

**MEETING NOTICE FOR THE
CITY OF HUBBARD**

TUESDAY

JANUARY 26, 2016

.....
PLANNING COMMISSIONERS: HOLUM, ANDERSON, NICHOLS, ESTES, NELSON
.....

The Hubbard Planning Commission will meet for a planning meeting at the Hubbard City Hall at 6:30 p.m.

The City will, upon request, endeavor to arrange for the following services to be provided. Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 4:00 p.m. on the Monday of the week preceding the meeting date.

- X Qualified sign language interpreters for persons with speech or hearing impairments; and
- X Qualified bilingual interpreters; and
- X Assisting listening devices for persons with impaired hearing.

Additional agenda items may be accepted until 4:00 p.m. on the Monday of the week prior to the meeting. Please contact the Director of Administration/City Recorder, Vickie L. Nogle, MMC, at 981-9633. (TTY / Voice 1-800-735-2900)

SEE ATTACHED AGENDA

Posted 1/21/2016
4:00 p.m.

Vickie L. Nogle, MMC
Director of Admin/City Recorder

**CITY OF HUBBARD
PLANNING COMMISSION
MEETING AGENDA**

**TUESDAY, JANUARY 26, 2016 - 6:30 PM
LOCATION: HUBBARD CITY HALL
3720 2ND STREET, HUBBARD**

- 1) **CALL TO ORDER.**
 - a) Flag Salute.

- 2) **SWEARING IN OF PLANNING COMMISSION MEMBER.**
 - a) Byron Nichols for the term ending December 31, 2018.
 - b) Harold Anderson for the term ending December 31, 2018.

- 3) **APPOINT CHAIR.**

- 4) **APPOINT VICE-CHAIR.**

- 5) **APPROVAL OF THE DECEMBER 15, 2015, PLANNING COMMISSION MEETING MINUTES.**

- 6) **WORK SESSION.**
 - a) **DISCUSSION REGARDING REGULATED MARIJUANA ACTIVITIES.**

- 7) **ADJOURNMENT.** (Next regular scheduled Planning Commission meeting February 16, 2016)

**CITY OF HUBBARD PLANNING COMMISSION MINUTES
DECEMBER 15, 2015**

CALL TO ORDER. The Hubbard Planning Commission meeting was called to order at 6:31 p.m. by the Planning Commission Chairman Glenn Holum at the City Hall, 3720 2nd Street, Hubbard.

Planning Commission Present: Glenn Holum, Harold Anderson, Dan Estes, Byron Nichols.

Excused Absence: Kevin Nelson.

Staff Present: Director of Administration/City Recorder Vickie Nogle; Administrative Assistant Lucy Astorga; City Planner Joseph Shearer, MWVCOG; City Attorney Chad Jacobs.

FLAG SALUTE. Planning Commission Chairman Glenn Holum led the group in reciting the Pledge of Allegiance.

APPROVAL OF THE OCTOBER 20 2015, COMBINED CITY COUNCIL AND PLANNING COMMISSION MEETING MINUTES. MSA/Planning Commissioner Dan Estes/Planning Commissioner Byron Nichols moved to approve the minutes as presented. Planning Commissioners Glenn Holum, Dan Estes, Byron Nichols, and Harold Anderson were in favor. Motion passed.

PUBLIC HEARING.

WEST FORK HOLDINGS, INC., - SIM #2015-01 DETERMINATION OF THE PROPOSED CANNABIS AND CANNABINOIDS MANUFACTURING, PROCESSING, RESEARCH AND DEVELOPMENT USE IS AUTHORIZED IN THE INDUSTRIAL DISTRICT AS A SIMILAR USE. (2880 J STREET – 041W33DB02600). City Planner Joseph Shearer asked if there were any declarations of conflicts of interest, bias, or ex parte contact. There were none. J. Shearer read the legislative hearing statement.

J. Shearer said the application for similar use is for the manufacturing and processing of cannabis, and the business would occupy the existing buildings on site. He said the proposed use is concurrent with the underlying zoning district and the impacts of the proposed use are similar to the impact of other types of allowed industries. J. Shearer reported there may be need for upgrades for health and safety, according to the public works department. He added the applicant has proposed an air filtration technology.

J. Shearer said there are four (4) exemptions for site development review, and believes the application falls under the fourth exemption, change of occupancy. J. Shearer recommended the application is exempt from site development review. He mentioned ORD 345-2015 was passed in November 2015, which pre-empts this application. According to the Ordinance, the applicant's proposed use is not allowed. J. Shearer said because of this, staff recommends denial of the application.

City Attorney Chad Jacobs said HB3400 gave cities the authority to create ordinances like ORD 345-2015. He said the exemption to that ordinance is if the applicant has completed the land use application and process. He said the City can allow the application due to the goal-post rule, so the Planning Commission has some flexibility. C. Jacobs stated the City has had discussion regarding time, place, and manner restrictions, including a 1,000 foot buffer from parks. The property in question is within 1,000 feet of a park. He said this is a big policy decision and the Planning Commission might want the City Council to make the decision.

Corinne Celko, Attorney for the applicant, 805 SW Broadway #2400, Portland, said they did not know an ordinance was pending when they submitted their application. She said the property has been in contract for quite some time. She said licenses can be applied for beginning January 4, 2016, and her applicant would like to be one of the first in the state. She added the City Council has the opportunity to call the application up within a certain number of days of the Planning Commission's decision if the Planning Commission denies the application. Regarding time, place, manner restrictions, C. Celko stated the State already has strict restrictions, including security. She said the applicant is willing to include time, place, manner restrictions, as long as they don't inhibit the applicant from using this property.

James Poelzer, 101 SW Main Street, Portland, said he works in medical and recreational marijuana and they currently have operations in Canada. He showed a video about the operations in Canada. He said they go to great lengths to protect the product; respect neighbors, control noise and smell, and are inconspicuous. He said there is no retail or visitors on site, and they operate during regular business hours. J. Poelzer said roughly 60 jobs will be created, but don't want to operate in a place where they are unwelcome or unwanted.

Planning Commission Chairman Glenn Holum asked if someone would be on site 24 hours a day.

J. Poelzer responded there will not be someone there around the clock, but the security system is monitored 24 hours a day. He said anyone entering the facility would trip the system and authorities would be contacted.

G. Holum opened the meeting to proponents.

John Howell, property owner 2880 J Street, Hubbard, said the building has been rented out for over 30 years, and they have been very accommodating to the City.

G. Holum opened the meeting to opponents. There were none.

Planning Commissioner Byron Nichols asked C. Jacobs to reiterate the Planning Commission's options.

C. Jacobs said under HB3400, the City passed an Ordinance prohibiting six of the seven marijuana uses; the only one allowed is medical marijuana grow sites. The Ordinance has an automatic sunset rule of August 1, 2016, or once it has been repealed due to time, place, and manner restrictions being set, whichever is sooner. He said the Planning Commission can follow

PAGE 3 – PLANNING COMMISSION MEETING MINUTES – DECEMBER 15, 2015

staff recommendations and deny the application, and subsequently the applicant can appeal to the City Council if they choose, or the Planning Commission can approve the application with time, place, and manner restrictions, and if the City Council wants a say in it, they can call it up within 12 days.

