

ORDINANCE NO. 17-702-O

AN ORDINANCE OF THE CITY OF COLUMBIA CITY RELATING TO BUSINESS LICENSE REGULATIONS FOR MARIJUANA FACILITIES.

WHEREAS, the voters adopted Measure 91 in November 2014, legalizing the growing, distribution, possession and use of recreational marijuana in certain amounts for people aged 21 or older and directing the Oregon Liquor Control Commission to license the retail sale of marijuana; and,

WHEREAS, the Legislature enacted Senate Bill 460 (2015) to allow medical marijuana facilities to sell limited marijuana retail product starting October 1, 2015; and,

WHEREAS, state law authorizes the operation of marijuana facilities and provides those facilities with immunity from state criminal prosecution; and,

WHEREAS, although the State of Oregon has passed legislation authorizing marijuana facilities and providing criminal immunity under state law, the operation of those facilities remain illegal under federal law; and,

WHEREAS, the issue of whether a local government believes a certain type of business should operate within its jurisdictional limits is a local government decision, the enforcement of which is subject to the general and police powers of that jurisdiction; and,

WHEREAS, the City Council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the city and subject to the general and police powers of the city, except when local action has been clearly and unambiguously preempted by state statute; and,

WHEREAS, the city's licensing and regulatory system should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other license or regulatory requirement imposed by any other provisions of city ordinance or local, regional, state or federal law; and,

WHEREAS, the City Council wants to provide business license regulations for marijuana facilities in the city in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses within the city; and,

WHEREAS, the City of Columbia City has set the following marijuana facility regulations as described in the following sections of this ordinance.

NOW, THEREFORE, the City of Columbia City ordains as follows:

Section 1. Definitions.

1.1 City Administrator means the City Administrator of the City of Columbia City or their official designee.

1.2 Marijuana means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin as currently defined by state law or as may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted there from), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

1.3 Marijuana facility or facility means any facility licensed by the state of Oregon to sell marijuana. The term includes both businesses and facilities that are registered by the Oregon Health Authority to sell, distribute, transmit, give, dispense or otherwise provide medical marijuana pursuant to O.R.S. Chapter 475, and facilities that are licensed by the Oregon Liquor Control Commission to sell or distribute marijuana for recreational purposes. A marijuana facility includes the real property on which the use is proposed or situated and all buildings or other structures on the property used for the storage, distribution, sale or dissemination of marijuana.

1.4 Operator means a person who owns, operates or otherwise has legal responsibility for a facility and who meets the qualifications established by the Oregon Health Authority and or the Oregon Liquor Control Commission and has been approved by the Oregon Health Authority and or Oregon Liquor Control Commission to operate a marijuana facility.

1.5 Principal means members, partners, or corporate officers, and all stockholders holding more than 10 percent of the voting stock for any applicant who is not a natural person.

Section 2. Rulemaking.

2.1 All state laws and rules must be followed; specifically Measure 91 - Control, Regulation and Taxation of Marijuana and Industrial Hemp Act, Oregon House Bill 3400, and Oregon House Bill 2041.

2.2 The City Administrator has the authority to adopt administrative rules and procedures related to the operation of marijuana facilities as necessary for the proper administration and enforcement of this ordinance.

Section 3. License and registration.

3.1 Local license required. Medical marijuana facilities must possess a valid license issued under this ordinance to operate within the city. The license required by this ordinance facilitates the registration and the city's oversight of a marijuana facility. The license required by this ordinance should not be construed to constitute an authorization to engage in any activity prohibited by

law nor a waiver of any other regulatory or license requirement imposed by any other provision of city ordinance or local, regional, state or federal law.

3.2 State registration required. To be eligible to apply for a license under this ordinance, medical marijuana facilities must be registered with the Oregon Health Authority and recreational facilities must be registered with the Oregon Liquor Control Commission. Marijuana facilities must be authorized by state law to operate, and they must also follow all current and future state laws and rules that are formed.

Section 4. License application.

4.1 Application. Applications for licenses must be submitted to the City of Columbia City. A separate application must be submitted for each proposed facility. The application must include the following information:

- a. Certification that the proposed facility is registered at that location as a medical marijuana facility with the Oregon Health Authority pursuant to ORS 475B.450 and/or certification that the proposed facility is registered at the location by the Oregon Liquor Control Commission.
- b. The applicant's name, residence address, and date of birth.
- c. The names and residence addresses of:
 - i. Any person or legal entity that has an ownership interest in the facility, including all principals of the applicant;
 - ii. Any person or legal entity with a financial interest that has loaned or given money or real or personal property to the applicant, or principal of the applicant, for use by the proposed facility within the preceding year;
 - iii. Any person or legal entity that has leased real property to the applicant for use by the facility and any person who manages that property; and
 - iv. Any person who is anticipated at the time of the application to be an employee or volunteer at the proposed facility.
- d. The business name.
- e. The address and telephone number of the proposed facility.
- f. The mailing address for correspondence about the license.
- g. A detailed description of the type, nature and extent of the business.
- h. The proposed days and hours of operation.
- i. A detailed description of the proposed accounting and inventory system of the facility.
- j. Certification that the facility has met all applicable requirements of the city development and sign code.
- k. Certification that all applicable taxes and fees have been paid.

