

ORDINANCE NO. NS-2257

AN ORDINANCE AMENDING THE BEND CODE BY ADDING CHAPTER 7.50 MARIJUANA BUSINESSES OPERATING LICENSE, AND DECLARING AN EMERGENCY

Findings

- A. The Oregon Legislature enacted House Bill 3460 (2013) and HB 3400 (2015), the latter implementing Measure 91, which together require the Oregon Health Authority and the Oregon Liquor Control Board to develop and implement processes to register medical marijuana dispensaries and retail marijuana facilities.
- B. The issue of whether a local government believes a certain type of business within its jurisdictional limits, and how it operates, is a local government decision, the enforcement of which is subject to the general and police powers of the city;
- C. Whether and under what conditions a certain type of commercial conduct should be regulated within the City of Bend is a decision of the City Council, and subject to the general police powers of the City, except when such action has been specifically exempted by state statute.
- D. These municipal code regulations are adopted in furtherance and protection of the health, safety and welfare of the citizens of Bend, including under the broad home rule authority of the City of Bend in Sections 6 and 4 of its municipal charter: "Except as this charter prescribes otherwise, and as the Oregon Constitution reserves municipal legislative powers to the voters of the city, all powers of the city are vested in the council." "The City has all powers that the constitutions, statutes, and common law of the United States and of the State of Oregon now or hereafter expressly or impliedly grant or allow the City, as fully as though this charter specifically enumerated each of those powers."
- E. The City Council desires to regulate existing and future medical marijuana dispensaries and recreational facilities, as well as other marijuana businesses, to ensure that such businesses are compatible with surrounding businesses and neighborhoods and that they operate in a manner that consider their potential impacts on law enforcement, the community and other businesses, while allowing for legitimate business practices and economic development of the industry consistent with the will of the voters.
- F. Council desires to ensure that the City keeps track of existing future and marijuana businesses operating in the City of Bend, as it is a newly legalized industry for adult recreational use and its impact on the city from an economic, law enforcement, tourism, protection of youth and state and federal regulatory perspective is still unknown.

G. On September 16, 2015, the City Council formed a Marijuana Technical Advisory Committee (MTAC) to act as a 9-member temporary committee to provide input to the Planning Commission and City Council regarding reasonable time, place and manner regulation of marijuana businesses, including retail, growing, wholesaling, testing and processing. The MTAC was purposefully made up of knowledgeable members of the industry, marijuana law, the Bend LaPine School District, and the community at large. A Planning Commissioner was also a non-voting member. The Committee held six meetings between September and November of 2015 (four of which were specifically on the land use regulations, adopted concurrently; the latter two were on the operating license code). The Committee had extensive discussion and debate on various policy recommendations, particularly distance requirements. The committee sought to balance a strong and heartfelt desire to protect the community's youth from under-age drug use with the industry's willingness to be responsive but also serve legitimate medical needs and develop their legal businesses for adults.

H. During this period, the OLCC published several versions of draft rules, and then comprehensive final temporary rules, which Staff and the MTAC took into consideration in formulating both the local land use code and operating license regulations. OHA has also published additional draft rules on the medical marijuana dispensary program, labeling, concentration and serving size and testing. Measure 91, HB 3400, other applicable statutes and the various rules were all linked and made available for public review on the MTAC website, along with other relevant materials. The MTAC record is incorporated by reference and made part of the record before council in adopting this code. <http://www.ci.bend.or.us/index.aspx?page=1321>.

I. Many areas of regulation (including advertising, labeling, edibles, extensive security issues, background checks, etc.) are not covered in the local program because the state regulations address those concerns in great detail.

J. The City Council held a work session on November 30, 2015, and a duly noticed public hearing on December 2, 2015. The City Council considered the MTAC recommendation, the record and the public testimony in adopting this code.

Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend Code is amended by adding a new Chapter 7.50 to the Bend Municipal Code to read as shown on the attached Exhibit A.

Section 2. Declaration of Emergency. The City Council finds that this ordinance is necessary for the health, safety and welfare of the public, and finds that an emergency exists. The ordinance therefore becomes effective upon its passage.

First reading: December 2, 2015.

Second reading and adoption by roll call vote: December 16, 2015.