B. Nichols asked what the hours of operation would be.

J. Poelzer responded they would be 7:00 a.m. to 7:00 p.m.

G. Holum closed the public portion of the meeting.

Planning Commissioner Dan Estes said he feels his hands are tied. He said he doesn't want to approve the application with just the applicant's word they will abide by time, place, and manner restrictions if it doesn't stop them from operating, and also wants to keep in mind the Council's intention with the ordinance. He said the application seems like a good use for the space, but the wrong timing.

MSA/Planning Commissioner Dan Estes/Planning Commissioner Harold Anderson moved to accept staff's recommendation of denial of SIM 2015-01 with knowledge that applicant can appeal to City Council. Planning Commissioners Dan Estes, Harold Anderson, Byron Nichols, and Glenn Holum were in favor. Motion passed.

Planning Commission took a short recess.

The meeting reconvened at 7:51 p.m.

WORKSHOP.

DISCUSSION REGARDING REGULATED MARIJUANA ACTIVITIES. City Planner Joseph Shearer said the Planning Commission will make a decision, and then a 45 day notice will be sent out.

Planning Commissioner Dan Estes asked if they could look at what other cities are doing.

J. Shearer responded they could, but it is kind of unforged territory. He said there has been discussion regarding where retail locations should be, as well as time, place, and manner restrictions.

Planning Commissioner Byron Nichols commented that people can already grow within their home, even within 1,000 feet of a school.

City Attorney Chad Jacobs said the standards set forth by OLCC (1,000 feet from school) are only for licenses issued and regulated by OLCC.

B. Nichols and D. Estes said they would both like to see what other cities are doing.

PAGE 4 – PLANNING COMMISSION MEETING MINUTES – DECEMBER 15, 2015

D. Estes commented he was approached by someone and asked if the City would allow a buffer around churches.

C. Jacobs responded, saying if there is a de facto ordinance because there are so many buffers that there's no place to put a facility, the City would run into legal action.

J. Shearer asked if there was anything else the Planning Commission might be interested in putting buffers around.

D. Estes said he is curious what it would look like to have buffers around churches. He would be happy if there were no marijuana retail locations in Hubbard. D Estes stated the applicant for the public hearing today seemed to be very professional and clean-cut, and the issues seem to be with retail locations; the production outlets don't seem to have the same problems and reputation.

J. Shearer asked if there was more specificity regarding place regulations.

C. Jacobs suggested looking at a zoning map and figuring out where the City wants the businesses to be located.

G. Holum said he is concerned with where retail locations will be allowed.

B. Nichols asked if there is a way to have a conditional application so it has to come before the City, no matter what type of marijuana use it's for, and the City can then choose where it can go.

D. Estes said having it as a conditional use might be good.

The Consensus of the Planning Commission was to have another work session after more information is gathered regarding what other jurisdictions are doing.

City Planner Joseph Shearer reported the City was granted a \$3500 grant from Marion County to initiate a rezone of the commercial core.

Planning Commissioner Dan Estes asked what the timeline was for that.

J. Shearer said everything needs to be before the City Council for approval by July 2016.

ADJOURNMENT. (The next scheduled Planning Commission Meeting will be January 19, 2016, at 6:30 p.m.) MSA/Planning Commissioner Dan Estes/Planning Commissioner Byron Nichols moved to adjourn the meeting. Planning Commissioners Glenn Holum, Dan Estes, Harold Anderson, and Byron Nichols were in favor. Motion passed. Meeting was adjourned at 8:44 p.m.

Glenn Holum, Planning Commission Chairman

ATTEST:

Vickie L. Nogle, MMC
Director of Administration/City Recorder

Lucy T. Astorga, Admin Asst.
Recording & Transcribing

EXHIBIT A

Note:

Text in underlined typeface is proposed to be added

Text in strikethrough typeface is proposed to be deleted.

***Indicates where text from the existing code has been omitted because it will remain unchanged.

Bend Development Code

Chapter 1.2

DEFINITIONS

Cannabinoid concentrate means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process; or

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol.

Cannabinoid edible means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

Cannabinoid extract means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses heat or pressure; or

(c) Any other process identified by the commission, in consultation with the authority, by rule.

Cannabinoid product means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

Cultivation or cultivate means: (i) all phases of growth of marijuana from seed to harvest; or (ii) preparing, packaging, or repackaging, labeling, or relabeling of marijuana prior to consumption, or incorporation into a recreational marijuana-infused product.

Marijuana means the plant Cannabis family Cannabaceae, any part of the plant of the Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

Marijuana business means any person or entity appropriately licensed by the Oregon Health Authority or the Oregon Liquor Control Commission that sells, produces,

cultivates, grows, wholesales, processes, researches, develops or tests medical marijuana or recreational adult use marijuana within the City of Bend.

Marijuana grow sites. Grow site means a specific location registered by the Oregon Health Authority and used by the grower to produce marijuana for medical use by a specific patient. Medical grow sites are regulated by state law as follows: 12 mature plants are allowed per grow site in residential zones; 48 mature plants per grow site in all other zones. If all grows at the site had registered with the State of Oregon by January 2, 2015, the grow site is limited to the number of plants at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in residential zones and 96 mature plants per grow site in other zones.

Marijuana processing means the preparing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates, and cannabinoid extracts for medical or recreations purposes.

Marijuana producing means the manufacture, planting, cultivation, growing, or harvesting of retail recreational marijuana.

Marijuana recreational retailer means a person or entity licensed by the Oregon Liquor Control Commission to sell useable recreational marijuana and marijuana-infused products in a retail outlet. Marijuana retailer is also referred to as “recreational retail facility” or a “marijuana recreational facility.”

Marijuana testing laboratory means a laboratory that tests marijuana items for producer, processor, wholesaler or retail licensees.

Marijuana wholesaler means a person or entity that purchases marijuana items in this state for resale to a person other than a consumer.

Medical marijuana dispensary means a medical marijuana facility or entity registered with the Oregon Health Authority under ORS 475.300 et. seq.

Recreational marijuana means any marijuana intended for recreational use which meets all requirements for recreational marijuana contained in this chapter, Oregon state law, and any other applicable law.

Recreational marijuana business means (a) any person or entity that cultivates, produces, distributes, possesses, transports, or makes available more than six marijuana plants or one ounce of marijuana, (b) any person that sells any amount of marijuana, or (c) any person who possesses marijuana openly or publicly. The term recreational marijuana business or retail shall not include the private cultivation, possession, production, or use within a person's residence of no more than (a) six plants in an enclosed, locked space, (b) one ounce of marijuana, or (c) the marijuana produced by no more than six plants on the premises where the plants were grown if the plants were grown in an enclosed, locked space.

