

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: MATTHEW BRONSON, CITY MANAGER
BRUCE BUCKINGHAM, COMMUNITY DEVELOPMENT DIRECTOR *BAB*
SUBJECT: CLARIFICATION OF COUNCIL DIRECTION ON PROPOSED ORDINANCE TO REGULATE COMMERCIAL MEDICAL MARIJUANA USES

BACKGROUND

The Municipal Code currently prohibits all commercial medical marijuana activities in the City. On July 5, 2016, the City Council directed staff to start working on a draft ordinance that would regulate commercial medical marijuana uses consistent with the Council's FY 17 Goals and Work Program. At the August 15, 2016 Council meeting, staff received further direction on framing the major components of the draft ordinance. The purpose of this report is to confirm staff's understanding of the Council's direction and seek clarification on outstanding items prior to staff's work in drafting the ordinance this fall for review and a recommendation by the Planning Commission and consideration and adoption by the Council.

DISCUSSION

Below is staff's summary of the Council's direction on the draft ordinance provided at the August 15, 2016 meeting along with the outstanding items where staff is seeking clarification.

Ordinance Purpose

The draft ordinance will include land use and regulatory requirements for commercial medical marijuana uses for manufacturing, warehousing/distribution, laboratory testing, cultivation, transportation, and dispensaries. The ordinance will also address personal cultivation to mitigate potential adverse impacts to surrounding properties. The ordinance will not address adult recreational use as proposed in Proposition 64 (Adult Use of Marijuana Act) on the November 2016 ballot. At such time recreation use becomes legal, the Council can determine if an amendment to the ordinance should occur.

Manufacturing, Warehousing/Distribution, Laboratory Testing

Location: These uses would be allowed in the industrial area located south of Farroll Road as part of an Overlay Zone (reference Attachment 1).

Distance from Sensitive Uses: The Council did not identify any minimum distances from sensitive uses (e.g., schools). This is consistent with state law which does not require a

APPROVED FOR FORWARDING



MATTHEW BRONSON
CITY MANAGER

Please Review for the Possibility of a Potential Conflict of Interest:

- None Identified by Staff
- Shoals
- Lee
- Bright
- Nicolls
- Shah

minimum distance for manufacturing uses from schools.

Limitation on Use: The Council did not identify any maximum limit on square footage, the number of businesses, or minimum distance between manufacturing uses.

Type of Manufacturing: This is one of the outstanding issues as the Council requested additional information on Level 1 and Level 2 manufacturing prior to providing direction. The State defines Level 1 manufacturing as being without the use of volatile solvents and Level 2 as being with the use of volatile solvents such as butane, propane, acetone, ethanol, isopropanol, and heptane which are considered to be hazardous materials. The use of volatile solvents allow for a more efficient extraction process than using water and enhance the concentration of the manufactured product (e.g., oils). State statutes create no distinction between the two processes except the reference to nonvolatile vs. volatile. However, this will change as the State establishes their regulations as authorized by State statutes implementing the Medical Marijuana Regulation and Safety Act (MMRSA).

Although none of the current parties that have expressed interest in operating in the city have proposed Level 2 manufacturing, it is likely that there would be future demand based on the limited number of cities that currently allow such manufacturing. Currently, there are numerous industrial type business entities in the City that have a permit for hazardous materials including automotive service, repair and painting, high-tech manufacturing, cabinetry fabrication and water treatment. The County Department of Environmental Health Services is the agency responsible for permitting and regulating the storage and use of hazardous materials.

If the Council decides to allow Level 2 manufacturing in the ordinance, staff would recommend that commercial grade laboratories be required at such facilities. Although these types of laboratories are more expensive to construct, they contain fume hoods and specialized equipment, which reduces the risk of explosion or fire.

Commercial Cultivation & Nurseries

The Council supported cultivation within a building (i.e., indoors) but was opposed to outdoor cultivation. The Council also supported mixed-light grow facilities that allow for a combination of artificial and natural light.

Location: These uses would be allowed in the industrial area located south of Farroll Road as part of an Overlay Zone (reference Attachment 1).

Distance from Sensitive Uses: No minimum distances from sensitive uses were identified by the Council. This is consistent with state law which does not require a minimum distance for cultivation uses from schools.

