

CITY OF TOLEDO

ORDINANCE NO. 1358

AN ORDINANCE ADOPTING CHAPTER 5.20 OF THE TOLEDO MUNICIPAL CODE RELATING TO THE LICENSING AND REGULATION OF MEDICAL MARIJUANA DISPENSARIES; AND, DECLARING AN EMERGENCY.

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; and

WHEREAS, House Bill 3460 (2013) directs that persons who operate or are employed by a registered medical marijuana facility would enjoy immunity from state prosecution; and

WHEREAS, the issue of whether a local government believes a certain type of business should operate within its jurisdictional limits, and particular time, place and manner restrictions on such businesses, are local government decisions, the enforcement of which are subject to the general and police powers of that jurisdiction; and

WHEREAS, the Oregon Legislature enacted Senate Bill 1531 (2014) which expressly authorized a city to adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities which regulations may include reasonable limitations on the hours during which a medical marijuana facility may be operate, reasonable limitations on where a medical marijuana facility may be located, and reasonable conditions in a manner in which a medical marijuana facility may dispense medical marijuana; and

WHEREAS, the City Council of the City of Toledo believes it is in the best interests of the health, safety and welfare of the citizens of Toledo to enact reasonable restrictions set forth in this ordinance on medical marijuana facilities operating within the jurisdictional boundaries of the City of Toledo;

NOW THEREFORE, THE CITY OF TOLEDO ORDAINS AS FOLLOWS:

SECTION 1.

Sections 2 through 21 this Ordinance are added to and made a part of the Toledo Municipal Code, Chapter 5.20, as indicated.

SECTION 2.

5.20.010 Findings and Purpose.

A. The purpose of this ordinance is to enact a new chapter of the Toledo Municipal Code on the subject of medical marijuana dispensary facilities, which explicitly prohibits medical marijuana dispensary facilities in the incorporated area of the City of Toledo, particularly in residential, industrial, natural resource, water-dependent, and public lands zones, and provides for a business license for medical marijuana dispensary facilities in commercial and light industrial zones.

B. This chapter is not intended to regulate the possession, cultivation or use of medical marijuana at a registered marijuana grow site or by anyone who is a registry identification cardholder under State law.

SECTION 3.

5.20.020 Prohibited Activities.

A. It is unlawful to operate, use or allow the operation of a medical marijuana dispensary facility in the incorporated area of the City of Toledo without having a current business license under this chapter.

B. It is unlawful to lease, rent or otherwise allow any medical marijuana dispensary facility in any building, structure, premises, location or land in the incorporated area of the City of Toledo unless the medical marijuana dispensary facility business has a current business license.

C. It is unlawful to operate, use or allow the operation of a registered marijuana grow site in the incorporated area of the City of Toledo for the purposes of supplying marijuana to a medical marijuana dispensary facility located in the incorporated area of the City of Toledo.

D. It is unlawful to lease, rent or otherwise allow registered marijuana grow site in any building, structure, premises, location or land in the incorporated area of the City of Toledo for the purposes of supplying marijuana to a medical marijuana dispensary facility located in the incorporated area of the City of Toledo.

SECTION 4.

5.20.030 Use Not Permitted in Any Residential, Industrial, Natural Resource, Water-Dependent, or Public Lands Zone.

The use of any building, structure, location, premises or land for a medical marijuana dispensary facility is not allowed in any residential, industrial, nature resource, water-dependent, or public lands zone.

SECTION 5.

5.20.040 Business License Required.

A medical marijuana dispensary facility may be located in commercial or light industrial zones as a conditional use in the incorporated area of the City of Toledo only if the business first obtains a business license.

SECTION 6.

5.20.050 Application For Business License.

A. A person or entity seeking a business license shall submit an application to the City on forms provided by the City. At the time of application, applicant shall pay a nonrefundable application fee to cover the costs incurred by the City in processing the application.

B. The applicant shall be the individual to whom the Oregon Health Authority ("OHA") has granted a permit pursuant to ORS 475.314 and the corresponding administrative rules.

C. The applicant shall submit a separate application and pay a separate application fee for each physical location for which the applicant seeks a business license.