School means a building where individuals gather to receive educational instruction, either public or private, except as otherwise specifically defined in this code. School does not include a child care facility as defined in this Chapter.

Usable Marijuana means the dried leaves and flowers of marijuana. “Usable marijuana” does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

Chapter 2.2
COMMERCIAL ZONING DISTRICTS (CB, CC, CL, CG)

Table

2.2.300 – Permitted and Conditional Uses

Land Use	CB	*CC	CL	CG
* <u>Medical Marijuana Dispensary and Marijuana Recreational Retailer</u>	-	-	-	-
<u>– building footprint less than 50,000 square feet</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>– building footprint greater than 50,000 square feet</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>
* <u>Marijuana Wholesale (more than 75% of sales are wholesale)</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>P</u>
* <u>Marijuana Testing, Research and Development Facilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
* <u>Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products Not Including Processing of Cannabinoid Extracts.</u>				
<u>– greater than 5,000 sq. ft.</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>N</u>
<u>– less than 5,000 sq. ft. with retail outlet</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

Chapter 2.3
MIXED-USE ZONING DISTRICTS (ME, MR AND PO)

Table 2.3.200

Permitted and Conditional Uses

Land Use	ME	MR	PO
<u>* Medical Marijuana Dispensary and Marijuana Recreational Retailer</u> <ul style="list-style-type: none"> • <u>not to exceed 50,000 sq. ft. ground floor</u> • <u>not to exceed 75,000 sq. ft. ground floor for ME zoned property five acres or greater</u> 	P	P	N
	P	N	N
<u>*Marijuana Wholesale (more than 75% of sales are wholesale)</u>	P	P	N
<u>*Marijuana Testing, Research and Development Facilities</u>	P	P	N
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products Not Including Processing of Cannabinoid Extracts.</u>	P	P	N

Chapter 2.4
INDUSTRIAL ZONING DISTRICTS (IG, IL)

Table 2.4.300 – Permitted and Conditional Uses

Land Use	IG	IL
<u>*Marijuana Grow Sites</u>	<u>P</u>	<u>P</u>
- <u>*Marijuana Wholesale</u>	<u>P</u>	<u>P</u>
- <u>*Marijuana Testing, Research and Development Facilities</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Concentrates and Cannabinoid Products.</u>	<u>P</u>	<u>P</u>
<u>* Marijuana Processing of Cannabinoid Extracts</u>	<u>P</u>	<u>P</u>

2.4.800 Special Development Standards.

The Industrial Districts accommodate a range of manufacturing, industrial office uses, and small personal service commercial uses.

A. Small-Scale Personal and Professional Services. Small-scale personal and professional services and incidental sales uses as specified in Table 2.4.300 shall comply with the following development standards:

1. Small-scale personal service commercial uses may be allowed when accessory to a primary user of the industrial development (in the case of a large industrial area). No more than 10 percent or 2,500 square feet

(whichever is greater) of a permitted or conditionally allowed industrial development may be occupied by an accessory commercial use, unless otherwise approved through a Conditional Use Permit.

2. Primary use, small-scale personal and professional and incidental sale uses may occur as stand-alone businesses when the total gross floor area of each use does not exceed 2,500 square feet. For multiple uses, where the uses share one building, the total building area shall not exceed 5,000 square feet. A single use may occupy 5,000 square feet if approved through a Conditional Use Permit. These nonindustrial use buildings shall comply with the provisions of BDC 2.2.600, Commercial Design Review Standards.

B. Location Standards. Child care centers and other similar uses shall be limited to properties located at the perimeter of the Industrial Districts with frontage on arterial or collector streets, unless they are accessory to a primary permitted use. When these uses occur as a stand-alone building, the provisions of BDC 2.2.600, Commercial Design Review Standards, apply.

C. Buffering. A buffer with a minimum width of 20 feet is required between industrial development and any adjacent Residential Zoning District. The buffer shall provide landscaping to screen the industrial activities, such as parking, service and delivery areas, from the Residential Districts. The buffer shall not contain trash receptacles or be used for the storage of equipment, materials, vehicles, etc. [Ord. NS-2195, 2013; Ord. NS-2016, 2006]

D. Prohibited Uses. Retail medical marijuana dispensaries and marijuana recreational facilities.

Chapter 3.6

SPECIAL STANDARDS AND REGULATIONS FOR CERTAIN USES

3.6.200 Residential Uses.

N. Home Occupations. The purpose of this subsection is to support those who are engaged in small business ventures that could not necessarily be sustained if it were necessary to lease commercial quarters, or which, by the nature of the venture, are appropriate in scale and impact to be operated within a residence. There are two types of home occupation uses.

2. Type II. A Type II home occupation exceeds the standards for a Type I home occupation and is subject to a Conditional Use Permit as described in BDC Chapter 4.4, Conditional Use Permits. In addition to the Type I requirements, a Type II home occupation shall also meet the following operational criteria:

3. Prohibited Home Occupation Uses.

- a. Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor beyond allowable levels as determined by local, State or Federal standards, or that can be detected beyond the property line, is prohibited.
- b. Any activity involving on-site retail sales is prohibited, except that the sale of items that are incidental to a permitted home occupation is allowed. For example, the sale of lesson books or sheet music by music teachers, art or craft supplies by arts or crafts instructors, computer software by computer consultants, and similar incidental items for sale by home business are allowed.
- c. Any uses described in this section or uses with similar objectionable impacts because of motor vehicle traffic, noise, glare, odor, dust, smoke or vibration, such as:
 - i. Ambulance service;
 - ii. Animal hospital, veterinary services, kennels or animal boarding;
 - iii. Auto and other vehicle repair, including auto painting;
 - iv. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles, airplanes or large equipment on site.
- d. Marijuana businesses.

3.6.300 Nonresidential Uses.

- J. Neighborhood Commercial Uses.

2. Uses Not Permitted. Automobile-oriented and automobile-dependent uses and marijuana businesses are expressly prohibited.

P. Marijuana Businesses.

1. Purpose. The purpose of this section is to reasonably regulate those who are engaged in the retail sale, producing, growing, processing, wholesaling and testing of medical and recreational marijuana, consistent with state law, in the City of Bend and to:
 - a. Protect the general health, safety, property, and welfare of the public;
 - b. Balance the right of individuals to produce and access marijuana and marijuana derivatives consistent with state law, with the need to minimize adverse impacts to nearby land uses, residents, property owners and businesses that may result from the production, storage, distribution, sale, and/or use of marijuana and derivatives;
 - c. Adopt reasonable time, place and manner restrictions on both medical and recreational dispensaries tied to specific community impacts;
 - d. Prevent or reduce criminal activity that may result in harm to persons or property;
 - e. Limit the exposure of minors to the commercial aspects of marijuana;
 - f. Prevent or reduce diversion of state-licensed marijuana and marijuana derivatives to minors; and
 - g. Minimize impacts to the city's public safety services by reducing calls for service.
2. Applicability.
 - a. The provisions of this section apply to marijuana businesses within the Bend city limits.
 - b. Relationship to other development standards. Marijuana businesses must comply with all of the standards of this section and all applicable state laws and regulations.
3. Procedure.
 - a. All new marijuana businesses must be reviewed through Site Plan Review, Minimum Development Standards or other applicable development review process listed in BDC Chapter 4, to ensure the standards of this section and other relevant portions of this code are met.
 - b. The City will require a proof of a license from the State (either OHS or OLCC) showing the security plan and all other required improvements, prior to final occupancy.