Yes: Jim Clinton, Mayor
Doug Knight
Sally Russell
Nathan Boddie
Casey Roats
Barb Campbell

No: None

Attest:

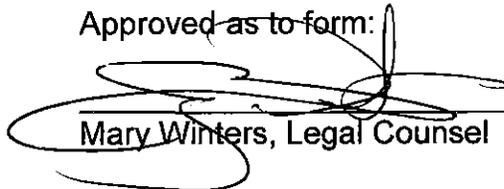


Robyn Christie, City Recorder



Jim Clinton, Mayor

Approved as to form:



Mary Winters, Legal Counsel

7.50

MARIJUANA BUSINESS OPERATING LICENSE

Sections:

7.50.005	Applicability.
7.50.010	Purpose.
7.50.015	Definitions.
7.50.020	Administration.
7.50.025	License Required.
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7.50.035	License Fees.
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7.50.045	Standards of Operation.
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7.50.055	Operating License Surrender.
7.50.060	Operating License Revocation/Suspension.
7.50.065	Appeal.

7.50.005 Applicability.

This chapter applies to all marijuana businesses in the City of Bend, including businesses related to medical marijuana dispensaries, recreational marijuana facilities or the processing, producing, wholesaling or testing of marijuana, and licensed or registered by the Oregon Liquor Control Commission or Oregon Health Authority.

7.50.010 Purpose.

The purpose of this Chapter is to create an operating licensing and regulatory program for marijuana businesses to protect the public health, safety, and welfare and to allow legitimate businesses to operate within the City of Bend while ensuring compatible and responsible business practices.

7.50.015 Definitions.

The definitions in this Chapter mean the terms as defined in BDC Chapter 1.2, Definitions.

7.50.020 Administration.

The City Manager shall (1) administer and enforce the provisions of this Chapter, (2) have the authority to issue written and oral interpretations consistent with its intent, and (3) be authorized to adopt administrative rules and procedures necessary to its proper administration and enforcement.

7.50.025 License Required.

A. A marijuana operating license is a permission to operate any marijuana business operation in accordance with this Chapter. A marijuana operating license may be suspended, terminated, or revoked if the standards are not met, or if the business is sold or otherwise transferred as defined in this Chapter. No person may engage in marijuana business without first obtaining an operating license, and renewal license(s) as required by this Chapter.

B. All marijuana businesses must obtain a marijuana operating license. Existing medical marijuana businesses must obtain the license by December 31, 2016, and annually thereafter. For new businesses, an operating license must be obtained within thirty days of obtaining the land use permit to operate, and annually thereafter. A marijuana operating license shall be required for each dispensary (including a dispensary converting to a recreational facility), facility or other business operation.

C. Nothing in this Chapter shall be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a license issued pursuant to this Chapter.

7.50.030 Term/Transferability.

Licenses under this Chapter are valid for one year, and may not be transferred or assigned to any other person or entity. Licenses expire one year after the date of issuance unless validly renewed.

7.50.035 License Fees.

Upon submission of the original application, the applicant shall submit a non-refundable license fee as set by City Council resolution based on the cost of administering the program. The renewal fee will be one-half of the amount for an initial license.

7.50.040 Marijuana Business Operating License Application.

An application for a marijuana business license must be on a city form and include the following information:

A. The name, address, and telephone number of the applicant(s).

B. The driver's license number or other government-issued photo identification number of all owners and managers of the business. If the applicant is an entity, the driver's license number or other government-issued photo identification number of all owners and managers of the entity.

C. A statement that the applicant is fully aware and knowledgeable of the applicable rules and regulations established by the Oregon Health Authority, the Oregon Liquor Control Commission and this Chapter.

D. For medical marijuana businesses, proof that the Oregon Health Authority has registered the medical dispensary at the location on the application and the registry identification card number of the person responsible for the medical marijuana dispensary.

E. For recreational marijuana businesses, proof that the Oregon Liquor Control Commission has registered the facility at the location on the application.

7.50.045 Standards of Operation.

A. Hours of Operation. Marijuana recreational retail facilities and medical marijuana dispensaries must not open before 7 a.m. or remain open after 10:00 p.m.

B. Building Requirement. Except for producing (grow) operations, all aspects of a recreational or medical marijuana business must be located inside a permanent building. Outdoor storage of marijuana and marijuana products for commercial sale is not allowed, except for production (grow) facilities as allowed by state regulation in the City's industrial zones.

C. On-site Consumption. The on-site consumption of marijuana at marijuana business is prohibited 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. Display. All marijuana plants, products, and paraphernalia must be completely screened from view from any point outside the marijuana business. There must be no visible marijuana, marijuana product, or marijuana paraphernalia from the exterior of the building or structure.

