

ORDINANCE NO. 2017-02

AN ORDINANCE OF THE CITY OF LA PINE ESTABLISHING TIME, PLACE, AND MANNER REGULATIONS CONCERNING MEDICAL MARIJUANA PRODUCERS AND PROCESSORS; SUPPLEMENTING THE PROVISIONS OF ORDINANCE NO. 2015-02 AND ORDINANCE NO. 2016-10; AMENDING ORDINANCE NO. 2015-02 FOR THE PERMITTING OF DISPENSARIES; AND DECLARING AN EMERGENCY

WHEREAS, the City of La Pine (“City”) has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, City adopted Ordinance No. 2015-02 to establish time, place, and manner regulations concerning medical marijuana dispensaries; and

WEHREAS, City adopted Ordinance No. 2016-10 establishing time, place, and manner regulations concerning recreational marijuana producers, processors, wholesalers, testing laboratories, and retailers; and.

WHERAS, City desires to permit medical marijuana producers and processors to operate within the City.

WHEREAS, the La Pine City Council (the “Council”) finds that the characteristics, operations, and potential impacts of medical marijuana processors and medical marijuana producers necessitate (a) the establishment of particular reasonable time, place, and manner regulations for such operations, and (b) a separate permitting process for such operations; and

WHEREAS, City desires to reasonably regulate medical marijuana producers and medical marijuana processors in an effort to protect the public health, safety, and welfare.

WHEREAS, City desires to amend the permitting requirements for medical marijuana dispensaries to bring consistency between the permitting requirements for medical and recreational marijuana businesses.

NOW, THEREFORE, the City of La Pine ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Purpose. The purpose of this Ordinance No. 2017-02 (this “Ordinance”) is to minimize any adverse public safety and public health impacts that may result from allowing medical marijuana producers and medical marijuana processors to operate in City’s incorporated limits by (a) adopting particular reasonable time, place, and manner regulations, and (b) a separate permitting process for such operations.
3. Definitions. For purposes of this Ordinance, the following terms and phrases have the meanings assigned to them below:

“business” means a medical marijuana processor and/or medical marijuana producer.

“cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.

“company principle(s)” means a person who is a director, officer, shareholder, manager, member, or partner of an entity or has a controlling interest in the entity through his or her ownership or control of 10% or more of the ownership in the entity or 10% or more of the total investment interest in the entity.

“controlled substance(s)” means a substance designated as Schedule I or Schedule II controlled substances by the Code of Federal Regulations Title 21, Chapter II, Part 1308.

“convicted” means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

“dispensary(ies)” shall have the meaning assigned in Ordinance No. 2015-02.

“financial interest” exists when a person, the person’s immediate family, and/or a legal entity of which the person is a company principal (a) receives or is entitled to receive directly or indirectly any of the benefits of a business, (b) rents or leases real property to the business for use by the business, and/or (c) lends or gives money, real property, or personal property to the business for use in the business. For purposes of this definition, monies owed to suppliers or contractors for the reasonable cost of goods and services received does not constitute a financial interest in a business.

“manager” mean’s City’s City Manager (or his or her designee) and/or any other City officer, employee, or agent appoint by the Council from time to time.

“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; provided, however, the term "marijuana" 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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination.

“medical marijuana” means marijuana and any product derived from marijuana intended for the use by patients registered pursuant to ORS 475B.415 to mitigate the symptoms or effects of a debilitating medical condition.

“medical marijuana processor” means a processor of medical marijuana required to be licensed under ORS 475B.435.

“medical marijuana producer” means a producer of medical marijuana required to be licensed under ORS 475B.420 and not permitted to be located within a residential zone under state law.

“permit” means the permit issued pursuant to Section 4 of this Ordinance.

“person responsible" means an individual who owns, operates, and/or otherwise has legal responsibility for a business and has been approved by the Oregon Health Authority.

“premises” means a location registered by the Oregon Health Authority (or any other state agency) under applicable law and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms, and storerooms, and all public and private areas where individuals are permitted to be present.

4. Annual Permit Required. The company principal of each business, operating in City’s incorporated limits must possess a valid annual medical marijuana permit issued under this Ordinance and must comply with the requirements of all applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, this Ordinance. The permit term will be for a fiscal year, beginning July 1 and ending June 30 of the immediately following year. The permit must be obtained and renewed contemporaneously with the company principal’s obtainment and renewal of City’s business license. Permits are non-transferrable. A separate permit must be obtained for each form of business even if operated on the same premises or under the same ownership.

