



# TOWN OF LAKEVIEW

525 N. 1st Street • Lakeview, OR 97630  
541-947-2029 General Business 541-947-2952 Fax  
[www.lakevieworegon.org](http://www.lakevieworegon.org)

## AGENDA

**TOWN OF LAKEVIEW  
TOWN COUNCIL  
WORK SESSION  
September 9, 2014  
3:00 P.M.**

**I. CALL TO ORDER**

**IV. NEW BUSINESS**

- A. Air Quality Ordinance
- B. Medical Marijuana Ordinance (August 12, 2014 Draft)

**V. EXECUTIVE SESSION**

- A. None

**IV. ADJOURNMENT**

Town Hall is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Christy Sarina, 541-947-2029.

The Public Law does not require that every proposed item of business be described on the notice. The law requires a reasonable effort to inform the public and interested person, including news media, of the nature of the more important issues ("principal subjects") coming before the body.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE PROHIBITING THE USE OF SOLID FUEL BURNING DEVICES WITHIN THE TOWN OF LAKEVIEW; PROVIDING CERTAIN EXEMPTIONS THEREFROM; ESTABLISHING CONTROLS FOR THE ENFORCEMENT OF THIS ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS HEREOF; REPEALING ORDINANCE NO. 748 IN ITS ENTIRETY AND DECLARING AN EMERGENCY.**

WHEREAS, the health, safety and welfare of the citizens of the Town of Lakeview are adversely affected by deteriorating air quality within the Town boundaries; and

WHEREAS, wood combustion for space heating produces particulate matter and other pollutants which are injurious to the public health, and are a primary cause of deteriorated air quality within the Town of Lakeview; and

WHEREAS, a mandatory wood burning curtailment ordinance is essential to comply with the provisions of the Federal Clean Air Act and to insure healthful air quality; now, therefore,

THE COUNCIL OF THE TOWN OF LAKEVIEW ORDAINS AS FOLLOWS:

**Section 1. - Definitions:** As used in this Ordinance, the following words, except where the context clearly indicates otherwise, mean:

(a) Air Pollution Alert. A 24 hour period commencing at noon after the designation by the Town of Lakeview of a Yellow Day or Red Day Air Quality Advisory.

(b) Air Quality Advisory. A public announcement to inform Town of Lakeview residents of forecasted air quality.

(c) Alternative Heat Source. A heat source other than a Solid Fuel Burning Device, with such heat source being capable of heating a residence in accordance with Oregon Building Code standards.

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(d) Commercial Structure. Any non residential building primarily used for business or commercial purposes.

(e) Green Day. An Air Quality Advisory provided by the Town of Lakeview which forecasts acceptable air quality for the following 24 hour period.

(f) Yellow Day. An Air Quality Advisory provided by the Town of Lakeview which forecasts increased PM2.5 concentrations over the following 24 hour period. A Yellow Day forecast signifies that average PM2.5 concentrations are expected to approach the 24 hour national ambient air quality particulate health standard of 30 ug/m3.

(g) Red Day. An Air Quality Advisory provided by the Town of Lakeview which forecasts average PM2.5 concentrations at levels which are at risk of reaching and/or exceeding 30 ug/m3.

(h) Person. Any individual, partnership, corporation, company, association or other business entity.

(i) New Solid Fuel Burning Device. A Solid Fuel Burning Device as defined by OAR 340-262-0450(16) and which has been certified by either the Oregon Department of Environmental Quality pursuant to OAR 340-262-0500 or by the United States Environmental Protection Agency pursuant to 40 CFR part 60, sub-part AAA.

(j) Residence. A building used as a home, dwelling or place of abode, including a condominium or rental unit.

(k) Sole Source of Heat. One or more Solid Fuel Burning Devices which constitutes the only source of heat in a Residence. A Sole Heat Source is one which provides heat to the main living space of the Residence but does not include ancillary heating units in bed and bathroom areas.

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(l) Solid Fuel Burning Device. A wood stove or any other device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space heating or water heating purposes in a Residence or Commercial structure and that has a heat output of less than one million British thermal units per hour. Solid fuel burning devices do not include fireplaces, antique stoves, pellet stoves, masonry heaters, central wood fire furnaces, wood cook stoves or New Solid Fuel Burning Devices as those terms are defined by OAR 340-262-0450.

