

CITY OF TOLEDO

ORDINANCE NO. 1360

AN ORDINANCE AMENDING SECTIONS 17.04.020, 17.16.030, 17.20.030, 17.24.030 17.46.080, 17.64.050, AND REPEALING SUBSECTIONS OF 17.64.050, OF THE TOLEDO MUNICIPAL CODE, RELATING TO THE REGULATION OF RECREATIONAL MARIJUANA; AND, DECLARING AN EMERGENCY.

WHEREAS, in compliance with the Oregon Revised Statutes Chapter 197, the City of Toledo adopted Ordinance 1285, the Toledo Comprehensive Land Use Plan, on April 4, 2001, acknowledged by the State of Oregon Department of Land Conservation and Development on June 19, 2002.

WHEREAS, the City of Toledo adopted Ordinance 1286, the Toledo Zoning Ordinance codified as Title 17 of the Toledo Municipal Code, on April 4, 2001.

WHEREAS, the City of Toledo adopted Ordinance 1287, the Toledo Land Use Procedures Ordinance codified as Title 19 of the Toledo Municipal Code, on April 4, 2001.

WHEREAS, pursuant to Article XI, Section 2, of the Oregon Constitution, which was added in 1906 by the people's initiative, the City has home rule authority to adopt regulations that are not unconstitutional or preempted by federal or state law.

WHEREAS, Toledo Municipal Code Chapter 1.01, the City Council, may from time to time make revisions to its municipal code which shall become part of the overall documentation and citation.

WHEREAS, Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana Act, in November 1998. The Oregon legislature has amended the Oregon Medical Marijuana Act and the Act authorizes local government to adopt reasonable regulations related to the hours of operation, location and manner in which medical marijuana dispensaries are regulated. Cities have home rule authority to adopt regulations that are not unconstitutional or preempted by federal or state law.

WHEREAS, Oregon voters approved Ballot Measure 91 in November 2014, legalizing the personal use and possession of adult recreational marijuana on July 1, 2015, with certain limitations, including restrictions on use in public, no growing in public view, a restriction on minors attempting to buy or entering licensed premises, prohibiting the sale or use by persons under 21, and imposing licensing and other requirements on marijuana cultivation, processing and dispensing facilities. The measure, as amended by the Oregon State Legislature in 2015 (House Bill 3400 A, Section 33), authorizes reasonable conditions on the manner in which licensed retailers, processors, producers, wholesalers, and laboratories, may sell marijuana; reasonable limitations on the hours during which a licensed marijuana facility may sell marijuana items; reasonable requirements related to a public's access to a licensed premises; reasonable distance between facilities (1000 feet); and reasonable limitations on where a licensed premises may be located. Such regulations must be consistent with the City's comprehensive plan, development code and public health and safety laws.

WHEREAS Senate Bill 460 (2015) allows medical marijuana dispensary facilities to sell limited amounts of adult recreational marijuana beginning October 1, 2015. This provision sunsets on December 31, 2016.

WHEREAS, the City of Toledo sent this Zoning Ordinance amendment to the State of Oregon Department of Land Conservation and Development on November 25, 2015.

WHEREAS, after a properly noticed public hearing held on January 13, 2016, the City of Toledo's Planning Commission recommended approval of a code amendment to the Toledo Municipal Code Chapters 17.04, 17.16, 17.20, 17.24, 17.46, 17.64, and repealing subsections in Code Chapter 17.64, allowing marijuana producers, marijuana processors, marijuana wholesalers, and marijuana laboratories as a conditional use in the Industrial and Light Industrial Zones; prohibiting marijuana producers, marijuana processors, marijuana wholesalers, and marijuana laboratories as a home occupation; and allowing marijuana retailers as a conditional use in the Commercial Zone.

WHEREAS, after a properly noticed public hearing held on February 3, 2016, the City of Toledo, acting by and through its City Council, reviewed the Staff Report and findings, heard testimony and comments, and deliberated on approval of this Municipal Code Amendment.

WHEREAS, the City Council, in adopting this ordinance, is concerned with fairness, neighborhood compatibility, respecting the will of the voters, protecting youth and minors, crime and nuisance issues, a non-reactive balanced approach, allowing new businesses to emerge and grow, and learning from the experience of other communities.

WHEREAS, the adverse effects of recreational marijuana facilities to the community, addressed through reasonable time, place and manner restrictions, such as the ones adopted by this ordinance, include: 1) Exposure of minors to the use and commercial aspects of marijuana; 2) Offensive odors from marijuana cultivation, production and storage; and 3) Incompatible development in residential areas.

