

**ORDINANCE NO. NS-2256**

**AN ORDINANCE AMENDING BEND DEVELOPMENT CODE CHAPTER 1.2 DEFINITIONS, CHAPTER 2.2 COMMERCIAL ZONING DISTRICTS, 2.3 MIXED-USE ZONING DISTRICTS, 2.4 INDUSTRIAL ZONING DISTRICTS, AND CHAPTER 3.6 SPECIAL STANDARDS FOR CERTAIN USES TO DEFINE, PERMIT AND ESTABLISH STANDARDS FOR MARIJUANA BUSINESSES, AND DECLARING AN EMERGENCY**

Findings:

A. Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana Act, in November 1998. The Oregon legislature has amended the Oregon Medical Marijuana Act and the Act authorizes local government to adopt reasonable regulations related to the hours of operation, location and manner in which medical marijuana dispensaries are regulated. Cities have home rule authority to adopt regulations that are not unconstitutional or preempted by federal or state law.

B. Oregon voters approved Ballot Measure 91 in November 2014, legalizing the personal use and possession of adult recreational marijuana on July 1, 2015, with certain limitations, including restrictions on use in public, no growing in public view, a restriction on minors attempting to buy or entering licensed premises, prohibiting the sale or use by persons under 21, and imposing licensing and other requirements on marijuana cultivation, processing and dispensing facilities. The measure, as amended by the Oregon State Legislature in 2015 (HB 3400 A, Section 33), authorizes reasonable conditions on the manner in which licensed retailers, processors, producers, wholesalers may sell marijuana; reasonable limitations on the hours during which a licensed marijuana facility may sell marijuana items; reasonable requirements related to a public's access to a licensed premises; reasonable distance between facilities (no more than 1,000 feet); and reasonable limitations on where a licensed premises may be located. Such regulations must be consistent with the City's comprehensive plan, development code and public health and safety law.

C. Senate Bill 460 allows medical marijuana retailers to sell limited amounts of adult recreational marijuana beginning October 1, 2015. This provision sunsets on December 31, 2016.

D. These regulations are also adopted in furtherance and protection of the health, safety and welfare of the citizens of Bend, including under the broad home rule authority of the City of Bend in Sections 6 and 4 of its municipal charter: "Except as this charter prescribes otherwise, and as the Oregon Constitution reserves municipal legislative powers to the voters of the city, all powers of the city are vested in the council." "The City has all powers that the constitutions, statutes, and common law of the United States and of the State of Oregon now or hereafter expressly or impliedly grant or allow the City, as fully as though this charter specifically enumerated each of those powers."

E. In determining what is “reasonable,” the City Council reviewed existing precedents across the state of Oregon, as well as Colorado and Washington states, particularly communities that are most similar in population, industry, tourism, demographics and mindset, to the City of Bend, to help decide what would be most appropriate for Bend.

F. The City Council, in adopting this ordinance, is concerned with fairness, neighborhood compatibility, respecting the will of the voters, protecting youth and minors, crime and nuisance issues, a non-reactive balanced approach, allowing new businesses to emerge and grow, and learning from the experience of other communities.

G. Adverse effects of marijuana facilities to the community, addressed through reasonable time, place and manner restrictions, such as the ones adopted by this ordinance, include:

1. Exposure of minors to the use and commercial aspects of marijuana;
2. Offensive odors from marijuana cultivation, production and storage; and
3. Incompatible development in residential areas.

H. After waiting to see what amendments to Measure 91 would come out of the 2015 legislative session, and what regulations would be considered for adoption by the implementing agencies, the Oregon Health Authority (OHA) and the Oregon Liquor Control Commission (OLCC), at a City Council work session on August 19, 2015, the City Council gave direction to City Staff to begin to formulate reasonable regulations for council consideration prior to the effective date of the ability for retail marijuana sale licensing, sometime after January 4, 2016. The City Council tasked three councilors with working with staff on a preliminary basis on land use and licensing regulations.

I. On September 16, 2015, the City Council formed a Marijuana Technical Advisory Committee (MTAC) to act as a 9-member temporary committee to provide input to the Planning Commission and City Council regarding reasonable time, place and manner regulation of marijuana businesses, including retail, growing, wholesaling, testing and processing. The MTAC was purposefully made up of knowledgeable members of the industry, marijuana law, the Bend LaPine School District, and the community at large. A Planning Commissioner was also a non-voting member. The Committee held six meetings between September and November of 2015 (four of which were specifically on the land use regulations; the latter two were on the operating license code, adopted concurrently). The Committee had extensive discussion and debate on various policy recommendations, particularly distance requirements. The committee sought to balance a strong and heartfelt desire to protect the community’s youth from under-age drug use with the industry’s willingness to be responsive but also serve legitimate medical needs and develop their legal businesses for adults.

J. During this period, the OLCC published several versions of draft rules, and then comprehensive final temporary rules, which Staff and the MTAC took into consideration in formulating both the local land use code and operating license regulations. OHA has

also published additional draft rules on the medical marijuana dispensary program, labeling, concentration and serving size and testing. Measure 91, HB 3400, other applicable statutes and the various rules were all linked and made available for public review on the MTAC website, along with other relevant materials. The MTAC record is incorporated into the Council record made part of the Council record for review. PZ No.15-0836. <http://www.ci.bend.or.us/index.aspx?page=1321>.

K. The City gave Measure 56 notice on October 16, 2015 to all properties in the industrial, commercial, mixed residential and mixed employment zones in the City of Bend.

L. The MTAC forwarded its recommended land use ordinance to the Planning Commission, via a memo dated October 29, 2015.

M. On November 9, 2015, the Planning Commission held a work session, with a presentation from members of the MTAC, and had a duly noticed public hearing. At the conclusion of the hearing, the Commission voted four in favor, two opposed and one vacant to forward an affirmative recommendation to the City Council. A majority of the Planning Commission voted not to include a buffer for parks, or to increase the school buffer to 1250 feet for schools, as they did not find a reasonable rationale for the buffer, although they agreed with the concern (protection of youth from exposure to adult activity). The Planning Commission recommendation and record is incorporated by reference into the Council record and made part of the Council record for review. PZ No. 15-0836. <http://www.ci.bend.or.us/index.aspx?page=1321>.