D. The applicant shall provide the following information on the application form and other required information in support of the application:

1. Name of the business and business location;
2. Name of the business owner and manager (if different);
3. Copy of OHA permit for the business;
4. Confirmation of passing a criminal background check performed by the chief of police pursuant to ORS 181.533 and OAR 257-010-0025(1)(a) for all owners, officers, managers, employees, agents, partners, or volunteers of the business identified in this section;
5. Written authorization for OHA to disclose information to the City about the business and the applicant in conjunction with the OHA permit;
6. The licensee shall save harmless, indemnify, and defend the City and any of its elected officials, officers, employees or agents for any and all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from City liability to agencies of the federal government pursuant to contracts or grants from those federal agencies occurring due to the issuance of a business license to the licensee;
7. The licensee shall waive liability against the City and any of its elected officials, officers, employees or agents for any claims arising out of the revocation of or refusal to grant a

license; for any claims alleging a taking or inverse condemnation due to revocation of or refusal to license a particular location or relocation of a permitted facility for failing to satisfy all the requirements of a license; or for any actions taken or not taken by the City pursuant to a license;

8. The licensee shall waive liability against the City and any of its elected officials, officers, employees or agents for any claims for any lawful arrest or prosecution of the applicant or any employees, clients or customers for a violation of federal or state criminal laws;

9. Any other information the City considers necessary.

E. The provisions of Toledo Municipal Code §5.04 shall apply to this Chapter where applicable. Where the provisions of Toledo Municipal Code §5.04 and §5.20 conflict, the provisions of §5.20 shall apply.

SECTION 7.

5.20.060 Term and Renewal of Business License.

A. A business license shall be valid from the date of issuance until the following June 30th and shall be renewed annually for one year beginning July 1st.

B. In order to renew a business license, the applicant shall submit an application to the City on forms provided by the City no more than ninety and at least sixty days prior to the expiration of the existing business license. A renewal application shall contain all of the information and documentation required of an original application pursuant to subsection D of Toledo Municipal Code §5.20.050.

C. At the time of filing a renewal application, applicant shall pay a nonrefundable application fee to cover the costs incurred by the City in processing the renewal application.

D. If a specific location that is the subject of a renewal application has a documented history of law enforcement contacts during the time that the specific location has been permitted under this chapter, the chief of police may recommend denial of a renewal application. In the event that the chief of police recommends denial of a renewal application, the chief of police shall forward the recommendation to the planning department. The planning department may issue a notice of denial based upon the chief of police's recommendation.

Denial of a renewal application based upon the chief of police's recommendation may be reviewed pursuant to Toledo Municipal Code §5.20.150.

SECTION 8.

5.20.070 Business License Regulations.

A person or entity having or required to obtain a business license for a medical marijuana dispensary business shall comply with the following regulations:

A. The person or entity shall comply with all building code and zoning requirements applicable to the property on which the business is located.

B. Except to the extent that marijuana is classified as a Schedule I controlled substance under federal law, the person or entity shall comply with all federal, state, and local laws applicable to the business. A business license under this Chapter does not protect a person or entity from possible criminal prosecution under federal law.

C. The medical marijuana dispensary facility shall not be located within 1000 feet of any boundary of a property containing a location prohibited by ORA regulations, which currently include being located within 1000 feet of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1000 feet of another medical marijuana dispensary facility. The distance shall be measured in a straight line from the closest edge of each property line.

D. The business shall make available to the chief of police all video surveillance and recordings upon request for the purpose of ensuring compliance with ORS 475.314, state rules, and this code.

E. All employees and volunteers of the business must submit to a criminal background check by the chief of police pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of this ordinance if an employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the criminal background check; has been convicted more than once of the manufacture or delivery of a controlled substance in Schedule I or Schedule II at any time; or has been convicted of any of the following crimes within the last 10 years: criminal mistreatment based upon the unlawful manufacture of a controlled substance, racketeering, use of minor in controlled substance offense, manufacture or delivery of hydrocodone within 1000 feet of a school, manufacture or delivery of a controlled substance within 1000 feet of a school, causing another to ingest a controlled substance, application of a controlled substance to the body of another person, falsifying business records, issuing a false financial statement, obtaining execution of documents by deception, forgery, criminal possession of a forged instrument, criminal possession of a forgery device, fraudulently obtaining a signature, fraudulent use of a credit card, negotiating a bad check, unlawful factoring of payment card transactions, identity theft, laundering a monetary instrument, engaging in a financial transaction in property derived from unlawful activity, or felony driving under the influence of intoxicants.

