

ORDINANCE NO. 4689

AN ORDINANCE AMENDING BEAVERTON CODE CHAPTER 7.02 ON MEDICAL MARIJUANA TO INCLUDE RECREATIONAL MARIJUANA

Whereas, the Oregon legislature passed HB 3400, which regulates the production, processing and sale of recreational marijuana;

Whereas, in 2016, the Oregon Liquor Control Commission began accepting applications for recreational marijuana licenses, including recreational marijuana producers, processors, wholesalers and retailers;

Whereas, the Oregon legislature recently enacted SB 1511 (2016), which allows recreational marijuana licensees to produce, process, and sell medical marijuana if licensed by the Oregon Liquor Control Commission; and

Whereas, the City of Beaverton desires to also issue regulatory licenses to recreational marijuana processors, wholesalers and retailers in addition to medical marijuana facilities.

Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS

Section 1. Beaverton Code Chapter 7.02 is amended to read as follows:

7.02.005 Short Title.

BC 7.02.005 to 7.02.085 shall be known and may be cited as the "Marijuana Facility Licensing Ordinance" and may be referred to herein as "this chapter."

7.02.010 Definitions.

As used in this chapter:

"Consumer" means a person who purchases, acquires, owns, holds, or uses marijuana items other than for the purpose of resale.

"Debilitating medical condition" has the meaning given that term in ORS 475B.410.

"Marijuana" has the meaning given that term in ORS 475B.410.

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

"Marijuana processor" means a person who processes marijuana items in this state and is licensed by the Oregon Liquor Control Commission (OLCC).

"Marijuana retailer" means a person who sells marijuana to a consumer in Oregon and is licensed by the OLCC.

"Marijuana wholesaler" means a person who purchases marijuana items in Oregon for resale to a person other than a consumer and is licensed by the OLCC.

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

"Medical marijuana facility" means the business that distributes marijuana to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder and is licensed by the Oregon Health Authority (OHA).

"Medical use of marijuana" has the meaning given that term in ORS 475B.410.

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

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

"Recreational marijuana facility" means a premise licensed by the OLCC for marijuana processors, marijuana retailers, or marijuana wholesalers under OAR Chapter 845.

"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 OHA.

7.02.015 Licensing Requirement; Exception.

A. 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 marijuana facility license issued pursuant to this chapter.

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

C. If the person responsible for a recreational marijuana facility has obtained a marijuana facility license and is also licensed by the OLCC to process or sell medical marijuana, then the person responsible for the recreational marijuana facility is not required to obtain another marijuana facility license to process or sell medical marijuana in the city.

7.02.020 License Application; Contents; Fee.

A. The person responsible for a medical marijuana facility or the person responsible for a recreational marijuana facility shall apply to the City for a 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 or the person responsible for the recreational marijuana facility;
2. The address or location of the medical marijuana facility or recreational marijuana facility;
3. The OHA MMD number of the medical marijuana facility or the OLCC license number of the recreational marijuana facility;
4. Proof that the OHA has registered the medical marijuana facility at the location indicated on the application or proof that the OLCC has licensed the recreational 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 or the person responsible for a recreational marijuana facility submits an application under this section, the person shall pay to the City a license application fee of \$100.00. 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. Except as provided in BC 7.02.025(C), within 180 days after receiving an application for a marijuana facility license, the City shall issue a license to conduct, maintain, manage, or operate a medical marijuana facility or recreational marijuana facility in Beaverton at the location identified in the application only if the City finds that:

1. The application is complete and accurate;
2. The OHA has registered the medical marijuana facility at the location indicated on the application or the OLCC has licensed the recreational marijuana facility at the location indicated on the application;
3. The applicant has paid the required application fee under BC 7.02.020; and
4. The applicant's recreational marijuana facility or medical marijuana facility is located in a zone permitted by the City's Development Code.

B. The Mayor or the Mayor's designee shall prescribe the form of the license the City issues under this chapter. At minimum, the marijuana facility license must display the expiration date of the license, the address or other location of the medical marijuana facility or recreational marijuana facility, and the name of the person responsible for the medical marijuana facility or the name of the person responsible for the recreational marijuana facility.

C. The City may disapprove an application and deny the applicant a license if the City finds that any of the criteria in BC 7.02.050(A) applies to the applicant.

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 chapter, the City may conduct a criminal history background check.