Limitation on Use: A second outstanding issue is whether the Council would desire a limit on maximum square footage, the number of businesses, or minimum distance between cultivation uses. On a related issue, the Council directed staff to require water conservation at a level up to 90%, if feasible.

If the Council does not establish a limit on the maximum square footage for cultivation, the water supply analysis required by the California Environmental Act (CEQA) would need to assume a reasonable estimate of cultivation area to estimate water usage. If the Council established a maximum square footage, then the CEQA analysis would be capped at the maximum area allowed for cultivation.

The following table provides some comparisons on water demand based on the above:

Water Demand Based on Amount of Recycled Water

Cultivation Area in s.f.	No. of Facilities (assuming max. of 22,000 s.f.)	No Recycled Water	50% Recycled Water	70% Recycled Water	90% Recycled Water
110,000	5	75 ac/ft/yr	37.5 ac/ft/yr	22.5 ac/ft/yr	7.5 ac/ft/yr
220,000	10	150 ac/ft/yr	75 ac/ft/yr	45 ac/ft/yr	15 ac/ft/yr
440,000	20	300 ac/ft/yr	150 ac/ft/yr	90 ac/ft/yr	30 ac/ft/yr
880,000	40	600 ac/ft/yr	300 ac/ft/yr	180 ac/ft/yr	60 ac/ft/yr

ac/ft/yr = acre-feet per year

Consequently, staff is seeking clarification on whether the Council wants to establish a maximum square footage of cultivation area or other use limitations in the draft ordinance.

Personal Cultivation: The Council directed staff to include regulations for personal cultivation to address potential adverse impacts to adjacent properties. The standards will include indoor cultivation only and a ministerial permit so the Police Department would be notified of all legally permitted sites for personal cultivation within the City.

Dispensaries

Location: The Council identified the industrial area south of Farroll Road for dispensaries with some discussion about increased setbacks as discussed below.

Distance from Sensitive Uses: The Council discussed the possibility of a 100 foot setback from residential zones, especially adjacent to Calvin Court. Staff is seeking clarification on if, and where, the Council would like to include a buffer from residential zones and whether that would also include a 100 foot setback from non-conforming residential units in the proposed overlay zone. Staff has provided a map indicating a 100 foot setback from residential zones (reference Attachment 2).

Staff did clarify that state law requires dispensaries be a minimum distance of 600 feet from public and private schools (kindergarten through grade 12). Therefore, a 600 foot setback is required from the existing private kindergarten school located at Baden Avenue and South 11th Street as shown on Attachment 3.

Limitation on Use: Similar to use limitations related to cultivation, the Council did not specifically discuss whether a limitation should be placed on the number of dispensaries that would be allowed to operate in the City. Staff is seeking clarification on whether the Council would like to limit the number of dispensaries allowed to operate.

Development Permit Process

The Council indicated its support for a two-step development permit process. The first step would be to obtain a Use Permit (discretionary permit) that would approve the location and establish land use requirements. The second step would involve obtaining a regulatory permit (ministerial permit) to demonstrate compliance with state law prior to opening the business and on an ongoing basis to ensure the business is operating in compliance with state and local laws. Currently, Use Permits require Planning Commission approval and only are considered by the Council on an appeal. Staff is seeking clarification on whether the Council wants to be the

Review Authority for Use Permit applications related to medical marijuana uses.

Potential Adverse Impacts

The draft ordinance will include appropriate safety measures and odor control measures for all proposed medical marijuana uses.

Design Standards

The Council indicated support for design standards for upgrading older industrial buildings. Staff will include requirements that buildings be painted and/or architecturally enhanced and minimum Development Code requirements be met for landscaping.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Provide clarification and comments on the content of the draft ordinance to regulate commercial medical marijuana uses; or
2. Provide alternative direction to staff.

RECOMMENDED ACTION

It is recommended that the City Council provide clarification and comments on the content of the draft ordinance to regulate commercial medical marijuana uses.

FISCAL IMPACT

As presented in previous staff reports, the costs in drafting the ordinance are estimated at \$10,000 for the City Attorney's time and \$20,000 for the consultant's time for the CEQA document and any other consultants to assist in drafting the ordinance. The total estimated costs of \$30,000 to draft an ordinance are not included in the FY 17 Budget and would need to be funded through General Fund reserves or another funding source.

