but provided no comment.

Tualatin Valley Fire and Rescue provided comments stating they have reviewed the proposal and have no objections to it.

FEMA provided comments stating that several things were out of compliance with the NFIP. Staff worked with FEMA and made the appropriate changes to Chapter 18.775 to comply with the NFIP. These emails are provided as Attachment 4.

SECTION VI. PUBLIC COMMENTS

Prior to the Planning Commission public hearing, the City received one email from Mr. Joel Vermillion, 10525 SW Tigard Street, asking how the proposed amendment will impact his property. A map of the current 100-year floodplain and the proposed map were provided. Mr. Vermillion also asked about paving an existing gravel area within the floodplain. Staff notified Mr. Vermillion that other sensitive lands are present on the property which may impact any development on the property.

The City received six phone calls and two residents came into the permit center asking about properties within the special flood hazard area. A map of the current 100-year floodplain and the proposed map were provided. No further comments were received.

The Planning Commission heard testimony from three citizens and received one written public comment (received from one of the citizens who also testified) at the public hearing on August 15, 2016. The testimony and written comment were considered by the Planning Commission as they formed their recommendation to Council that the proposed map update and code changes be approved. The written public comment is included as Attachment 2 and Planning Commission Minutes are Attachment 3.

ATTACHMENTS:

Attachments:

1. Proposed Amendments
 - a. 18.120 Definitions
 - b. 18.775 Sensitive Lands
 - c. 18.735 Marijuana Facilities
2. Public Comment Letter- Mr. Davis
3. August 15, 2016 Planning Commission Minutes
4. Emails from FEMA dated August 10th and 17th, 2016



PREPARED BY: Agnes Kowacz
Associate Planner

August 31, 2016
DATE



APPROVED BY: Tom McGuire
Assistant Community Development Director

August 31, 2016
DATE

DCA2016-00002
REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE
DEVELOPMENT CODE AMENDMENT

Explanation of Formatting

These text amendments employ the following formatting:

~~Strikethrough~~ - Text to be deleted

[Bold, Underline and Italic] – Text to be added

Excerpt from Chapter 18.120

18.120 Definitions

18.120.030 Meaning of Specific Words and Terms

86. Flood-related definitions:

a. “Base flood” - The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the “100-year flood.”

b. “Critical facility”- A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools,; nursing homes,; hospitals; police, fire, and emergency response installations; and installations which produce, use or store hazardous materials or hazardous waste.

~~b. “Floodplain” - The zone along a watercourse enclosed by the outer limits of land which is subject to inundation in its natural or lower revised contours by the base flood.~~

c. “Floodway” - ~~The normal stream or drainage channel~~ **of a river or other watercourse** and ~~that the adjoining adjacent land areas of the natural floodplain needed to convey the waters, including the zero-foot rise floodway area defined by the U.S. Corps of Engineers Flood Insurance Study, February, 1984, that~~ Floodways must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation **more than one foot.**

d. “Floodway fringe” - The area of the floodplain **special flood hazard area** lying outside of the floodway.

e. “Special Flood Hazard Area”- The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V. Also referred to as the “100-year floodplain.”

DCA2016-00002
REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE
DEVELOPMENT CODE AMENDMENT

Explanation of Formatting

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Chapter 18.775
SENSITIVE LANDS

Sections:

- 18.775.010 Purpose**
- 18.775.020 Applicability of Uses: Permitted, Prohibited, and Nonconforming**
- 18.775.030 Administrative Provisions**
- 18.775.040 General Provisions for ~~Floodplain~~ *Special Flood Hazard* Areas**
- 18.775.050 General Provisions for Wetlands**
- 18.775.060 Expiration of Approval: Standards for Extension of Time**
- 18.775.070 Sensitive Land Permits**
- 18.775.080 Application Submission Requirements**
- 18.775.090 Special Provisions for Development within Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek**
- 18.775.100 Adjustments to Underlying Zone Standards**
- 18.775.110 Density Transfer**
- 18.775.120 Variances to Section 18.775.090 Standards**
- 18.775.130 Plan Amendment Option**
- 18.775.140 Significant Habitat Areas Map Verification Procedures**

18.775.010 Purpose

- A. Maintain integrity of rivers, streams, and creeks. Sensitive land regulations contained in this chapter are intended to maintain the integrity of the rivers, streams, and creeks in Tigard by minimizing erosion, promoting bank stability, maintaining and enhancing water quality, and fish and wildlife habitats, and preserving scenic quality and recreation potential.
- B. Implement comprehensive plan and floodplain management program. The regulations of this chapter are intended to implement the comprehensive plan and the city's floodplain management program as required by the *Federal Emergency Management Agency (FEMA) through the* National Flood Insurance Program, ~~and to~~ help to preserve ~~natural~~ sensitive land areas from encroaching use, and to maintain the November 4, 2016 ~~February 18, 2005~~, zero-foot rise floodway elevation.
- C. Implement Clean Water Service (CWS) design and construction standards. The regulations of this chapter are intended to protect the beneficial uses of water within the Tualatin River Basin in accordance with the CWS "Design and Construction Standards," as adopted February 7, 2000.

- D. Implement the Metro Urban Growth Management Functional Plan. The regulations of this chapter are intended to protect the beneficial water uses and functions and values of resources within water quality and flood management areas and to implement the performance standards of the Metro Urban Growth Management Functional Plan.
- E. Implement Statewide Planning Goal 5 (Natural Resources). The regulations in this chapter are intended to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule pertaining to wetland and riparian corridors.
- F. Protect public health, safety, and welfare. Sensitive land areas are designated as such to protect the public health, safety, and welfare of the community through the regulation of these sensitive land areas.
- G. Location. Sensitive lands are lands potentially unsuitable for development because of their location within:
1. The ~~100-year floodplain~~ special flood hazard area or 1996 flood inundation line, whichever is greater;
 2. Natural drainageways;
 3. Wetland areas which are regulated by the other agencies including the U.S. Army Corps of Engineers and the Division of State Lands, or are designated as significant wetland on the City of Tigard "Wetland and Stream Corridors Map";
 4. Steep slopes of 25% or greater and unstable ground; and
 5. Significant fish and wildlife habitat areas designated on the City of Tigard "Significant Habitat Areas Map." (Ord. 06-20, Ord. 05-01)

18.775.020 Applicability of Uses—Permitted, Prohibited, and Nonconforming

- A. CWS stormwater connection permit. All proposed development must obtain a stormwater connection permit from CWS pursuant to its design and construction standards. ~~As used in this chapter, the meaning of the word "development" shall be as defined in the CWS "Design and Construction Standards": All human induced changes to improved or unimproved real property, including:~~
- ~~1. Construction of structures requiring a building permit, if such structures are external to existing structures;~~
 - ~~2. Land division;~~
 - ~~3. Drilling;~~
 - ~~4. Site alterations resulting from surface mining or dredging;~~
 - ~~5. Grading;~~
 - ~~6. Construction of earthen berms;~~
 - ~~7. Paving;~~

- ~~8. Excavation; or~~
 - ~~9. Clearing when it results in the removal of trees or vegetation which would require a permit from the local jurisdiction or an Oregon Department of Forestry tree removal permit.~~
 - ~~10. The following activities are not included in the definition of development:
 - ~~a. Farming activities when conducted in accordance with accepted farming practices as defined in ORS 30.930 and under a Senate Bill 1010 water quality management plan;~~
 - ~~b. Construction, reconstruction, or modification of a single family residence on an existing lot of record within a subdivision that was approved by the city or county after September 9, 1995 (from ORS 92.040(2)); and~~
 - ~~c. Any development activity for which land use approvals have been issued pursuant to a land use application submitted to the city or county on or before February 4, 2000, and deemed complete on or before March 15, 2000.~~~~
- B. Outright permitted uses with no permit required. Except as provided below and by subsections D, F, and G of this section, the following uses are outright permitted uses within the ~~100-year floodplain~~, special flood hazard area drainageways, slopes that are 25% or greater, and unstable ground when the use does not involve paving. For the purposes of this chapter, the word “structure” shall exclude: children’s play equipment, picnic tables, sand boxes, grills, basketball hoops and similar recreational equipment.
1. Accessory uses such as lawns, gardens, or play areas; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
 2. Farm uses conducted without locating a structure within the sensitive land area; except in a water quality sensitive area or vegetative corridor, as defined in CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
 3. Community recreation uses, excluding structures; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
 4. Public and private conservation areas for water, soil, open space, forest, and wildlife resources.
 5. Removal of poison oak, tansy ragwort, blackberry, English ivy, or other noxious vegetation.
 6. Maintenance of floodway excluding re-channeling; except in a water quality sensitive area or vegetated corridor, as defined in the CWS “Design and Construction Standards” or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
 7. Fences; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW “Design and Construction Standards”; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

8. Accessory structures which are less than 120 square feet in size; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards"; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
 9. Land form alterations involving up to 10 cubic yards of material; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards"; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.
- C. Exemptions. When performed under the direction of the city, and in compliance with the provisions of the City of Tigard Standards and Specifications for Riparian Area Management, on file in the engineering division, the following shall be exempt from the provisions of this section:
1. Responses to public emergencies, including emergency repairs to public facilities;
 2. Stream and wetlands restoration and enhancement programs;
 3. Non-native vegetation removal;
 4. Planting of native plant species; and
 5. Routine maintenance or replacement of existing public facilities projects.
- D. Jurisdictional wetlands. Landform alterations or developments which are only within wetland areas that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers, Division of State Lands, CWS, and/or other federal, state, or regional agencies, and are not designated as significant wetlands on the City of Tigard "Wetland and Streams Corridors Map," do not require a sensitive lands permit. The city shall require that all necessary permits from other agencies are obtained. All other applicable city requirements must be satisfied, including sensitive land permits for areas within the ~~100-year floodplain~~ special flood hazard area, slopes of 25% or greater or unstable ground, drainageways, and wetlands which are not under state or federal jurisdiction.
- E. Administrative sensitive lands review.
1. Administrative sensitive lands permits in the ~~100-year floodplain~~ special flood hazard area, drainageway, slopes that are 25% or greater, and unstable ground shall be obtained from the appropriate community development division for the following:
 - a. The city engineer shall review the installation of public support facilities by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
 - b. The city engineer shall review minimal ground disturbance(s) or landform alterations involving 10 to 50 cubic yards of material, except in the floodway area, for land that is within public easements and rights-of-way by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
 - c. The director shall review minimal ground disturbance(s) or landform alterations involving 10 to 50 cubic yards of material, except in the floodway area by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;

- d. The director shall review the repair, reconstruction, or improvement of an existing structure or utility, the cost of which is less than 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction provided no development occurs in the floodway by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter;
 - e. The building official shall review building permits for accessory structures which are 120 to 528 square feet in size, except in the floodway area; and
 - f. The director shall review applications for paving on private property, except in the floodway area by means of a Type I procedure, as governed by Section 18.390.030 subject to compliance with all of the standards in this chapter.
2. The responsible community development division shall approve, approve with conditions, or deny an application for a development permit, as described above, based on the standards set forth in Sections 18.775.050, 18.775.070, and 18.775.080.

