

ORDINANCE NO. 1067

**AN ORDINANCE OF THE CITY OF RAINIER RELATING TO
BUSINESS LICENSE REGULATIONS FOR
MARIJUANA FACILITIES**

**NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF RAINIER
ORDAINS AS FOLLOWS:**

Whereas, the voters adopted Measure 91 in November 2014, legalized the growing, distribution, possession and use of recreational marijuana in certain amounts for people aged 21 or older and directs the Oregon Liquor Control Commission to license the retail sale of marijuana;

Whereas, the Legislature enacted Senate Bill 460 (2015) to allow medical marijuana dispensaries to sell limited marijuana retail product starting October 1, 2015;

Whereas, the issue of whether a local government believes a certain type of business should operate within its jurisdictional limits is a local government decision, the enforcement of which is subject to the general and police powers of that jurisdiction;

Whereas, the City Council wants to provide business license regulations for marijuana dispensaries in the city to protect and benefit the public health, safety and welfare of existing and future residents and businesses in the city;

Whereas, the City of Rainier has set the following marijuana facility regulations as described in pages one through eleven;

SEVERABILITY, If any provisions of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable;

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Findings

1. State law authorizes the operation of marijuana facilities and provides those facilities with immunity from state criminal prosecution.
2. Although the State of Oregon has passed legislation authorizing marijuana facilities and providing criminal immunity under state law, the operation of those facilities remains illegal under federal law.
3. The city council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the city and subject to the general and police powers of the city, except when local action has been clearly and unambiguously preempted by state statute.
4. Whether a certain business should operate within a local jurisdiction is a local government decision, and local governments may enforce that decision through the general and police powers of that jurisdiction.
5. The city's licensing and regulatory system should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other license or regulatory requirement imposed by any other provisions of city ordinance or local, regional, state or federal law.
6. The city council wants to regulate the operation of marijuana facilities in the city in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the city.

Definitions

1. Marijuana, Medical marijuana or Recreational 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. It 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 there from), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. As used in this chapter, "marijuana" or "medical marijuana" refers to marijuana dried, produced, processed, kept, stored, delivered, transferred, dispensed or otherwise provided for the exclusive benefit of and use by a person to mitigate the symptoms or effects of a person's debilitating medical condition as defined in ORS 475.302.
2. Marijuana facility means a facility any facility or operation designed, intended or used for the purpose of delivering, dispensing or transferring marijuana to a person for Medical or Recreational purpose. A facility includes all premises,

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buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.

3. Operator means a person who owns, operates or otherwise has legal responsibility for a facility and who meets the qualifications established by the Oregon Health Authority and or the Oregon Liquor Control Commission an has been approved by the Oregon Health Authority and or Oregon Liquor Control Commission to operate a marijuana facility.
4. Principal means members, partners or corporate officers, and all stockholders holding more than 10 percent of the voting stock for any applicant who is not a natural person.

Rulemaking

1. All State Laws and Rules must be followed specifically Measure 91 the Control, Regulation and Taxation of Marijuana and Industrial Hemp Act and HB 3400 and HB 2041.
2. The City Administrator or the City Administrators designee has authority to adopt administrative rules and procedures necessary for the proper administration and enforcement of this chapter relating to the operation of a Marijuana facility.

License / Registration

1. Local License Required. Medical marijuana facilities must possess a valid license issued under this chapter to operate within the city. The license required by this chapter facilitates the registration and the city's oversight of a medical marijuana facility. The license required by this chapter should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other regulatory or license requirement imposed by any other provision of city ordinance or local, regional, state or federal law.
2. State Registration Required. To be eligible to apply for a license under this chapter, marijuana facilities for Medical and or Recreational must be registered with the Oregon Health Authority and or Oregon Liquor Control Commission and authorized by state law to operate. They must also follow all current and future State laws and rules that are formed.

License Application

1. Application / Renewals. Applications for new and renewed licenses must be submitted to City of Rainier. A separate application must be submitted for each proposed facility. The initial or renewal application must include the following information:

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- a. Certification that the proposed facility is registered at that location as a medical marijuana facility with the Oregon Health Authority pursuant to ORS 475.314 and or registered at the location as a recreational facility by the Oregon Liquor Control Commission.
- b. The applicant's name, residence address, and date of birth.
- c. The names and residence addresses of:
 - i. Any person or legal entity that has an ownership interest in the facility, including all principals of the applicant;
 - ii. Any person or legal entity with a financial interest that has loaned or given money or real or personal property to the applicant, or principal of the applicant, for use by the proposed facility within the preceding year;
 - iii. Any person or legal entity that has leased real property to the applicant for use by the facility and any person who manages that property; and
 - iv. Any person who is anticipated at the time of the application to be an employee or volunteer at the proposed facility.
- d. The business name.
- e. The address and telephone number of the proposed facility.
- f. The mailing address for correspondence about the license.
- g. A detailed description of the type, nature and extent of the business.
- h. The proposed days and hours of operation.
- i. A detailed description of the proposed accounting and inventory system of the facility.
- j. Certification that the facility has met all applicable requirements of the city development and sign code.
- k. Certification that all applicable taxes and fees have been paid.
- l. A complete application for a criminal background check for the applicant, and all principals, persons with a financial interest, employees, and volunteers of the proposed marijuana facility.
- m. The names of at least three natural persons who can give an informed account of the business and moral character of the applicant and principals.