4. Standards for Retail Marijuana.

- a. Permitted. Medical Marijuana Dispensaries and Marijuana Recreational Facilities are permitted in all CB, CC, CI, CG, ME and MR zoning districts (unless listed as a conditional use, and subject to size limitations). See use tables in BDC Title 2.
- b. Co-Location of Marijuana Dispensaries and Marijuana Recreational Facilities. Dispensaries and facilities selling medical and retail marijuana may co-locate only during such time and selling the product as allowed by state law and regulation.
- c. Medical Marijuana Dispensaries and Marijuana Recreational Facilities and Proximity to Other Land Uses.
 - i. The distance limitations and definition established by this section shall control over the minimum distance limitations set forth by the state of Oregon.
 - ii. The distance limitation are based upon the uses surrounding the proposed marijuana dispensary or facility site on the date the development application is submitted.
 - iii. A dispensary or facility shall not be located within the specified proximity of any of the uses listed below. For purposes of this paragraph, the distance specified is a straight line measurement from the closest points between property lines of the affected properties.
- d. Medical Marijuana Dispensaries. No medical marijuana dispensary may operate or conduct business within:
 - i. 1,000 feet of a public or secondary school for which attendance is compulsory under ORS 339.020 (2013); or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013);
 - ii. 1000 feet of another medical marijuana dispensary; or
 - iii. 150 feet of a licensed child care facility, as defined in BDC 1.2.
- e. Existing Medical Marijuana Dispensaries.
 - i. A medical marijuana dispensary existing as of December 15, 2015 is considered a permitted use regardless if (1) an existing licensed child care facility is located within 150 feet; (2) an existing public or secondary school for which attendance is compulsory under ORS 339.020 (2013), or a private

or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013), is located within 1,000 feet, or (3) a another medical marijuana dispensary is located within 1,000 feet.

- ii. A marijuana dispensary existing at the time any use listed in subsection P.4.d above is subsequently sited within the specified proximity of the dispensary, may remain at that location and is considered a permitted use and not a nonconforming use.
 - iii. An existing marijuana dispensary may change to a recreational facility provided the business complies with applicable state laws and permitted and conditional use tables, and goes through the procedure identified in P.3.
- f. Marijuana Recreational Facility. No marijuana recreational facility may operate or conduct business within:
- i. 1,000 feet of a public or secondary school for which attendance is compulsory under ORS 339.020 (2013); or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a) (2013); or
 - ii. 150 feet of a licensed child care facility, as defined in BDC 1.2.
- g. Existing Marijuana Recreational Facility.
- i. A Marijuana Recreational Facility existing at the time any use listed in subsection P.4.f above is subsequently sited within the specified proximity of the Facility, may remain at that location and is considered a permitted use and not a nonconforming use.
 - ii. An existing recreational retail facility may change to a marijuana dispensary provided the business complies with applicable state laws and permitted and conditional use tables, and goes through the process identified in P.3.
- h. Building Site. The proposed development must be located inside a permanent building. Outdoor storage of any merchandise, plants, or other materials is not allowed.
- i. Display. All marijuana plants, products, and paraphernalia must be completely screened from view from all marijuana dispensaries and recreational facilities. There must be no marijuana, marijuana product, or marijuana paraphernalia visible from the exterior of the building.

5. Production and Growing of Commercial Marijuana.

- a. Recreational Production of Marijuana. Recreational production (growing) facilities are prohibited in all residential and commercial zoned and designated areas. It is allowed in industrial zoned and designated areas, as further set forth in the use tables in Title 2. Retail marijuana is not permitted at the same facility as industrial production.
 - b. Medical Grow Sites. Medical grow sites are permitted as allowed by State law up to the possession limitations for registered cardholders or designated primary caregivers of the cardholder in all zones.
 - c. The private growing or cultivating of marijuana for non-commercial personal use, as defined by state law, is not regulated by this chapter.
6. Commercial Marijuana Wholesale. Marijuana wholesale is permitted in CL, CG, MR and ME zones, similar to other wholesale uses (75% of the business use needs to be wholesale). Wholesale is not permitted in residential designated areas. Wholesale is permitted in all industrial zoned and designated areas. See use tables in BDC Title 2.
7. Marijuana Processing.
 - a. Residential Zones. Marijuana processing is prohibited in residentially zoned and designated areas.
 - b. Marijuana processing of cannabinoid concentrates and cannabinoid products not including processing of cannabinoid extracts is permitted in all CB, CC, CL, CG, ME and MR zoned and designated areas, provided that the area is less than 5000 square feet and the use includes a retail component as identified in the use tables in BDC Title 2, and specifically subject to Fire Marshal approval. It is permitted conditionally subject to size limitations in the CL zoned and designated areas, and in all Industrial zoned and designated areas. See use tables.
 - c. Marijuana processing of cannabinoid extracts is allowed only in Industrial zoned and designated areas, subject to state law and Fire Marshal approval. See use tables in BDC Title 2.
8. Marijuana Testing Laboratory. Marijuana testing laboratories is permitted in IL, IG, CB, CC, CI, CG and in the ME and MR zoned and designated areas, as further set forth in the use tables in BDC Title 2.
9. Operating License Required. All marijuana businesses operating in the City of Bend must obtain an operating license pursuant to Bend Municipal Code, Chapter 7.50, Marijuana Business Operating License. This applies to existing (businesses currently operating at the time of adoption of this code) in order to continue operating and as a condition to obtaining land use approval under this chapter.

10. Marijuana Businesses-Prohibited Uses. In addition to the other prohibitions identified in this Section, the following uses or practices are also prohibited:

- a. Drive-through dispensaries or facilities in any zone.
- b. Temporary dispensaries or facilities in any zone.
- c. On-site consumption of marijuana at a licensed dispensary or marijuana recreational facilities unless: (1)The consumption is conducted for testing in compliance with OAR 333-008-1190; or (2) The consumption is allowed under the medical exception granted in OAR 333-008-1200.
- d. Co-location of medical marijuana dispensaries at grow sites.
- e. Marijuana businesses in residential zones or designations.
- f. Retail medical marijuana dispensaries or marijuana recreational facilities in industrial zones.
- g. Marijuana businesses as a home occupation in any zone.
- h. Marijuana businesses as a Neighborhood Commercial use.