F. Sensitive lands permits issued by the director.

1. The director shall have the authority to issue a sensitive lands permit in the following areas by means of a Type II procedure, as governed in Section 18.390.040, using approval criteria contained in Section 18.775.070:
 - a. Drainageways;
 - b. Slopes that are 25% or greater or unstable ground; and
 - c. Wetland areas which are not regulated by other local, state, or federal agencies and are designated as significant wetlands on the City of Tigard "Wetland and Streams Corridors Map."
2. Sensitive lands permits shall be required for the areas in paragraph 1 of this subsection F when any of the following circumstances apply:
 - a. Ground disturbance(s) or land form alterations involving more than 50 cubic yards of material;
 - b. Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction;
 - c. Residential and nonresidential structures intended for human habitation; and
 - d. Accessory structures which are greater than 528 square feet in size, outside floodway areas.

G. Sensitive lands permits issued by the hearings officer.

1. The hearings officer shall have the authority to issue a sensitive lands permit in the special flood hazard area~~100-year floodplain~~ by means of a Type IIIA procedure, as governed by Section 18.390.050, using approval criteria contained in Section 18.775.070.

2. Sensitive lands permits shall be required in the ~~100-year floodplain~~ special flood hazard area when any of the following circumstances apply:
 - a. Ground disturbance(s) or landform alterations in all floodway areas;
 - b. Ground disturbance(s) or landform alterations in floodway fringe locations involving more than 50 cubic yards of material;
 - c. Repair, reconstruction, or improvement of an existing structure or utility, the cost of which equals or exceeds 50% of the market value of the structure prior to the improvement or the damage requiring reconstruction provided no development occurs in the floodway;
 - d. Structures intended for human habitation; and
 - e. Accessory structures which are greater than 528 square feet in size, outside of floodway areas.
- H. Other uses. Except as explicitly authorized by other provisions of this chapter, all other uses are prohibited on sensitive land areas.
- I. Nonconforming uses. A use established prior to the adoption of this title, which would be prohibited by this chapter or which would be subject to the limitations and controls imposed by this chapter, shall be considered a nonconforming use. Nonconforming uses shall be subject to the provisions of Chapter 18.760. (Ord. 09-13; Ord. 06-20)

18.775.030 Administrative Provisions

- A. Interagency coordination. The appropriate approval authority shall review all sensitive lands permit applications to determine that all necessary permits shall be obtained from those federal, state, or local governmental agencies from which prior approval is also required.

As governed by CWS "Design and Construction Standards," the necessary permits for all "development," as defined in Section 18.775.020.A, shall include a CWS service provider letter, which specifies the conditions and requirements necessary, if any, for an applicant to comply with CWS water quality protection standards and for the agency to issue a stormwater connection permit.

- B. Alteration or relocation of water course.
 1. The director shall notify communities adjacent to the affected area and the State Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
 2. The director shall require that maintenance is provided within the altered or relocated portion of a watercourse so that the flood-carrying capacity is not diminished.
- C. Apply standards. The appropriate approval authority shall apply the standards set forth in Sections 18.775.040 and 18.775.070 when reviewing an application for a sensitive lands permit.
- D. Elevation and floodproofing certification. The appropriate approval authority shall require that the elevations and floodproofing certification required in subsection E of this section be provided prior to permit issuance and verification upon occupancy and final approval.
- E. Maintenance of records.

1. Where base flood elevation data is provided through the flood insurance study, the building official shall obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;
2. For all new or substantially improved floodproofed structures, the building official shall:
 - a. Verify and record the actual elevation (in relation to mean sea level); and
 - b. Maintain the floodproofing certifications required in this chapter.
3. The director shall maintain for public inspection all other records pertaining to the provisions in this chapter.

18.775.040 General Provisions for ~~Floodplain~~ Special Flood Hazard Areas

- A. Permit review. The appropriate approval authority shall review all permit applications to determine whether proposed building sites will minimize the potential for flood damage.
- B. Special flood hazard. The areas of special flood hazard identified by ~~the Federal Insurance Administration~~ FEMA in a scientific and engineering report entitled “The Flood Insurance Study of the City for Washington County, Oregon and Incorporated Areas of Tigard,” ~~effective February 18, 2005~~ dated effective November 4, 2016” with accompanying ~~flood insurance rate maps~~ Map effective February 18, 2005, is hereby adopted by reference and declared to be a part of this ~~chapter~~ ordinance. ~~This flood insurance study is on file at the Tigard Civic Center.~~
- C. Base flood elevation data. When base flood elevation data has not been provided in accordance with subsection B of this section, the director shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer subsections M and N of this section.
- D. Test of reasonableness. Where elevation data is not available either through the flood insurance study or from another authoritative source, applications for building permits shall be reviewed to assure that the potential for flood damage to the proposed construction will be minimized. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these sensitive land areas may result in higher insurance rates.
- E. Resistant to flood damage. All new construction and substantial improvements, including manufactured homes, shall be constructed with materials and utility equipment resistant to flood damage.
- F. Minimize flood damage. All new construction and substantial improvements, including manufactured homes, shall be constructed using methods and practices that minimize flood damage.
- G. Equipment protection. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- H. Water supply systems. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwater into the system.

- I. Anchoring. All new construction, all manufactured homes and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- J. Sanitary sewerage systems. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwater into the systems and discharge from the systems into floodwater.
- K. On-site water disposal systems. On-site water disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- L. Residential construction.
1. New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including the basement, elevated at least one foot above base flood elevation;
 2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - b. The bottom of all openings shall be no higher than one foot above grade; and
 - c. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of flood waters.
 3. Manufactured homes shall be securely anchored to an adequately anchored permanent foundation system. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- M. Nonresidential construction. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation, or together with attendant utility and sanitary facilities, shall:
1. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the building official as set forth in 18.775.030.E.2; and

4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in paragraph L.2 of this section. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).
- N. Subdivisions and partitions in 100-year floodplainspecial flood hazard areas. Subdivisions and partitions in the ~~100-year floodplains~~special flood hazard area shall meet the following criteria:
1. The design shall minimize the potential for flood damage;
 2. Public utilities and facilities such as sewer, gas, electrical, and water systems shall be located and constructed so as to minimize flood damage;
 3. Adequate drainage shall be provided to reduce exposure to flood damage; and
 4. For subdivisions or partitions which contain more than 50 lots or five acres and where base flood elevation data is not available from the Federal Emergency Management Agency (FEMA) or another authoritative source, the applicant shall generate base flood elevation data to be reviewed as part of the application.
- O. Recreational vehicles. Recreational vehicles placed on sites within Zones A1-A30, AH, and AE on the community's flood insurance rate map either:
1. Are on the site for fewer than 180 consecutive days;
 2. Are fully licensed and ready for highway use:
 - a. Are on wheels or jacking system,
 - b. Are attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions, or
 - c. Meet the requirements of subsections E, F, I, and L of this section and the elevation and anchoring requirements for manufactured homes. (Ord. 05-01)
- P. Construction of new critical facilities shall be, to the extent possible, located outside of the limits of the special flood hazard area. Construction of new critical facilities shall be permissible within the special flood hazard area if no feasible alternative site is available. Critical facilities constructed within the special flood hazard area shall have the lowest floor elevated three feet above base flood elevation or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.**
- O. Severability. If any section, clause, sentence, or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.**
- R. Definitions. The following definitions are only applicable to this section:**

1. DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
2. FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
3. FLOOD INSURANCE STUDY (FIS) means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.
4. LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.
5. MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured" home does not include a "recreational vehicle".
6. NEW CONSTRUCTION means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
7. RECREATIONAL VEHICLE means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
8. START OF CONSTRUCTION includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure, whether or not that alteration affects the external dimensions of the building.

9. **STRUCTURE** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
10. **SUBSTANTIAL DAMAGE** means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
11. **VIOLATION** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
- S. Disclaimer of Liability.** This section provides a reasonable degree of flood protection but does not imply total flood protection.
- T. Greater Restriction.** This section shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this section imposes a greater restriction, the provisions of this section shall control.

18.775.050 General Provisions for Wetlands

- A. **Code compliance requirements.** Wetland regulations apply to those areas classified as significant on the City of Tigard "Wetland and Streams Corridors Map," and to a vegetated corridor ranging from 25 to 200 feet wide, measured horizontally, from the defined boundaries of the wetland, per "Table 3.1, Vegetated Corridor Widths," and "Appendix C, Natural Resource Assessments," of the CWS "Design and Construction Standards." Wetland locations may include but are not limited to those areas identified as wetlands in "Wetland Inventory and Assessment for the City of Tigard, Oregon," Fishman Environmental Services, 1994.
- B. **Delineation of wetland boundaries.** Precise boundaries may vary from those shown on wetland maps; specific delineation of wetland boundaries may be necessary. Wetland delineation will be done by qualified professionals at the applicant's expense.