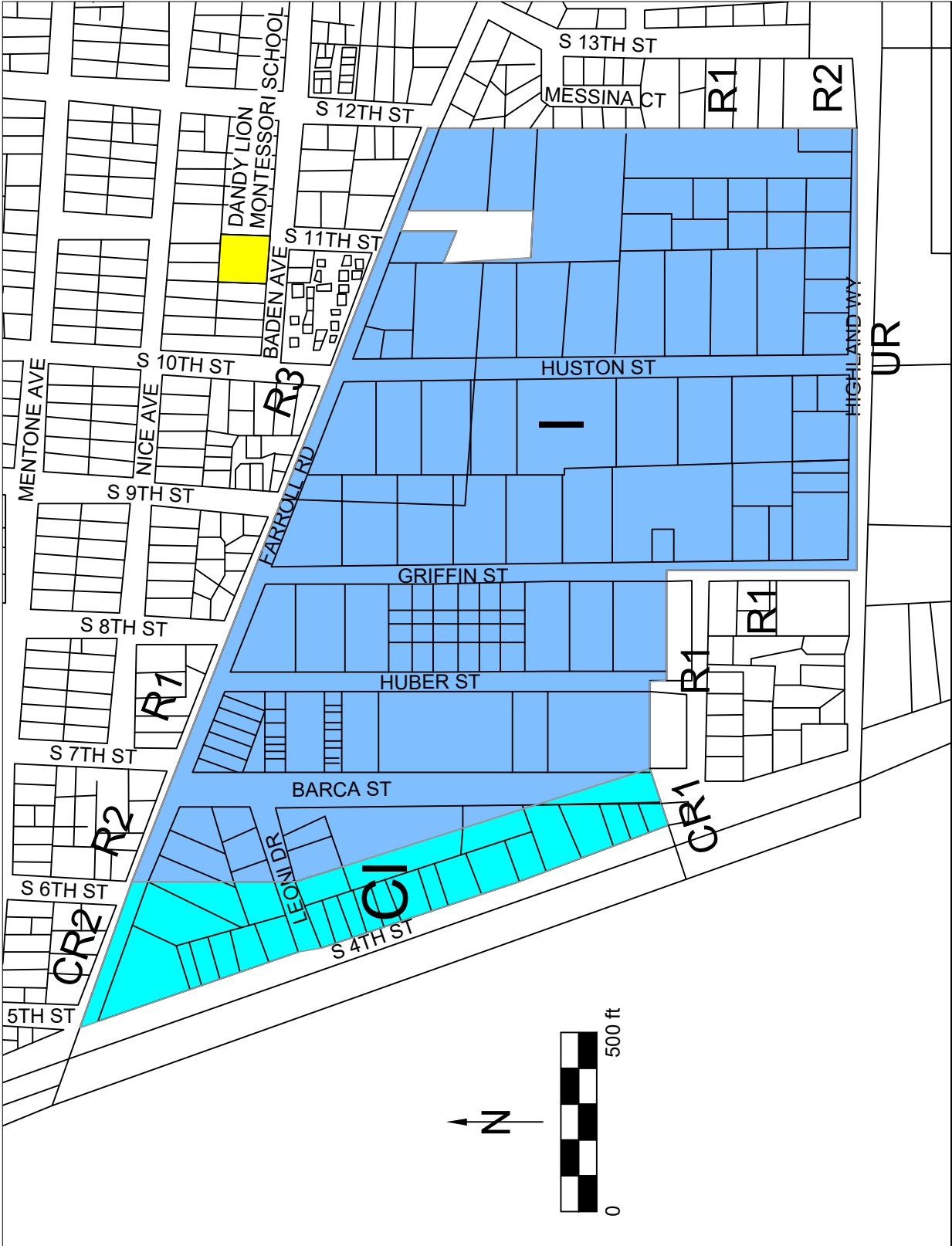
The adoption of an ordinance regulating commercial medical marijuana uses would allow the City to charge a fee for all staff time spent on future development applications, background checks, facility inspections, and all other time spent by staff related to enforcing the adopted ordinance. This is no different than any other development application where the City can charge a fee that is reasonably related to time spent on the project in order to achieve full cost recovery for services provided. Such a regulatory fee structure is different from the tax measure (Measure L) placed on the November 2016 ballot by the Council which would establish an annual commercial cannabis tax on medical and non-medical marijuana businesses where permissible by law.