F. The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer, and shall make available to the chief of police upon request the records maintained pursuant to OAR 333-008-1210 for the purpose of ensuring compliance with ORS 475.314, state rules, and this code.

G. The business may not be operated as a home occupation in any zone.

H. No minors are allowed on the business premises unless the minor is an Oregon Medical Marijuana Program (OMMP) cardholder and is accompanied by a parent or guardian and not in areas prohibited by OAR 333-008-1200.

I. A person may not smoke, ingest, or otherwise use marijuana at a medical marijuana dispensary facility unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon indoor clean air act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of medical marijuana social club where medical marijuana is consumed.

J. The business may only operate between the hours of 10:00 a.m. to 7:00 p.m. daily.

SECTION 9.

5.20.080 Marijuana-Infused Products.

A. A medical marijuana dispensary facility may not transfer any marijuana-infused product that is meant to be swallowed or inhaled, unless the product is packaged in child-resistant safety packaging.

B. A medical marijuana dispensary facility may not transfer any marijuana-infused product that is manufactured or packaged in a manner that is attractive to minors.

SECTION 10.

5.20.090 Advertising.

A. A medical marijuana facility shall be limited to one sign identifying the facility by the licensee's business name or trade name that is affixed or hanging in the windows or on the outside of the premises that is visible to the general public from the public right of way. The size of the sign is limited to sixteen hundred square inches.

B. All marijuana advertising and labels of useable marijuana and marijuana-infused products sold in the City of Toledo may not contain any statement, or illustration that:

1. Is false or misleading;
2. Promotes over consumption;
3. Represents the use of marijuana has curative or therapeutic effects;
4. Depicts a child or other person under legal age to consume marijuana, or includes:

- i. Objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or

ii. Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

C. No permitted medical marijuana dispensary facility shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, usable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:

1. Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older;

2. On or in a public transit vehicle or public transit shelter; or

3. On or in a publicly owned or operated property.

D. Giveaways, coupons, and distribution of branded merchandise are prohibited.

E. All advertising must contain the following warnings:

1. "This product has intoxicating effects and may be habit forming.";

2. "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

3. "There may be health risks associated with consumption of this product."; and

4. "Keep out of the reach of children."

SECTION 11.

5.20.100 Mobile Marijuana Facilities Prohibited.

Mobile marijuana facilities are prohibited. No person shall locate, operate, own, allow to be operated or aide, abet or assist in the operation of any mobile marijuana facility which transports or delivers, or arranges the transportation or delivery, of marijuana to a person.

SECTION 12.

5.20.110 Public Nuisance Declared.

Operation of any medical marijuana facility within the City in violation of the provisions of the Toledo Municipal Code is hereby declared a public nuisance and shall be abated pursuant to all available remedies.

SECTION 13.

5.20.120 No Vested or Nonconforming Rights.

Neither this chapter nor any other provision of the Toledo Municipal Code, or any action, failure to act, statement, representation, certificate, approval, or permit issued shall create, confer or convey any vested or nonconforming right or benefit regarding any medical marijuana business, medical marijuana dispensary facility or other facility that is prohibited by this chapter.

SECTION 14.

5.20.130 License Surrender.

A licensee may surrender a medical marijuana facility license by delivering written notice to the City that the licensee thereby 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 committed before surrendering the license.

SECTION 15.