5 Permit Application; Renewal; Updates; Termination; Fees.

5.1 Initial Application; Fee. Application forms for medical marijuana permits will be available at the La Pine City Hall. Applications for initial and renewal permits must be submitted to City and signed under penalty of perjury. At the time of submission of an initial permit application, the applicant must pay a permit application and investigation fee. The permit application and investigative fee amount will be set from time to time by Council resolution. No portion of the fee is refundable if a permit is denied or operation of the business is discontinued for any reason. A separate permit application must be submitted for each proposed business location. The permit application documents may be included as part of City’s business license application materials and must contain, at minimum, the following:

- (a) The location of the proposed business;
- (b) A description of the type, nature, and extent of the business to be conducted;
- (c) A description of the proposed accounting and inventory systems for the business;
- (d) Certification that the proposed business is licensed to conduct business in compliance with Ordinance No. 2014-02, City’s business license ordinance, and in compliance with all applicable federal, state, and local laws, regulations, and ordinances;
- (e) Certification that the proposed business has met the requirements of all applicable land use and/or development laws, regulations, and codes; and
- (f) Such other information deemed necessary or appropriate by the manager to conduct any investigation and/or background check (including names and fingerprints) of the company principals, employees, volunteers, persons with a financial interest, and persons or entities providing debt financing for the business.

5.2 Renewal Application; Fee. A permit renewal application will include information similar in nature to that provided on the permittee's initial permit application and must be submitted to City not less than 30 days prior to expiration of the permit. Permit renewal application materials may be included as part of City's business license renewal application materials. At the time of submission of a permit renewal application, the permittee must pay a permit renewal application and investigation fee. The renewal application and investigation fee amount will be set from time to time by Council resolution. No portion of the fee is refundable if a permit is denied or operation of the business is discontinued for any reason.

5.3 Termination. A permit terminates automatically on June 30 of each year unless a permit renewal application is prior approved. A permit terminates automatically and without further act of City if any federal and/or state statutes, laws, regulations, ordinances, and/or guidelines are modified, changed, and/or interpreted in a manner by state or federal law enforcement officials so as to prohibit operation of the business under this Ordinance.

5.4 Notification of Changes. If a business is required to provide the Oregon Health Authority or any other state agency with any update, notice, report, or additional disclosure under OAR Chapter 333, Division 8 and/or any other state law and/or regulation, the business will supply the same information to City within the same deadline. If the supplied information necessitates a modification of the permit, such as the change in business location, the business will remit the applicable fee for an annual renewal.

5.5 Permitting for Dispensaries. Dispensaries are hereby subject to the same permitting requirements and processes for businesses set forth in this Ordinance including, without limitation, the requirements and processes set forth in Sections 4, 5, 6.2, 6.3, 6.11, 6.14, 6.17, 7, 8, 9, and 11. Any inconsistency between the permitting requirements for dispensaries established in Ordinance No. 2014-02 shall give way to the permitting requirements for dispensaries established in this Ordinance.

6. Operation Regulations; Permit Conditions. Except as otherwise expressly provided under this Ordinance, a business must comply with the following operating regulations, in addition to any and all other applicable federal, state, and/or local laws, regulations, and/or ordinances:

6.1 Compliance with Applicable Laws. Each business must at all times be operated in compliance with applicable Oregon laws and regulations, including, without limitation, ORS chapter 475B; OAR Chapter 333, Division 8; this Ordinance; all land use/development, building, and fire codes; and all other federal, state, and local laws, regulations, and ordinances, including, without limitation, those directly or indirectly relating to medical marijuana, including the payment of all fines, fees, and taxes owing to City.

6.2 Oregon Health Authority Registration Required. Each business must at all times be registered with the Oregon Health Authority, or any other applicable state agency, and in good standing under Oregon law.

6.3 Business License Required. Each business must have a current City business license.

6.4 Production and Processing Restrictions.

(a) Co-location of businesses on the same premises is only permitted as allowed under Oregon law and as consistent with City's zoning and land use regulations (including, without limitation, the La Pine Zoning Ordinance, Ordinance No. 2012-05, as amended).

(b) Subject to restrictions on certain forms of processing contained in this Ordinance, processors will only be permitted to engage in the forms of processing for which they have obtained applicable endorsements under state law including, without limitation, OAR 333-008-1700.

(c) No production and/or processing may occur in any outdoor area and/or in any structure where the production and/or processing is visible from outside of the structure.

(d) Medical marijuana processors with an endorsement to produce cannabinoid extracts or concentrates must comply with state requirements for such production including, without limitation, OAR 333-008-1800.

(e) Medical marijuana processors with endorsements to produce cannabinoid edibles must comply with all state requirements for such production including, without limitation, OAR 333-008-1790.

(f) Medical marijuana processors with endorsements to produce cannabinoid topical, tincture, capsule, suppository or transdermal patches must comply with all state requirements for such production including, without limitation, OAR 333-008-1810.

