

**ORDINANCE NO. 15-832**

**AN ORDINANCE OF THE CITY OF BURNS ESTABLISHING TIME, PLACE, AND MANNER REGULATIONS CONCERNING MEDICAL MARIJUANA DISPENSARIES; AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Burns ("City") has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, the Burns City Council (the "Council") finds that the unique characteristics of medical marijuana dispensary operations and their potential impacts necessitate the establishment of particular reasonable time, place, and manner regulations for such operations as well as a separate permitting process for such facilities; and

WHEREAS, City desires to reasonably regulate medical marijuana dispensary operations in an effort to protect the public health, safety, and welfare.

NOW, THEREFORE, the City of Burns ordains as follows:

1. Findings. The above-stated findings are hereby adopted.

2. Purpose. The purpose of this Ordinance No. 15-832 (this "Ordinance") is to minimize any adverse public safety and public health impacts that may result from allowing medical marijuana dispensaries to operate in City's incorporated limits by adopting particular reasonable time, place, and manner regulations and a separate permitting process for such dispensaries.

3. Definitions. For purposes of this Ordinance, the following terms and phrases have the meanings assigned to them below:

"Company principle(s)" means a person who is an officer or director of an entity or has a controlling interest in the entity through his or her ownership or control of 10% or more of the ownership in the entity or 10% or more of the total investment interest in the entity.

"Controlled substance(s)" means a substance designated as Schedule I or Schedule II controlled substances by the Code of Federal Regulations Title 21, Chapter II, Part 1308.

"Convicted" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

"Debt financing" means secured or unsecured loans to provide funds for use in the medical marijuana business, except for monies owed for the reasonable cost of goods or services received.

"Dispensary" means a medical marijuana facility that is registered by the Oregon Health Authority under ORS 475.300-475.346 and that sells, distributes, transmits, gives, dispenses, and/or otherwise provides medical marijuana to medical marijuana qualifying patients.

"Edible" means a product made with marijuana that is intended for ingestion.

“Financial interest” exists when a person, the person’s immediate family, and/or a legal entity of which the person is a company principal (a) receives or is entitled to receive directly or indirectly any of the benefits of a dispensary, (b) rents or leases real property to the PRF for use by the dispensary business, and/or (c) lends or gives money, real property, or personal property to the PRF for use in the dispensary business. For purposes of this definition, monies owed to suppliers or contractors for the reasonable cost of goods and services received does not constitute a financial interest in a dispensary.

“Manager” means City’s City Manager (or his or her designee) and/or any other City officer, employee, or agent appointed by the Council from time to time.

“Marijuana” 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; provided, however, the term “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 that is incapable of germination.

“Medical marijuana” means all parts of marijuana plants that may be used to treat or alleviate a qualifying patient’s debilitating medical condition as defined under ORS 475.302(3) or symptoms associated with the patient’s debilitating medical condition.

“Medical marijuana qualifying patient” means a registry identification cardholder as defined under OAR 333-008-1010(29) or the designated primary caregiver of the cardholder as defined under OAR 333-008-1010(7).

“Minor” means any person under 18 years of age.

“Person” means an individual.

“Premises” means a location registered by the Oregon Health Authority under applicable Oregon law and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms, and storerooms, and all public and private areas where individuals are permitted to be present.

“PRF” (person responsible for a medical marijuana facility) means an individual who owns, operates, and/or otherwise has legal responsibility for a facility and has been approved by the Oregon Health Authority.

“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.

“Youth development activities” mean activities related to or concerning the care, supervision, and/or guidance intended for youth development or enrichment, including, without limitation, teaching skills and/or proficiency in physical, social, and/or educational activities such as tutoring, music lessons, social activities, sports, and recreational activities.

4. Annual Permit Required. The PRF of any dispensary operating in City's incorporated limits must possess a valid annual dispensary permit issued under this Ordinance and must comply with the requirements of any and all federal, state, and local laws, regulations, and ordinances. The permit terms will be for a fiscal year, beginning July 1 and ending June 30 of the immediately following year.

