

CODE

ORDINANCE NO. 4636

**AN ORDINANCE AMENDING CHAPTER SEVEN
OF THE BEAVERTON CITY CODE RELATING TO
REGULATORY BUSINESS LICENSES FOR
MEDICAL MARIJUANA FACILITIES AND
DECLARING AN EMERGENCY**

Whereas, Oregon law authorizes businesses to distribute marijuana for medical use at facilities located in areas zoned for commercial, industrial or mixed use; and

Whereas, federal law prohibits the distribution of medical marijuana for any purpose outside of the narrow confines of a government-approved research project; and

Whereas, one of the consequences of the conflict between state and federal law regarding the commercial distribution of marijuana for medical use is that many of the medical marijuana facilities that distribute marijuana are shut out of the traditional banking system because the financial industry fears that if they provide services to marijuana businesses they may be found to have aided and abetted a criminal enterprise, possibly subjecting themselves to civil or criminal sanctions for violating prohibitions on money laundering, among other federal laws and regulations; and

Whereas, the lack of access that medical marijuana facilities have to traditional financial services results in the facilities having large amounts of cash on site; and

Whereas, US Attorney General Eric Holder has expressed concern about the public safety component of having such large amounts of cash in retail marijuana outlets, saying that "there's a public safety component to this. Huge amounts of cash—substantial amounts of cash just kind of lying around with no place for it to be appropriately deposited"; and

Whereas, the City of Beaverton seeks to regulate medical marijuana facilities to reduce the risk these businesses pose to the health, safety and welfare of the community; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

SECTION 1:

Chapter Seven of the Beaverton City Code is amended by adding section BC 7.02.005 through 7.02.085 as set out below:

7.02.005 SHORT TITLE

BC 7.02.005 to 7.02.085 shall be known and may be cited as the "Medical Marijuana Ordinance" and may be referred to herein as "this ordinance."

7.02.010 DEFINITIONS

As used in this ordinance:

"Debilitating medical condition" has the meaning given that term in ORS 475.302.

"Marijuana" has the meaning given that term in ORS 475.005.

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"Medical Marijuana" means marijuana used for the exclusive benefit of a person to mitigate the symptoms or effects of the person's debilitating medical conditions.

"Medical marijuana facility" means the business that distributes marijuana to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

"Medical use of marijuana" has the meaning given that term in ORS 475.302.

"Person responsible for a medical marijuana facility" means an individual who owns, operates, or otherwise has legal responsibility for a facility, or who intends to own, operate, or otherwise have legal responsibility for a facility.

"Registry identification card" means a document issued by the Oregon Health Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

"Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

7.02.015 LICENSING REQUIREMENT

A person may not conduct, maintain, manage, or operate a medical marijuana facility in Beaverton unless a person responsible for the medical marijuana facility has a medical marijuana facility license issued pursuant to this ordinance.

7.02.020 LICENSE APPLICATION; CONTENTS; FEE

A. The person responsible for a medical marijuana facility shall apply to the City for a medical marijuana facility license in writing on a form and in a manner prescribed by the City. The application shall request and the applicant shall provide information including:

1. The name of the person responsible for the medical marijuana facility;
2. The address or location of the medical marijuana facility;
3. The registry identification card number of the person responsible for a medical marijuana facility;
4. Proof that the Oregon Health Authority has registered the medical marijuana facility at the location indicated on the application; and
5. Any other information the City considers necessary.

B. At the time the person responsible for a medical marijuana facility submits an application under this section, the applicant shall pay to the City a license application fee of \$100. The license application fee is not refundable. The council may establish a different license application fee by adoption of a resolution.

7.02.025 LICENSE APPLICATION APPROVAL; ISSUANCE; FORM; DENIAL

A. Within 180 days after receiving an application for a medical marijuana facility license, the City shall issue a license to conduct, maintain, manage, or operate a medical marijuana facility in Beaverton at the location identified in the application if the City finds that:

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1. The application is complete and accurate;
 2. The Oregon Health Authority has registered the medical marijuana facility at the location indicated on the application; and
 3. The applicant has paid the required application fee under BC 7.02.020.
- B. The mayor shall prescribe the form of the license the City issues under this ordinance. At minimum, the license must display the expiration date of the license, the address or other location of the medical marijuana facility and the name of the person responsible for the medical marijuana facility.
- C. The City shall disapprove an application and deny the applicant a license if the City finds that the applicant does not meet one or more of the standards set forth in subsection A. of this section.
- D. If the City disapproves an application or denies the applicant a license under subsection A. of this section, the City shall notify the applicant promptly and state the reasons for the disapproval and denial.
- E. As reasonably required to complete the review of an application for a license issued under this ordinance, the City may conduct a criminal history background check.

7.02.030 LICENSE AUTHORIZATION; TERM

A medical marijuana facility license:

- A. Is not transferable or assignable;
- B. Authorizes the person responsible for the medical marijuana facility to conduct, maintain, manage, and operate a medical marijuana facility only at the location displayed on the license;
- C. Remains in full force and effect for one year from date of issuance, unless sooner surrendered, suspended or revoked as provided herein.

7.02.035 ANNUAL LICENSE RENEWAL; FEE

A. The person responsible for a medical marijuana facility shall apply to the City annually for renewal of a medical marijuana facility license in writing on a form and in a manner prescribed by the City. The application shall request and the applicant shall provide information including:

1. The name of the person responsible for the medical marijuana facility;
2. The address or location of the medical marijuana facility;
3. The registry identification card number of the person responsible for a medical marijuana facility;
4. Proof that the Oregon Health Authority has registered the medical marijuana facility at the location indicated on the application; and
5. Any other information the City considers necessary.

