

ORDINANCE NO. 2015-02

AN ORDINANCE OF THE CITY OF LA PINE ESTABLISHING TIME, PLACE, AND MANNER REGULATIONS CONCERNING MEDICAL MARIJUANA 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, the La Pine City Council (the “Council”) finds that the unique characteristics of medical marijuana dispensary operations and their potential impacts necessitate the establishment of particular reasonable time, place, and manner regulations for such operations; and

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

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. 2015-02 (this “Ordinance”) is to minimize any adverse public safety and public health impacts that may result from allowing medical marijuana dispensaries to operate in City’s incorporated limits by adopting particular reasonable time, place, and manner regulations.
3. Definitions. For purposes of this Ordinance, the following terms and phrases have the meanings assigned to them below:

“Dispensary(ies)” means a medical marijuana facility that is registered by the Oregon Health Authority under ORS 475.300 to 475.346 and that sells, distributes, transmits, gives, dispenses, and/or otherwise provides medical marijuana to medical marijuana qualifying patients.

“Edible” means a product made with marijuana that is intended for ingestion.

“Manager” means City’s City Manager (or his or her designee) and/or any other City officer, employee, or agent appointed 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 all parts of marijuana plants that may be used to treat or alleviate a qualifying patient’s debilitating medical condition as defined under ORS 475.302(3) or symptoms associated with the patient’s debilitating medical condition.

“Medical marijuana qualifying patient(s)” means a registry identification cardholder as defined under OAR 333-008-1010(30) or the designated primary caregiver of the cardholder as defined under OAR 333-008-1010(8).

“Minor(s)” means any person under 18 years of age.

“Person(s)” means an individual.

“Premises” means a location registered by the Oregon Health Authority under applicable Oregon 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.

“PRF” (person responsible for a medical marijuana facility) means an individual who owns, operates, and/or otherwise has legal responsibility for a facility and has been approved by the Oregon Health Authority.

“Registry identification cardholder(s)” 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.

4. Business License Required. The PRF of any dispensary operating in City’s incorporated limits must possess a valid City business license and must comply with the requirements of any and all federal, state, and local laws, regulations, and ordinances, including, without limitation, this Ordinance.

5. Dispensary Operation Regulations. All dispensaries 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:

5.1 Compliance with Applicable Laws. The dispensary must at all times be operated in strict compliance with ORS 475.300 to 475.346; 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. The dispensary must at all times be registered and in good standing as an Oregon medical marijuana facility under Oregon law. Daily operating hours for the dispensary must be no earlier than 9:00 a.m. or later than 7:00 p.m., Monday through Sunday.

5.2 On-Site Production and/or Consuming Prohibited. The dispensary must not manufacture and/or produce any extracts, oils, resins, and/or similar derivatives of marijuana on-site and must not use open flames in the preparation of any products. Marijuana must not be consumed, ingested, inhaled, and/or topically applied anywhere on the premises of the dispensary, except that an employee of a registered facility who is a patient may consume marijuana during his or her work shift as necessary for his or her medical condition as provided in OAR 333-008-1200(1)(b).

5.3 Odors; Disposal. The dispensary must utilize an air filtration and ventilation system that, to the greatest extent possible, confines all objectionable odors associated with the

dispensary to the dispensary premises. For purposes of this Section 5.3, 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. The dispensary must provide for secure disposal of marijuana remnants or byproducts; such remnants or byproducts must not be placed within the dispensary’s exterior refuse containers.

5.4 Dispensary Location Restrictions. A dispensary must not be located (a) at the same address as a marijuana grow site, (b) within 1,000 feet of the real property comprising a public or private elementary, secondary, and/or career school attended primarily by minors, (c) within 750 feet of the real property comprising a public library, (d) within 500 feet of the real property comprising a licensed or certified “child care facility” as defined under ORS 329A.250, (e) within 1,000 feet of another dispensary, and/or (f) in any area or zone not expressly permitted under City’s land use code (including, without limitation, the La Pine Zoning Ordinance, Ordinance No. 2012-05, as amended). “Within 1,000 feet”, “within 750 feet”, or “within 500 feet” means a straight line measurement in a radius extending for 1,000 feet or less, 750 or less, or 500 feet or less (as applicable) in every direction from any point on the boundary line of the real property identified above.

5.5 Packaging of Edibles. All edible marijuana products sold and/or otherwise transferred on dispensary premises must (a) contain a warning label on the outside of the packaging that includes the following: “WARNING: MEDICINAL PRODUCT – KEEP OUT OF REACH OF CHILDREN” in bold capital letters and in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product, and (b) be packaged in a tamper-proof hard or soft-bodied receptacle that is designed and constructed to be significantly difficult for children under five years of age to open and that is sealed, opaque such that the product cannot be seen from outside the packaging, closable for any product intended for more than a single use or containing multiple servings, and not brightly colored, depicting cartoons, or in the shape of an animal or any other commercially recognizable toy or candy.