**Section 2. - Operation of Solid Fuel Burning Device Prohibition:**

(a) The operation of a Solid Fuel Burning Device within the Town of Lakeview, whether in a Residence or Commercial Structure, during an Air Pollution Alert Period shall be prohibited unless an exemption has been granted by the Town of Lakeview pursuant to Section 4 below. A rebuttable presumption of a violation of this Ordinance shall exist if smoke is being discharged through a flue or chimney at any time during an Air Pollution Alert period. The owner, renter or the primary occupant residing in the premises who is over the age of 18 shall be presumed to be the violator unless rebutted by contrary evidence.

(b) Visible smoke emissions created during a ten (10) minute start up period and ten (10) minutes after refueling are exempt but such refueling shall be limited to once every four (4) hours.

**Section 3. - Alternative Heat Source Requirement:** On or after one year from the effective date of this Ordinance, no property owner shall rent or lease a Residence or Commercial Structure unless the same is equipped with an Alternative Heat Source. Liability for a violation of this Section shall be entirely with owner of the Residence or Commercial Structure.

**Section 4. - Exemptions from Prohibition:** It shall be permissible for a Residence to operate a Solid Fuel Burning Device during a Red or Yellow Day when the head of that household

has previously obtained from the Town of Lakeview Air Quality Office an exemption to operate the same. Exemption availability shall be limited to the following circumstances:

(a) Sole Source. An exemption may be issued to the heads of households who sign a sworn statement declaring their reliance on a Solid Fuel Burning Device as the sole device providing heat for the main living space of their Residence. The availability of this exemption shall permanently expire after \_\_\_\_\_ from the effective date of this Ordinance. Additionally, the granting of this exemption shall be conditional upon the payment of an annual exemption fee in the amount of \$\_\_\_\_\_.

(b) Economic Need. An exemption for economic need to operate a Solid Fuel Burning Device may be granted to heads of households if the head of household can establish that the total family income is less than 80% of the median income level for the Town of Lakeview as established by the Federal Department of Housing and Urban Development (<http://www.huduser.org/portal/datasets/il.htm/>). Exemptions granted based upon economic shall expire annually on September 30<sup>th</sup>, must be reapplied for annually and shall not require an exemption fee.

(c) New Solid Fuel Burning Devices. An exemption may be issued to the heads of household for the operation of a New Solid Fuel Burning Device in a Residence during a Yellow Day Air Quality Advisory. However, the availability of this exemption is strictly contingent upon the New Solid Fuel Burning Device producing no visible smoke. The operation of a new Solid Fuel Burning Stove shall be prohibited during a Red Day Air Quality Advisory, unless some other applicable exemption has been granted.

**Section 5. - Immediate Expiration of Exemption:** If an exemption pursuant to Section 4 above is granted to a Residence and the Residence is subsequently transferred whether by sale, gift,

descent and distribution, or otherwise, then the exemption as granted shall immediately expire and the Residence shall not be eligible for future exemptions.

**Section 6. - Enforcement and Penalties:** A first violation of Section 2 of this Ordinance shall result in the violator receiving a written warning from the Town specifying the nature of the violation. Such written notice shall be sent by both registered and first class mail and shall contain penalty and enforcement information for subsequent violations.

Subsequent violations of Section 2 of this Ordinance, after issuance of a written warning, shall be commenced by the issuance of a citation and shall be prosecuted in the Lake County Circuit Court as a Class \_\_\_\_\_ Violation pursuant to the provisions of ORS Chapter 153 as now in effect or as may be amended from time to time. A violation of Section 3 of this Ordinance shall be prosecuted as a Class B Violation.

If subsequent violations of this Ordinance occur, and in lieu of or in addition to the above penalties, the Town may unilaterally remove and destroy, without legal liability or compensation to the owner, any New Solid Fuel Burning Device or Solid Fuel Burning Device being operated in violation of this Ordinance.

**Section 7. - Enforcement:** The Town's Police Chief, or his designee, will have primary responsibility for the enforcement of this Ordinance. Nothing contained in this Ordinance shall prevent the Town from obtaining voluntary compliance by way of oral warnings or education.

**Section 8. - Severability:** If any section, subsection, sentence or clause, or any portion of this Ordinance is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

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**Section 9. - Emergency and Effective Date:** This Ordinance and its purposes being necessary for the preservation of public peace, health and safety of the Town of Lakeview and its inhabitants, an emergency is hereby declared to exist and this Ordinance shall take effect immediately upon its adoption by the Town Council.

A motion was made to read this Ordinance by title only and such motion passed unanimously. Thereafter, the Ordinance was read by title only and was adopted as indicated below.

Passed by the Town Council by a vote as follows:

\_\_\_\_\_ In Favor

\_\_\_\_\_ Opposed

Adopted this \_\_\_\_ day of September, 2014.