N. The City Council held a work session on November 30, 2015, and a duly noticed public hearing on December 2, 2015. The City Council considered the MTAC and Planning Commission recommendation, the record and the public testimony in adopting these codes.

O. With regard to establishing a 1,000 foot buffer between recreational retail facilities, the Council recognizes that there are differences of opinion in the community about whether buffering is necessary or appropriate. However, the Council finds that it is in the public interest to treat marijuana recreational retailers in a similar manner as medical dispensaries, and that establishing a 1,000 foot buffer between marijuana recreational retailers is consistent with the buffering requirement between medical dispensaries. The Council also finds that there is evidence that increased exposure to the commercial aspects of marijuana and increased density of marijuana retailers may play a role in increased rates of marijuana consumption and marijuana-related hospitalization, including by minors. Therefore, it is in the public interest to limit the concentration of marijuana recreational retailers in a manner consistent with the existing state limitations on concentration of medical marijuana dispensaries. However, the Council recognizes that some existing medical dispensaries plan to convert to recreational retail facilities when allowed to do so by the state. The Council therefore finds it is appropriate to allow existing

medical dispensaries a limited period of time to convert to recreational retail facilities without being prevented from doing so by the 1,000 foot buffer between recreational retail facilities. The Council finds that an existing medical dispensary which has demonstrated the ability to meet all legal and regulatory requirements should not be prevented from converting to a recreational retail facility, as allowed by state law, simply because of the siting of a new recreational retail facility nearby. While this does raise the possibility that some recreational retail facilities could be located within 1,000 feet of one another, the Council notes that the state's rigorous licensing requirements and the nature of commercial real estate, including availability of suitable properties, suggests this is not likely to be a typical outcome. It also prevents the potentially arbitrary result of a business that has demonstrated compliance with laws and regulations being excluded from the new recreational retail market simply because another business, potentially untested, happens to work through the various land use and licensing processes first. The Council finds that a 1,000 foot buffer between marijuana recreational retailers with a limited exemption for existing medical dispensaries that convert to recreational retail facilities will place reasonable limits on concentration, and thereby limit the exposure of minors to commercial marijuana facilities resulting in a reasonable regulation that balances the industry's ability to develop, concerns about geographic saturation and increased exposure to marijuana, fairness to medical marijuana dispensaries and their patients, and legitimate community concerns regarding the impacts of the commercial marijuana industry on youth and the City of Bend as a whole.

P. The Council finds that it is reasonable to require a 150 foot buffer between parks and medical marijuana dispensaries and marijuana recreational retailers. Parks are places where youth congregate, sometimes informally and sometimes without adults or parents present, and there is a legitimate community concern that medical marijuana dispensaries and marijuana recreational retailers in immediate proximity to parks increases exposure to commercial marijuana in a way that may have a negative impact on youth. The Council finds that a 150 foot buffer around parks strikes an appropriate balance between that concern and the ability of marijuana businesses to develop. The 150 foot buffer prevents a medical marijuana dispensary or marijuana recreational retailer from locating directly next to or across the street from a park but otherwise allows them to reasonably locate in appropriately zoned property in areas close to park facilities, and does not unreasonably reduce or restrict the availability of commercial properties available to medical marijuana dispensaries and marijuana recreational retailers.

**Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:**

Section 1. Bend Development Code Chapter 1.2 Definitions, Chapter 2.2 Commercial Zoning Districts, 2.3 Mixed-Use Zoning Districts; 2.4 Industrial Zoning Districts, and;

Chapter 3.6 Special Standards for Certain Uses, are amended to define, permit and establish standards for marijuana businesses as shown below in Exhibit A.

Section 2. In addition to the findings set forth above, the City Council adopts the findings in Exhibit B.


Section 3. Declaration of Emergency. The City Council finds that this ordinance is necessary for the health, safety and welfare of the public, and finds that an emergency exists. The ordinance therefore becomes effective upon its passage.

First reading: December 2, 2015.

Second reading and adoption by roll call vote: December 16, 2015.

Yes: Jim Clinton, Mayor  
Doug Knight  
Sally Russell  
Nathan Boddie  
Casey Roats  
Barb Campbell

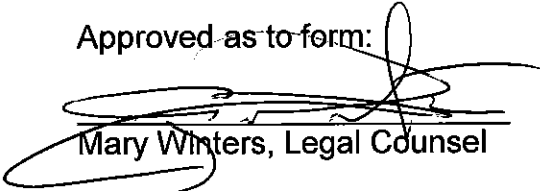
No: None

  
\_\_\_\_\_  
Jim Clinton, Mayor

Attest:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:

  
\_\_\_\_\_  
Mary Winters, Legal Counsel



## EXHIBIT A

Note:

Text in underlined typeface is proposed to be added

Text in strikethrough typeface is proposed to be deleted.

\*\*\*Indicates where text from the existing code has been omitted because it will remain unchanged.

### Bend Development Code

#### Chapter 1.2

#### DEFINITIONS

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**Cannabinoid concentrate** means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process; or

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol.

**Cannabinoid edible** means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

**Cannabinoid extract** means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses heat or pressure; or

(c) Any other process identified by the commission, in consultation with the authority, by rule.

**Cannabinoid product** means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair that contains cannabinoids or dried marijuana leaves or flowers.

**Cultivation or cultivate** means: (i) all phases of growth of marijuana from seed to harvest; or (ii) preparing, packaging, or repackaging, labeling, or relabeling of marijuana prior to consumption, or incorporation into a recreational marijuana-infused product.

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**Marijuana** means the plant Cannabis family Cannabaceae, any part of the plant of the Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

**Marijuana business** means any person or entity appropriately licensed by the Oregon Health Authority or the Oregon Liquor Control Commission that sells, produces, cultivates, grows, wholesales, processes, researches, develops or tests medical marijuana or recreational adult use marijuana within the City of Bend.