5. Permit Application; Renewal; Termination; Fees.

5.1 Initial Application; Fee. Application forms for dispensary permits will be available at the Burns City Hall. Applications for initial and renewal dispensary permits must be submitted to City and signed under penalty of perjury. At the time of submission of an initial dispensary permit application, the applicant must pay a dispensary permit application and investigation fee. The fee amount will be set from time to time by council resolution. No portion of the fee is refundable if a permit is denied or operation of the dispensary is discontinued for any reason. A separate permit application must be submitted for each proposed dispensary location. The application documents must include, at minimum, the following:

- (a) The location of the proposed dispensary.
- (b) A description of the type, nature, and extent of the enterprise to be conducted.
- (c) A description of the proposed accounting and inventory systems for the dispensary.
- (d) Certification that the proposed dispensary is (1) registered as an Oregon medical marijuana facility under ORS 475.300-475.346, (2) licensed to conduct business in compliance with Chapter 5.05 of the Burns Municipal Code, and (3) in compliance with all applicable federal, state, and local laws, regulations, and ordinances.
- (e) Certification that the proposed dispensary has met the requirements of all applicable land use and/or development laws, regulations, and codes.
- (f) Detailed illustrations (to scale) of all proposed signage and the location of such signage.
- (g) Such other information deemed necessary or appropriate by the manager to conduct any investigation and/or background check (including names and fingerprints) of the PRF, employees, volunteers, persons with a financial interest, and persons or entities providing debt financing for the dispensary.

5.2 Renewal Application; Fee. A permit renewal application will include information similar in nature to that provided on the permittee's initial permit application and must be submitted to City not less than 30 days prior to expiration of the permit. At the time of submission of a dispensary permit renewal application, the permittee must pay a dispensary permit renewal application and investigation fee. The renewal application and investigation fee amount will be set from time to time by council resolution. No portion of the fee is refundable if a permit is denied or operation of the dispensary is discontinued for any reason.

5.3 Termination. A dispensary permit terminates automatically on June 30 of each year unless a permit renewal application is prior approved. A dispensary permit terminates automatically and without further act of City if any federal and/or state statutes, laws, regulations, and/or guidelines are modified, changed, and/or interpreted in a manner by state or federal law enforcement officials so as to prohibit operation of the dispensary under this Ordinance.

6. Dispensary Operation Regulations; Permit Conditions. All dispensaries must comply with the following operating regulations, in addition to any other applicable federal, state, and/or local laws, regulations, and/or ordinances:

6.1 Compliance with Applicable Laws. The dispensary must at all times be operated in strict compliance with Oregon Revised Statutes 475.300 - ORS 475.346; Oregon Administrative Rules Chapter 333, Division 8; this Ordinance; all land use/development, building, and fire codes; and all other federal, state, and local laws, regulations, and ordinances, including, without limitation, those directly or indirectly relating to medical marijuana, including the payment of all fines, fees, and taxes owing to City.

6.2 Oregon Health Authority Registration Required. The dispensary must continue to be registered in good standing as an Oregon medical marijuana facility under Oregon law.

6.3 Business License Required. The dispensary must have a current City business license.

6.4 On-Site Production Prohibited. The dispensary must not manufacture and/or produce any extracts, oils, resins, and/or similar derivatives of marijuana on-site and must not use open flames in the preparation of any products.

6.5 On-Site Consumption Prohibited. Marijuana and tobacco products must not be consumed, ingested, inhaled, and/or topically applied anywhere on the premises of the dispensary, except that an employee of a registered facility who is a patient may consume marijuana during his or her work shift as necessary for his or her medical condition as provided in OAR 333-008-1200(1)(b).

6.6 Operating Hours. Daily operating hours for the dispensary must be no earlier than 9:00 a.m. or later than 7:00 p.m., Monday through Friday.

6.7 Odors. The dispensary must utilize an air filtration and ventilation system that, to the greatest extent possible, confines all objectionable odors associated with the dispensary to the dispensary premises. For purposes of this Section 6.7, the standard for judging "objectionable odors" will be that of a 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.

6.8 Disposal. The dispensary must provide for secure disposal of marijuana remnants or byproducts; such remnants or byproducts must not be placed within the dispensary's exterior refuse containers.

6.9 Marijuana Clubs. The dispensary must not be located on the same property or within the same building with any marijuana social club or smoking club.

6.10 Dispensary Location. A dispensary will not be located (a) at the same address as a marijuana grow site, (b) within 1,000 feet of the real property comprising a public or private elementary, secondary, and/or career school attended primarily by minors, (c) within 1,000 feet of a facility that provides youth development activities to minors, which facilities include, without limitation, the Boys and Girls Club of Harney County, and/or (d) within 1,000 feet of another dispensary. "Within 1000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from any point on the boundary line of the real property specified above.