18.775.060 Expiration of Approval—Standards for Extension of Time

- A. **Voiding of permit.** Approval of a sensitive lands permit shall be void if:
1. Substantial construction of the approved plan has not begun within a one-and-one-half year period;
or
 2. Construction on the site is a departure from the approved plan.
- B. **Granting of extension.** The director shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one year, provided that:
1. No changes are made on the original plan as approved by the approval authority;

2. The applicant can show intent of initiating construction of the site within the one year extension period; and
 3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.
- C. Notice of the decision. Notice of the decision shall be provided to the applicant. The director's decision may be appealed by the applicant as provided by 18.390.040.G and H.

18.775.070 Sensitive Land Permits

- A. Permits required. An applicant, who wishes to develop within a sensitive area, as defined in Chapter 18.775, must obtain a permit in certain situations. Depending on the nature and intensity of the proposed activity within a sensitive area, either a Type II or Type III permit is required, as delineated in 18.775.020.F and G. The approval criteria for various kinds of sensitive areas, e.g., special flood hazard area~~floodplain~~, are presented in subsections B through E of this section.
- B. Within the 100-year floodplain~~special flood hazard area~~. The hearings officer shall approve, approve with conditions or deny an application request within the 100-year floodplain~~special flood hazard area~~ based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
 2. Land form alterations shall preserve or enhance the special flood hazard area ~~floodplain~~ storage function and maintenance of the zero-foot rise floodway shall not result in any encroachments, including fill, new construction, substantial improvements and other development unless certified by a registered professional engineer that the encroachment will not result in any increase in flood levels during the base flood discharge;
 3. Land form alterations or developments within the 100-year floodplain ~~special flood hazard area~~ shall be allowed only in areas designated as commercial or industrial on the comprehensive plan land use map, except that alterations or developments associated with community recreation uses, utilities, or public support facilities as defined in Chapter 18.120 of the community development code shall be allowed in areas designated residential subject to applicable zoning standards;
 4. Where a land form alteration or development is permitted to occur within the special flood hazard area ~~floodplain~~ it will not result in any increase in the water surface elevation of the 100-year flood;
 5. The land form alteration or development plan includes a pedestrian/bicycle pathway in accordance with the adopted pedestrian/bicycle pathway plan, unless the construction of said pathway is deemed by the hearings officer as untimely;
 6. Pedestrian/bicycle pathway projects within the special flood hazard area ~~floodplain~~ shall include a wildlife habitat assessment that shows the proposed alignment minimizes impacts to significant wildlife habitat while balancing the community's recreation and environmental educational goals;
 7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS permits and approvals shall be obtained; and
 8. Where land form alterations and/or development are allowed within and adjacent to the special flood hazard area ~~100-year floodplain~~, the city shall require the consideration of dedication of

sufficient open land area within and adjacent to the ~~special flood hazard area~~ floodplain in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the ~~special flood hazard area~~ floodplain in accordance with the adopted pedestrian/bicycle pathway plan.

- C. With steep slopes. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit on slopes of 25% or greater or unstable ground based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
 2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
 3. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
 4. The structures are appropriately sited and designed to ensure structural stability and proper drainage of foundation and crawl space areas for development with any of the following soil conditions: wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock; and
 5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening.
- D. Within drainageways. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
 2. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
 3. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
 4. The water flow capacity of the drainageway is not decreased;
 5. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;
 6. The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;
 7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;

8. Where land form alterations and/or development are allowed within and adjacent to the special flood hazard area~~100-year floodplain~~, the city shall require the consideration of dedication of sufficient open land area within and adjacent to the special flood hazard area~~floodplain~~ in accordance with the comprehensive plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the special flood hazard area~~floodplain~~ in accordance with the adopted pedestrian bicycle pathway plan.
- E. Within wetlands. The director shall approve, approve with conditions or deny an application request for a sensitive lands permit within wetlands based upon findings that all of the following criteria have been satisfied:
1. Compliance with all of the applicable requirements of this title;
 2. The proposed land form alteration or development is neither on wetland in an area designated as significant wetland on the comprehensive plan special flood hazard area~~floodplain~~ and wetland map nor is within the vegetative corridor established per "Table 3.1 Vegetative Corridor Widths" and "Appendix C: Natural Resources Assessments" of the CWS "Design and Construction Standards," for such a wetland;
 3. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than the minimum required for the use;
 4. Any encroachment or change in on-site or off-site drainage which would adversely impact wetland characteristics have been mitigated;
 5. Where natural vegetation has been removed due to land form alteration or development, erosion control provisions of the Surface Water Management program of Washington County must be met and areas not covered by structures or impervious surfaces will be replanted in like or similar species in accordance with Chapter 18.745, Landscaping and Screening;
 6. All other sensitive lands requirements of this chapter have been met;
 7. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;
 8. The provisions of Chapter 18.790, Tree Removal, shall be met;
 9. Physical limitations and natural hazards, special flood hazard area~~floodplains~~ and wetlands, natural areas, and parks, recreation and open space policies of the comprehensive plan have been satisfied. (Ord. 12-09 §1; Ord. 09-11)

18.775.080 Application Submission Requirements

All applications for uses and activities identified in 18.775.020.A through G shall be made on forms provided by the director and must include the following information in graphic, tabular and/or narrative form. The specific information on each of the following is available from the director:

- A. A CWS stormwater connection permit;
- B. A site plan;

- C. A grading plan;
- D. An urban forestry plan per Chapter 18.790 (for 18.775.020.F and G); and
- E. A landscaping plan. (Ord. 12-09 §1)

18.775.090 Special Provisions for Development within Locally Significant Wetlands and Along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek

- A. In order to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule (OAR 666-023-0030) pertaining to wetlands, all wetlands classified as significant on the City of Tigard “Wetlands and Streams Corridors Map” are protected. No land form alterations or developments are allowed within or partially within a significant wetland, except as allowed/approved pursuant to Section 18.775.130.
- B. In order to address the requirements of Statewide Planning Goal 5 (Natural Resources) and the safe harbor provisions of the Goal 5 administrative rule (OAR 660-023-0030) pertaining to riparian corridors, a standard setback distance or vegetated corridor area, measured horizontally from and parallel to the top of the bank, is established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek.
 - 1. The standard width for “good condition” vegetated corridors along the Tualatin River is 75 feet, unless wider in accordance with CWS “Design and Construction Standards,” or modified in accordance with Section 18.775.130. If all or part of a locally significant wetland (a wetland identified as significant on the City of Tigard “Wetlands and Streams Corridors Map”) is located within the 75-foot setback area, the vegetated corridor is measured from the upland edge of the associated wetland.
 - 2. The standard width for “good condition” vegetated corridors along Fanno Creek, Ball Creek, and the South Fork of Ash Creek is 50 feet, unless wider in accordance with CWS “Design and Construction Standards”, or modified in accordance with Section 18.775.130. If all or part of a locally significant wetland (a wetland identified as significant on the City of Tigard “Wetlands and Streams Corridors Map”) is located within the 50-foot setback area, the vegetated corridor is measured from the upland edge of the associated wetland.
 - 3. The minimum width for “marginal or degraded condition” vegetated corridors along the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek is 50% of the standard width, unless wider in accordance with CWS “Design and Construction Standards,” or modified in accordance with Section 18.775.130.
 - 4. The determination of corridor condition shall be based on the natural resource assessment guidelines contained in the CWS “Design and Construction Standards.”
 - 5. The standard setback distance or vegetated corridor area applies to all development proposed on property located within or partially within the vegetated corridors, except as allowed below:
 - a. Roads, pedestrian or bike paths crossing the vegetated corridor from one side to the other in order to provide access to the sensitive area or across the sensitive area, as approved by the city per Section 18.775.070 and by CWS “Design and Construction Standards”;
 - b. Utility/service provider infrastructure construction (i.e. storm, sanitary sewer, water, phone, gas, cable, etc.), if approved by the city and CWS;

- c. A pedestrian or bike path, not exceeding 10 feet in width and meeting the CWS “Design and Construction Standards”;
 - d. Grading for the purpose of enhancing the vegetated corridor, as approved by the city and CWS;
 - e. Measures to remove or abate hazards, nuisances, or fire and life safety violations, as approved by the regulating jurisdiction;
 - f. Enhancement of the vegetated corridor for water quality or quantity benefits, fish, or wildlife habitat, as approved by the city and CWS;
 - g. Measures to repair, maintain, alter, remove, add to, or replace existing structures, roadways, driveways, utilities, accessory uses, or other developments provided they are consistent with city and CWS regulations, and do not encroach further into the vegetated corridor or sensitive area than allowed by the CWS “Design and Construction Standards.”
6. Land form alterations or developments located within or partially within the Goal 5 safeharbor setback or vegetated corridor areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash Creek that meet the jurisdictional requirements and permit criteria of the CWS, U.S. Army Corps of Engineers, Division of State Lands, and/or other federal, state, or regional agencies, are not subject to the provisions of this subsection B, except where the:
- a. Land form alterations or developments are located within or partially within a good condition vegetated corridor, as defined in paragraphs 1 and 2 of this subsection B;
 - b. Land form alterations or developments are located within or partially within the minimum width area established for marginal or a degraded condition vegetated corridor, as defined in paragraph 3 of this subsection B.

These exceptions reflect instances of the greater protection of riparian corridors provided by the safe harbor provisions of the Goal 5 administrative rule.

18.775.100 Adjustments to Underlying Zone Standards

Adjustments to dimensional standards of the underlying zone district may be approved by the Planning Director when necessary to further the purpose of this section.