**Marijuana grow sites** means a specific location registered by the Oregon Health Authority and used by the grower to produce marijuana for medical use by a specific patient. Medical grow sites are regulated by state law as follows: 12 mature plants are allowed per grow site in residential zones; 48 mature plants per grow site in all other zones. If all grows at the site had registered with the State of Oregon by January 2, 2015, the grow site is limited to the number of plants at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in residential zones and 96 mature plants per grow site in other zones.

**Marijuana items** means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

**Marijuana processing** means the preparing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates, and cannabinoid extracts for medical or recreational purposes.

**Marijuana producing** means the manufacture, planting, cultivation, growing, or harvesting of retail recreational marijuana.

**Marijuana recreational retailer** means a person or entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state. Marijuana retailer is also referred to as “recreational retail facility” or a “marijuana recreational facility.”

**Marijuana testing laboratory** means a laboratory that tests marijuana items for producer, processor, wholesaler or retail licensees.

**Marijuana wholesaler** means a person or entity that purchases marijuana items in this state for resale to a person other than a consumer.

**Medical marijuana dispensary** means a medical marijuana facility or entity registered with the Oregon Health Authority under ORS 475.300 et. seq.

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**Recreational marijuana** means any marijuana intended for recreational use which meets all requirements for recreational marijuana contained in this chapter, Oregon state law, and any other applicable law.

**Recreational marijuana business** means (a) any person or entity that cultivates, produces, distributes, possesses, transports, or makes available more than six marijuana plants or one ounce of marijuana, (b) any person that sells any amount of marijuana, or (c) any person who possesses marijuana openly or publicly. The term recreational marijuana business or retail shall not include the private cultivation, possession, production, or use within a person's residence of no more than (a) six plants in an enclosed, locked space, (b) one ounce of marijuana, or (c) the marijuana produced by no more than six plants on the premises where the plants were grown if the plants were grown in an enclosed, locked space.

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**School** means a building where individuals gather to receive educational instruction, either public or private, except as otherwise specifically defined in this code. School does not include a child care facility as defined in this Chapter.

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**Usable Marijuana** means the dried leaves and flowers of marijuana. “Usable marijuana” does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

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## Chapter 2.2

### COMMERCIAL ZONING DISTRICTS (CB, CC, CL, CG)

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**Table 2.2.300 – Permitted and Conditional Uses**

Land Use	CB	*CC	CL	CG
<u>* Medical Marijuana Dispensary and Marijuana Recreational Retailer</u>  <u>– building footprint 50,000 square feet or less</u>  <u>– building footprint greater than 50,000 square feet</u>	P  P	P  C	P  P	P  P
<u>*Marijuana Wholesale (more than 75% of sales are wholesale)</u>	N	N	P	P
<u>*Marijuana Testing, Research and Development Facilities</u>	P	P	P	P
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products Not Including Processing of Cannabinoid Extracts.</u>  <u>– greater than 5,000 sq. ft.</u>  <u>– 5,000 sq. ft. or less with retail outlet</u>	N  P	N  P	C  P	N  P

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Chapter 2.3

MIXED-USE ZONING DISTRICTS (ME, MR AND PO)

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Table 2.3.200

Permitted and Conditional Uses

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Land Use	ME	MR	PO
* <u>Medical Marijuana Dispensary and Marijuana Recreational Retailer</u>			
• <u>not to exceed 50,000 sq. ft. ground floor</u>	<u>P</u>	<u>P</u>	<u>N</u>
• <u>not to exceed 75,000 sq. ft. ground floor for ME zoned property five acres or greater</u>	<u>P</u>	<u>N</u>	<u>N</u>
* <u>Marijuana Wholesale (more than 75% of sales are wholesale)</u>	<u>P</u>	<u>P</u>	<u>N</u>
* <u>Marijuana Testing, Research and Development Facilities</u>	<u>P</u>	<u>P</u>	<u>N</u>
* <u>Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products Not Including Processing of Cannabinoid Extracts.</u>	<u>P</u>	<u>P</u>	<u>N</u>

**Chapter 2.4**  
**INDUSTRIAL ZONING DISTRICTS (IG, IL)**

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**Table 2.4.300 – Permitted and Conditional Uses**

Land Use	IG	IL
<u>*Marijuana Grow Sites and Marijuana Producing</u>	<u>P</u>	<u>P</u>
- <u>*Marijuana Wholesale</u>	<u>P</u>	<u>P</u>
- <u>*Marijuana Testing, Research and Development Facilities</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products.</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Extracts</u>	<u>P</u>	<u>P</u>

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**2.4.800 Special Development Standards.**

The Industrial Districts accommodate a range of manufacturing, industrial office uses, and small personal service commercial uses.

A. Small-Scale Personal and Professional Services. Small-scale personal and professional services and incidental sales uses as specified in Table 2.4.300 shall comply with the following development standards:

1. Small-scale personal service commercial uses may be allowed when accessory to a primary user of the industrial development (in the case of a large industrial area). No more than 10 percent or 2,500 square feet (whichever is greater) of a permitted or conditionally allowed industrial development may be occupied by an accessory commercial use, unless otherwise approved through a Conditional Use Permit.

2. Primary use, small-scale personal and professional and incidental sale uses may occur as stand-alone businesses when the total gross floor area of each use does not exceed 2,500 square feet. For multiple uses, where the uses share one building, the total building area shall not exceed 5,000 square feet. A single use may occupy 5,000 square feet if approved through a Conditional Use Permit. These nonindustrial use buildings shall comply with the provisions of BDC 2.2.600, Commercial Design Review Standards.

B. Location Standards. Child care centers and other similar uses shall be limited to properties located at the perimeter of the Industrial Districts with frontage on arterial or collector streets, unless they are accessory to a primary permitted use. When these uses occur as a stand-alone building, the provisions of BDC 2.2.600, Commercial Design Review Standards, apply.