6.11 Signage. Signage will comply with any and all applicable sign codes.

6.12 Packaging of Edibles. All edible marijuana products sold and/or otherwise transferred on dispensary premises must (a) contain a warning label on the outside of the packaging that includes the following: "WARNING: MEDICINAL PRODUCT – KEEP OUT OF REACH OF CHILDREN" in bold capital letters and in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product, and (b) be packaged in a tamper-proof hard or soft-bodied receptacle that is designed and constructed to be significantly difficult for children under five years of age to open and that is sealed, opaque such that the product cannot be seen from outside the packaging, closable for any product intended for more than a single use or containing multiple servings, and not brightly colored, depicting cartoons, or in the shape of an animal or any other commercially recognizable toy or candy.

6.13 Minors. No minor is allowed on the dispensary premises unless the minor is a registry identification cardholder and is accompanied by a parent or guardian whose purpose is to procure the minor's medicine. No minor is allowed to enter the area of the dispensary where medical marijuana is present.

6.14 Criminal Convictions. A person who has been convicted in any state for any felony, including for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, once or more in the five years immediately preceding the date of application or twice or more in the person's lifetime, may not be a PRF, company principle, employee, and/or volunteer of a dispensary or have a financial interest in a dispensary operated in City's incorporated limits.

6.15 Accounting System and Records. The dispensary must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash such that revenue and expenses are recorded as they are paid, regardless of when goods are received or delivered, and sufficient to maintain detailed, auditable financial records. If the manager finds that the PRF's books and records are deficient in any way and/or if the PRF's accounting system is not auditable, the PRF must modify the dispensary's accounting system to meet the requirements of the manager.

6.16 Record Keeping. Each PRF must keep and preserve, in an accounting format established by the manager, records of all sales made by the dispensary and such other books or accounts as may be required by the manager. Each PRF must keep and preserve for a period of at least three years records containing at least the following information, in addition to that information specified in OAR 333-008-1210(1):

- (a) True names and any aliases of the PRF.
- (b) True names and any aliases of employees/volunteers of the dispensary.

(c) True names and addresses and any aliases of persons that have or within the preceding year have had a financial interest in the dispensary.

(d) Documentation concerning costs related to transferring, handling, securing, insuring, testing, packaging, and processing marijuana, and the cost of supplies, utilities, and rent or mortgage.

(e) The amount of money paid by a dispensary to a grower for each transfer of marijuana.

(f) The amount of money paid by each patient or designated primary caregiver for a transfer of marijuana.

(g) State and federal income tax returns.

(h) The manager may require additional information as he or she deems necessary or appropriate.

6.17 Permit Display. Each dispensary must display its current permit inside the dispensary in a prominent place easily visible to persons conducting business in the dispensary.

6.18 Sales and Transfers. Sales or other transfers of marijuana products on the dispensary premises must occur inside the dispensary building and must be conducted only between the dispensary and medical marijuana qualifying patients. No walk-up or drive-through service is allowed.

6.19 Mobile Dispensaries Prohibited. Mobile marijuana dispensaries are prohibited. No person will locate, operate, own, allow to be operated, and/or aid, abet, and/or assist in the operation of any mobile marijuana dispensary that transports or delivers, or arranges the transportation or delivery of, marijuana to a person.

7. Background Checks. City will send to the Burns Police Department the information provided on each initial or renewal dispensary permit application. The police department may conduct criminal background checks (or obtain the results of background checks conducted by the Oregon Health Authority) to determine whether any person specified therein (including, without limitation, the PRF, person with financial interest, company principle, employee, or volunteer) has any history of felony convictions and will inform City whether all the persons named in the permit application passed the required background checks. If, following an initial application or renewal, an additional person is proposed to be a PRF, person with financial interest, company principle, employee, or volunteer, then such person must pass the background check prior to assuming such position.

8. Release; Indemnification.

8.1 Release of Liability. By accepting a dispensary permit issued pursuant to this Ordinance, the permittee waives and releases City, its officers, employees, volunteers, and agents for, from, and against any liabilities for injuries, damages, and/or liabilities of any kind that result from any arrest or prosecution of dispensary owners, PRF, persons with financial interest, company principles, employees, volunteers, clients, customers, and/or other associated persons for violations of any federal, state, and/or local laws, regulations, and/or ordinances.

8.2 Indemnification. By accepting a dispensary permit issued pursuant to this Ordinance, the permittee agrees to indemnify and hold harmless City, its officers, employees, volunteers, agents, insurers, and self-insurance pool against all liabilities, claims, and demands on account of any injury, loss, and/or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, and/or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the dispensary that is the subject of the permit.

9. Permit Denial, Suspension, and Revocation; Penalties; Appeals.

9.1 Grounds for Denial, Suspension, Revocation. The manager may deny, suspend, or revoke a dispensary permit for failure to comply with this Ordinance, for submitting falsified information to City or to the Oregon Health Authority, and for noncompliance with any other City ordinances or regulations or violations of federal, state, and/or local laws, regulations, and/or ordinances.