PUBLIC NOTIFICATION

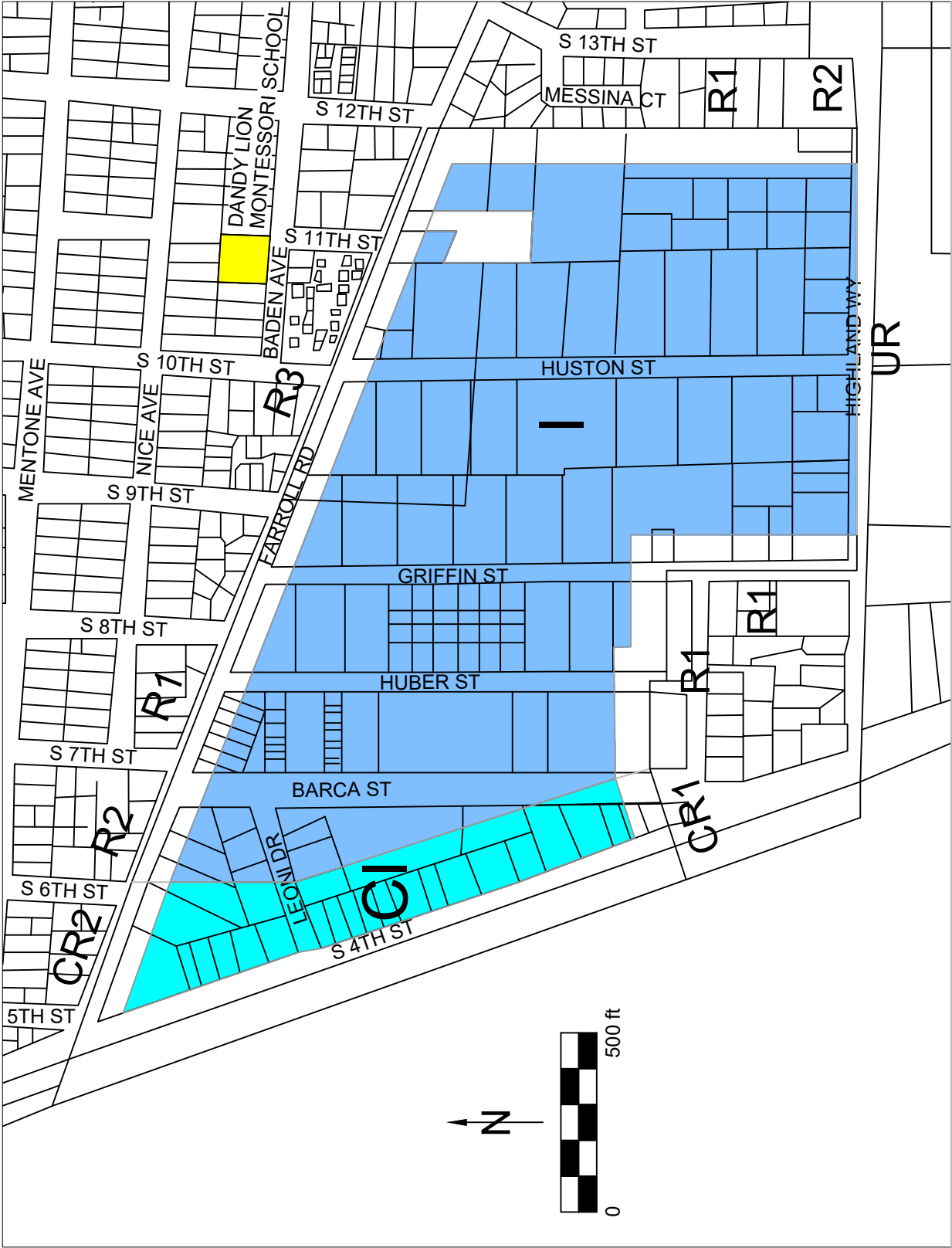
The agenda was posted in accordance with the Brown Act. A copy of the agenda was sent to parties that previously expressed interest in commercial medical marijuana activities in the City.