C. Buffering. A buffer with a minimum width of 20 feet is required between industrial development and any adjacent Residential Zoning District. The buffer shall provide landscaping to screen the industrial activities, such as parking, service and delivery areas, from the Residential Districts. The buffer shall not contain trash receptacles or be used for the storage of equipment, materials, vehicles, etc. [Ord. NS-2195, 2013; Ord. NS-2016, 2006]

D. Prohibited Uses. Retail medical marijuana dispensaries and marijuana recreational facilities.

## Chapter 3.6

### SPECIAL STANDARDS AND REGULATIONS FOR CERTAIN USES

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#### 3.6.200 Residential Uses.

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N. Home Occupations. The purpose of this subsection is to support those who are engaged in small business ventures that could not necessarily be sustained if it were necessary to lease commercial quarters, or which, by the nature of the venture, are appropriate in scale and impact to be operated within a residence. There are two types of home occupation uses.

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2. Type II. A Type II home occupation exceeds the standards for a Type I home occupation and is subject to a Conditional Use Permit as described in BDC Chapter 4.4, Conditional Use Permits. In addition to the Type I requirements, a Type II home occupation shall also meet the following operational criteria:

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3. Prohibited Home Occupation Uses.
  - a. Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor beyond allowable levels as determined by local, State or Federal standards, or that can be detected beyond the property line, is prohibited.
  - b. Any activity involving on-site retail sales is prohibited, except that the sale of items that are incidental to a permitted home occupation is allowed. For example, the sale of lesson books or sheet music by music teachers, art or craft supplies by arts or crafts instructors, computer software by computer consultants, and similar incidental items for sale by home business are allowed.
  - c. Any uses described in this section or uses with similar objectionable impacts because of motor vehicle traffic, noise, glare, odor, dust, smoke or vibration, such as:
    - i. Ambulance service;
    - ii. Animal hospital, veterinary services, kennels or animal boarding;
    - iii. Auto and other vehicle repair, including auto painting;

- iv. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles, airplanes or large equipment on site.

d. Marijuana businesses.

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**3.6.300 Nonresidential Uses.**

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J. Neighborhood Commercial Uses.

- 2. Uses Not Permitted. Automobile-oriented and automobile-dependent uses and marijuana businesses are expressly prohibited.

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P. Marijuana Businesses.

- 1. Purpose. The purpose of this section is to reasonably regulate those who are engaged in the retail sale, producing, growing, processing, wholesaling and testing of medical and recreational marijuana, consistent with state law, in the City of Bend, and 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 land uses, residents, property owners and businesses that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
  - c. Adopt reasonable time, place and manner restrictions on both medical and recreational dispensaries tied to specific community impacts;
  - d. Prevent or reduce criminal activity that may result in harm to persons or property;
  - e. Limit the exposure of minors to the commercial aspects of marijuana;
  - f. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
  - g. Minimize impacts to the city's public safety services by reducing calls for service.
- 2. Applicability.
  - a. The provisions of this section apply to marijuana businesses within the Bend city limits.

b. Relationship to other development standards. Marijuana businesses must comply with all of the standards of this section and all applicable state laws and regulations.

3. Procedure.

a. All new marijuana businesses must be reviewed through Site Plan Review, Minimum Development Standards Review and/or a Conditional Use Permit Review to ensure the standards of this section and other relevant portions of this code are met. Marijuana businesses are not eligible for the Minimum Development Standards Review exemption of BDC 4.2.400.B.2.

b. The City will require a proof of a license from the State (either OHA or OLCC) confirming the security plan and all other required improvements, prior to final occupancy.

4. Standards for Retail Marijuana.

a. Permitted. Medical Marijuana Dispensaries and Marijuana Recreational Facilities are permitted in all CB, CC, CI, CG, ME and MR zoning districts (unless listed as a conditional use, and subject to size limitations). See use tables in BDC Title 2.

b. Co-Location of Marijuana Dispensaries and Marijuana Recreational Facilities. Dispensaries and facilities selling medical and retail marijuana may co-locate only during such time and selling the product as allowed by state law and regulation.

c. Medical Marijuana Dispensaries and Marijuana Recreational Facilities and Proximity to Other Land Uses.

i. The distance limitations and definition established by this section shall control over the minimum distance limitations set forth by the state of Oregon.

ii. The distance limitation are based upon the uses surrounding the proposed marijuana dispensary or facility site on the date the development application is submitted.

iii. A dispensary or facility shall not be located within the specified proximity of any of the uses listed below. For purposes of this paragraph, the distance specified is a straight line measurement from the closest points between property lines of the affected properties.

d. Medical Marijuana Dispensaries. No medical marijuana dispensary may operate or conduct business within:

i. 1,000 feet of a public or secondary school for which attendance is compulsory under ORS 339.020 (2013); or a private or parochial



elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013);

- ii. 1,000 feet of another medical marijuana dispensary;
  - iii. 150 feet of a licensed child care facility, as defined in BDC 1.2; or,
  - iv. 150 feet of a Bend Park and Recreation District developed park facility including neighborhood parks, community parks, regional parks, natural areas, urban plazas and community river parks, or an Oregon State Park.
- e. Existing Medical Marijuana Dispensaries.
- i. A medical marijuana dispensary existing as of December 15, 2015 is considered a permitted use regardless if (1) an existing licensed child care facility is located within 150 feet; (2) an existing public or secondary school for which attendance is compulsory under ORS 339.020 (2013), or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013), is located within 1,000 feet, (3) another medical marijuana dispensary is located within 1,000 feet, or (4) an existing Bend Park and Recreation District developed park facility including neighborhood parks, community parks, regional parks, natural areas, urban plazas and community river parks, or an Oregon State Park is located within 150 feet.
  - ii. A marijuana dispensary existing at the time any use listed in subsection P.4.d above is subsequently sited within the specified proximity of the dispensary, may remain at that location and is considered a permitted use and not a nonconforming use.
  - iii. An existing marijuana dispensary may change to a recreational facility provided the business complies with applicable state laws and permitted and conditional use tables and 3.6.300. Marijuana Businesses.
  - iv. The distance requirements in subsection P.4.d above do not apply for applications for marijuana recreational facilities that meet the following criteria:
    - (A) The application is from a medical marijuana dispensary existing as of December 15, 2015;
    - (B) The marijuana recreational facility application is for the same address as which the medical marijuana dispensary is currently in operation;
    - (C) The medical marijuana dispensary has no outstanding compliance issues pending with the Oregon Health Authority or the City of Bend;
    - (D) The applicant meets all other requirements of this Chapter;