E. Security. All marijuana businesses must include the following safety measures:

1. Security lighting in parking lots, primary entrances, and exterior walkways to provide adequate visibility to employees and patrons.
2. Installation of a fully operational security system, including a video surveillance system and alarm system.
3. Any other security required by state law. Marijuana business may not have a walk-up and/or drive-through window.

F. Disposal. Marijuana businesses must provide for secure disposal of marijuana remnants or by-products as required by state law and regulation. Marijuana remnants or by-products may not be placed for collection with regular solid waste or recyclables by the City's solid waste collection franchisees.

G. Admittance of Law Enforcement and Other Authorized Personnel. Marijuana businesses may not refuse or limit entry of law enforcement or other authorized personnel to the business or premises for legitimate law enforcement, inspection, or other regulatory purposes.

H. Other City Regulations. The marijuana business must meet applicable laws and regulations, including but not limited to building and fire codes and the Bend Development Code. The marijuana business must comply with the regulations of all other city departments, including but not limited to, the Fire Department, Public Works and utilities, the Building Division and Community Development, and must pay all required inspection and permitting fees. A marijuana business operating license will not be issued by the City of Bend until all required City approvals have been obtained.

7.50.050 Operating License Approval – Denial.

A. After receiving an application, the City may issue or renew an operating license to operate a marijuana business at the location identified in the application if the City finds:

1. The application is complete and accurate;
2. The Oregon Health Authority and/or Oregon Liquor Control Board has registered the facility at the location indicated on the application;
3. The applicant has paid the required fee; and
4. The applicant meets all requirements of this Chapter.

B. If the City disapproves or denies the license application or license renewal application for a marijuana operating license, the City shall notify the applicant promptly and state the reasons for the disapproval or denial.

7.50.055 Operating License Surrender.

A licensee may surrender a marijuana operating license by delivering written notice to the City that the licensee voluntarily surrenders the license. A licensee's surrender of a license under this section does not affect the licensee's civil or criminal liability for acts the licensee may have committed before surrendering the license.

7.50.060 Operating License Suspension/Revocation.

A. The City may suspend or revoke a marijuana operating license if:

1. The licensee knowingly makes a material false statement or omission in connection with the application for or renewal of the license;

2. The Oregon Health Authority and/or Oregon Liquor Control Commission revokes or suspends the registration of or the authority of the person responsible for the business to which the license pertains;

3. The license is exercised in violation of any state or local law, rule or regulation; and/or

4. Noncompliance with the Standards of Operation contained in this Chapter.

B. The factors to consider in determining whether to suspend or revoke a license include:

1. The nature of the conduct constituting the grounds for suspension or revocation;

2. The frequency of the conduct;

3. The effect the conduct has upon the enjoyment of life, health and property of members of the community;

4. The efforts of the person responsible for the business to prevent, mitigate or eliminate the conduct and the actual results of any action taken; and

5. The cost to the City of investigating the conduct, including bringing the proceeding.

7.50.065 Appeal.

A. Appeal to City Council. The applicant or owner may appeal a denial of an operating license or the decision to suspend or revoke a license to the City Council by filing a written notice of appeal, including the basis for the appeal, and paying the appeal fee within 12 calendar days of the license determination. The requirement to file a written notice of appeal and pay the fee is jurisdictional and late filings and/or payments are not allowed. The appeal shall be filed with the City Recorder.

B. Appeal Fee. The appeal fee will be established by City Council resolution. The fee shall be sufficient to recover the average or actual costs of mailing notice of hearing and conducting the hearing.

C. Procedures. The City Manager may establish administrative procedures to implement the appeal procedures. The City Council may adopt procedures for hearings, including but not limited to time limits on oral testimony and limitations on written argument.

D. Hearing. Within 21 days of receiving the notice of appeal, the City Manager shall schedule a hearing on the appeal before the City Council. At the hearing, the appellant shall have the opportunity to present evidence and arguments. The City Council may

direct the City Attorney to draft findings of fact and interpretations of code or law to be considered at a later council meeting.

E. Standard of Review and Decision. After the hearing, the City Council shall decide whether to uphold the staff decision.

F. Finality. The City Council's decision shall be final on the date of mailing the decision to the appellant. The City Council's decision is the final decision of the City and is appealable only by writ of review to Deschutes County Circuit Court.