

ORDINANCE NO. 860

**AN ORDINANCE ALLOWING THE LOCATION OF 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. 852 IN ITS ENTIRETY, AND DECLARING AN EMERGENCY**

WHEREAS, this Ordinance is intended to implement the provisions added to Chapters 317, 475 and 811 of the Oregon Revised Statutes by Ballot Measure 91 (adopted July 1, 2014);

WHEREAS, the Oregon Legislature has also enacted ORS 475B.800 which authorizes local governments to enact a moratorium prohibiting the operation of 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;

WHEREAS, the Town Council of the Town of Lakeview enacted Ordinance No. 852 on November 25, 201~~4~~<sup>7</sup>, regulating medical marijuana facilities and repealing Ordinance No. 848;

WHEREAS, the Town Council of the Town of Lakeview now desires to repeal Ordinance No. 852 to regulate all 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;

WHEREAS, the Town Council has determined that the unique characteristics of 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 pursuant to ORS 475B.500; 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:

- ORS definitions*
- (a) **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.
  - (b) **Recreational Marijuana Retail Outlet (RMRO)** -- is a facility licensed by the Oregon Liquor Control Commission (OLCC) and/or Oregon Health Authority that is allowed to sell marijuana products to persons 21 years of age and older.
  - (c) **Recreational Marijuana Wholesaler (RMW)** -- is a facility licensed by OLCC, that purchases marijuana items for resale to a person other than a consumer.
  - (d) **Recreational Marijuana Production Site (RMPSI)** -- means a location, licensed under OAR Chapter 845 Division 24, where marijuana is produced for commercial recreation use. Production of marijuana means the manufacture, planning, cultivation, growing or harvesting of marijuana products for recreational use. Production does not include the drying of marijuana products by a marijuana processor, if the marijuana processor is not otherwise producing marijuana products.
  - (e) **Recreational Marijuana Processor (RMP)** -- means a business, licensed by the OLCC, that will transform raw marijuana into another product or extract. "Processes" means the processing, compounding, or conversion of marijuana products into cannabinoid products, cannabinoid concentrates or cannabinoid extracts. It does not include packaging or labeling of marijuana items. Marijuana processing does not include drying marijuana by a marijuana producer, which is "preparation" of farm products and part of the definition of farm use under OAR 660-033-0020(7)(b)(A).

- (f) 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 shall apply to all RMROs, RMPs, RMWs, and all RMPSI located within the Town:

- (a) All sales or any other transfers of marijuana products at an RMRO, RMP, RMW, or RMPSI must occur within the facility itself.
- (b) No RMRO or RMP shall be within 1000 feet of real property comprising a public or private elementary, secondary or career school attended primarily by minors.
- (c) For purposes of determining 1000 feet from the RMRO or RMP as set forth in paragraph (3b) above "within a thousand feet" means a straight line in a radius extending the relevant distance in every direction from any one point on the boundary line of the real property comprising the public or private elementary, secondary or career school primarily attended by minors.
- (d) There shall be no use of any marijuana product at an RMRO, RMP, RMPSI, of RMW. Use includes the smoking, ingestion of, or consumption of marijuana products.
- (e) All other Town of Lakeview zoning and development ordinances and other local county, Town, and State laws apply to the operation, construction, siting and building of any and all RMROs, RMPs, RMPSIs, and RMWs, including but not limited to setbacks, lot coverage, parking, special standards, and fire codes as to whatever zone the RMROs, RMPs, RMPSIs, and RMWs are located within.
- (f) All RMROs, RMPs, and RMWs must utilize an air filtration system and ventilation system that confines all odors associated with the site of any RMRO, RMP, or RMW. The air filtration and ventilation system, to the greatest extent feasible, must confine all objectionable odors to the site of an RMRO, RMW, or RMP. For purposes of this provision, the standard for judging "objectionable odors" will be that of an average, reasonable person with ordinary sensibilities after taking into account the character of the neighborhood in which the odor is made and the odor is detected.
- (g) There shall be no production of marijuana product at any RMRO, RMP, or any RMW.
- (h) No marijuana product shall be sold or transferred to a person who appears to be visibly intoxicated or impaired.
- (i) Public View Into Facility. All doorways, windows and other openings shall be located, covered or screened in such a manner to prevent a view into the interior from

any exterior public or semipublic area.

**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. Such action will be prosecuted against the person responsible for any RMRO, RMP, RMPSI, or RMW.
- (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. 852: Upon the effective date of this Ordinance all of the terms and provisions of Town Ordinance No. 852 are hereby repealed and replaced.

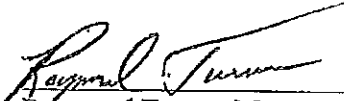
Section 8. - EMERGENCY CLAUSE AND EFFECTIVE DATE: This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on the date it is passed.

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:


5 In Favor

\_\_\_\_\_ Opposed

Adopted this 25<sup>th</sup> day of July, 2017.

  
\_\_\_\_\_  
Raymond Turner, Mayor

Attest:

  
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Amy Havel, Town Recorder-Manager  
Roberta Vanderwell