11. Compliance and Enforcement.

- a. Any premise, house, building, structure or place of any kind where marijuana is sold, manufactures, barter, distributed in violation of state law or this ordinance is a public nuisance. The City may institute an action in Deschutes County in the name of the City to temporarily or permanently enjoin such nuisance.
- b. This remedy is in addition to, and not in lieu of, any other civil, criminal or administrative remedies available to the City authorized under this code, or by law or equity.

First Reading:

Second reading and adoption by roll call vote:

YES: NO: ABSTAIN:

Jim Clinton, Mayor

Attest:

**CITY OF PHOENIX
PHOENIX, OREGON
ORDINANCE NO. _____**

**AN ORDINANCE AMENDING CHAPTER 5.18 OF THE CITY MUNICIPAL CODE –
PERTAINING TO THE REGULATION OF THE TIME, PLACE, AND MANNER OF
COMMERCIAL CANNABIS FACILITIES**

WHEREAS, the City of Phoenix duly enacted Ordinance 958 on December 14, 2015, thus establishing a Cannabis Facility License program and regulations on time, place, and manner for cannabis facilities; and

WHEREAS, the City amended its Land Development code to place reasonable regulations on the time, place, and manner of commercial cannabis cultivation operations; and

WHEREAS, the City of Phoenix now wishes to make minor amendments to its Cannabis Facility License regulations in Chapter 5.18 of its Municipal Code that will be consistent with and supportive of these amendments to its Land Development Code.

NOW THEREFORE, the City Council of the City of Phoenix **ORDAINS** as follows:

Section 1. The Municipal Code of the City of Phoenix is hereby amended as proposed in Exhibit A.

Section 2. Effective Date: This ordinance shall remain subject to and limited by the moratorium currently effective up to and until the moratorium is no longer effective.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 21st day of September, 2015.

Mayor

ATTEST:

Recorder

EXHIBIT A

CHAPTER 5.18 OF THE CITY OF PHOENIX MUNICIPAL CODE, AS AMENDED BY ORDINANCE _____ ON SEPTEMBER 21, 2015, SHALL READ AS FOLLOWS:

Chapter 5.18 – Cannabis Facility License

Sections

5.18.010 Purpose

5.18.020 Definitions

5.18.030 License Required

5.18.040 Application Procedures

5.18.050 Standards for Review and Facility Operation

5.18.060 Period of Validity

5.18.070 Transfer of License Prohibited

5.18.080 Ineligibility for Noncompliance

5.18.090 Annual License Renewal Procedures

5.18.100 Revocation of License for Noncompliance

5.18.110 Appeal of Denial or Revocation of a Dispensary License Application

5.18.120 No Vested Rights

5.18.130 Enforcement

5.18.010 Purpose.

- A. The City of Phoenix intends to protect the public health, safety, and welfare of persons and property within its jurisdiction.
- B. The City of Phoenix wishes to protect the residential character and quality of life within its predominately residential neighborhoods.
- C. The City of Phoenix endeavors to manage its public safety and other municipal resources in the most effective and efficient way possible.
- D. The City of Phoenix has planned, and desires to create a thriving, walkable City Center, that attracts visitors of all ages and backgrounds and provides goods and services to the community within which it is located.
- E. The City of Phoenix wishes to minimize potential adverse secondary effects upon children and other members of the public that may reasonably be anticipated to occur in the absence of the following regulation.

5.18.020 Definitions.

- A. “Cannabis” or “marijuana” means all parts of the plant of the 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 may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include industrial hemp, as defined by ORS 571.300, 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.

- B. “Cannabis containing products” or “Cannabis derived products” means any compound, manufacture, salt, derivative, mixture, extract, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include industrial hemp, as defined by ORS 571.300, 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.
- C. “Cannabis cultivation” means the agricultural or industrial practice of growing cannabis from seed or immature plant, as defined by the laws and administrative rules of the State of Oregon. It may include the harvesting and drying of cannabis cola and leaves that have been grown upon the same premises. Cannabis cultivation does not include the agricultural or industrial practice of growing industrial hemp, as defined by the laws and administrative rules of the State of Oregon. Nor does it include the mere incidental possession of immature cannabis plants by a cannabis processor or wholesale or retail distributor.
- D.C.** ———“Cultivation area” means the area within which plants are grown. All parts of a plant grown within a cultivation area shall be contained within the perimeter of the cultivation area. No part of a plant, except for rhizomal matter, roots, etc., grown within a cultivation area shall grow past the perimeter of the cultivation area.
- D. D. C.** ———“Distribution of **Cannabiscannabis**” means the physical transfer of any amount of cannabis, marijuana, or taxonomically related plant in any form by one person to any other person or persons, regardless of whether any consideration is paid or received.
- DE.** ———“Facility, **Cannabiscannabis**” means real property, whether improved or not, whereupon cannabis, cannabis containing products, or products derived from cannabis are distributed, produced, processed, or cultivated~~manufactured, or distributed.~~ Premises whereupon a resident grower cultivates cannabis for personal consumption as permitted by Chapter 2 of the Phoenix Land Development Code and applicable laws and administrative rules of the State of Oregon are not cannabis facilities.
- EF.** “Operator” means the person who is the proprietor of a facility, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. If the operator is a corporation, the term operator also includes each and every member of the corporation’s Board of Directors whose directorship occurs in a period during which the facility is in operation. If the operator is a partnership or limited liability company, the term operator also includes each and every member thereof whose membership occurs in a period during which the facility is in operation.
- FG.** “Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

- ~~GH.~~ “Premises” means real property at or in which a Cannabis Facility is located.
- ~~HI.~~ “Production or processing of ~~Cannabis-cannabis~~ Containing-containing or ~~Derived-derived~~ Productsproducts” means the production of substances and finished products by mixing, extraction, or other preparations of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the production of substances and finished products containing or derived from industrial hemp, as defined by ORS 571.300, 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.
- ~~IJ.~~ “Purchase or Salesale” means the acquisition or furnishing for consideration by any person of cannabis or cannabis containing or derived products within the City.
- ~~JK.~~ “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.
- ~~KL.~~ “Seller” means any person who is required to be licensed or has been licensed by the State of Oregon to provide cannabis and/or cannabis containing or derived products to purchasers for money, credit, property or other consideration.

5.18.030 License Required.

It is unlawful for any persons acting as principal, clerk, agent or servant to engage ~~in~~in the cultivation, processing, production or distribution of cannabis, cannabis containing or derived products and byproducts, otherwise permitted under State law without first obtaining a license ~~from the City of Phoenix~~therefore. ~~Such~~This licenses shall be an addition to any ~~or~~and all other licenses and permits held by applicant.

- A. Cannabis facilities engaged in the retail distribution of cannabis must obtain separate licenses in order to engage in the retail distribution of cannabis that is intended for medicinal consumption under the OMMP and cannabis that is intended for non-medicinal, “recreational” consumption.
- B. A cannabis facility may be licensed to conduct multiple licensed activities as allowed by and pursuant to the laws and administrative rules established by the State of Oregon related to “Segregated Premises”.
- C. Cultivation of cannabis conducted by a “resident grower” as defined by Chapter 2 of Phoenix Land Development Code shall not require a cannabis facility license but must comply with the provisions of Chapter 2 and all other applicable regulations and laws.