5.20.140 Grounds for Suspension or Revocation of License.

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

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

2. The Oregon Health Authority suspends or revokes the registration of the medical marijuana facility to which the license pertains;

3. Oregon Health Authority suspends or revokes the authority of the person responsible for the medical marijuana facility to operate a medical marijuana facility;

4. The licensee fails to satisfy all the application requirements and regulations set forth in this chapter at any time after issuance of the license, and the unsatisfied application requirement or regulation cannot be remedied within the time specified in the notice of revocation sent to the person or entity; or

5. Except to the extent that marijuana is classified as a Schedule I controlled substance under federal law, the license is exercised in violation of any other State, Federal or local law, rule or regulation.

B. A license may be suspended if the person or entity issued the license fails to satisfy an application requirement or regulation set forth in this chapter at any time after issuance of the license, but the unsatisfied application requirement or regulation can be remedied within the time specified in the notice of suspension sent to the person or entity. Upon satisfaction of the application requirement or regulation, the notice of suspension will be withdrawn.

C. The City may initiate proceedings to suspend or revoke a license if the City has reasonable cause to believe that one or more grounds for suspension or revocation provided under subsection A of this section exists.

D. Any proceeding under this section shall be substantially in accord with the procedure provided in Toledo Municipal Code §5.04.060(C) and (D).

E. Upon a determination that grounds for suspension or revocation of a license exists, the factors to be considered in determining whether to suspend or revoke the license must 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 medical marijuana facility to prevent, mitigate or eliminate the conduct;
5. The actual results of any actions taken by the person responsible for the medical marijuana facility to prevent, mitigate or eliminate the conduct;
6. The license history of either or both the medical marijuana facility and the person responsible for the medical marijuana facility; and
7. The cost to the City of investigating the conduct, including bringing the proceeding.

SECTION 16.

5.20.150 Appeal.

A decision pursuant to this chapter to deny an application for a new license or to deny an application for the renewal of an existing license, or to suspend or revoke a license may be appealed pursuant to Toledo Municipal Code §5.04.070. Appeal of a final decision shall be by writ of review to the Circuit Court of Lincoln County, Oregon, as provided by law.

SECTION 17.

5.20.160 Closure During Pendency of Action; Emergency Closures.

The City may institute an action for a temporary restraining order or preliminary injunction pursuant to ORCP 78 if a threatened or existing nuisance under this chapter creates an emergency that requires immediate action to protect public health, safety or welfare. In such instances, the notice requirements of this chapter need not be fulfilled.

SECTION 18.

5.20.170 Enforcement of Closure Order; Costs.

The court may authorize the City to physically secure the medical marijuana facility against use or occupancy in the event that the person in charge of the facility fails to do so within the time specified by the court. In the event that the City is authorized to secure the premises, all costs incurred by the City to effect a closure shall be allowed and recovered as provided under ORCP 68. As used in this section, "costs" include those reasonable and necessary expenses incurred by the City for the physical securing of the premises.

SECTION 19.

5.20.180 Violations-penalty.

A. A violation of any provision of this chapter shall constitute a Class A infraction. Violations of separate provisions are separate offenses, and each day that a violation occurs or continues is a separate offense.

B. Any penalty or remedy imposed pursuant to this chapter is in addition to, and not in lieu of, any other civil, criminal or administrative penalty, sanction or remedy otherwise authorized by law. The abatement of a nuisance under this chapter does not prejudice the right of any person to recover damages for its past existence.

SECTION 20.

5.20.190 Fees.

Fees specified in this chapter shall be set by City resolution.

SECTION 21

5.20.200 Severability.

The sections and subsections of this chapter are severable. If any part of this chapter is held unconstitutional or otherwise invalid, the remaining parts shall remain in force unless:

A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or

B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

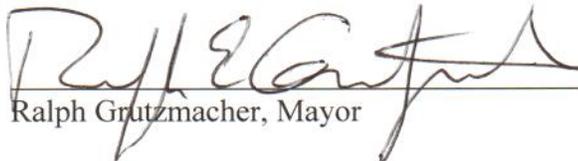
SECTION 22

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 take effect upon its passage.

APPROVED AND ADOPTED by the City Council of the City of Toledo, Oregon on this 19th day of November, 2014:

APPROVED by the Mayor of the City of Toledo, Oregon, on this 19th day of November, 2014.

APPROVED


Ralph Grutzmacher, Mayor

ATTEST:


Nancy Bryant, City Recorder