(E) The conversion to a marijuana recreational facility must be finalized no later than December 31, 2016, or, if the OLCC fails to issue recreational licenses by November 1, 2016, within 30 days of receiving an OLCC license. In no case may a conversion from medical to recreational occur after July 1, 2017. A change from a marijuana dispensary to a marijuana recreational facility must be approved by issuance of a Minimum Development Standards decision. An existing marijuana dispensary that converts to recreational is not eligible for the Minimum Development Standards Review exemption under BDC 4.2.400.B.2.

f. Marijuana Recreational Facility. No marijuana recreational facility may operate or conduct business within:

- i. 1,000 feet of a public or secondary school for which attendance is compulsory under ORS 339.020 (2013); or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013);
- ii. 1,000 feet of another marijuana recreational facility;
- iii. 150 feet of a licensed child care facility, as defined in BDC 1.2; or
- iv. 150 feet of a Bend Park and Recreation District developed park facility including neighborhood parks, community parks, regional parks, natural areas, urban plazas and community river parks, or an Oregon State Park.

g. Existing Marijuana Recreational Facility.

- i. A Marijuana Recreational Facility existing at the time any use listed in subsection P.4.f above is subsequently sited within the specified proximity of the facility, may remain at that location and is considered a permitted use and not a nonconforming use.
- ii. An existing recreational facility may change to a marijuana dispensary provided the business complies with applicable state laws and permitted and conditional use tables and 3.6.300. Marijuana Businesses.

h. Building Site. The proposed development must be located inside a permanent building. Outdoor storage of any merchandise, plants, or other materials is not allowed.

i. Display. All marijuana plants, products, and paraphernalia must be completely screened from view. There must be no marijuana, marijuana product, or marijuana paraphernalia visible from the exterior of the building.

5. Production and Growing of Commercial Marijuana.

a. Recreational Production of Marijuana. Recreational production (growing) facilities are prohibited in all residential, commercial and mixed-use zoned and designated areas. It is allowed in industrial zoned and designated areas, as

- further set forth in the use tables in Title 2. Retail marijuana is not permitted at the same facility as industrial production.
- b. Medical Grow Sites. Medical grow sites are permitted as allowed by State law up to the possession limitations for registered cardholders or designated primary caregivers of the cardholder in all zones.
  - c. The private growing or cultivating of marijuana for non-commercial personal use, as defined by state law, is not regulated by this chapter.
6. Commercial Marijuana Wholesale. Marijuana wholesale is permitted in CL, CG, MR and ME zones, similar to other wholesale uses (more than 75% of the business use needs to be wholesale). Wholesale is not permitted in residential designated areas. Wholesale is permitted in all industrial zoned and designated areas. See use tables in BDC Title 2.
7. Marijuana Processing.
- a. Residential Zones. Marijuana processing is prohibited in residentially zoned and designated areas.
  - b. Marijuana processing of cannabinoid concentrates and cannabinoid products not including processing of cannabinoid extracts is permitted in all CB, CC, CL, CG, ME and MR zoned and designated areas, and in the commercial zoned and designated areas provided the building area is 5,000 square feet or less and the use includes a retail component as identified in the use tables in BDC Title 2. It is permitted conditionally subject to size limitations in the CL zoned and designated areas, and it is permitted in all Industrial zoned and designated areas. See use tables. All marijuana processing is subject to Fire Marshal approval.
  - c. Marijuana processing of cannabinoid extracts is allowed only in Industrial zoned and designated areas, subject to state law and Fire Marshal approval. See use tables in BDC Title 2.
8. Marijuana Testing Laboratory. Marijuana testing laboratories is permitted in IL, IG, CB, CC, CI, CG, ME and MR zoned and designated areas, as further set forth in the use tables in BDC Title 2.
9. Operating License Required. All marijuana businesses operating in the City of Bend must obtain an operating license pursuant to Bend Municipal Code, Chapter 7.50, Marijuana Business Operating License. This applies to existing businesses (businesses currently operating at the time of adoption of this code) in order to continue operating and as a condition to obtaining land use approval under this chapter.
10. Marijuana Businesses-Prohibited Uses. In addition to the other prohibitions identified in this Section, the following uses or practices are also prohibited:
- a. Drive-through dispensaries or facilities in any zone.

- b. Temporary dispensaries or facilities in any zone.
- c. On-site consumption of marijuana at a licensed dispensary or marijuana recreational facilities unless: (1)The consumption is conducted for testing in compliance with OAR 333-008-1190; or (2) The consumption is allowed under the medical exception granted in OAR 333-008-1200.
- d. Co-location of medical marijuana dispensaries at grow sites.
- e. Marijuana businesses in residential zones or designations.
- f. Retail medical marijuana dispensaries or marijuana recreational facilities in industrial zones.
- g. Marijuana businesses as a home occupation in any zone.
- h. Marijuana businesses as a Neighborhood Commercial use.

#### 11. Compliance and Enforcement.

- a. Any premise, house, building, structure or place of any kind where marijuana is sold, manufactured, bartered, or distributed in violation of state law or this City code is a public nuisance. The City may institute an action in Deschutes County in the name of the City to temporarily or permanently enjoin such nuisance.
- b. This remedy is in addition to, and not in lieu of, any other civil, criminal or administrative remedies available to the City authorized under this code, or by law or equity.