- A. Adjustment option. The planning director may approve up to 50% adjustment to any dimensional standard (e.g., setback height or lot area) of the underlying zone district to allow development consistent with the purposes of this section. The purpose of the adjustment process is to reduce adverse impacts on wetlands, stream corridors, fish and wildlife habitat, water quality and the potential for slope of flood hazards.
- B. Adjustment criteria. A special adjustment to the standards in the underlying zoning district may be requested under Type II procedure when development is proposed within or adjacent to the vegetated corridor area or within or adjacent to areas designated as “strictly limit” or “moderately limit” on the City of Tigard “Significant Habitat Areas Map.” Verification of significant habitat boundaries shall be done in accordance with the procedures described in Section 18.775.140. In order for the director to approve a dimensional adjustment to standards in the underlying zoning district, the applicant shall demonstrate that all the following criteria are fully satisfied:

1. The adjustment is the minimum necessary to allow a permitted use, while at the same time minimizing disturbance to a water resource, riparian setback area or water quality buffer;
 2. Explicit consideration has been given to maximizing vegetative cover, minimizing excavation and minimizing impervious surface area on buildable land;
 3. Design options have been considered to reduce the impacts of development, including but not limited to multi-story construction, siting of the residence close to the street to reduce driveway distance, maximizing the use of native landscaping materials, minimizing parking areas, minimizing hydrologic impacts and garage space;
 4. In no case shall the impervious surface area as a single-family residence (including the building footprint, driveway and parking areas, accessory structures, swimming pools and patios) exceed 3,000 square feet of a vegetated corridor area;
 5. Assurances are in place to guarantee that future development will not encroach further on land under the same ownership within the vegetated corridor area;
 6. Protected vegetated corridor, significant habitat areas and adjacent buffer areas must be:
 - a. Placed in a non-buildable tract or protected with a restrictive easement;
 - b. Restoration and enhancement of habitat and buffer areas required, including monitoring for five years.
- C. Reduction to minimum density requirements for developments that include inventoried significant habitat areas. The minimum number of units required by Section 18.510.040 (Density Calculation) may be waived if necessary to ensure that impacts on habitat areas are minimized.
1. Approval criteria. Reduction requests will be approved if the review body finds that the applicant has shown that the following criteria are met:
 - a. An area of the property lot or parcel to be developed has been identified on the "Significant Habitat Areas Map." Verification of significant habitat boundaries shall be done in accordance with the procedures described in Section 18.775.140.
 - b. The proposal will be consistent with the character of the neighboring area.
 - c. This provision may only be applied to properties that were inside the Metro Urban Growth Boundary (UGB) on January 1, 2002.
 - d. The proposal will directly result in the protection of significant habitat areas through placement in a non-buildable tract or protected with a restrictive easement.
 2. Procedure.
 - a. The amount of reduction in the minimum density shall be calculated by subtracting the number of square feet of inventoried significant habitat that is permanently protected from the total number of square feet used to calculate the minimum density requirement.

- b. Requests for a reduction are processed as Type II procedure along with the development proposal for which the application has been filed.

The planning director may impose any reasonable condition necessary to mitigate identified impacts resulting from development on otherwise unbuildable land. (Ord. 06-20)

18.775.110 Density Transfer

Density may be transferred from vegetated corridor areas as provided in Sections 18.715.020 through 18.715.030.

18.775.120 Variances to Section 18.775.090 Standards

Variances to the use provisions of Section 18.775.090 are not permitted. Variances from measurable (dimensional) provisions of this section shall be discouraged and may be considered only as a last resort.

- A. Type II variance option. The hearings officer shall hear and decide variances from dimensional provisions of this chapter under Type III procedure, in accordance with the criteria in Chapter 18.370 of the zoning ordinance.
- B. Additional criteria. In addition to the general variance criteria described in Chapter 18.370, all the following additional criteria must be met to grant a variance to any dimensional provision of this chapter:
 1. The variance is necessary to allow reasonable economic use of the subject parcel of land, which is owned by the applicant, and which was not created after the effective date of this chapter;
 2. Strict application of the provisions of this chapter would otherwise result in the loss of a buildable site for a use that is permitted outright in the underlying zoning district, and for which the applicant has submitted a formal application;
 3. The applicant has exhausted all options available under this chapter to relieve the hardship;
 4. Based on review of all required studies identical to those described in Section 3.02.5.c Tier 2 Alternatives Analysis of the CWS "Design and Construction Standards," the variance is the minimum necessary to afford relief, considering the potential for increased flood and erosion hazard, and potential adverse impacts on native vegetation, fish and wildlife habitat, and water quality;
 5. Based on review of all required studies identical to those described in Section 3.02.5 of the CWS "Design and Construction Standards," no significant adverse impacts on water quality, erosion or slope stability will result from approval of this hardship variance, or these impacts have been mitigated to the greatest extent possible;
 6. Loss of vegetative cover shall be minimized. Any lost vegetative cover shall be replaced on-site, on a square foot for square foot basis, by native vegetation.

18.775.130 Plan Amendment Option

Any owner of property affected by the Goal 5 safeharbor (1) protection of significant wetlands and/or (2) vegetated areas established for the Tualatin River, Fanno Creek, Ball Creek, and the South Fork of Ash

Creek may apply for a quasi-judicial comprehensive plan amendment under Type IV procedure. This amendment must be based on a specific development proposal. The effect of the amendment would be to remove Goal 5 protection from the property, but not to remove the requirements related to the CWS Stormwater Connection Permit, which must be addressed separately through an alternatives analysis, as described in Section 3.02.5 of the CWS "Design and Construction Standards." The applicant shall demonstrate that such an amendment is justified by either of the following:

- A. ESEE analysis. The applicant may prepare an environmental, social, economic and energy (ESEE) consequences analysis prepared in accordance with OAR 660-23-040.
 1. The analysis shall consider the ESEE consequences of allowing the proposed conflicting use, considering both the impacts on the specific resource site and the comparison with other comparable sites within the Tigard Planning Area;
 2. The ESEE analysis must demonstrate to the satisfaction of the Tigard City Council that the adverse economic consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource;
 3. In particular, ESEE analysis must demonstrate why the use cannot be located on buildable land, consistent with the provisions of this chapter, and that there are no other sites within the Tigard Planning Area that can meet the specific needs of the proposed use;
 4. The ESEE analysis shall be prepared by a team consisting of a wildlife biologist or wetlands ecologist and a land use planner or land use attorney, all of whom are qualified in their respective fields and experienced in the preparation of Goal 5 ESEE analysis;
 5. If the application is approved, then the ESEE analysis shall be incorporated by reference into the Tigard Comprehensive Plan, and the "Tigard Wetland and Stream Corridor Map" shall be amended to remove the site from the inventory.
- B. Determination of "insignificance." In this case, the applicant must demonstrate that the sensitive area site(s) no longer meet(s) the applicable significance threshold defined by the Goal 5 administrative rule, relative to other comparable resources within the Tigard Planning Area.
 1. Significance thresholds are described and applied in the addendum to the City of Tigard Local Wetlands Inventory adopted by reference as part of this chapter.
 2. In considering this claim, the city council shall determine that the decline in identified resource values did not result from a violation of this chapter or any other provision of the Tigard Community Development Code.

18.775.140 Significant Habitat Areas Map Verification Procedures

The significant habitat areas map shall be the basis for determining the general location of significant habitat areas on or adjacent to the site.

- A. Applicants who concur that the significant habitat areas map is accurate shall submit the following information to serve as the basis for verifying the boundaries of inventoried habitat areas:
 1. Submission requirements.

- a. A detailed property description;
 - b. A scale map of the property showing the locations of significant habitat areas, any existing built area, wetlands or water bodies, Clean Water Services' vegetated corridor, the special flood hazard area~~100-year floodplain~~, the 1996 flood inundation line, and contour lines (two-foot intervals for slope less than 15% and 10-foot intervals for slopes 15% or greater); and
 - c. A current aerial photograph of the property.
2. Decision process. The planning director's decision shall be based on consideration of submitted information, site visit information, and other factual information. Should the applicant disagree with the planning director's determination on the location of significant habitat areas on the property, the precise boundaries shall be verified by the applicant in accordance with the detailed delineation methodology outlined in subsection B of this section.
- B. Applicants who believe that the map is inaccurate shall submit a detailed delineation conducted by a qualified professional in accordance with the following methodology to verify the precise boundaries of the inventoried habitat areas by means of a Type II procedure.
1. Verifying boundaries of inventoried riparian habitat. Locating habitat and determining its riparian habitat class is a four-step process:
 - a. Locate the water feature that is the basis for identifying riparian habitat.
 - i. Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.
 - ii. Locate the special flood hazard area~~100-year floodplain~~ or 1996 flood inundation line, whichever is greater, within 100 feet of the property.
 - iii. Locate all wetlands within 150 feet of the property. Identified wetlands on the property shall be further delineated consistent with methods currently accepted by the Oregon Division of State Lands and the U.S. Army Corps of Engineers.
 - b. Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.
 - i. Vegetative cover status shall be as identified on the metro vegetative cover map.
 - ii. The vegetative cover status of a property may be adjusted only if (a) the property was developed prior to the time the regional program was approved; or (b) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the following definition of vegetative cover types in Table 18.775.1.

Table 18.775.1
Definitions of Vegetative Cover Types

Type	Definition
Low structure vegetation or open soils	Areas that are part of a contiguous area one acre or larger of grass, meadow, croplands, or areas of open soils located within 300 feet of a

	surface stream (low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, croplands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger).
Woody vegetation	Areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.
Forest canopy	Areas that are part of a contiguous grove of trees one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature.

- c. Determine whether the degree that the land slope upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% (using the vegetated corridor measurement methodology as described in Clean Water Services Design and Construction Standards); and
- d. Identify the riparian habitat classes applicable to all areas on the property using Table 18.775.2 and Table 18.775.3.

Table 18.775.2
Method for Locating Boundaries of Class I and II Riparian Areas

Distance in feet from water feature	Development/Vegetation Status ¹			
	Developed areas not providing vegetative cover	Low structure vegetation or open soils	Woody vegetation (shrub and scattered forest canopy)	Forest canopy (closed to open forest canopy)
Surface streams				
0-50	Class II	Class I	Class I	Class I
50-100		Class II ²	Class I	Class I
100-150		Class II ² if slope > 25%	Class II ² if slope > 25%	Class II ²
150-200		Class II ² if slope > 25%	Class II ² if slope > 25%	Class II ² if slope > 25%
Wetlands (Wetland feature itself is a Class I Riparian Area)				
0-100		Class II ²	Class I	Class I
100-150				Class II ²
Flood Areas (Undeveloped portion of flood area is a Class I Riparian Area)				
0-100			Class II ²	Class II ²

¹ The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged. As an example of how the categories were assigned, in order to qualify as a "forest canopy" the forested area had to be part of a larger patch of forest land at least one acre in size.

² Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

Table 18.775.3
Tualatin Basin "Limit" Decision

Conflicting Use Category

Resource Category	High Intensity Urban	Other Urban	Future Urban (2002 and 2004 additions)	Non-Urban (outside UGB)
Class I & II Riparian Inside Vegetated Corridor	Moderately Limit	Strictly Limit	Strictly Limit	N/A
Class I & II Riparian Outside Vegetated Corridor	Moderately Limit	Moderately Limit	Moderately Limit	Moderately Limit
All other Resource Areas	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit
Inner Impact Area	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit
Outer Impact Area	Lightly Limit	Lightly Limit	Lightly Limit	Lightly Limit

* Vegetated corridor standards are applied consistently throughout the District; in HIU areas they supersede the “limit” decision.

2. Verifying boundaries of inventoried upland habitat was identified based on the existence of contiguous patches of forest canopy, with limited canopy openings. The “forest canopy” designation is made based on analysis of aerial photographs as part of determining the vegetative cover status of land within the region. Upland habitat shall be as identified on the Significant Habitat Areas Map unless corrected as provided in this subsection.
 - a. Except as provided below, vegetative cover status shall be as identified on the Metro Vegetative Cover Map used to inventory habitat (available from the Metro Data Resource Center, 600 N.E. Grand Ave., Portland, OR 97232).
 - b. The only allowed corrections to the vegetative cover status of a property area as follows:
 - i. To correct errors made when the vegetative status of an area was determined based on analysis of the aerial photographs used to inventory the habitat. The perimeter of an area delineated as “forest canopy” on the Metro Vegetative Cover Map may be adjusted to more precisely indicate the dripline of the trees within the canopied area provided that no areas providing greater than 60% canopy crown closure are de-classified from the “forest canopy” designation. To assert such errors, applicants shall submit an analysis of the vegetative habitat cover on their property using the aerial photographs that were used to inventory the habitat and the definitions of the different vegetative cover types provided in Table 18.775.1; and
 - ii. To remove tree orchards and Christmas tree farms from inventoried habitat; provided, however, that Christmas tree farms where the trees were planted prior to 1975 and have not been harvested for sale as Christmas trees shall not be removed from the habitat inventory.
 - c. If the vegetative cover status of any area identified as upland habitat is corrected pursuant to subparagraph A.2.b.i of this section to change the status of an area originally identified as “forest canopy,” then such area shall not be considered upland habitat unless it remains part of a forest canopy opening less than one acre in area completely surrounded by an area of contiguous forest canopy. (Ord. 06-20) ■

DCA2016-00002
REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE
DEVELOPMENT CODE AMENDMENT

Explanation of Formatting

These text amendments employ the following formatting:

~~Strikethrough~~ - Text to be deleted

[Bold, Underline and Italic] - Text to be added

Chapter 18.735
MARIJUANA FACILITIES

Sections:

- 18.735.010 Purpose**
- 18.735.020 Applicability**
- 18.735.030 Compliance and Enforcement**
- 18.735.040 Development Standards**

18.735.010 Purpose

The purpose of this chapter is to:

- A. Protect the general health, safety, property, and welfare of the public;
- B. Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby properties that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
- C. Prevent or reduce criminal activity that may result in harm to persons or property;
- D. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
- E. Minimize impacts to the city's public safety services by reducing calls for service. (Ord. 15-07 §3)

18.735.020 Applicability

- A. Relationship to other standards. The regulations within this chapter are in addition to base zone standards. Sites with overlay zones, plan districts, inventoried hazards, and/or sensitive lands are subject to additional regulations. Specific uses or development types may also be subject to regulations set forth elsewhere in this title.
- B. When provisions apply. The provisions of this chapter shall apply to all marijuana facilities requiring a state license or registration. (Ord. 15-07 §3)

18.735.030 Compliance and Enforcement

- A. Procedure. All marijuana facilities requiring a state license or registration, and public places of assembly where marijuana is consumed, shall demonstrate minimal compliance with these standards through a Type I procedure as set forth in Section 18.390.030 of this title, using approval criteria set forth in subsection B of this section.
- B. Approval criteria. Development subject to the provisions of this chapter shall demonstrate compliance with all standards set forth in Section 18.735.040 of this chapter.
- C. Documentation. The following provisions shall apply at the time of minimum compliance review or a request for enforcement:
 - 1. When processing a minimum compliance review, the city may accept an evaluation and explanation certified by a registered engineer or architect, as appropriate, that the proposed development will meet the off-site odor impact standard. The evaluation and explanation shall provide a description of the use or activity, equipment, processes and the mechanisms, or equipment used to avoid or mitigate off-site impacts.
 - 2. If the city does not have the equipment or expertise to measure and evaluate a specific complaint regarding off-site impacts, it may request assistance from another agency or may contract with an independent expert to perform the necessary measurements. The city may accept measurements made by an independent expert hired by the controller or operator of the off-site impact source. (Ord. 15-07 §3)

18.735.040 Development Standards

Development subject to the provisions of this chapter shall demonstrate compliance with all of the following standards:

- A. The proposed development complies with all applicable state requirements.
- B. The proposed use is allowed in the underlying zone and complies with all applicable requirements of this title.
- C. The proposed development meets all of the following site location restrictions. All distances shall be measured at the closest property lines between the proposed site and nearest lot or parcel containing the specified use or characteristic.
 - 1. Marijuana facilities are prohibited within the MU-CBD zone.
 - 2. The proposed development is not within 1,000 feet of a public or private elementary school, secondary school, or career school attended primarily by minors.
 - 3. Sale-oriented retail and wholesale sales uses open to the public shall be subject to the following restrictions:
 - a. Must be located on a lots or parcel with frontage along Pacific Highway (Oregon Route 99W);
 - b. Shall not be located within ~~2,000~~1,000 feet of another state-licensed retail or wholesale marijuana facility within or outside of city limits; and

- c. Shall not be located within 500 feet of a public library or Tigard parks and recreation zone.
4. Non-retail uses and wholesale sales uses not open to the public shall not be located within 500 feet of one or more of the following zones or facilities:
 - a. Residential zone;
 - b. Parks and recreation zone;
 - c. Public library.
- D. Hours of commercial operation shall be limited to the hours between 10:00 am and 8:00 pm. General industrial uses with no on-site retail activity are exempt from this restriction.
- E. Primary entrances shall be clearly visible from Pacific Highway (Oregon Route 99W).
- F. The proposed development shall be located inside a permanent building and may not be located within a trailer, shipping container, cargo container, tent, or motor vehicle. Outdoor storage of merchandise, plants, or other materials is not allowed.
- G. Parking lots, primary entrances, and exterior walkways shall be illuminated with downward facing security lighting to provide after-dark visibility to employees and patrons. Fixtures shall be located so that light patterns overlap at a height of seven feet with a minimum illumination level of 1.0 footcandles at the darkest spot on the ground surface.
- H. Drive-through marijuana facilities are prohibited.
- I. The proposed development shall confine all marijuana odors and other objectionable odors to levels undetectable at the property line.
- J. Marijuana or marijuana product shall not be visible from the exterior of the building or structure. (Ord. 15-07 §3) ■

Dr. Gene & Vivian Davis
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August 15th, 2016

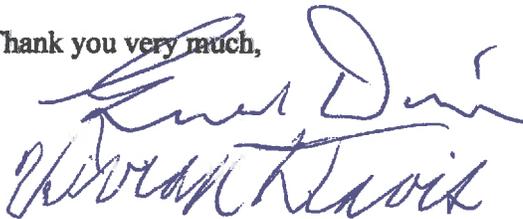
Dear Planning Commission and City Council:

In 1986 the city of Tigard put in a 16" water main paralleling the Southern Pacific Railroad at SW North Dakota just 135 feet from where Ash Creek flows into Fanno Creek (see red line on map for water main and yellow line for creeks). This was done without any engineering as your city files clearly reveal. Since that time, Ash Creek has silted in and deposited 30" or so of sediment. This sediment is pretty much from the water main to Oak Street but is most evident in the two, 12' wide by 9' high box culverts under Hwy 217 next to our property. This is about a half of a mile upstream.

City manager, Marty Wine, on October 23rd, 2014, gave me written permission to lower that 16" water main at my expense. I am willing to do it if ever I can sell enough property to get enough money to make it happen. This water main is causing flooding upstream and impacting the FEMA floodplain water levels on our property (see blue area on map).

Please do not change and increase the FEMA floodplain model until this problem is solved. The flooding and increased high water is being caused by the improper installation of the 16" city water main and will be alleviated when that issue is solved. To take away land value from upstream owners, in this case myself, is not fair and is not necessary. Please do not adopt the updated FEMA Firm Map without considering correcting the map when the water main is lowered.

Thank you very much,

A handwritten signature in blue ink, appearing to read "Gene & Vivian Davis", written over a printed name.

Dr. Gene and Vivian Davis

**CITY OF TIGARD
PLANNING COMMISSION
Meeting Minutes
August 15, 2016**

CALL TO ORDER

President Fitzgerald called the meeting to order at 7:00 p.m. The meeting was held in the Tigard Civic Center, Town Hall, at 13125 SW Hall Blvd.

ROLL CALL

Present: President Fitzgerald
Commissioner Jelinek
Commissioner Lieuallen
Commissioner McDowell
Commissioner Middaugh
Alt. Commissioner Mooney
Commissioner Muldoon
Commissioner Schmidt

Absent: Vice President Feeney; Alt. Commissioner Enloe; Commissioner Hu

Staff Present: Tom McGuire, Assistant Community Development Director; Agnes Kowacz, Associate Planner; -Joe Patton, Sr. Admin. Specialist

COMMUNICATIONS – President Fitzgerald reported she attended the Tigard Triangle CAC meeting and they are continuing to work ahead.