l. A complete application for a criminal background check for the applicant, and all principals, persons with a financial interest, employees, and volunteers of the proposed marijuana facility.

m. The names of at least three natural persons who can give an informed account of the business and moral character of the applicant and principals.

n. The signature, under penalty of perjury, of the applicant, if a natural person, or otherwise of an authorized agent of the applicant, if the applicant is other than a natural person.

o. Any and all other information deemed necessary by the City Administrator to complete review of the application.

4.2 Continuing obligation to update information. All information provided in an application must be kept current at all times, including after a license is issued. Each licensee shall notify the City of Columbia City in writing within ten (10) days of any change in the information provided to obtain the licenses. Failure to provide information may result in the city's revocation of license to operate within the city.

Section 5. Issuance of license.

5.1 Determination. Within ten (10) days after receiving a complete application and license fee for a marijuana facility license, the City of Columbia City will issue the license if the City Administrator finds that:

a. The facility is registered as a medical marijuana facility with the Oregon Health Authority pursuant to ORS 475B.450 and/or a recreational facility that meets all Oregon Liquor Control Commission rules; and

b. The facility meets all of the requirements of this ordinance and all other applicable city ordinances.

5.2 Denial. In addition to denial for failure to meet the requirements of this ordinance, the City Administrator may deny a license if:

a. The applicant made an untrue, misleading, or incomplete statement on, or in connection with, the application for the license or a previous application for a license;

b. Notwithstanding the federal Controlled Substances Act, the applicant fails to meet all requirements of local, state and federal laws and regulation, including, but not limited to, other permitting or licensing requirements and land use regulations; or

c. The owner or employees have been convicted of any felony crimes.

Section 6. Fees. An application must be accompanied by a marijuana facilities license fee. The fee amount will be established by resolution of the City Council.

Section 7. Display of license. The license issued under this ordinance must be prominently displayed at all times in an easily visible location inside the facility.

Section 8. License term, termination and surrender:

8.1 Term. The term of a license issued under this ordinance shall be limited to the calendar year in which it was issued. All licenses issued under this ordinance shall terminate at midnight, December 31 of the same year in which they were issued.

8.2 Termination due to change in law. A license terminates automatically if city, federal or state statutes, regulations or guidelines are modified, changed or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the facility under this ordinance.

8.3 Surrender. A licensee may surrender a marijuana facility license by delivering written notice to the city that the licensee thereby surrenders the license. A licensee's surrender of a license under this section does not affect the licensee's civil or criminal liability for acts the licensee committed before surrendering the license.

Section 9. Transferability. Licenses issued under this ordinance may be transferred to another person upon determination by the City Administrator that the person receiving the license meets all of the requirements of this ordinance. A license transfer requires the completion of a new license application in accordance with this ordinance and payment of a new license fee.

Section 10. Indemnification.

10.1 Waiver. By accepting a marijuana facility license issued under this ordinance, the licensee waives and releases the city, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of a facility owner or operator, principal, person or legal entity with a financial interest in the facility, person or entity that has leased real property to the facility, employee, volunteer, client of customer for a violation of federal, state or local laws and regulations.

10.2 Indemnification. By accepting a marijuana facility license issued under this ordinance, the licensee(s), jointly and severally if there is more than one, agree to indemnify and hold harmless the city, its officers, elected officials, employees, volunteers, and agents, insurers, and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the marijuana facility that is the subject of the license.

Section 11. Standards of operation.

11.1 Registration and compliance. Medical marijuana facilities under ORS 475B.450 must be in good standing with the Oregon Health, and the facility must comply with all applicable laws and regulations administered by the Oregon Health Authority for medical marijuana facilities. Recreational marijuana facilities must comply with all rules as outlined by the State of Oregon and Oregon Liquor Control Commission.

11.2 Compliance with other laws. The facility must comply with all applicable laws and regulations, including, but not limited to, the building and fire codes.

11.3 Hours of operation. Operating hours must be no earlier than 10 am and no later than 8 pm on the same day.

11.4 Public view into facility. All doorways, windows and other openings shall be located, covered or screened in such a manner to prevent a view into the interior from any exterior public or semipublic area.

11.5 Odors. Odor of marijuana is the characteristic of marijuana that may be perceived by the sense of smell. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premise to any other property. The facility must use an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of every law enforcement officer that is certified by the Oregon Board of Public Safety and Standards Training, is sufficiently trained to identify the sight and odor of marijuana, and whose opinion as to the presence of the odor of marijuana shall be presumed affirmative proof thereof.