5.18.040 Application Procedures.

An applicant shall complete an application for a license on a form provided by the City and containing the following information:

- A. A notarized statement that the applicant is the owner of record for the property at which the cannabis facility would operate, accompanied by proof of ownership, or, if the applicant is not the owner of record for the property, a notarized statement that the owner authorized the application for the license.
- B. The full name, mailing address, email address, and telephone number of the owner of record for the property if the applicant is not the owner of record for the property.
- C. Payment of an applicable license review fee established by resolution of the City Council.
- D. A floor plan and site plan, with accurate dimensions and drawn to scale, depicting the enclosed and locked location in the building where cannabis and cannabis containing and derived products will be stored, and detailing security measures undertaken to secure that location and the premises in general;
- E. For safety and building code requirements, a description detailing the electrical, plumbing, and any other building modifications and improvements utilized in the distribution, production, and/or cultivation of cannabis plants and cannabis containing and derived products;
- G. Documentation of any building, development, or other permits and licenses as required and issued by the City or State including a business license as required by Chapter 5.04 of the Phoenix Municipal Code and any licenses issued by the State of Oregon authorizing the distribution, cultivation, or production of cannabis and cannabis containing or derived products.
- H. The names and addresses of all persons that
 - 1. Have an ownership interest in the cannabis facility;
 - 2. Have loaned or given money or real or personal property to the applicant for use by the facility within the preceding year;
 - 3. Will act as an operator.
- I. The Chief of Police shall conduct background checks to determine whether any person named therein has been convicted in any state for the manufacture or delivery of a controlled substance listed in CFR Schedule I or Schedule II once or more in the previous five years or twice or more in the person's lifetime.
- J. Any additional information as may be deemed necessary by the Chief Law Enforcement Official or the Planning Director.
- K. The City shall issue, in writing, a decision approving, approving with conditions, or denying the requested cannabis facility license within 60 days of submission of a completed application.

5.18.050 Standards for Review and Facility Operation

In order to qualify for a cannabis facility license, the facility must meet all of the following standards:

- A. ~~The e~~Cannabis facilities may not operate within R-1, R-2, R-3, or C-C land use districts. Production of cannabis containing and derived products is further prohibited in these districts and in the C-H ~~district. This district. This~~ provision shall not be read so as to release cannabis facilities from other requirements to obtain additional land use and building permits as required by the Phoenix Land Development Code and state building and fire codes.

B. ~~The A~~ cannabis ~~facility shall~~facility shall be located more than 250 feet from any R-1, R-2, or R-3, residential zones or a property that is legally used for residential purposes. The minimum separation between the cannabis facility or use and any and all residential property, as defined by this section, shall be calculated using the method described below in 5.18.050.F.

C. ~~A cannabis~~ ~~The cannabis facility shall~~facility shall be located more than 250 feet from any park or recreational facility meeting the following standards:

1. A public park or recreation facility that has been identified in the City's Comprehensive Plan, with the exception of the Bear Creek Greenway;
2. A public library;
3. A commercial or residential recreational facility, which serves children under 18 years of age;
4. The minimum separation between the cannabis facility and any and all parks and recreation facilities property as defined by this section shall be calculated using the method described below in 5.18.050.F.

D. ~~The All~~ cannabis ~~facility facilities~~ shall be located more than 1,000 feet from any public or private school, with an average weekday attendance (during any continuous 3 month period during the preceding 12 months) of not fewer than 30 children who are under 18 years of age. This minimum separation between the ~~adult business or use~~cannabis facility and any and all schools shall be calculated using the method described below in 5.18.050.F.

E. The cannabis facility shall be located at least 1,000 feet from another cannabis facility.

F. Minimum distance shall be measured using the following method:

1. The entrance to the cannabis facility that is nearest to the nearest residential, school, park or recreational facility property, as defined by this section shall be identified.
2. A straight line shall be drawn from that point to the nearest point on the property line of the nearest residential, school, park or recreational facility property.
3. To measure minimum distance between two cannabis facilities, the entrances to each facility closest to one another shall be identified, and a straight line shall be drawn between these two entrances.
4. The distance as measured using the procedures in 5.18.050.E.1-3 must be less than the minimum spatial separation distances delineated in 5.18.050 B, C, D, and E.

G. The cannabis facility shall be located in a permanent building and may not be located in a motor vehicle, cargo container, tent, trailer or other temporary structure.

H. All cannabis and cannabis containing and derived products shall be contained within a secure, locked case, cabinet, safe, or similar enclosure that is not accessible without restricted means of entry.

I. At no time shall cannabis and cannabis containing and derived products or any items, effect, paraphernalia, accessory or thing which is designed or marketed for use with cannabis and cannabis containing and derived products be visible by passers-by.

J. Outdoor storage of cannabis, cannabis containing and derived products, or other raw materials for use in the production of cannabis containing or derived products, is strictly prohibited.

K. The exterior of the building within which the cannabis facility is located shall be consistent in appearance with buildings in immediate vicinity and comply with any applicable architectural design standards. Any modification to the premises or exterior of a building in which a cannabis facility is located shall be subject to Chapter 4.2 of the Phoenix Land Development Code.

L. Drive-up or drive-through facilities are expressly prohibited for cannabis facilities.

M. Cannabis facilities shall provide for secure disposal of cannabis remnants, waste and byproducts; such materials and substances shall not be disposed of in unsecured refuse collection containers.

N. A cannabis facility engaged in the distribution of cannabis to the general public, whether the intended use of the cannabis is for medical or non-medical purposes, Cannabis facilities shall only operate between the hours of 8:00AM and 8:00PM.

O. Cannabis and cannabis containing or derived products shall not be consumed on the premises, unless the Cannabis Facility is registered with the State of Oregon Health Authority as a Medical Marijuana Facility, and only then may this activity occur according to applicable state statutes and the rules promulgated there from.

P. The facility shall utilize 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 an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

Q. No minor is allowed on the premises unless the minor is a registry identification cardholder, is accompanied by a parent or guardian, and the Cannabis Facility is registered with the State of Oregon Health Authority as a Medical Marijuana Facility, and only then may this activity occur according to applicable state statutes and the rules promulgated there from.

R. A person who has been convicted in any state for the manufacture or delivery of a controlled substance listed in CFR Schedule I or Schedule II once or more in the previous five years or twice or more in the person's lifetime shall not

1. Be an operator of a cannabis facility;
2. Have an ownership interest of 5% or more in the facility or in any entity that has a 25% or more ownership interest in the facility;
3. Provide equity or debt financing for the facility; or
4. Have an ownership interest of 5% or more in any entity that provides or has provided equity or debt financing for the facility.