6.5 On-Site Consumption Prohibited. Marijuana, alcohol, and other intoxicants must not be consumed, ingested, inhaled, and/or topically applied anywhere on the premises of the business, except that an employee of a business with a valid medical marijuana registry identification card may consume marijuana during his or her work shift as necessary for his or her medical condition as provided in OAR 845-025-1230(6)(b).

6.6 Odors. Each business must utilize an air filtration and ventilation system (and employ such other measures and means) that, to the greatest extent possible, confines all objectionable odors associated with the business to the business's premises. Odor control measures must be installed and operational prior to commencing business operations. For purposes of this Section 6.6, the standard for judging "objectionable odors" will be that of a reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and where the odor is detected.

6.7 Disposal. Each business must provide for secure disposal of marijuana waste, expired marijuana products, marijuana remnants and marijuana byproducts. Receptacles for such disposal must not be placed within the business's exterior refuse containers or otherwise outside of the control of the business.

6.8 Signage. Signage will comply with any and all applicable sign codes.

6.9 Packaging of Edibles. All packaging of medical marijuana products produced must satisfy any and all applicable state requirements for packaging and labeling.

6.10 Minors. No minor is allowed on any business premises. No minor is allowed to enter the area of a business where marijuana is present.

6.11 Criminal Convictions. A person who has been convicted in any state for any felony, including for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, once or more in the five years immediately preceding the date of application (or renewal) or twice or more in the person's lifetime may not be a company principal, employee, and/or volunteer of the business or have a financial interest in the business operated in City's incorporated limits.

6.12 Accounting System and Records. Each business must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash such that revenue and expenses are recorded as they are paid, regardless of when goods are received or delivered, and sufficient to maintain detailed, auditable financial records. If the manager finds that the business's books and records are deficient in any way and/or if the accounting system is not auditable, the business must modify the business's accounting system to meet the requirements of the manager.

6.13 Record Keeping. Each business must keep and preserve records of all sales made by the business and such other books or accounts as may be required by the manager. Each business must keep and preserve for a period of at least three years records containing at least the following information, in addition to that information specified under Oregon law: (a) true names and any aliases of the company principals; (b) true names and any aliases of employees/volunteers of the business; (c) true names and addresses and any aliases of persons that have or within the preceding year have had a financial interest in the business; (d) documentation concerning costs related to transferring, handling, securing, insuring, testing, packaging, and processing marijuana, and the cost of supplies, utilities, and rent or mortgage; (e) the amount of money paid by a business to a grower for each transfer of marijuana; (f) state and federal income tax returns; and (g) any other additional information the manager deems necessary or appropriate.

6.14 Permit Display. Each business must display its current permit inside the business location in a prominent place easily visible to persons conducting transactions in the business and adjacent to the business's business license.

6.15 Sales and Transfers. Sales or other transfers of marijuana products on the business premises must occur inside the business's building and must be conducted only between the business and buyer. No walk-up or drive-through service is allowed.

6.16 Security System. Each business must obtain and maintain a fully operable security system that complies with applicable Oregon laws and regulations. The security system will be maintained in good working condition and will be in use at all times.

6.17 Worker Permits. All employees who perform work on behalf of a business must be registered with the appropriate state agency if required under state law.

7. Background Checks. City will send to the Deschutes County Sheriff's Office the information provided on each initial or renewal permit application. The Deschutes County Sheriff's Office may conduct criminal background checks (or obtain the results of background checks conducted by any state agency) to determine whether any person specified therein (including, without limitation, any person with financial interest, company principal, employee, or volunteer) has any history of felony

convictions in Oregon and will inform City whether all persons named in the permit application passed the required Oregon background checks. Each business will provide City the results of criminal background checks (including federal background checks) for any person specified in an initial or renewal permit application including, without limitation, any person with a financial interest in the business, person responsible for the facility, company principal, employee, or volunteer, to determine if any person specified therein has any history of federal or state felony convictions. If, following an initial application or renewal, an additional person is proposed to be a person with financial interest, company principal, employee, or volunteer, then such person must pass the background check prior to assuming such position.

8. Release; Indemnification.

8.1 Release of Liability. By accepting a permit issued pursuant to this Ordinance, the business, business owners, persons with a financial interest, and company principal(s) waive and release City and City's officers, employees, volunteers, agents, insurers, and self-insurance pool for, from, and against any and all injuries, claims, demands, actions, suits, damages, liabilities, costs, and expenses of any kind, including, without limitation, attorney fees and costs, which arise out of or result from any arrest and/or prosecution of the business, business owners, persons with financial interest, company principals, employees, volunteers, clients, customers, and/or any other associated persons for violations of any federal, state, and/or local laws, regulations, and/or ordinances.