**EXHIBIT B  
FINDINGS OF FACT  
DEVELOPMENT CODE UPDATE  
AMENDMENT PZ 15-0836**

**Procedural Findings**

The application was initiated by the city in accordance with BDC 4.1.500. Timely and sufficient notice of the public hearings was provided pursuant to BDC 4.1.515. Notice of the proposed amendments was provided to the Department of Land Conservation and Development (DLCD) on October 2, 2015 and a revision was sent on November 2, 2015. On October 16, 2015, the City of Bend sent a postcard that included language as required by ORS 227.186 to 3,461 property owners within the commercial, mixed-use and industrial zoning districts to notify individuals of the Planning Commission's public hearing on November 9, 2015. The Bend Planning Division published a notice of the Planning Commission and City Council public hearings for the proposed Development Code text amendments in the Bend Bulletin on October 18, 2015. A public hearing notice was also sent to all of the City's Neighborhood Associations on October 14, 2015 and to known marijuana businesses on November 3, 2015 and November 4, 2015. The Planning Commission held a public hearing on November 9, 2015 and recommended approval of the proposed amendments. The City Council held a work session on November 30, 2015 and a public hearing and first reading on December 2, 2015. On December 16, 2015, the Council held a second reading and voted unanimously for emergency adoption of the amendments.

**Criteria of Approval**

- (1) The Bend Area General Plan
- (2) Bend Development Code
  - (a) Chapter 4.6, Land Use District Map and Text Amendments;  
Section 4.6.200(B), Criteria for Legislative Amendments

**Applicable Procedures**

- (1) Bend Development Code
  - (a) Chapter 4.1, Land Use Review and Procedures

**Findings Regarding Compliance with Applicable Criteria:**

**CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.6,  
LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

**4.6.200 Legislative Amendments.**

**A. Applicability, Procedure and Authority. Legislative amendments generally involve broad public policy decisions that apply to other than an individual**

property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

**FINDING:** The amendments to the text of the Development Code involve broad public policy rather than an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures for this review.

**B. Criteria for Legislative Amendments. The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:**

**1. The request is consistent with the applicable State land use law;**

**FINDING:** The proposed amendments are consistent with the applicable State land use law. In particular, they satisfy Goal 1: Citizen Involvement, Goal 2: Land Use Planning, and Goal 9: Economic Development.

**Goal 1, Citizen Involvement**, is satisfied through following the City's acknowledged text amendment process that includes a Planning Commission public hearing, followed by a City Council public hearing. In addition, on September 16, 2015, the City Council adopted Resolution 3006 establishing a Marijuana Technical Advisory Committee (MTAC) to provide input to the Planning Commission and City Council regarding reasonable time, place and manner regulations of marijuana businesses. The MTAC held public work sessions on September 17, 2015, October 1, 2015, October 15, 2015 and October 29, 2015. The creation of the MTAC was an integral component of the community involvement process regarding legal marijuana. The process allowed stakeholders to comment, participate and impact how the City of Bend will regulate a new industry. Public comment was accepted at all MTAC meetings.

**Goal 2, Land Use Planning**, requires a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. The Goal is met because the City followed the land use planning process and policy framework established in the City's acknowledged Comprehensive Plan (General Plan) and Development Code as a basis for the decisions and actions related to the new regulations regarding the use of land and to assure an adequate factual base for these decisions and actions. The proposed amendments will be adopted by the City Council after a public hearing. Multiple opportunities were provided for review and comment by citizens and affected governmental units during the preparation of this ordinance.

Goal 2 specifically states that minor plan changes such as the marijuana business regulations, should be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change should be established. The MTAC was purposefully made up of knowledgeable members of the industry, marijuana law, the Bend LaPine School District, and the

community at large. The MTAC held four meetings between September and November of 2015. The MTAC had extensive discussion and debate on various policy recommendations, particularly distance requirements. The MTAC studied several maps with buffers around various uses including schools, childcare facilities, libraries, parks and also between marijuana recreational facilities. The MTAC and the Planning Commission proposed buffers around schools and childcare facilities. On December 2, 2015, the City Council added additional buffers around parks and between marijuana recreational facilities. The buffers balance a strong and heartfelt desire to protect the community's youth from drug use while still allowing medical marijuana dispensaries to locate in the City of Bend to serve legitimate medical needs and also to allow marijuana retail to develop their legal businesses for adults.

**Goal 9, Economic Development**, is implemented through Oregon Administrative Rule (OAR) Division 9 which is intended to ensure that each jurisdiction maintain an adequate land supply for economic development and employment growth. The Goal is satisfied because the proposed amendments establish regulations that are not overly regulatory and allow existing and new marijuana businesses to emerge and grow, thereby diversifying the local economy.

**Other Goals:** Because the proposed code amendments are limited in scope, there are no other Statewide Planning Goals or Administrative Rules applicable to this amendment. Likewise, there are no applicable Oregon Revised Statutes that are criteria applicable to these amendments (Note, consistency with the Transportation Planning Rule (TPR) is discussed further in this document).

Based on the above discussion, the proposed text amendment to the Development is consistent with the statewide planning goals and therefore complies with the requirement that the amendment be consistent with state land use planning law.

## **2. The request is consistent with the applicable Bend Area General Plan goals and policies;**

**FINDING:** The “goals” established in the general plan express the desires of the residents of Bend as the City progresses into the future. The “goals” are generally carried out through “policies,” which are statements of public policy. The following Goals and Policies are applicable:

### ***Chapter 1: Plan Management and Citizen Involvement***

#### *Goals:*

- *Quality Economic Growth — Assure an opportunity for a stable, vital and diverse economy while sustaining its environment/ecological support systems.*

#### *Policies:*

- *Policy 15: The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.*

- *Policy 16: The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process*

**FINDING:** At the August 19, 2015 City Council meeting, Council directed staff to move forward with a committee consisting of interested and knowledgeable stakeholders to help develop and refine land use regulations and licensing requirements for marijuana businesses. Staff recruited a 9-person committee that included representatives from the industry, marijuana law, the Bend LaPine School District, and the community at large. The City Council approved the MTAC on September 16, 2015 during a council meeting. The MTAC met on September 17, 2015, October 1, 2105, October 15, 2015 and October 29, 2015 to discuss and draft the proposed amendments.

The Planning Commission held a work session and public hearing on November 9, 2015 and the City Council held a work session on November 30, 2015 and a public hearing on December 2, 2015 regarding the proposed amendments.