CONSIDER MINUTES

July 18, 2016 Meeting Minutes: President Fitzgerald asked if there were any additions, deletions, or corrections to the July 18 minutes; there being none, Fitzgerald declared the minutes approved as submitted.

OPEN PUBLIC HEARING

President Fitzgerald opened the public hearing.

**REQUIRED REGULATORY CHANGES AND FEMA FIRM MAP UPDATE
DEVELOPMENT CODE AMENDMENT (DCA) 2016-00002)**

REQUEST: The City of Tigard proposes legislative amendments to the Tigard Development Code (TDC). The proposed amendments include: (1) Adopt updated Flood Insurance Maps; and (2) Update floodplain regulations (Chapter 18.775 Sensitive Lands) relating to critical facilities and add a severability clause; and (3) Change marijuana facilities (Chapter 18.735) spacing requirements between facilities from 2,000 feet to 1,000 feet. **LOCATION:** Citywide. **APPLICABLE REVIEW CRITERIA:** Statewide Planning Goals 1 (Citizen Involvement), 2

(Land Use Planning), 7(Areas subject to Natural Disasters and Hazards), and 9 (Economic Development); ORS 475B (Cannabis Regulation); METRO's Urban Growth Management Functional Plan Titles 3, and 8; Comprehensive Plan Goals 1.1.2, 2.1.2, 2.1.3, 2.1.6, 2.1.11, 2.1.21, 2.1.23, 7.1.7, 7.1.8, 7.1.9, 9.1.3, and 9.1.12; and Tigard Development Code Chapters 18.380 and 18.390.

STAFF REPORT

Agnes Kowacz, City of Tigard Associate Planner, gave the staff report (staff reports are available to the public online one week before public hearings). She gave a brief overview of the required regulatory changes and FEMA FIRM map updates. The National Flood Insurance Program (NFIP) was established in 1968. Jurisdictions have six months to adopt the FIRM maps and corresponding Flood Insurance Study (FIS) in order to participate, or have its citizens eligible to participate, in the discounted NFIP. FEMA periodically updates the floodplain maps and amends the NFIP. A Community Assistance Visit (CAV) occurred in September 2014 and identified that Tigard's Code lacked Critical Facilities regulations and a severability clause. In order for Tigard to continue its participation in the NFIP it must adopt, by November 4, 2016, the updated FIRM and corresponding FIS, regulations specified by the CAV, and additional items identified in the FEMA email (Exhibit A). The draft Tigard Development Code (TDC – Exhibit B) shows the proposed changes which she briefly described. Also distributed prior to the start of the meeting is a letter from Dr. Davis (Exhibit C).

Ballot Measure 91 legalized the use and possession of recreational marijuana on November 4, 2014. Tigard adopted new regulations for handling marijuana related businesses on April 21, 2015. HB3400A established statewide regulations and recognized marijuana as a farm crop. It also prohibits local jurisdictions from requiring a larger buffer than 1,000 feet between retail marijuana facilities. The adoption of the revision is required to comply with state law.

QUESTIONS

Can you tell me about how the FEMA maps were developed, the process to appeal the decision? *FEMA's process is to hire a contractor to develop a hydraulic model that FEMA will use to develop their maps. FEMA does have an appeal process and this current process started in 2008 and that process has been completed for these revisions. FEMA and the county previously notified affected property owners.*

What happens if the City chooses not to adopt the maps? *The City would be dropped from the National Flood Insurance Program as would Tigard property owners. They would have to pay full cost for flood insurance.*

TESTIMONY IN FAVOR – None.

TESTIMONY IN OPPOSITION –

Cece Dispenza, 11460 SW Dawns Court, voiced frustration regarding the FEMA FIRM process and the NFIP. Her flood insurance went from \$0 per year 25 years ago to the highest risk with premiums of \$1,400 per year due to the NFIP changes. She stated the notice of rate

change can come from your mortgage or insurance company. She has spoken to multiple agencies and has not been able to figure out the reason for the increase. She questioned if Tigard will complete the same process as Beaverton to lower the insurance rates for its citizens.

Dr. Gene Davis, 10875 SW 89th Avenue, lives near Ash Creek. He stated his property had no flooding issues until the water main was installed in 1986. He has received permission to lower the water main and believes lowering it will alleviate the flooding on his property. An analysis of the issue should be conducted before adopting the new maps.

Paul Jackson, 10250 SW Tigard Street, expressed concern about the notice stating the proposed changes may affect the value of your property. He referred to an Oregonian article questioning FEMA's legal authority. *Tom noted there are two separate processes. One is adoption of the new maps. The second involves a lawsuit against FEMA for violation of the Endangered Species Act. It is unknown how the settlement of the case will impact Tigard, but none of the proposed Code changes are affected as they are separate issues.*

QUESTIONS TO STAFF

Why change the definition of the 100 year floodplain? *Special flood hazard areas is the term FEMA uses and in some ways it is a better term. 100 year floodplain can be confusing. Someone that experienced a flood 10 years ago may assume they will not experience another for 90 years. What it actually refers to is the area has a 1% chance to flood in any given year, not the length of time between flooding.*

Can Tigard do anything to change these maps, such as lowering the water main on Dr. Davis' property? *In general no, and the City does not agree that the water main is the cause of the flooding. The City Manager has given Dr. Davis permission to move the water main at his expense if he obtains the proper permits. There are two processes that can take place. A property owner can go to FEMA's website and find an application to appeal and find out the requirements and fees involved. The City could theoretically complete a basin study and based off the results ask for map revisions. All of the evidence would be required and expensive to gather.*

Is there anything Tigard can do to help alleviate some of the costs to citizens such as Beaverton is doing? *Tom noted FEMA has a program called Community Rating System. Depending on the City's level of participation, flood insurance premium rates for floodplain property owners can be reduced up to 45%. Council has not given any direction to formally apply for the program or for the associated expenses.*

PUBLIC HEARING CLOSED

DELIBERATION

Some points – comments:

- The marijuana Code change does not alter Tigard's policy regarding siting, just the distance between retail facilities, making it compliant with the state law.
- Providing more comprehensive information regarding the FEMA map revision process would be helpful to affected property owners. Even though Tigard will not advocate on

behalf of individual property owners, it should advocate for the City as a whole by completing the FEMA process to lower the rates as much as possible.

- For help with the Community Rating System required studies, local agencies such as the U.S. Army Corps of Engineers may be able to help on a volunteer or assisted basis.
- Tigard has to comply with the law and approve the map revisions without control over how the maps are determined. Failure to comply will result in even higher flood insurance rates for the affected property owners.

MOTION

Commissioner Middaugh made the following motion – “I move for approval of the application DCA2016-00002 and adoption of the findings and conditions of approval contained in the staff report, and based on the testimony received, with the addition that staff investigates the ranking system option.” The motion was seconded by Commissioner Lieuallen.

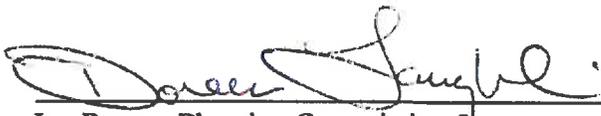
RESULT – All in favor, none opposed.

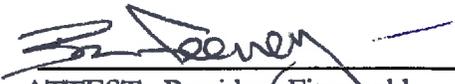
BRIEFING

Agnes gave an overview of upcoming changes to the Code. Changes are needed due to known problems with poor code construction, deferred maintenance and incremental changes. The focus is on terminology, process, administration and reorganization. The first part includes the mandatory changes approved tonight which will be heard by Council on September 27. The "Content" portion will be covered in two packages. The first package will include administrative fixes, new processes, new sections and regulations, and clean-up/miscellaneous. Package two will include terminology and permit review. She discussed the timeline (Exhibit D) which is an ambitious schedule. The goal is final adoption in February 2018. Tom noted there are some controversial issues that could slow the process considerably.

ADJOURNMENT

President Fitzgerald adjourned the meeting at 8:40 p.m.


For: Joe Patton, Planning Commission Secretary


ATTEST: President Fitzgerald
For

Agnes Kowacz

From: Pilkenton, Roxanne <roxanne.reale-pilkenton@fema.dhs.gov>
Sent: Wednesday, August 17, 2016 11:44 AM
To: Agnes Kowacz
Subject: RE: Flood Ordinance

The challenge is with FEMA's definition of development which reads:

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Because of the strict definition many of the things that are listed in both 18.775.020.B and 18.775.020.C cannot be exempted; specifically the following:

18.775.020.B

6. Maintenance of floodway excluding re-channeling; except in a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards" or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

If the maintenance of the floodway includes any of the activities as listed in the definition of development, a flood hazard permit must be required and cannot be outright permitted.

7. Fences; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards"; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

Even if the fences are located in the special flood hazard area (versus just the floodway) they are considered a man-made change and would require a flood hazard permit and cannot be outright permitted.

8. Accessory structures which are less than 120 square feet in size; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards"; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

Even if the accessory structures are located in the special flood hazard area (versus just the floodway) they are considered a man-made change and would require a flood hazard permit and cannot be outright permitted.

9. Land form alterations involving up to 10 cubic yards of material; except in the floodway area; a water quality sensitive area or vegetated corridor, as defined in the CSW "Design and Construction Standards"; or the Statewide Goal 5 vegetated corridor established for the Tualatin River, as defined in Section 18.775.090.

Land form alterations involving up to 10 cubic yards of material is considered development, a flood hazard permit must be required and cannot be outright permitted.

18.775.020.C

1. Responses to public emergencies, including emergency repairs to public facilities.

Are there provisions in Tigard code that state what an actual emergency is comprised of? And if emergency work is done is it only done during an imminent threat that must be alleviated? Does the Tigard code address that after the emergency is abated that permitting is required to keep the emergency measures in place? Often jurisdictions will issue an emergency permit that includes conditions that within so many days (example: 90) the emergency abatement measures are removed or permitted demonstrating compliance with all applicable codes and ordinances.

2. Stream and wetlands restoration and enhancement programs;

If the restoration and enhancements include any of the work described in the FEMA definition of development the work cannot be exempt from a flood hazard permit.