ATTACHMENTS

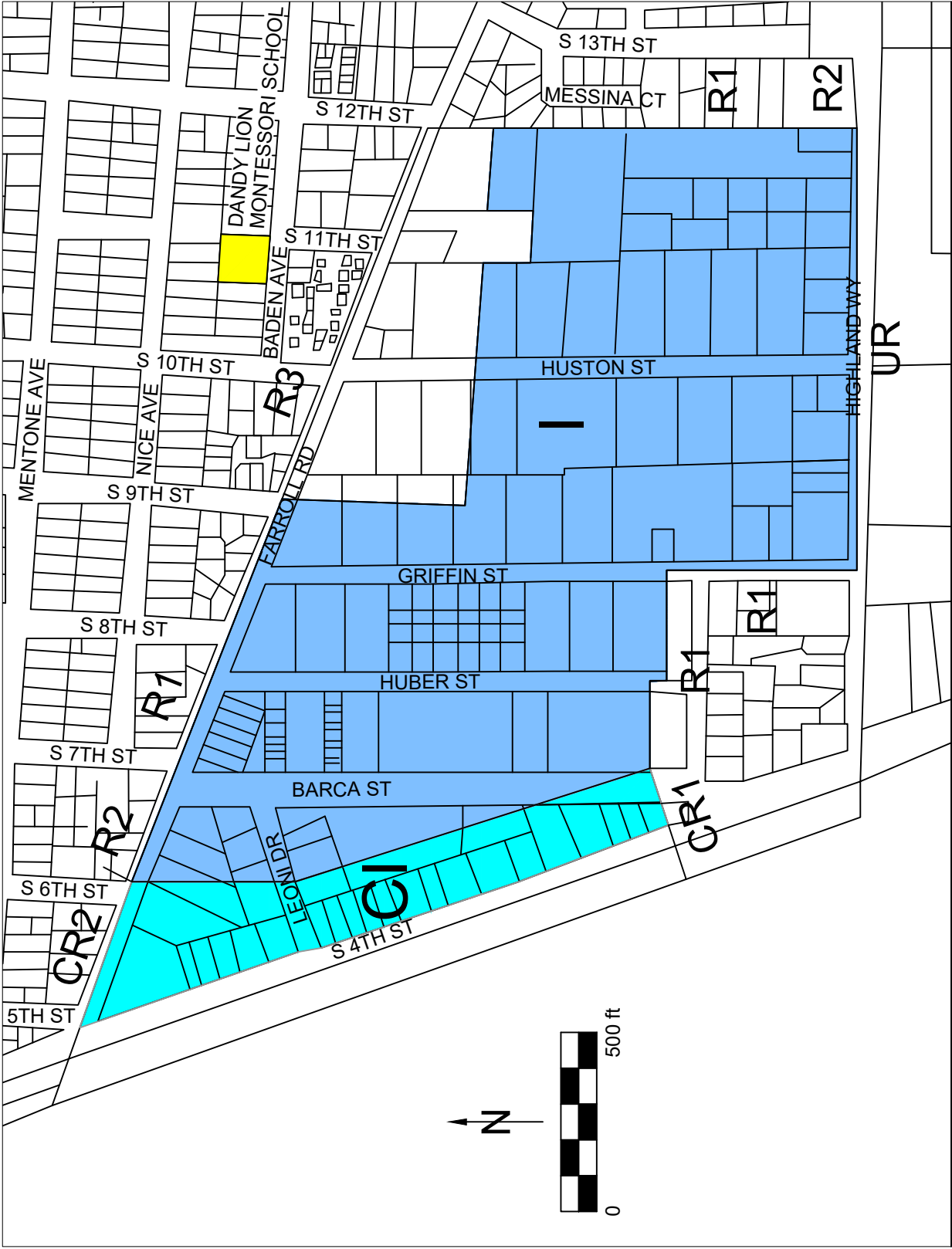
1. Overlay Zone I & CI Zones south of Farroll Road
2. Overlay Zone with 100 Foot Setback from Residential Zones
3. Overlay Zone with 600 Foot Setback from School



OVERLAY ZONE FOR CI & I ZONES



OVERLAY ZONE CI & I ZONES w/ 100 ft. Setback from Residential Zones



OVERLAY ZONE FOR CI & I ZONES w/ 600 ft. Setback from School