B. At the time the person responsible for a medical marijuana facility submits a license renewal application under this section, the applicant shall pay to the City a license renewal application fee of \$75. The license renewal application fee is not refundable. The council may establish a different license renewal application fee by adoption of a resolution.

7.02.040 LICENSE RENEWAL APPLICATION APPROVAL; ISSUANCE; FORM; DENIAL

A. After receiving a license renewal application for a medical marijuana facility, the City shall renew the license to conduct, maintain, manage, and operate a medical marijuana facility in Beaverton at the location identified in the application if the City finds that:

1. The application is complete and accurate;
2. The Oregon Health Authority has registered the medical marijuana facility at the location indicated on the application; and
3. The applicant has paid the required renewal application fee under BC 7.02.035.

B. The mayor shall prescribe the form of the license renewal the City issues under this ordinance.

C. The City shall disapprove an application and deny the applicant renewal of a medical marijuana facility license if the City finds that the applicant does not meet one or more of the standards set forth in subsection A. of this section.

D. If the City disapproves an application or denies the applicant renewal of a medical marijuana facility license under subsection A. of this section, the City shall notify the applicant promptly and state the reasons for the disapproval and denial.

7.02.045 LICENSE SURRENDER

A licensee may surrender a medical 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.

7.02.050 GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE

A. The City may suspend or revoke a medical marijuana facility license if:

1. The licensee knowingly makes a material false statement or omission in connection with the issuance or renewal of the license;
2. The Oregon Health Authority suspends or revokes the registration of the medical marijuana facility to which the license pertains;
3. Oregon Health Authority suspends or revokes the authority of the person responsible for the medical marijuana facility to operate a medical marijuana facility; or
4. The license is exercised in violation of any state, federal or local law, rule or regulation.

B. The City may initiate proceedings to suspend or revoke a medical marijuana facility license if the City has reasonable cause to believe that one or more grounds for suspension or revocation provided under subsection A. of this section exists.

C. Any proceeding under this section shall be substantially in accord with the procedure provided in BC 2.05.056 through 2.05.058.

D. Upon a determination that grounds for suspension or revocation of a medical marijuana facility license exists, the factors to be considered in determining whether to suspend or revoke the license must include:

1. The nature of the conduct constituting the grounds for suspension or revocation;
2. The frequency of the conduct;

3. The effect the conduct has upon the enjoyment of life, health and property of members of the community;
4. The efforts of the person responsible for the medical marijuana facility to prevent, mitigate or eliminate the conduct;
5. The actual results of any actions taken by the person responsible for the medical marijuana facility to prevent, mitigate or eliminate the conduct;
6. The license history of either or both the medical marijuana facility and the person responsible for the medical marijuana facility; and
7. The cost to the City of investigating the conduct, including bringing the proceeding.

7.02.055 APPEAL

A decision pursuant to this ordinance to deny an application for a new license or to deny an application for the renewal of an existing license, or to suspend or revoke a license, is final. Appeal of a final decision shall be by writ of review to the Circuit Court of Washington County, Oregon, as provided by law.

7.02.060 ENFORCEMENT

The City may institute appropriate suit or legal action in a court of competent jurisdiction to enforce the provisions of any decision or order issued pursuant to this ordinance.

7.02.065 PUBLIC NUISANCE

A. Any premise, house, building, structure or place of any kind where marijuana is sold, manufactured, bartered, distributed or given away in violation of state law or this ordinance, or where persons are permitted to resort for the purpose of consuming marijuana in violation of state law or this ordinance, or any place where marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this ordinance, is a public nuisance.

B. The City may institute an action in the Circuit Court for Washington County 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 plaintiff shall not be required to give bond in such action.

7.02.070 CLOSURE DURING PENDENCY OF ACTION; EMERGENCY CLOSURES

The City may institute an action for a temporary restraining order or preliminary injunction pursuant to ORCP 78 if a threatened or existing nuisance under this ordinance creates an emergency that requires immediate action to protect public health, safety or welfare. In such instances, the notice requirements of this ordinance need not be fulfilled.

7.02.075 ENFORCEMENT OF CLOSURE ORDER; COSTS

The court may authorize the City to physically secure the medical marijuana facility against use or occupancy in the event that the person in charge of the facility fails to do so within the time specified by the court. In the event that the City is authorized to secure the premises, all costs incurred by the City to effect a closure shall be allowed and recovered as provided under ORCP 68. As used in this subsection, "costs" include those reasonable and necessary expenses incurred by the City for the physical securing of the premises.

7.02.080 REMEDIES CUMULATIVE

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Any penalty or remedy imposed pursuant to this ordinance is in addition to, and not in lieu of, any other civil, criminal or administrative penalty, sanction or remedy otherwise authorized by law. The abatement of a nuisance under this ordinance does not prejudice the right of any person to recover damages for its past existence.

7.02.085 SEVERABILITY

The sections and subsections of this ordinance are severable. If any part of this ordinance is held unconstitutional or otherwise invalid, the remaining parts shall remain in force unless:

A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or

B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

SECTION 2: EMERGENCY CLAUSE; EFFECTIVE DATE

This ordinance being necessary for the preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance takes effect on February 28, 2014.

SECTION 3: OPERATIVE DATE


Section A. of BC 7.02.025 of this ordinance becomes operative on September 1, 2014, to allow the City to take such action that is necessary to enable the City to exercise, on or after the operative date, all the duties, functions and powers conferred on the City by this ordinance.

First reading this 18th day of February, 2014.

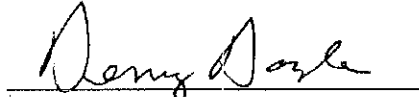
Second reading and passage by the Council this 25 day of February, 2014.

Approved by the Mayor this 26 day of February, 2014.

ATTEST:


CATHERINE JANSEN, City Recorder

APPROVED:


DENNY DOYLE, Mayor

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