5. Routine maintenance or replacement of existing public facility projects.

I was unable to find a definition of public facility in the Tigard code but if the routine maintenance or replacement includes any of the work described in the FEMA definition of development the work cannot be exempt from a flood hazard permit.

Please let me know if I can provide any further assistance.

Take care,
Rox-

Roxanne Pilkenton, CFM
Floodplain Management Specialist
FEMA Region X | Floodplain Management and Insurance Branch
130 228th Street SW | Bothell, Washington 98021-9792
Phone: (425) 487-4654 | Cell: (202) 341-6948
KF7ROX
Roxanne.Pilkenton@fema.dhs.gov



FEMA

From: Agnes Kowacz [mailto:AgnesK@tigard-or.gov]
Sent: Monday, August 15, 2016 3:04 PM
To: Pilkenton, Roxanne <roxanne.reale-pilkenton@fema.dhs.gov>
Subject: RE: Flood Ordinance

Roxanne-
Can you specifically tell me which items are in conflict in section 18.775.020.B and 18.775.020.C?

Enforcement language is found in Tigard Municipal Code 14.04.090.

The remaining items will be added to the ordinance.

Thanks,

Agnes Kowacz | Associate Planner
City of Tigard | Community Development

13125 SW Hall Boulevard
Tigard, Oregon 97223
Phone: 503.718.2429
Email: AgnesK@tigard-or.gov

From: Pilkenton, Roxanne [mailto:roxanne.reale-pilkenton@fema.dhs.gov]
Sent: Thursday, August 11, 2016 11:32 AM
To: Tom McGuire <TomM@tigard-or.gov>
Cc: Shirley, Christine <christine.shirley@state.or.us>; Lentzner, Dave <david.lentzner@state.or.us>; Agnes Kowacz <AgnesK@tigard-or.gov>
Subject: FW: Flood Ordinance

Hello Tom,

Scott Van Hoff told me about your phone call this morning and I wanted to get an email out to you right away. A Community Assistance Visit (CAV) was conducted in 2014 and there were two ordinance items that were requested to be changed in regards to Critical Facilities and the Severability section. I was able to confirm that both of these items are being corrected in the update that is why they are not included in what I requested below. Please note that I'm not asking for the items in my email below to be corrected or added due to the CAV but because of the adoption of the new maps; the ordinance is required to be compliant with the NFIP minimum standards and portions of the Tigard code do not meet these minimum standards.

Scott said that you needed confirmation today that the items below do need to be addressed; please accept this email as confirmation that the items in my email below need to be addressed in the Tigard ordinance update.

Again, please let me know if I've inadvertently missed areas where some of the below code can be found. Please feel free to contact me with any further questions. I'd be happy to review the draft changes once they are made.

Take care,
Roxanne

Roxanne Pilkenton, CFM
Floodplain Management Specialist
FEMA Region X | Floodplain Management and Insurance Branch
130 228th Street SW | Bothell, Washington 98021-9792
Phone: (425) 487-4654 | Cell: (202) 341-6948
KF7ROX
Roxanne.Pilkenton@fema.dhs.gov



FEMA

From: Pilkenton, Roxanne
Sent: Wednesday, August 10, 2016 4:37 PM
To: Agnes Kowacz <AgnesK@tigard-or.gov>
Cc: Lentzner, Dave <david.lentzner@state.or.us>; Shirley, Christine <christine.shirley@state.or.us>
Subject: RE: Flood Ordinance

Hello Agnes,

Please forgive the lateness of my response I was out of the office last week and the first two days of this week were spent catching back up! ☺ I've found the following items that the City of Tigard may want to consider changing in the

ordinance along with the adoption of the maps. Please know that I realize I do not know your ordinance as well as you do and if I have inadvertently missed where the code/definition is I apologize:

Definitions:

FEMA's definition of development: *DEVELOPMENT* means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

I do see that Tigard has a definition of development but not one that would cover what is stated above.

FEMA's definition of Flood Insurance Rate Map: *FLOOD INSURANCE RATE MAP (FIRM)* means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

I do not see that Tigard has a definition of Flood Insurance Rate Map (FIRM).

The Oregon Model Flood Damage Prevention Ordinance definition of Flood Insurance Study: *FLOOD INSURANCE STUDY* means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

I do not see that Tigard has a definition of Flood Insurance Study.

FEMA's definition of Lowest Floor: *LOWEST FLOOR* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.

I do not see that Tigard has a definition of Lowest Floor.

FEMA's definition of Manufactured Home: *MANUFACTURED HOME* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured" home does not include a "recreational vehicle".

I do see that Tigard has a definition of Mobile Home but it does not include all of the language that the NFIP requires.

FEMA's definition of New Construction: *NEW CONSTRUCTION* means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

I do not see that Tigard has a definition of New Construction.

FEMA's definition of Recreational Vehicle: *RECREATIONAL VEHICLE* means a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

I do see that Tigard has a definition of Recreational Vehicle but it does not include all of the language that the NFIP requires.

The Oregon Model Flood Damage Prevention Ordinance definition of Start of Construction: *START OF CONSTRUCTION* includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure, whether or not that alteration affects the external dimensions of the building.

I do not see that Tigard has a definition of Start of Construction.

FEMA's definition of Structure: *STRUCTURE* means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

I do see that Tigard has a definition of Structure, which asks you to go to the definition of Building, but it does not include all of the language that the NFIP requires.

FEMA's definition of Substantial Damage: *SUBSTANTIAL DAMAGE* means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

I do not see that Tigard has a definition of Substantial Damage.

FEMA's definition of Violation: *VIOLATION* means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

I do not see that Tigard has a definition of Violation.

Code Challenges:

18.775.020 (A)(10) In the Tigard code is in direct conflict with the NFIP. This section needs to be removed from the ordinance.

Several of the exemptions listed in 18.775.020 (B) are in direct conflict with the NFIP and need to be removed from the ordinance. While I agree that many of these items will not require a building or other permits they will require a flood hazard (or sensitive land) permit.

18.775.020 (C) in the Tigard code includes provisions that are in direct conflict with the NFIP. While some of these exemptions may be allowed in the NFIP not all are.

I am unable to find an enforcement provisions in 18.775, including a violation and penalty section specifying actions that Tigard will take to assure compliance. Please let me know if it is located in another area of the code.

I could not locate a Disclaimer of Liability section advising that the degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection. Please direct me to the location in code if I have missed it.

I am unable to find an Abrogation and Greater Restriction section (e.g., This Ordinance shall not in any way impair/remove the necessity of compliance with any other applicable laws, ordinances, regulations, etc. Where this Ordinance imposes a greater restriction, the provisions of this Ordinance shall control.) Please let me know if it is located in another area of the code.

Again, please forgive me if you have these items covered in your code and in my inexperience I have overlooked them. Please feel free to contact me with any questions about this email.

Take care,
Roxanne

Roxanne Pilkenton, CFM
Floodplain Management Specialist
FEMA Region X | Floodplain Management and Insurance Branch
130 228th Street SW | Bothell, Washington 98021-9792
Phone: (425) 487-4654 | Cell: (202) 341-6948
KF7ROX
Roxanne.Pilkenton@fema.dhs.gov



FEMA

From: Agnes Kowacz [<mailto:AgnesK@tigard-or.gov>]
Sent: Wednesday, July 27, 2016 2:38 PM
To: Pilkenton, Roxanne <roxanne.reale-pilkenton@fema.dhs.gov>
Cc: Shirley, Christine <christine.shirley@state.or.us>
Subject: RE: Flood Ordinance

Roxanne-
DLCD was sent all materials of this code package on 7/11/2016. I forgot to include the timeline. The first public hearing with the Planning Commission will be 8/15/2016 and City Council on 9/27/2016. The changes will be adopted by 11/4/2016. Thanks,

Agnes Kowacz | Associate Planner
City of Tigard | Community Development
13125 SW Hall Boulevard
Tigard, Oregon 97223
Phone: 503.718.2429
Email: AgnesK@tigard-or.gov

From: Pilkenton, Roxanne [<mailto:roxanne.reale-pilkenton@fema.dhs.gov>]
Sent: Wednesday, July 27, 2016 1:50 PM
To: #CD PoD <CDPoD@tigard-or.gov>
Cc: Shirley, Christine <christine.shirley@state.or.us>
Subject: Flood Ordinance

Good Afternoon Tom,
FEMA has you listed as the Floodplain Manager for the City of Tigard in our database; please forgive me if this information is incorrect. I'm reaching out to you in regards to the Washington County jurisdictions that will have new FIRMs and FIS becoming effective 04 November 2016. I know that Oregon State Law requires you to send them a copy of the proposed changes in your flood ordinance at least 35 days before the first public hearing. In communicating with Christine Shirley, DLCD it sounds as if she will be working closely with you to ensure State obligations are met. Because FEMA has a vested interest in ensuring that your new ordinance meets the NFIP minimum standards I would like to request that a copy of the ordinance that you send to Ms. Shirley is sent to me at the same time. In doing this it would also be helpful for you to provide a timeline as to when the City expects to pass major milestones in the ordinances adoption procedure.

If you have any questions please do not hesitate to contact me.

Take care,
Roxanne

Roxanne Pilkenton, CFM
Floodplain Management Specialist
FEMA Region X | Floodplain Management and Insurance Branch
130 228th Street SW | Bothell, Washington 98021-9792
Phone: (425) 487-4654 | Cell: (202) 341-6948
KF7ROX
Roxanne.Pilkenton@fema.dhs.gov



FEMA

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City of Tigard Memorandum

To: Tigard City Council

From: Agnes Kowacz, Associate Planner

Re: Marijuana Regulations

Date: October 18, 2016

At the September 27, 2016, City Council instructed staff to provide additional information on the time and place regulations for marijuana facilities. Specifically, City Council asked staff to research hours of operations in other jurisdictions, report on any criminal activity associated with marijuana facilities located within the City and provide maps showing potential locations where marijuana facilities could be located after the change in the minimum distance between facilities from 2,000 feet to 1,000 feet.