## **Chapter 6: The Economy and Lands for Economic Growth**

### **Goals**

- *Have a vital, diverse and sustainable economy, while enhancing the community's overall livability.*
- *Stimulate economic development that will diversify and strengthen economic activity and provide primary and secondary job opportunities for local residents.*

**FINDING:** The proposed code amendments include updating the commercial, mixed-use and industrial land use tables to include appropriate marijuana businesses. The amendments also include procedures, development standards, distance requirements, and prohibited uses. As detailed in the maps (Attachment A) approved by the City Council on December 2, 2015, the mapping of the proposed distance requirements indicates that there are somewhat limited areas where potential medical marijuana dispensaries and marijuana recreational facilities can locate; however, it would not create an undue burden. The proposed amendments will still allow marijuana businesses to develop in Bend and provide job opportunities while continuing to enhance the community's overall livability. Based on the findings stated above, the proposed text amendments are consistent with the applicable General Plan Goals and Policies.

### **3. The applicant can demonstrate a public need or benefit for the proposed amendment.**

**FINDING:** The City of Bend recognizes the importance of its unique qualities and diverse economy that supports a mix of uses. The proposed amendments address compatibility concerns raised by members of the public; however, they are not overly regulatory to allow new businesses to emerge and grow, thereby diversifying the local economy. The proposed regulations will give City staff and the general public clear direction regarding what may be permitted, and where.



#### **4.6.500 Record of Amendments.**

**The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.**

**FINDING:** Once the Development Code text amendment is adopted by ordinance, the City Recorder will maintain a record of the amendments and the revised provisions will be included as part of the Bend Development Code available to the public on the City's website.

#### **4.6.600 Transportation Planning Rule Compliance.**

**When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.**

**FINDING:** The new text amends the Bend Development Code, a functional component of the General Plan, and is an amendment to a land use regulation as noted in OAR 660-012-0060. The proposed amendments are not tied to any one development application and do not affect the functional classification of any street. The proposed amendments will have no measurable impacts on the amount of traffic on the existing transportation system; therefore the proposed text amendments do not cause a "significant effect" under ORS 660-012-0060.

#### **V. CONCLUSION:**

Based on the above Findings, the proposed Development Code text amendment meets all applicable criteria for adoption.

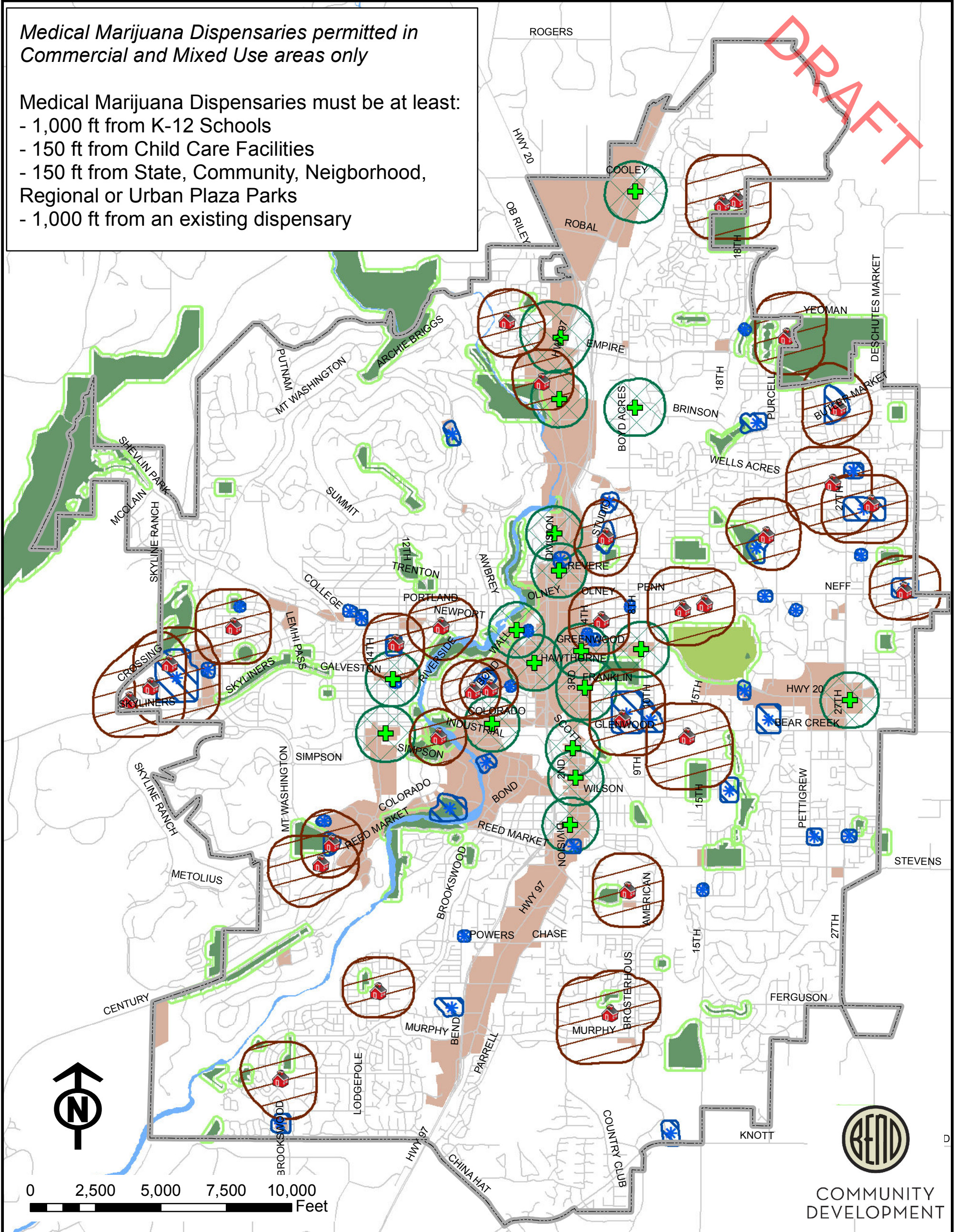
Attachment A

# Map A. Required Separation Distances for New Medical Marijuana Dispensaries - Proposed for PZ-15-0836 Marijuana Code Amendments -

Medical Marijuana Dispensaries permitted in Commercial and Mixed Use areas only

Medical Marijuana Dispensaries must be at least:

- 1,000 ft from K-12 Schools
- 150 ft from Child Care Facilities
- 150 ft from State, Community, Neighborhood, Regional or Urban Plaza Parks
- 1,000 ft from an existing dispensary



- |  |                        |  |  |
|--|------------------------|--|--|
|  | Dispensaries           |  | 1000 ft of a School                    |
|  | K-12 Schools           |  | 150 ft of a Child Care Facility        |
|  | Child Care Facilities  |  | 1000 ft of Dispensary                  |
|  | Public Parks           |  | 150 ft of a Park                       |
|  | Pilot Butte State Park |  | General Plan designation allows retail |

Notes: General Plan designations shown would allow marijuana retail uses (CB, CC, CG, CL, ME, MR). Separation distances measured radially from property boundary.