S. A Medical Marijuana Facility shall provide proof of current registration under the State of Oregon Medical Marijuana Program. All cannabis facilities that are licensed by the State of Oregon shall provide proof of current registration as required by state law and administrative rules.

T. A cannabis facility shall display its current permit inside the facility in a prominent place easily visible to persons conducting business in the facility.

U. Cannabis facilities engaged in commercial cultivation shall meet the standards and requirements established in the Phoenix Land Development Code.

V. Cannabis facilities engaged in commercial cultivation may also be required to post a performance bond or other form of financial surety, the amount of which shall be calculated by City staff to recover all reasonably anticipated costs associated with the removal and disposal of cannabis plants and related materials and equipment.

5.18.060 Period of Validity.

A license granted under these provisions shall be effective and valid for a period of up to one year from issuance or, in the case of ~~Medical Marijuana Facilities~~facilities licensed by a State agency, until the expiration of ~~that~~ registration ~~under the State of Oregon's Medical Marijuana Program~~, whichever occurs first.

5.18.070 Transfer of License Prohibited.

No license issued under the forgoing provisions may be sold, transferred, or otherwise assigned from the original license holder to another person or corporate entity.

5.18.080 Ineligibility for Noncompliance.

No license shall be issued to or renewed for a cannabis facility that

- A. Is not in compliance with the building and property management codes enacted by the City and the International Fire Code;
- B. Has not been issued a valid certificate of occupancy, if applicable;
- C. Is in violation of Chapter 3.17 of the Phoenix Municipal Code.

5.18.090 Annual License Renewal Procedures.

Prior to the expiration of the original one year license, a license renewal application fee as established by the City Council, shall be filed with the City. Any changes to the information provided on the original application shall be indicated on the license renewal application.

- A. Prior to license renewal approval, the Chief Law Enforcement Official, or designee thereof, and the City's building inspector and/or Planning Director, may inspect the licensed facility. The inspection shall include, at minimum, a review of storage areas and security measures.†
- B. All requirements established in this section must be satisfied in order for an adult business to be eligible to renew its license to distribute cannabis and cannabis containing and derived products.†
- C. The applicant must be current on all applicable Cannabis Facility Taxes and fees as established in Chapter 3.17 of the Municipal Code.
- D. If the Chief Law Enforcement Official or designee thereof determines that the cannabis facility is in compliance with these requirements, a one year license renewal shall be issued.†
- E. A license renewal application shall be submitted requesting renewal annually at least 30 days prior to expiration of the current permit. The premises used as a cannabis facility may be inspected by the Chief Law Enforcement Official, or a designee thereof, and the City's building official, to ensure compliance with this ordinance.

5.18.100 Revocation of License for Noncompliance.

In the event of any noncompliance with this provision after a license has been issued, the license may be revoked upon any of the following findings by order of the Chief Law Enforcement Official, a designee thereof, the Planning Director, or the City's building official, until noncompliance has been corrected as determined by the aforementioned agent(s):

- A. -A violation of any state or local regulations, the provisions of this ordinance, or the provisions of the license;
- B. Operation of ~~an adult business~~ cannabis facility that cultivates, distributes, produces cannabis or cannabis containing products, or otherwise assists a patient, client, or customer, in the use of cannabis or cannabis products in an unlawful manner or in a manner contrary to the public health, safety, and welfare;
- C. Any attempt to transfer, assign, or sell a license to another location or to use the same improperly;
- D. -The information provided with the license application was falsified, incomplete, and/or inaccurate;
- E. Failure to pay any duly enacted fees or taxes.

5.18.110 Appeal of Denial or Revocation of a Cannabis Facility License Application.

An application for an original or renewal license which has been denied, or an existing license that has been revoked by the Chief Law Enforcement Official, a designee thereof, the Planning Director, or the City's building official, may be appealed to the Phoenix City Council.

5.18.120 No Vested Rights.

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any amendment thereto.

5.18.130 Enforcement.

A. A person who violates any provision of this chapter, or the terms, conditions, or provisions of a license, is responsible for a municipal civil infraction, and shall be subject to all fines as established from time to time by resolution of the City Council.

B. In order to secure, remove, and dispose of cannabis plants or cannabis containing or derived products that remain upon the premises of a cannabis facility after it has ceased operations, the City may enter upon the premises.

C. Nothing in this section shall be construed to limit the remedies available to the City in the event of a violation by a person of this chapter and/or a license. Each act of violation, and each day upon which a violation exists or continues, shall constitute a separate offense.

CITY OF SILVERTON
ORDINANCE
15-07

AN ORDINANCE OF THE SILVERTON CITY COUNCIL REGULATING MARIJUANA FACILITIES WITHIN THE CITY OF SILVERTON, ADDING CHAPTER 5.34 TO TITLE FIVE OF THE SILVERTON MUNICIPAL CODE, REPEALING THE PREVIOUS TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS AND DECLARING AN EMERGENCY.

WHEREAS, House Bill 3460 (2013) requires medical marijuana dispensaries to register with the Oregon Health Authority and establishes rules for the State of Oregon’s regulation of medical marijuana dispensaries; and

WHEREAS, Senate Bill 1531 (2014) placed additional restrictions on medical marijuana dispensaries and expressly permitted cities to impose a temporary moratorium on the operation of registered medical marijuana facilities within city limits; and

WHEREAS, Ballot Measure 91, which Oregon voters approved in November 2014, permits the manufacturing, distribution, sale, possession and use of recreational marijuana in Oregon; and

WHEREAS, House Bill 3400 (2015) expressly permits local jurisdictions to adopt reasonable zoning and other regulations on all marijuana facilities, including medical marijuana grow sites; and

WHEREAS, the City adopted Ordinance No. 14-11 establishing a tax on the sale of marijuana and marijuana infused products in October 2014; and

WHEREAS, House Bill 3400 (2015) amends Ballot Measure 91 to provide for a means for local governments to tax the sale of marijuana up to a maximum of 3% and requiring local governments to refer any such tax on the sale of marijuana to the electorate in a statewide election; and

WHEREAS, the City believes House Bill 3400 (2015) is not the only source of authority for the city to regulate of marijuana facilities; and

WHEREAS, the City finds that the public health, safety and general welfare of the City, its residents and its visitors necessitates and requires the adoption of this ordinance regulating the establishment and operation of marijuana facilities within city limits and for it to take effect immediately upon its adoption.

NOW, THEREFORE, THE CITY OF SILVERTON ORDAINS AS FOLLOWS:

Section 1. Chapter 5.34 –Marijuana Facilities – is added to Title Five of the Silverton Municipal Code to read as attached in Exhibit A.

Section 2. City of Silverton Ordinance No. 14-11 Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products in the City of Silverton is repealed.

Section 3. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance takes effect on September 14, 2015.

Ordinance adopted by the City Council of the City of Silverton, this 14th day of September, 2015.