9.2 Notice of Revocation or Suspension. The manager must provide to the permittee written notice of any permit suspension or revocation and reasons therefor by first-class US mail at least 10 calendar days prior to the effective date of the revocation or suspension.

9.3 Appeal. A decision to deny, suspend, or revoke a dispensary permit may be appealed by delivering personally a written notice of appeal to the manager on or before the effective date of the denial, suspension, or revocation. Unless the manager has declared that imminent danger to the public will exist, the manager's decision to revoke or suspend is stayed pending appeal. The manager will transmit the notice of appeal together with the file of the appealed matter to the Council after which transmission the Council will fix a time and place for hearing the appeal. The Council will give the appellant not less than 10 days' prior written notice of the time and place of hearing of the appealed matter.

9.4 Violations; Infractions. In addition to the remedies of suspension and revocation, all violations of this Ordinance are punishable as set forth in Chapter 9.35 of the Burns Municipal Code. Each day in violation constitutes a separate offense. Company principles, PRFs, employees, and volunteers are jointly and severally liable for such offenses.

9.5 Remedies not Exclusive. The remedies provided in this Section 9 are not exclusive and will not prevent City from exercising any other rights and/or remedies available under law, nor will provisions of this Ordinance prohibit or restrict City or other appropriate prosecutor from pursuing criminal charges under state law and/or City ordinances.

10. Public Nuisance Declared. Operation of any dispensary within City's incorporated limits in violation of this Ordinance is hereby declared a public nuisance and will be abated pursuant to all available remedies.

11. Confidentiality. Except as otherwise provided under applicable law, City officers and employees will not divulge, release, or make known in any manner any financial or employee information submitted or disclosed to City by a PRF under the terms of this Ordinance. Nothing in this Section 11, however, will prohibit or prevent (a) disclosure of the names and addresses of any PRF or provider of equity or debt financing for a dispensary, (b) disclosure of general statistics in a form that

would reasonably prevent identification of financial information regarding a PRF, (c) any disclosure necessary or appropriate in connection with the enforcement of this Ordinance, including the presentation of evidence to a court or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by City under this Ordinance, and/or (d) disclosure of exempt information when such disclosure is required under public records law procedures.

12. Examination of Books, Records, and Premises.

12.1 Examinations by Manager. To determine compliance with the requirements of this Ordinance; Oregon Revised Statutes 475.300 - ORS 475.346; Oregon Administrative Rules Chapter 333, Division 8; all land use/development, building, and fire codes; and all other federal, state, and local laws, regulations, and ordinances, including, without limitation, those directly or indirectly relating to medical marijuana, including the payment of all fines, fees, and taxes owing to City; the manager may examine or cause to be examined by an agent or representative designated by the manager, at any reasonable time, the premises of the dispensary, including wastewater from the dispensary, and any and all dispensary financial, operational, and dispensary information, including books, papers, payroll reports, and state and federal income tax returns. Every permittee is directed and required to furnish to the manager the means, facilities, and opportunity for making such examinations and investigations.

12.2 Criminal Investigations. As part of the investigation of a crime or violation of this Ordinance that law enforcement officials reasonably suspect has taken place on the dispensary premises, the Burns Police Department will be allowed to view surveillance videotapes or digital recordings relating to the dispensary at any reasonable time.

12.3 Access. Without reducing or waiving any provisions of this Ordinance, the Burns Police Department will have the same access to the dispensary, dispensary records, and dispensary operations as allowed to state inspectors. Denial or interference with such access will be grounds for revocation or suspension of a dispensary permit.


13. Severability; Corrections. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law; and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors. Nothing in this Ordinance affects the validity of any criminal or civil enforcement actions commenced prior to the adoption of this Ordinance; all City ordinances existing at the time that such actions were filed will remain valid and in full force and effect for purposes of those actions.

14. Emergency Declaration. The Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City's citizens. Therefore, an

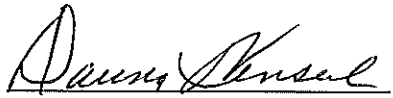


emergency is hereby declared to exist. This emergency Ordinance will be in full force and effect upon its passage by the Council and approval of the mayor.

This Ordinance was PASSED and ADOPTED by the Burns City Council by a vote of 6 for and 0 against and APPROVED by the mayor on this 28<sup>th</sup> day of January, 2015.

  
Craig J. LaFollette, Mayor

ATTEST:

  
Dauna Wensenk, City Recorder