WHEREAS, these regulations are also adopted in furtherance and protection of the health, safety and welfare of the citizens of Toledo, including under the broad home rule authority of the City of Toledo in Chapter II, Section 5, of its municipal charter: "the Charter shall be liberally construed, so that, within the limits imposed by the charter or the constitution or the laws of the United States or the State of Oregon, the City has all powers necessary or convenient for conducting its affairs, including all powers that the City may now or hereafter assume under the home rule provisions of the constitution and the laws of the State of Oregon. The powers are continuing powers."

WHEREAS, this ordinance does not, and cannot, provide immunity from possible federal prosecution.

WHEREAS, this ordinance does not regulate the private growing or cultivating of marijuana for non-commercial personal use, as defined by state law; and

WHEREAS, the implementation of the ordinance as soon as possible is in the public interest and necessary for the peace, health, convenience, and safety of the inhabitants of the City of

Toledo.

NOW THEREFORE, THE CITY OF TOLEDO ORDAINS AS FOLLOWS:

SECTION 1.

The following definition is added to §17.04.020 of the Toledo Municipal Code to read as follows and shall be placed in alphabetical order with the existing definitions and terms:

17.04.020 Definitions

“Cannabinoid concentrate” means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process: or

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol.

“Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

“Cannabinoid extract” means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane:

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide if the process uses heat or pressure: or

(c) Any other process identified by the Oregon Liquor Control Commission, in consultation with the authority by rule.

“Cannabinoid product” means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair that contains cannabinoids or dried marijuana leaves or flowers.

“Cultivation” or “cultivate” means: (i) all phases of growth of marijuana from seed to harvest: or (ii) preparing, packaging, or repackaging, labeling, or relabeling of marijuana prior to consumption, or incorporation into a marijuana-infused product.

“Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae, and the seeds of the plant Cannabis family Cannabaceae. “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

“Marijuana items” means marijuana, cannabinoid products, cannabinoid concentrates, and cannabinoid extracts.

“Medical marijuana grow site” means a specific location registered by the Oregon Health Authority and used by a grower to produce marijuana for medical use by a specific

patient.

“Marijuana laboratory” means a laboratory that performs testing, research or development of recreational marijuana or marijuana items for producer, processor, wholesaler, or retail licensees.

“Marijuana processor” means a recreational marijuana processor who holds a processor license issued by the Oregon Liquor Control Commission, to process, compound or convert marijuana into products, concentrates or extracts, but does not include packaging or labeling, for the premises at which marijuana items are processed.

“Marijuana producer” means a recreational marijuana producer who holds a production license issued by the Oregon Liquor Control Commission, to manufacture, plant, cultivate, grow or harvest of marijuana, for the premises at which the marijuana is produced.

“Marijuana retailer” means a recreational marijuana retailer who holds a retail license issued by the Oregon Liquor Control Commission, for retail sale of marijuana or marijuana items, for the premises at which marijuana items are sold.

“Marijuana wholesaler” means a recreational marijuana wholesaler who holds a wholesale license issued by the Oregon Liquor Control Commission, for purchase of marijuana items for resale to a person other than a consumer, for the premises at which marijuana items are received, kept, stored or delivered.

“Recreational marijuana” means any marijuana intended for recreational use which meets all requirements for recreational marijuana contained in this chapter, Oregon state law, and any other applicable law.

“Recreational marijuana facility” means any recreational marijuana related facility, including marijuana producer, marijuana processor, marijuana wholesaler, marijuana retailer, and marijuana laboratory.

SECTION 2.

Subsection (L) of Section §17.16.030 of the Toledo Municipal Code is amended to read as follows:

17.16.030 Conditional uses permitted

(L) Marijuana retailer.

SECTION 3.

Subsection (M) is added to Section §17.16.030 of the Toledo Municipal Code, to read as follows:

17.16.030 Conditional uses permitted

(M) Uses which are similar to those permitted outright or conditionally in the C zone and

which conform to the purpose of the zone.

SECTION 4.

Subsection (M) of Section §17.20.030 of the Toledo Municipal Code is amended to read as follows:

17.20.030 Conditional uses permitted

- (M) Marijuana producer, marijuana processor, marijuana wholesaler, and marijuana laboratory. Marijuana retailer may be approved when medical marijuana dispensary facility is an approved use at the same site.

SECTION 5.

Subsection (N) is added to Section §17.20.030 of the Toledo Municipal Code, to read as follows:

17.20.030 Conditional uses permitted

- (N) Uses which are similar in character, scale and performance to those permitted outright or conditionally in the L-I zone and which conform with the purpose of the zone.

SECTION 6.

Subsection (G) of Section §17.24.030 of the Toledo Municipal Code is amended to read as follows:

17.24.030 Conditional uses permitted

- (G) Marijuana producer, marijuana processor, marijuana wholesaler, and marijuana laboratory.

SECTION 7.