Mayor, City of Silverton
Rick Lewis

ATTEST

City Manager/Recorder, City of Silverton
Bob Willoughby

Exhibit A to Ordinance No. 15-07

Chapter 5.34- Marijuana Facilities

5.34.010 Definitions

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter are as follows:

- A. "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.
- B. "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from marijuana by: (a) a mechanical extraction process; (b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; (c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or (d) Any other process identified by the Oregon Health Authority or the Oregon Liquor Control Commission.
- C. "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.
- D. "Cannabinoid extract" means a substance obtained by separating cannabinoids from marijuana by: (a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane; (b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure; or (c) Any other process identified by Oregon Health Authority or the Oregon Liquor Control Commission
- E. "Cannabinoid product" means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers. It does not include (aA) Usable marijuana by itself; (bB) A cannabinoid concentrate by itself; (cC) A cannabinoid extract by itself; or (dD) Industrial hemp.
- F. "Marijuana Facilities" means recreational marijuana producers, recreational marijuana processors, recreational marijuana retailers, recreational marijuana wholesalers and medical marijuana dispensaries, medical marijuana grow sites, and medical marijuana processors.
- G. "Marijuana Processor" means a facility licensed by the Oregon Liquor Control Commission or registered by the Oregon Health Authority ~~who~~ that the process, compound or convert marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extract.
- H. "Marijuana Producer" means a facility that is licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.
- I. "Marijuana Retailer" means a facility licensed by the Oregon Liquor Control Commission to sell marijuana to a consumer.

- J. “Marijuana Wholesaler” means a facility licensed by the Oregon Liquor Control Commission to purchase marijuana items in Oregon for resale to a person other than a consumer.
- K. “Medical Marijuana Dispensary” means a facility registered with the Oregon Health Authority or for which an application has been submitted to the Oregon Health Authority that transfers usable marijuana, immature marijuana plants, seeds, and cannabinoid products, concentrates and extracts to Registrants and Primary Caregivers. Dispensaries also receive transfers of cannabinoid products, concentrates and extracts from Marijuana Processing [facilitiesSites](#). Dispensaries receive transfers of usable marijuana, immature marijuana plants and seeds from Registrants and Primary Caregivers.
- L. “Medical Marijuana Grow Site” means specific location registered by the OHA used by a medical marijuana grower to manufacture, plant, cultivate, grow, or harvest marijuana or [dries-dry](#) marijuana leaves or flowers marijuana for medical use by a specific patient.

5.34.020 Marijuana Producers and Medical Marijuana Grow Sites

All Marijuana Producers and grow sites within the City shall be located entirely indoors within a permanent enclosed structure with a roof and shall:

- A. Use an air filtration and ventilation system which, the greatest extent feasible, contains all marijuana related odors within the facility rather than allowing such odor to escape outside. Sufficient measures and means of preventing odor, debris, fluids and other substances from escaping the facility must be in effect at all times.
- B. Provide for secure disposal of marijuana remnant or by-products; such remnants or by-products shall not be placed within the facilities exterior refuse containers. Outdoor storage of merchandise, raw materials, or other materials associated with the production of marijuana is prohibited.
- C. Comply with all applicable state regulations.
- D. Comply with applicable City design standards with security bars or grates prohibited unless integrated into the design.

5.34.030 Marijuana Processors

All Marijuana Processors within the City shall be located entirely indoors within a permanent enclosed structure with a roof and shall:

- A. Use an air filtration and ventilation system which, the greatest extent feasible, contains all marijuana related odors within the facility rather than allowing such odor to escape outside. Sufficient measures and means of preventing odor, debris, fluids and other substances from escaping the facility must be in effect at all times

B. Provide for secure disposal of marijuana remnant or by-products; such remnants or by-products shall not be placed within the facilities exterior refuse containers. Outdoor storage of merchandise, raw materials, or other materials associated with the processing of marijuana is prohibited.

C. Comply with all applicable state regulations.

D. Comply with City design standards with security bars or grates prohibited unless integrated into the design.

5.34.040 Medical Marijuana Dispensaries, Marijuana Retailers, and Marijuana Wholesalers

A. Facilities under this subsection may be open to the public between the hours of 9 a.m. and 9 p.m. on Monday to Friday, between the hours of 11 a.m. and 7 p.m. on Saturdays, and between 9 a.m. and 6 p.m. on Sundays.

B. Facilities under this subsection may not locate in a trailer, cargo container or motor vehicle and shall not offer drive-through or delivery services. Outdoor storage of merchandise, raw materials or other materials associated with the facility is prohibited. Facilities under this section must be a wood frame or brick and mortar structure on a foundation with a permanent address which can be registered with the State of Oregon.

C. No marijuana or paraphernalia shall be displayed or kept in a facility under this subsection so as to be visible from the outside of the licensed premise. Marijuana and tobacco products must not be inhaled (smoked or vaporized) ingested (orally, sublingually or rectally) topically applied or otherwise consumed in any manner that creates pharmaceutical effect or chemical influences on a person while on the premise.

D. Facilities under this subsection must use an air filtration and ventilation system which, the greatest extent feasible, contains all marijuana related odors within the facility rather than allowing such odor to escape outside. Sufficient measures and means of preventing odor, debris, fluids and other substances from escaping the facility must be in effect at all times

E. Facilities under this subsection must provide for secure disposal of marijuana remnant or by-products; such remnants or by-products shall not be placed within the facilities exterior refuse containers.

F. Facilities under this subsection must comply with all applicable state regulations.

G. Facilities under this subsection must take steps to ensure that all products and paraphernalia must be enclosed in an opaque bag or container upon exiting the facility;

H. Entrances and off-street parking areas of facilities under this subsection shall be well lit and not visually obscured from public view and rights of way;

I. Site or building exterior of facilities under this subsection must comply with City design standards with security bars or grates prohibited unless integrated into the design.

J. Marijuana retailers, marijuana wholesalers, and medical marijuana dispensaries may not sell marijuana cannabinoid edibles.

5.34.050 Violations and Enforcement.

1. The establishment, maintenance or operation of a marijuana facility by a person, business or any other entity within the city in violation of the requirements of this chapter will be subject to any and all enforcement remedies available to the city under law and/or the Silverton Municipal Code including but not limited to enforcement pursuant to Chapter 8.07 [and Chapter 1.08](#) of the Silverton Municipal Code and/or the filing of an appropriate action and pursuit of an appropriate remedy in a court of competent jurisdiction.

2. The establishment, maintenance or operation of a marijuana facility by a person, business or any other entity within the city in violation of the requirements of this chapter is declared to be a public nuisance. The city may abate a nuisance under this chapter either pursuant to Chapter 8.04 of the Silverton Municipal Code or it may pursue any other remedies available to it, including but not limited to an action seeking declaratory relief and/or injunctive relief.

3. If the city brings an action in either law or equity in any of the courts of this state (including the U.S. District Court for the District of Oregon) other than its municipal court for the enforcement of this Chapter, the city shall be entitled to the award of its reasonable attorney fees in the event it is the prevailing party.