7.02.030 License Authorization; Term.

A 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; or, authorizes the person responsible for the recreational marijuana facility to conduct, maintain, manage, and operate a recreational marijuana facility only at the location displayed on the license; and

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 or the person responsible for a recreational marijuana facility shall apply to the City annually for renewal of a 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 or the person responsible for the recreational marijuana facility;
2. The address or location of the medical marijuana facility or the recreational marijuana facility;
3. The OHA MMD number of the medical marijuana facility or the OLCC license number of the person responsible for a recreational marijuana facility;
4. Proof that the OHA has registered the medical marijuana facility at the location indicated on the application or proof that the OLCC has licensed the recreational 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 or the person responsible for a recreational marijuana facility submits a license renewal application under this section, the person shall pay to the City a license renewal application fee of \$75.00. 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. Except as provided in BC 7.02.040(C), after receiving a license renewal application for a medical marijuana facility or recreational marijuana facility, the City shall renew the marijuana facility license identified in the application if the City finds that:

1. The application is complete and accurate;
2. The OHA has registered the medical marijuana facility at the location identified on the application or the OLCC has registered the recreational marijuana facility at the location identified on the application; and
3. The applicant has paid the required renewal application fee under BC 7.02.035.

B. The Mayor or the Mayor's designee shall prescribe the form of the license renewal the City issues under this chapter.

C. The City may disapprove an application and deny the applicant renewal of a marijuana facility license if the City finds that any of the criteria in BC 7.02.050(A) applies to the applicant.

D. If the City disapproves an application or denies the applicant renewal of a marijuana facility license, 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 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 may have committed before surrendering the license.

7.02.050 Grounds for Suspending, Revoking, or Refusing to Grant License.

A. The City may initiate proceedings to suspend, revoke or refuse to grant a marijuana facility license if the City has reasonable grounds to believe that one or more grounds as provided below exist:

1. The licensee or applicant knowingly makes a material false statement or omission in connection with the issuance or renewal of the license;
2. The OHA or the OLCC suspends or revokes the registration of the medical marijuana facility or the recreational marijuana facility to which the license pertains;
3. The OHA or the OLCC suspends or revokes the authority of the person responsible for the medical marijuana facility to operate a medical marijuana facility or the authority of the person responsible for the recreational marijuana facility to operate a recreational marijuana facility;
4. (a) A violation of the provisions of this chapter, state, or local law has been committed; (b) the citation for the violation is connected with the operation of the recreational marijuana facility or medical marijuana facility; and (c) the person responsible for a recreational marijuana facility or person responsible for a medical marijuana facility knew, or reasonably should have known, that violations or offenses were allowed to occur at the location.

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

C. Upon a determination that grounds for suspension, revocation, or refusal to grant a marijuana facility license exists, the factors to be considered in determining whether to suspend, revoke, or refuse to grant a marijuana facility license are limited to one or more of the following:

1. The nature of the conduct constituting the grounds for suspension, revocation, or refusal;
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 or the person responsible for the recreational 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 or the person responsible for the recreational marijuana facility to prevent, mitigate or eliminate the conduct; and

6. The license history of either or both the medical marijuana facility and the person responsible for the medical marijuana facility, or the license history of either or both the recreational marijuana facility and the person responsible for the recreational marijuana facility.

7.02.055 Appeal.

A decision pursuant to this chapter 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 chapter.

7.02.065 Public Nuisance.

A. Any premises, house, building, structure or place of any kind where marijuana is sold, manufactured, bartered, distributed, processed, or given away in violation of State law or this chapter, or where persons are permitted to resort for the purpose of consuming marijuana in violation of State law or this chapter, or any place where marijuana is kept or possessed for sale, barter, distribution, processing, or gifting in violation of State law or this chapter, 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 chapter creates an emergency that requires immediate action to protect public health, safety or welfare. In such instances, the notice requirements of this chapter 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 or recreational 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 section, "costs" include those reasonable and necessary expenses incurred by the City for the physical securing of the premises.

7.02.080 Remedies Cumulative.

Any penalty or remedy imposed pursuant to this chapter 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 chapter 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 chapter are severable. If any part of this chapter is held unconstitutional or otherwise invalid, the remaining parts shall remain in force unless:

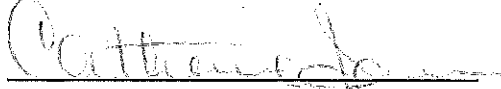
- A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or
- B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

First reading this 12th day of July, 2016.

Second reading and passage by this Council this 19th day of July, 2016.


Approved by the Mayor this 20th day of July, 2016.

ATTEST:



CATHERINE L. JANSEN, City Recorder

APPROVED:



DENNY DOYLE, Mayor