\_\_\_\_\_  
Mike Patrick, Mayor

Attest:

\_\_\_\_\_  
Amy Havel, Town Recorder

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Law Offices

**Bogardus & Hedlund, P.C.**

Robert F. Nichols (1926 -1992)

John H. Bogardus

\*Jeffrey D. Hedlund

\*Albert M. Monaco, Jr.

Pamela D. Frazier

\*Also Admitted to Practice in California

35 South "G" Street, Lakeview, Oregon 97630

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August 18, 2014

*Hand Delivered*

Lakeview Town Council  
525 North First Street  
Lakeview, Oregon 97630

*Re: Medical Marijuana Facility Ordinance*

Dear Council,

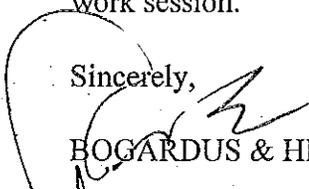
This correspondence will answer the two questions that were posed at the recent work session regarding medical marijuana facilities that I could not answer. Specifically questions pertaining to minors and facility employees.

First, as to minors, Oregon law provides that minors can be issued registry identification cards and minors holding those cards can enter upon a facility premises as long as they are accompanied by a parent or guardian whose purpose is to procure the minor's medicine. Therefore, subsection (f) of Section 3 of the draft ordinance is accurate as written. Obviously, other minors that do not have registry identification cards would be prohibited from entry upon facility premises at any time.

Secondly, as to employees, the person that makes the application with the Oregon Health Authority for the operation of a medical marijuana facility is known as the person responsible for that facility or (PRF). The PRF is required to go through an extensive criminal background check but neither Oregon law nor Oregon administrative rules provide that employees of the PRF are required to go through criminal background checks. It is not an unreasonable regulation and the Town Council may want to consider requiring any employee of a PRF to likewise go through a criminal background check before being eligible to be employed by a medical marijuana facility. This provision could be inserted into our draft ordinance.

Presumably, the foregoing information answers the inquiries as posed, but if a further explanation is needed or further questions arise we can deal with them at the next work session. I am also enclosing a second draft of the ordinance that incorporates the changes that were agreed to at the work session.

Sincerely,

  
BOGARDUS & HEDLUND, P.C.

John H. Bogardus

JHB:dl

Enclosure (1)

cc: Mr. Ray Simms, Town Manager

COPY

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ALLOWING THE LOCATION OF MEDICAL MARIJUANA FACILITIES WITHIN THE TOWN OF LAKEVIEW; ESTABLISHING TIME, PLACE AND MANNER REGULATIONS ON SUCH FACILITIES; PROVIDING PENALTIES FOR A VIOLATION HEREOF AND REPEALING ORDINANCE NO. 848 IN ITS ENTIRETY.

WHEREAS, the Oregon Legislature enacted House Bill 3460 (2013) which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities. This House Bill has been codified as ORS 475.314;

WHEREAS, the Oregon Legislature has also enacted House Bill 1531 (2014) which authorizes local governments to enact temporary moratoriums prohibiting the operation of medical marijuana facilities within local government jurisdictions;

WHEREAS, the Town Council of the Town of Lakeview enacted Ordinance No. 848 on April 29, 2014, which Ordinance imposed such a moratorium effective to May 1, 2015 unless sooner rescinded;

WHEREAS, the Town Council of the Town of Lakeview now desires to repeal Ordinance No. 848 thereby rescinding the imposed moratorium and allowing medical marijuana facilities to be located within the Town of Lakeview and to be operated in ways that protect and benefit the public health, safety and welfare of the residents of the Town of Lakeview;

WHEREAS, under Oregon law, local governments may regulate the operation and the location of certain types of businesses within their jurisdiction except when such action has been specifically preempted by state statute; and

WHEREAS, the Town Council has determined that the unique characteristics of medical marijuana facility operations and their potential impacts make it necessary to establish particular

time, place and manner restrictions for such operations within the Town of Lakeview; now, therefore,

THE COUNCIL OF THE TOWN OF LAKEVIEW ORDAINS AS FOLLOWS:

**Section 1. - Purpose:** The purpose of this Ordinance is to minimize adverse public safety and public health impacts that may result from allowing medical marijuana facilities to operate within the Town of Lakeview by adopting particular time, place and manner restrictions for the operation of such facilities.