5.6 Minors. No minor is allowed on the dispensary premises unless the minor is a registry identification cardholder and is accompanied by a parent or guardian whose purpose is to procure the minor’s medicine. No minor is allowed to enter the area of the dispensary where medical marijuana is present.

5.7 Accounting System and Records. The dispensary 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 or when goods are received or delivered, and sufficient to maintain detailed, auditable financial records. If the manager finds that the PRF’s books and records are deficient in any way and/or if the PRF’s accounting system is not auditable, the PRF must modify the dispensary’s accounting system to meet the requirements of the manager.

5.8 Record Keeping. Each PRF must keep and preserve records of all sales made by the dispensary and such other books or accounts as may be required by the manager. Each PRF 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 in OAR 333-008-1210(1): (a) true names and any aliases of the PRF; (b) true names and any aliases of employees/volunteers of the dispensary; (c) documentation concerning costs related to transferring, handling, securing, insuring, testing, packaging, and processing marijuana, and the cost of supplies, utilities, and rent or mortgage; (d) the amount of money paid by a dispensary to a grower for each transfer of marijuana; (e) the amount of money paid by

each patient or designated primary caregiver for a transfer of marijuana; (f) state and federal income tax returns; and (g) any other additional information the manager deems necessary or appropriate.

5.9 Sales and Transfers. Sales or other transfers of marijuana products on the dispensary premises must occur inside the dispensary building and must be conducted only between the dispensary and medical marijuana qualifying patients. No walk-up or drive-through service is allowed.

5.10 Mobile Dispensaries Prohibited. Mobile marijuana dispensaries are prohibited. No person will locate, operate, own, allow to be operated, and/or aid, abet, and/or assist in the operation of any mobile marijuana dispensary that transports or delivers, or arranges the transportation or delivery of, marijuana to a person.

5.11 Marijuana Clubs. The dispensary must not be located on the same property or within the same building as any marijuana social club or smoking club. For purposes of this Section 5.11, a marijuana “social club” or “smoking club” means an association or organization of persons dedicated to a particular interest or activity related to or concerning marijuana.

6. Release; Indemnification. Each dispensary, dispensary owner, and PRF waive and release City, its officers, employees, volunteers, agents, insurers, and self-insurance pool for, from, and against any and all liabilities for injuries, damages, and/or liabilities of any kind that result from any arrest or prosecution of the dispensary owners, PRF, employees, volunteers, clients, customers, and/or other associated persons for violations of any federal, state, and/or local laws, regulations, and/or ordinances. Each dispensary, dispensary owner, and PRF will indemnify and hold harmless City, its officers, employees, volunteers, agents, insurers, and self-insurance pool against any and all liabilities, claims, and demands on account of any injury, loss, and/or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, and/or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the dispensary.

7. 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 PRF 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. Each day in violation constitutes a separate offense. Dispensary owners, PRFs, employees, and volunteers are jointly and severally liable for such offenses. The remedies provided in this Section 7 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.

8. Public Nuisance Declared. Operation of any dispensary 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.

9. Confidentiality. Except as otherwise provided under applicable law, City officers and employees will not knowingly divulge, release, or make known in any manner any financial or employee information submitted or disclosed to City by a PRF under the terms of this Ordinance. Nothing in this Section 9, however, will prohibit or prevent (a) disclosure of the names and addresses of any PRF or provider of equity or debt financing for a dispensary, (b) disclosure of general statistics in a form that

would reasonably prevent identification of financial information regarding a PRF, (c) any disclosure necessary or appropriate in connection with the enforcement of this Ordinance, including the presentation of evidence to a court or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by City under this Ordinance, and/or (d) disclosure when such disclosure is permitted or required under applicable public records laws.

10. Examination of Books, Records, and Premises. To determine compliance with the requirements of this Ordinance; ORS 475.300 to 475.346; Oregon Administrative Rules Chapter 333, Division 8; 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, 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 dispensary, including wastewater from the dispensary, and any and all dispensary financial, operational, and other information or documentation, including books, papers, payroll reports, and state and federal income tax returns. Every PRF is directed and required to furnish to the manager the means, facilities, and opportunity for making such examinations and investigations.

11. 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.

12. Emergency Declaration. The 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 emergency Ordinance will be in full force and effect upon its passage by the Council and approval of 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 _____, 2015.

Ken Mulenex, Mayor

ATTEST:

Richard L. Allen, Interim City Manager