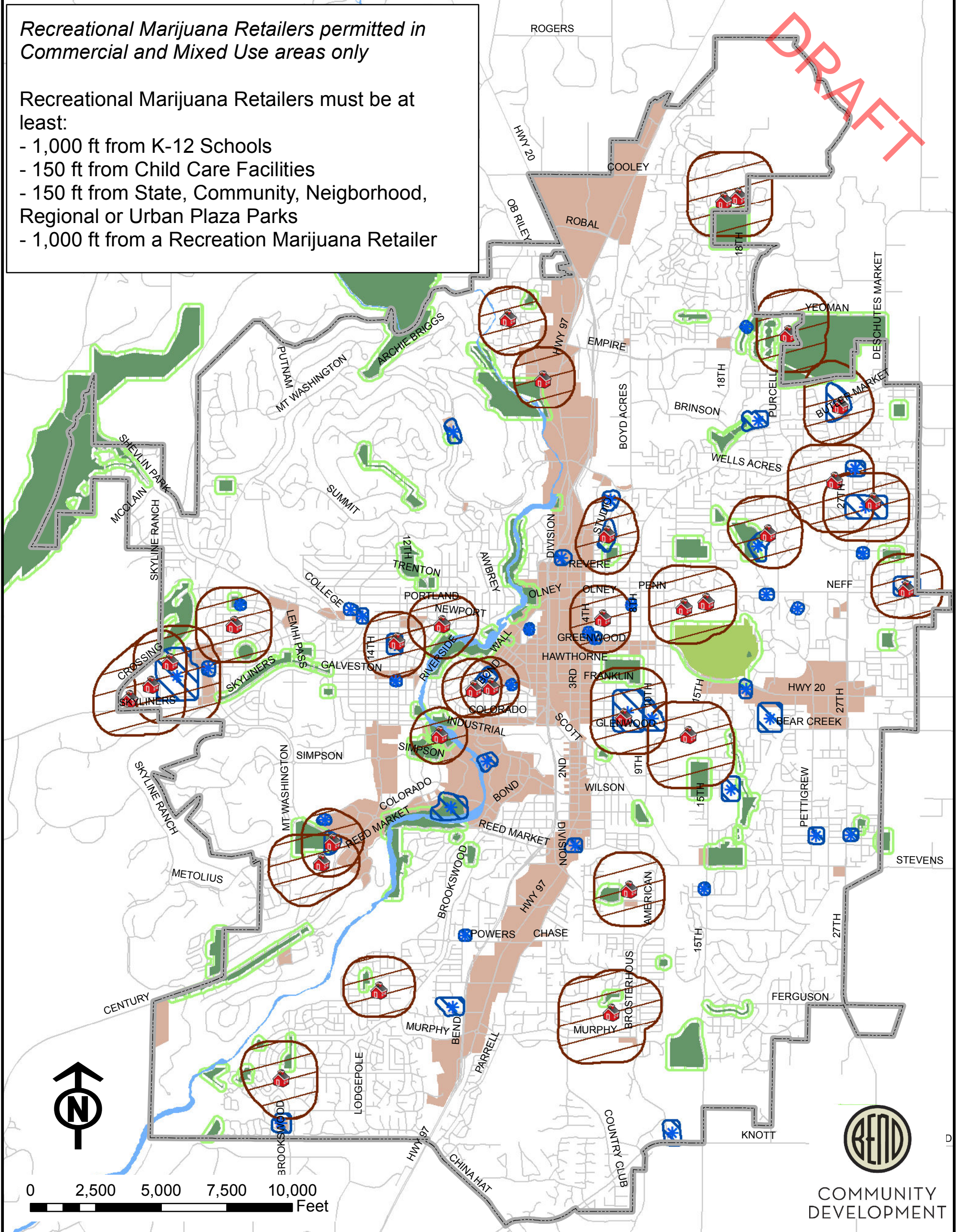
Map created 12/3/15 by CDD Planning Division - for planning purposes only. Data sources: Oregon State GIS Clearinghouse, Deschutes County, City of Bend, BPRD, and Oregon Health Authority for 18 licensed dispensaries; School data updated 11/19/15

# Map B. Required Separation Distances for Recreational Marijuana Retailers - Proposed for PZ-15-0836 Marijuana Code Amendments -

*Recreational Marijuana Retailers permitted in Commercial and Mixed Use areas only*

Recreational Marijuana Retailers must be at least:

- 1,000 ft from K-12 Schools
- 150 ft from Child Care Facilities
- 150 ft from State, Community, Neighborhood, Regional or Urban Plaza Parks
- 1,000 ft from a Recreational Marijuana Retailer



- |                        |  |
|------------------------|--|
| K-12 Schools           | 1000 ft of a School                    |
| Child Care Facilities  | 150 ft of a Child Care Facility        |
| Public Parks           | 150 ft of a Park                       |
| Pilot Butte State Park | General Plan designation allows retail |

Notes: General Plan designations shown would allow marijuana retail uses (CB, CC, CG, CL, ME, MR). Separation distances measured radially from property boundary.

Map created 12/3/15 by CDD Planning Division - for planning purposes only. Data sources: Oregon State GIS Clearinghouse, Deschutes County, City of Bend, Bend Parks and Recreation District; School data updated 11/19/15