**Section 2. - Definitions:** For the purpose of this Ordinance, the following definitions are hereby established:

- (a) Designated Primary Caregiver means an individual 18 years of age or older who has significant responsibility for managing the well being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application or a registry identification card or an other written notification to the Oregon Health Authority.
- (b) Marijuana Products 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 as may be defined by Oregon Revised Statutes as they currently exist or as may be amended from time to time. Marijuana does include the mature stocks of the plant, fiber produced from the stocks, 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 which is incapable of germination.

- (c) Medical Marijuana Facility means a medical marijuana facility that is registered by the Oregon Health Authority pursuant to the provisions of ORS475.300 et. seq. that sells, distributes, transmits, gives, dispenses or otherwise provides medical marijuana to qualifying patients.
- (d) Medical Marijuana Qualifying Patient means a registry identification cardholder, specifically a person who has been diagnosed by a physician as having a debilitating medical condition or the designated primary caregiver of the cardholder.
- (e) Minor means any person under 18 years of age.
- (f) Premises means a location registered by the State of Oregon as a medical marijuana facility and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, restrooms, storerooms, and including all public and private areas where individuals are permitted to be present.
- (g) Production includes the manufacture, planting, cultivation, growing or harvesting of medical marijuana.
- (h) Registry Identification Cardholder means a person who has a document issued by the Oregon Health Authority that identifies that person as being authorized to engage in the medical use of marijuana.

**Section 3. - Time, Manner and Place Restrictions:** The time, manner and place restrictions established and imposed by ORS 475.314 are specially incorporated into the provisions of this Ordinance and the following additional restrictions and regulations apply to medical marijuana facilities operating within the Town:

- (a) The facility shall be registered with the Oregon Health Authority authorizing the facility to transfer marijuana products and evidence of such registration shall be prominently displayed within the facility easily visible to persons conducting

business in the facility.

- (b) All sales or any other transfers of marijuana products on the facility premises must occur inside the facility building and must be conducted only between the facility and medical marijuana qualifying patients. The facility shall only transfer marijuana to a registry identification card holder or to the designated primary care giver of a registry identification card holder.
- (c) The facility shall only be located within a Central Commercial Land Use District - Highway Commercial Sub-District as established by the Town of Lakeview Development Code (July 2001).
- (d) The facility shall not be located within 1000 feet of real property comprising a public or private elementary, secondary or career school attended primary by minors, daycare center, church or within 1000 feet of a public park.
- (e) There shall be no use of any marijuana product at the medical marijuana facility premises. Use includes the smoking, ingestion or consumption of marijuana product.
- (f) No minor is allowed on the facility premises unless the minor is a registry identification card holder accompanied by a parent or guardian whose purpose is to procure the minor's medicine.
- (g) There shall be no production of marijuana product at the facility premises.
- (h) The facility shall not transfer any marijuana product unless the product is packaged in child-resistant safety packaging and also in a manner that is not attractive to minors.
- (i) Operating hours for retail sales of marijuana product shall be no earlier than \_\_\_\_\_ a.m. or later than \_\_\_\_\_ p.m., Monday through Saturday.
- (j) A medical marijuana facility shall be attached to appurtenant real property as a fixed

improvement and not mobile in any manner.

(k) No marijuana product shall be sold or transferred to a person who appears to be visibly intoxicated or impaired.

(l)

(m)

(n)

**Section 4. - Access to Premises:** A facility, in order to insure compliance with the above rules, restrictions and regulations, and after 1 hour advance notice, shall allow access to the facility to any Town of Lakeview personnel, and that such access shall be without the necessity of legal warrant or other legal process.

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**Section 5. - Penalties:** Any violation or violations of this Ordinance shall entitle the Town to pursue the following civil and/or criminal remedies:

(a) The Town may suspend or revoke a facility's authority to operate within the Town for failure to comply with any provision of state statute, of this Ordinance or for non-compliance with any other Town ordinance.

(i) Any suspension or revocation pursuant to this Section shall be in writing, setting forth the reasons therefor and giving the facility written notice by first class United States mail at least five days prior to the effective date of the suspension or revocation; and

(ii) A decision to suspend or revoke a facilities authorization to operate within the Town of Lakeview may be appealed to the Town Council and the findings of the Town Council shall be final and conclusive.

(b) In addition to the remedies of suspension and revocation, failure to comply with the requirements of this Ordinance may be prosecuted in the Lake County Circuit Court

as a Class B violation pursuant to the provisions of ORS 153.008, ORS 153.012 and ORS 153.018 as now in effect or as may be amended from time to time.

- (c) The remedies provided in this Section are not exclusive and shall not prevent the Town from exercising any other available legal remedies including the right to seek a preliminary injunction nor shall the provisions of this Section prohibit or restrict the Town from pursuing criminal charges under state law or Town ordinance.