Hours of Operation

Staff researched the hours of operations in other jurisdictions. The following table shows the permitted hours of operation for marijuana facilities for six other jurisdictions:

<u>Jurisdiction</u>	<u>Hours of Operation</u>
Tigard	10AM-8PM
Beaverton	7AM-10PM
Tualatin	10AM-8PM
Hillsboro	10AM-8PM
Portland	8AM-10PM
Washington County	8AM-10PM
State/OLCC	7AM-10PM

Police Report

Currently, only one retail marijuana facility is operating within the City of Tigard, The Herbarry located at 11642 SW Pacific Highway. The Police Department reviewed all crimes at and around the business location for the past year and found that two calls were generated at that address. One was a hit and run and the other was an unwanted customer with potentially mental health issues that they wanted removed. No other incidents were reported.

Maps

Two citywide maps have been provided with this memo identifying all the commercial and industrial areas (blue areas) where marijuana facilitates could occur if they were not limited to parcels with frontage on Pacific Highway (99W). On Map A, the areas identified in blue exclude the 1,000 foot buffer from schools and other retail facilities, 500 foot buffer from parks zones and library and the downtown core (Mixed Use Central Business District). On Map B, the areas identified in blue exclude the 1,000 foot buffer from schools and other retail facilities and the downtown core (Mixed Use Central Business District).

Map A

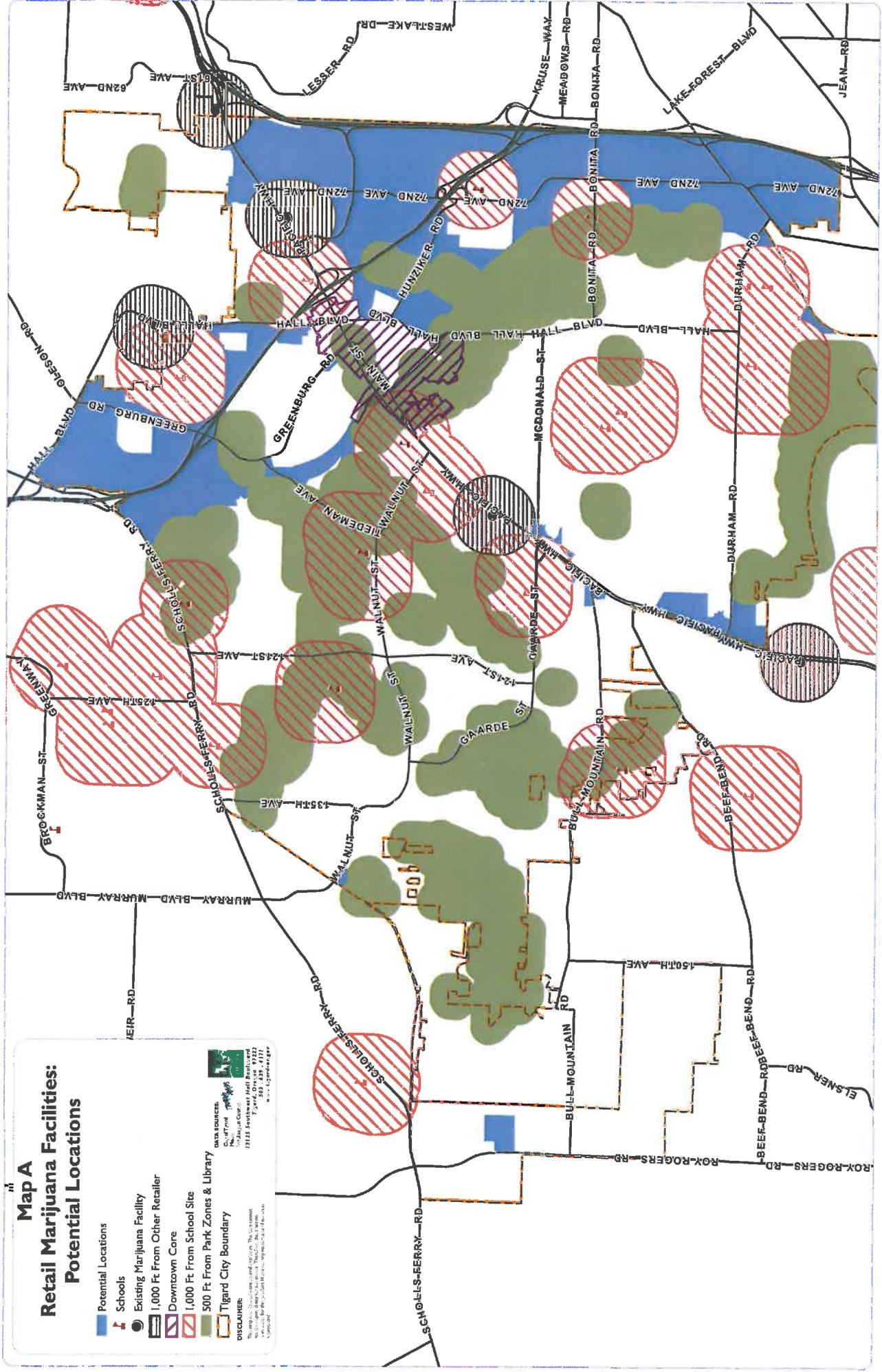
Retail Marijuana Facilities: Potential Locations

Potential Locations

- Schools
- Existing Marijuana Facility
- 1,000 Ft. From Other Retailer
- Downtown Core
- 1,000 Ft. From School Site
- 500 Ft. From Park Zones & Library
- Tigard City Boundary

DATA SOURCES:
 City of Tigard
 Tigard City Council
 12115 Southeast Hill Road
 Tigard, OR 97132
 503.438.4171
 www.tigard.gov

DISCLAIMER:
 This map is for informational purposes only. The City cannot be held responsible for any errors or omissions. The City is not a retailer of marijuana.



**Chapter 18.735
MARIJUANA FACILITIES**

Sections:

- 18.735.010 Purpose**
18.735.020 Applicability
18.735.030 Compliance and Enforcement
18.735.040 Development Standards

18.735.010 Purpose

The purpose of this chapter is to:

- A. Protect the general health, safety, property, and welfare of the public;
- B. Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby properties that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
- C. Prevent or reduce criminal activity that may result in harm to persons or property;
- D. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
- E. Minimize impacts to the city's public safety services by reducing calls for service. (Ord. 15-07 §3)

18.735.020 Applicability

- A. Relationship to other standards. The regulations within this chapter are in addition to base zone standards. Sites with overlay zones, plan districts, inventoried hazards, and/or sensitive lands are subject to additional regulations. Specific uses or development types may also be subject to regulations set forth elsewhere in this title.
- B. When provisions apply. The provisions of this chapter shall apply to all marijuana facilities requiring a state license or registration. (Ord. 15-07 §3)

18.735.030 Compliance and Enforcement

- A. Procedure. All marijuana facilities requiring a state license or registration, and public places of assembly where marijuana is consumed, shall demonstrate minimal compliance with these standards through a Type I procedure as set forth in Section 18.390.030 of this title, using approval criteria set forth in subsection B of this section.
- B. Approval criteria. Development subject to the provisions of this chapter shall demonstrate compliance with all standards set forth in Section 18.735.040 of this chapter.
- C. Documentation. The following provisions shall apply at the time of minimum compliance review or a request for enforcement:
 - 1. When processing a minimum compliance review, the city may accept an evaluation and explanation certified by a registered engineer or architect, as appropriate, that the proposed

development will meet the off-site odor impact standard. The evaluation and explanation shall provide a description of the use or activity, equipment, processes and the mechanisms, or equipment used to avoid or mitigate off-site impacts.

2. If the city does not have the equipment or expertise to measure and evaluate a specific complaint regarding off-site impacts, it may request assistance from another agency or may contract with an independent expert to perform the necessary measurements. The city may accept measurements made by an independent expert hired by the controller or operator of the off-site impact source. (Ord. 15-07 §3)

18.735.040 Development Standards

Development subject to the provisions of this chapter shall demonstrate compliance with all of the following standards:

- A. The proposed development complies with all applicable state requirements.
- B. The proposed use is allowed in the underlying zone and complies with all applicable requirements of this title.
- C. The proposed development meets all of the following site location restrictions. All distances shall be measured at the closest property lines between the proposed site and nearest lot or parcel containing the specified use or characteristic.
 1. Marijuana facilities are prohibited within the MU-CBD zone.
 2. The proposed development is not within 1,000 feet of a public or private elementary school, secondary school, or career school attended primarily by minors.
 3. Sale-oriented retail and wholesale sales uses open to the public shall be subject to the following restrictions:
 - a. Must be located on a lot or parcel with frontage along Pacific Highway (Oregon Route 99W);
 - b. Shall not be located within 1,000 feet of another state-licensed retail or wholesale marijuana facility within or outside of city limits; and
 - c. Shall not be located within 500 feet of a public library or Tigard parks and recreation zone.
 4. Non-retail uses and wholesale sales uses not open to the public shall not be located within 500 feet of one or more of the following zones or facilities:
 - a. Residential zone;
 - b. Parks and recreation zone;
 - c. Public library.
- D. Hours of commercial operation shall be limited to the hours between 7:00 am and 10:00 pm. General industrial uses with no on-site retail activity are exempt from this restriction.

- E. Primary entrances shall be clearly visible from Pacific Highway (Oregon Route 99W).
- F. The proposed development shall be located inside a permanent building and may not be located within a trailer, shipping container, cargo container, tent, or motor vehicle. Outdoor storage of merchandise, plants, or other materials is not allowed.
- G. Parking lots, primary entrances, and exterior walkways shall be illuminated with downward facing security lighting to provide after-dark visibility to employees and patrons. Fixtures shall be located so that light patterns overlap at a height of seven feet with a minimum illumination level of 1.0 footcandles at the darkest spot on the ground surface.
- H. Drive-through marijuana facilities are prohibited.
- I. The proposed development shall confine all marijuana odors and other objectionable odors to levels undetectable at the property line.
- J. Marijuana or marijuana product shall not be visible from the exterior of the building or structure. (Ord. 15-07 §3) ■