8.2 Indemnification. By accepting a permit issued pursuant to this Ordinance, the business, business owners, persons with a financial interest, and company principal(s) will, on a joint and several basis, indemnify and hold harmless City and City's officers, employees, volunteers, agents, insurers, and self-insurance pool for, from, and against any and all injuries, claims, demands, actions, suits, damages, liabilities, costs, and expenses of any kind whatsoever, including, without limitation, attorney fees and costs, arising out of or resulting from in any manner the operation of the business, including, without limitation, any bodily injury, personal injury, sickness, disease, death, property loss or damage, and/or any other loss.

9. Permit Denial, Suspension, and Revocation; Penalties; Appeals.

9.1 Grounds for Denial, Suspension, Revocation. The manager may deny, suspend, or revoke a permit for failure to comply with this Ordinance, for submitting falsified information to City or to the Oregon Liquor Control Commission, and/or for noncompliance with any other City ordinances or regulations or violations of federal, state, and/or local laws, regulations, and/or ordinances.

9.2 Notice of Revocation or Suspension. The manager must provide to the permittee written notice of any permit suspension or revocation and reasons therefor by first-class US mail at least 10 calendar days prior to the effective date of the revocation or suspension.

9.3 Appeal. A decision to deny, suspend, or revoke a permit may be appealed by delivering personally a written notice of appeal to the manager on or before the effective date of the denial, suspension, or revocation. Unless the manager has declared that imminent danger to the public will exist, the manager's decision to revoke or suspend is stayed pending appeal. The manager will transmit the notice of appeal together with the file of the appealed matter to the Council after which transmission the Council will fix a time and place for hearing the appeal. The Council will give the

appellant not less than 10 days' prior written notice of the time and place of hearing of the appealed matter.

9.4 Violations; Infractions. Violation of or failure to comply with any provision of this Ordinance is punishable upon conviction by a fine not to exceed \$500.00. City will be entitled to collect from any company principal violating or otherwise failing to comply with this Ordinance City's reasonable attorney fees and other fees, costs, and expenses incurred by City to enforce this Ordinance, including, without limitation, any costs incurred by City to audit a business's records. Each day in violation constitutes a separate offense. Business owners, company principals, employees, and volunteers are jointly and severally liable for such offenses.

9.5 Remedies not Exclusive. The remedies provided in this Section 9 are not exclusive and will not prevent City from exercising any other rights and/or remedies available under law, nor will provisions of this Ordinance prohibit or restrict City or other appropriate prosecutor from pursuing criminal charges under state law and/or City ordinances.

10. Public Nuisance Declared. Operation of any business within City's incorporated limits in violation of this Ordinance is hereby declared a public nuisance and will be abated pursuant to all available remedies.

11. Examination of Books, Records, and Premises.

11.1 Examinations by Manager. To determine compliance with the requirements of this Ordinance, Oregon law, all land use/development, building, and fire codes, and/or all other federal, state, and local laws, regulations, and ordinances, including, without limitation, those directly or indirectly relating to medical marijuana, including the payment of all fines, fees, and taxes owing to City, the manager may examine or cause to be examined by an agent or representative designated by the manager, at any reasonable time, the premises of the business, including wastewater from the business, and any and all financial, operational, and other information or documentation, including books, papers, payroll reports, and state and federal income tax returns. Every company principal is directed and required to furnish to the manager the means, facilities, and opportunity for making such examinations and investigations.

11.2 Criminal Investigations. As part of the investigation of a crime or violation of this Ordinance that law enforcement officials reasonably suspect has taken place on the business premises, the Deschutes County Sheriff's Office will be allowed to view surveillance videotapes or digital recordings relating to the business at any reasonable time.

11.3 Access. Without reducing or waiving any provisions of this Ordinance, the Deschutes County Sheriff's Office will have the same access to the business, business records, and business operations as allowed to state inspectors. Denial or interference with such access will be grounds for revocation or suspension of a permit.

12. Severability; Corrections. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule,

regulation, code, or ordinance as now in force and hereafter amended. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors. Nothing in this Ordinance affects the validity of any criminal or civil enforcement actions commenced prior to the adoption of this Ordinance; all City ordinances existing at the time that such actions were filed will remain valid and in full force and effect for purposes of those actions.

13. Emergency Declaration. The City Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City's citizens. Therefore, an emergency is hereby declared to exist. This Ordinance will be in full force and effect upon its passage and adoption by the City Council and signing by the mayor.

This Ordinance was PASSED and ADOPTED by the La Pine City Council by a vote of ___ for and ___ against and APPROVED by the mayor on this ___ day of _____, 2017.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

Dennis Scott, Mayor

ATTEST:

Cory Misley, City Manager