

ORDINANCE NO. 852

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Ordinance No. 848 on April 29, 2014, which Ordinance imposed such a moratorium effective to May 1, 2015 unless sooner rescinded;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 in 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 for a registry identification card or in 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 not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant 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 and includes all areas at the facility that are used in business operations including offices, kitchens, restrooms, storerooms, and including all public and private areas where individuals, employees or otherwise, are permitted to be present.
- (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) Production includes the manufacture, planting, cultivation, growing or harvesting of medical marijuana.
- (g) 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.
- (h) Town Council means the governing body of the Town.
- (i) Town Manager means that person appointed by the Town Council pursuant to Chapter VIII of the Town's Charter as the administrative head of Town government or his or her designee.

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 located 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 at the facility 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 caregiver 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) as now in effect or as may be amended from time to time.
- (d) The facility shall not be located within 1,000 feet of real property comprising a public or private elementary, secondary or career school attended primarily by minors, or within 1,000 feet of a daycare center, a public park, or another medical marijuana facility.
- (e) The facility shall not be located within 250 feet of real property comprising a church.
- (f) For the purpose of determining distances from the medical marijuana facility as set forth in subparagraphs (d) and (e) above, "within a 1,000 feet" or "within 250 feet" means a straight line measurement in a radius extending the relevant distance in every direction from any point on the boundary line of the real property comprising

a public or private elementary, secondary or career school primarily attended by minors, a daycare center, public park, another medical marijuana facility or church.

- (g) There shall be no use of any marijuana product at the medical marijuana facility. Use includes the smoking, ingestion or consumption of marijuana product.
- (h) No minor is allowed on the facility unless the minor is a registry identification card holder accompanied by a parent or guardian whose purpose is to procure the minor's medicine.
- (i) There shall be no production of marijuana product at the facility.
- (j) 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.
- (k) Daily operating hours for retail sales of marijuana product shall be no earlier than 9:00 a.m. or later than 6:00 p.m., Monday through Friday.
- (l) A medical marijuana facility shall be attached to appurtenant real property as a fixed improvement and not mobile in any manner.
- (m) No marijuana product shall be sold or transferred to a person who appears to be visibly intoxicated or impaired.
- (n) A person shall not be eligible for employment at a medical marijuana facility if a criminal background check of that person reveals a conviction in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within 5 years of the date of background check. Potential employees shall cooperate in the criminal background investigation process.

Section 4. - Access to Premises: A medical marijuana facility, in order to insure compliance with the above rules, restrictions and regulations shall allow access to the facility to the Town Manager and that such access shall be without the necessity of legal warrant or other legal process.

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 Manager 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.
 - (iii) An appeal timely filed shall stay any proposed suspension or revocation until the appeal is heard and ruled on by the Town Council.
- (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 A 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. Such action will be prosecuted against the person responsible for the medical marijuana facility as designated by ORS 475.314(2)(a).
- (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.

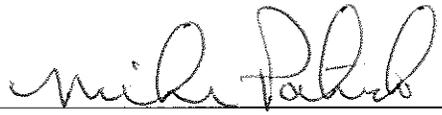
Section 7. - Repeal of Ordinance No. 848: Upon the effective date of this Ordinance all of the terms and provisions of Town Ordinance No. 848 are hereby repealed in all respects.

Section 8. - Effective Date: This Ordinance shall take effect on the thirtieth (30) day after its adoption.

This Ordinance was read by title only and no Council member requested that the Ordinance be read in full and thereafter was adopted by the following vote:

4 In Favor
0 Opposed

Adopted this 25th day of November, 2014.


Mike Patrick, Mayor

Attest:


Amy Havel, Town Recorder