Subsection (H) is added to Section §17.24.030 of the Toledo Municipal Code, to read as follows:

17.24.030 Conditional uses permitted

- (H) Uses which are similar in character, scale and performance to those permitted outright or conditionally in the I zone and which conform with the purpose of the zone.

SECTION 8.

Subsection (E) is added to Section §17.46.080 of the Toledo Municipal Code, to read as

follows:

17.46.080 Prohibited home occupation uses.

- (E) Marijuana producer, marijuana processor, marijuana retailer, marijuana wholesaler, and marijuana laboratory.

SECTION 9.

Subsection (C) and (D) of Section §17.64.050 of the Toledo Municipal Code are repealed; and Subsection (B) of Section §17.64.050 is amended, to read as follows:

17.64.050 Standards governing conditional uses

(B) In addition to other standards of the zone in which the conditional use is located, certain uses shall comply with the following additional standards:

1. Utility Substation or Pumping Station. The minimum lot size in the applicable zone may be waived only on finding that the waiver will not result in noise or other detrimental effect on adjacent property. No equipment storage shall be permitted on the site. Such development shall be fenced and landscaped as required by the planning commission.
2. Processing and manufacturing operations.
 - a. The facility shall not abut a property zoned general residential or single-family residential.
 - b. The processor shall operate in a wholly enclosed building, except for incidental storage.
 - c. A processing facility shall be no larger than forty thousand (40,000) square feet.
 - d. The processing facility may not shred, compact, or bale ferrous metals other than food and beverage containers.
3. Waste transfer, recycling facility, or scrap metal facility.
 - a. Facilities must be fenced and shall be secured from unauthorized entry and the removal of materials when attendants are not present.
 - b. Facilities and storage shall be located no closer than thirty (30) feet from any property line.
 - c. Hours of operation shall be established, and the facility shall be clearly marked with the name and telephone number of the facility operator and the hours of operation.

d. The site shall be maintained free of litter, odors, pests, and any other undesirable material, and shall be cleaned of loose debris on a daily basis.

e. Space shall be provided on the site for the anticipated peak load of customers to circulate, park, and deposit recyclable materials.

f. Containers provided for after-hours donations of recyclable materials shall be at least fifty (50) feet from any property zoned general residential or single-family residential, shall be of sturdy, rustproof construction, shall have sufficient capacity to accommodate the materials collected, and shall be secure from unauthorized entry or the removal of materials.

g. Donation areas shall be kept free of litter, odors, pests, and any other undesirable material. The containers shall be clearly marked to identify the type of material, which may be deposited. The facility shall display a notice stating that no material shall be left outside the recycling containers.

4. Marijuana producer, marijuana processor, marijuana retailer, marijuana wholesaler, and marijuana laboratory.

a. The use shall not abut a property in the General Residential (R-G) or Single-Family Residential (R-G) zones or Lincoln County residential land use zones.

b. The use may be co-located with a medical marijuana grow site or medical marijuana dispensary facility, if allowed by state law and regulation, provided such use is properly licensed.

c. The use shall not be located within 1,000 feet of a private or parochial elementary or secondary school, teaching children as defined in ORS 339.030(1)(a).

d. The use shall not be located within 1,000 feet of a public elementary or secondary school whose attendance is compulsory under ORS 339.020.

e. The facility where the use takes place shall be no larger than forty thousand (40,000) square feet.

f. The use shall not be located within 1,000 feet of another medical or recreational marijuana facility, including a marijuana producer, marijuana processor, marijuana retailer, marijuana wholesaler, marijuana laboratory, medical marijuana dispensary facility, or medical marijuana grow site. This 1,000 feet requirement from property line to property line in a straight line measurement is not meant to prohibit more than one of the uses described in this subsection 4.f. from being co-located. More than one of the uses in this subsection 4.f. may be co-located, but only for the period of time, and as allowed, by state law and regulation.

g. Drive-through recreational marijuana facilities in any zone are prohibited.

h. The proposed use must be located inside a permanent building. Outdoor storage of any merchandise or plants is not allowed.

i. The proposed use requires continued compliance with all state, city, and federal law, excluding marijuana's classification as a controlled substance under the federal Controlled Substances Act.

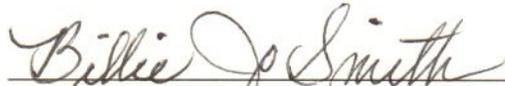
SECTION 10.

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 3rd day of February, 2016.

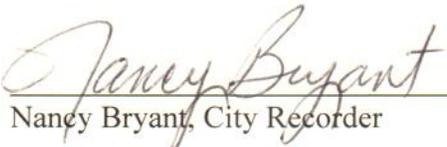
APPROVED by the Mayor of the City of Toledo, Oregon, on this 3rd day of February, 2016.

APPROVED:



Billie Jo Smith, Mayor

ATTEST:



Nancy Bryant, City Recorder