11.6 Violation of odor. Violation of odor of marijuana is declared to be a public nuisance and shall be abated pursuant to all available remedies.

11.7 Lighting. Facilities must maintain adequate outdoor lighting over each exterior exit.

11.8 Sales in facility. Sales or any other transfers of marijuana on the facility premises must occur inside the facility building and must be conducted only within the facility.

11.9 On-site use. Marijuana products must not be smoked, ingested, consumed or otherwise used on the premises of a medical marijuana facility.

11.10 Outdoor storage. Outdoor storage of merchandise, raw materials or other material associated with the facility is prohibited.

11.11 Secure disposal. The facility must provide for secure disposal of marijuana remnants and byproducts. Marijuana remnants and byproducts shall not be placed within the facility's exterior refuse containers.

11.12 Home occupation. A facility may not be operated as a home occupation.

11.13 Drive-through or walk-up. A facility may not have a walk-up window or a drive-through.

11.14 Accounting systems. The facility must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the city finds the books and records of the facility are deficient in any way or if the facility's accounting system is not auditable, the facility must modify the accounting system to meet the requirements of the City Administrator.

11.15 Accounting records. Every facility must keep and preserve, in an accounting format, records of all sales made by the facility and such other books or accounts as may be required by the city. Each facility must keep and preserve for a period of at least two (2) years records containing at least the following information:

- a. Daily wholesale purchases (including grow receipts) and retail sales, including a cash receipts and expense journal;
- b. State and federal income tax returns;
- c. True names and any aliases of any owner, operator, employee or volunteer of the facility;
- d. True names and addresses and any aliases of persons that have, or have had within the preceding year, a financial interest in the facility; and
- e. Additional information as may be required by the City Administrator.

Section 12. Examination of books, records and premises.

12.1 To determine compliance with the requirements of this ordinance and other applicable city ordinances, a licensee shall allow the City of Columbia City to examine or cause to be examined by an agent or representative designated by the City Administrator at any reasonable time the premises of the facility, including wastewater from facility, and any and all financial and operational information, including books, papers, payroll reports, and state and federal income tax returns. Every licensee is directed and required the City Administrator the means, facilities and opportunity for making such examinations and investigations.

12.2 As part of the investigation of a crime or a violation of this ordinance which law enforcement officials reasonably suspect has taken place on the facility's premises or in connection with the operation of the facility, the Columbia City Police shall be allowed to view surveillance videotapes or digital recordings at any reasonable time. Without reducing or waiving any provision of this ordinance, the Columbia City Police shall have the same access to the facility, its records and its operations as allowed to state inspectors.

Section 13. Civil Enforcement.

13.1 Enforcement. The City Administrator may deny, suspend or revoke a license issued under this ordinance for reasons outlined under section 5, subsection 5.2 of this ordinance.

13.2 Civil penalty. In addition to the other remedies provided in this section, any person or entity, including any person who acts as the agent of, or otherwise assists, a person or entity who fails to comply with the requirements of this ordinance or the terms of a license issued under this ordinance, who undertakes an activity regulated by this ordinance without first obtaining a license, who fails to comply with a cease and desist order issued pursuant to this ordinance, or who fails to comply with state law shall be subject to a civil penalty not to exceed \$1000.00 per violation, per day.

13.3 Other remedies. In addition to the other remedies provided in this section, the city may institute any legal proceedings in Circuit Court necessary to enforce the provisions of this ordinance. Proceedings may include, but are not limited to, injunctions to prohibit the continuance of a licensed activity, and any use or occupation of any building or structure used in violation of this ordinance.

13.4 Remedies not exclusive. The remedies provided in this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under city ordinance or state law.

Section 14. Public nuisance.

14.1 Public nuisance. Any premises, house, building, structure or place of any kind where marijuana is grown, processed, manufactured, sold, bartered, distributed or given away in violation of state law or this ordinance, or any place where medical marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this ordinance is a public nuisance.

14.2 Action to remedy public nuisance. The city may institute an action in municipal or circuit court in the name of the city to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The city shall not be required to give bond in such an action.

Section 15. Confidentiality. Except as otherwise required by law, it shall be unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial or employee information submitted or disclosed to the city under the terms of this ordinance. Nothing in this section shall prohibit the following:

15.1 This disclosure of names and facility addresses of any licensee under this ordinance or of other individual associated with the marijuana facility, such as other owners;

15.2 The disclosure of general statistics in a form which would prevent identification of financial information regarding a facility;

15.3 The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the city under the ordinance.

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6-9.16

15.4 The disclosure of information upon request of a local, state or federal law enforcement official; or

15.5 The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures or when such disclosure is ordered under the Oregon Public Records law.

Section 16. [Severability.]

Passed by the council and approved by the mayor November 17, 2017.