**Section 6. - Severability:** If any section, sub-section or provision of this Ordinance is deemed to be unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance.

**Section 7. - Repeal of Ordinance No. 848:** Upon the effective date of this Ordinance all of the terms and provisions of Town Ordinance No. 848 are hereby repealed in all respects.

**Section 8. - Effective Date:** This Ordinance shall be effective after \_\_\_\_\_.

This Ordinance was adopted by being read fully and distinctly in open Council meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and then passed by a vote of the Town Council as follows:

\_\_\_\_\_ In Favor

\_\_\_\_\_ Opposed

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Attest:

\_\_\_\_\_  
Mike Patrick, Mayor

\_\_\_\_\_  
Amy Havel, Town Recorder

**Subject:** Fw: Marijuana Dispensaries  
**From:** Ray Simms (lakeviewtownmanager@yahoo.com)  
**To:** ltownrecorder@yahoo.com;  
**Cc:** mr\_p62@hotmail.com;  
**Date:** Monday, August 25, 2014 8:39 AM

Amy, please print this comment and add it to the work session material for the 9th of September.

Ray

On Sunday, August 24, 2014 8:00 PM, abigail finetti <cafinetti@gmail.com> wrote:

Mayor Patrick,

It is my understanding that the discussion of placement of these marijuana dispensaries is taking place. If our community must be ruined with such things, I would greatly appreciate these dispensaries **NOT** be anywhere where children will be, including churches and affiliated buildings as well as parks. When children aren't in school, they are often at church groups, headed up to the amazing pool or playground we have here in Lakeview.

It'll be bad enough when they have to pass them, but please make it so it's not next door to places they frequent.

If you have any questions about my opinions, please contact me.

Abigail Finetti  
541.947.5932  
541.417.0077

Dear Mike and Ray,

I have heard that Lakeview is considering allowing marijuana storefronts within 1000 feet of churches because Lakeview is a small town and someone thinks that restricting this type of business from our core business area might have a negative impact on pot stores. The fact of the matter is that if someone in Lake County wants to purchase marijuana, they will drive the extra mile that is necessary to keep our children safe and our downtown drug free. Many cities don't hesitate to keep the drug trade from their core business area near schools and churches. As a parent, I would not want our children to go downtown for lunch during the school year if a pot store was located next to Burger Queen, Polar Bear, Pizza Villa, Happy Horse Deli, Papa Dan's Bowling Alley or even Safeway. I think most in Lakeview share that concern which could devastate these businesses.

Would Lakeview benefit from having pot stores in the downtown area? I don't think so, but it is the council's duty to determine this prior to making any decisions. Personal agendas need to be put away and the council should ask downtown business owners what they would think of having a pot store locate next to them. It would not be a good idea to frighten merchants out of Lakeview with your decision to allow pot shops to locate next to them. Scaring off legitimate businesses to allow a pot business with only a little over 100 legal patrons in the county seems foolish. We all know that most of those card holders already grow or have growers provide their pot. If a marijuana business has no legitimate customers, they will be tempted to sell illegally. Illegal selling of marijuana is why California cities that have allowed pot have changed their tune and have now banned pot stores. I would encourage every council member to contact several cities similar in size to Lakeview and ask why they have gone from allowing pot to banning it. We should learn from asking the question, not from spending thousands of dollars on trial of an error.

The other question that comes to mind concerns the burden of pot smokers on the social welfare system. We know that all major employers and many other employers require drug tests for ongoing employment. Presence of THC from pot in a drug test is still grounds for dismissal because it impairs ability and judgment. The increased availability of pot will negatively impact the employability of citizens in Lakeview. This will increase the burden on tax paying citizens. We should look at the evidence from states that have legalized pot to determine the best course of action for the long haul.

Making a quick and hasty decision is not necessary nor prudent. We have an election in November that may change the course of action for the state, our county and our town. Putting regulations in place that need to be changed in a couple of months is a waste of the town's money and time. The

community needs you to do what is in the best interest of the majority of the community. The moratorium allows several more months to determine the best course of action for our town. Time is on your side, so, I would encourage you to use this to benefit the whole town.

Thank you all for your service to the town. We all trust that you will make sound decisions that keep the spirit and businesses of Lakeview alive and that will minimize the social burden borne by tax paying citizens due to marijuana use.

Sincerely,

Teresa Barry Decker  
503-799-2918 mobile

541-947-2114 ext 281 (days)

541-947-2706 (eves)