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- n. The signature, under penalty of perjury, of the applicant, if a natural person, or otherwise the signature of an authorized agent of the applicant, if the applicant is other than a natural person.
 - o. Any and all other information deemed necessary by the Rainier City Administrator to complete review of the application.
2. Continuing obligation to update information. All information provided in an initial or renewal application must be kept current at all times, including after a license is issued. Each licensee shall notify the City of Rainier in writing within 7 Business Days of any change in the information provided to obtain the license. Failure to provide information may result in revocation of License to operate.

Issuance of License

1. Determination. Within 10 days after receiving a complete initial or renewal application and license fee for a marijuana facility license, the City of Rainier will issue the license if City Administrator finds that the facility is registered as a medical marijuana facility with the Oregon Health Authority pursuant to ORS 475.314 and or Recreational Facility that meets all Oregon Liquor Control Commission rules and meets all City of Rainier Ordinances / Rules and that all other requirements under this chapter have been met.
2. Denial. In addition to denial for failure to meet the requirements of this chapter, the City Administrator may deny a license if:
 - a. The applicant made an untrue, misleading, or incomplete statement on, or in connection with, the application for the license or a previous application for a license;
 - b. Notwithstanding the federal Controlled Substances Act, the applicant fails to meet all requirements of local, state, and federal laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations; or
 - c. The Owner and or employees have been convicted of any Felony Crimes.

Fees

1. Fee. An initial license application or renewal application must be accompanied by a Marijuana Facilities license fee. The fee amount will be established by Council Resolution.

Display of License

1. Display. The license issued under this chapter must be prominently displayed at all times in an easily visible location inside the facility.

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License, Tem, Renewal and Surrender

1. Termination. A license terminates automatically December 31st unless a license renewal application has been approved.
2. Renewal. A license may be renewed for additional year as provided by this chapter.
3. Renewal Application. Renewal applications shall be submitted, with the required license fee, to the City of Rainier not less than 30 days prior to the expiration date of the existing license.
4. Termination Due to Change in Law. A license terminates automatically if City, federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the facility under this ordinance.
5. Surrender. A licensee may surrender a 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.

Transferability

1. Licenses issued under this chapter may be transferred to another person upon determination by the City Administrator that the person receiving the license meets the requirements of this chapter for licensees. A Transferability fee equal to the current License fee will be charged.

Indemnification

1. Waiver. By accepting a marijuana facility license issued under this chapter, the licensee waives and releases the city, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of a facility owner or operator, principal, person or legal entity with a financial interest in the facility, person or entity that has leased real property to the facility, employee, volunteer, client or customer for a violation of federal, state or local laws and regulations.
2. Indemnification. By accepting a marijuana facility license issued under this chapter, the licensee(s), jointly and severally if there is more than one, agree to indemnify and hold harmless the city, its officers, elected officials, employees, volunteers, and agents, insurers, and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness,

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disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the marijuana facility that is the subject of the license.

Standards of Operation

1. **Registration and Compliance with Oregon Health Authority Rules.** The facility's registration as a medical marijuana facility under ORS 475.314 must be in good standing with the Oregon Health Authority, and the facility must comply with all applicable laws and regulations administered by the Oregon Health Authority for facilities. Recreational Marijuana facilities must comply with all recreational marijuana facility rules as outline by the State of Oregon and Oregon Liquor Control Commission.
2. **Compliance with Other Laws.** The facility must comply with all applicable laws and regulations, including, but not limited to, the building and fire codes.
3. **Hours of Operation.** Operating hours for medical marijuana facilities must be no earlier than 10:00 AM and no later than 8:00 PM on the same day. A marijuana facility may choose to open later in the day or close earlier, but must set its hours within this allowed time frame.
4. **If marijuana facilities are located with-in 200 feet of a church they must be closed on Christmas, Christmas Eve, Sundays and closed by 6:00 PM on Wednesdays.**
5. **Marijuana facilities can remain open on Sundays and Wednesdays after 6:00 PM with written approval of the church that is with-in 200 feet of facility. If approval is given for Sundays and Wednesdays written notice must be submitted to The City of Rainier. If written approval is given by the adjoining church it can be revoked at anytime with 30 days notice.**
6. **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.
7. **Odors.** Odor of marijuana is the characteristic of marijuana that may be perceived by the sense of smell. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premise to any other property. The facility must use an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of every law enforcement officer that is certified by the Oregon Board of Public Safety and Standards Training, is sufficiently trained to identify the sight and odor

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of marijuana and whose opinion as to the presence of the odor of marijuana shall be presumed affirmative proof thereof.

8. Violation of Odor of marijuana is declared to be a public nuisance and shall be abated pursuant to all available remedies.
9. Lighting. Facilities must maintain adequate outdoor lighting over each exterior exit.
10. Sales in Facility. Sales or any other transfers of marijuana on the facility premises must occur inside the facility building and must be conducted only between the facility.
11. On-Site Use. Marijuana and tobacco products must not be smoked, ingested, consumed or otherwise used on the premises of a medical marijuana facility.
12. On-Site Manufacturing. Manufacturing or production of any extracts, oils, resins or similar derivatives of marijuana is prohibited at a facility. Use of open flames or gases in the preparation of any products is prohibited at a facility.
13. Outdoor Storage. Outdoor storage of merchandise, raw materials or other material associated with the facility is prohibited.
14. Secure Disposal. The facility must provide for secure disposal of marijuana remnants or byproducts; marijuana remnants or by-products shall not be placed within the facility's exterior refuse containers.
15. Home Occupation. A facility may not be operated as a home occupation.
16. Drive-Through, Walk-Up. A facility may not have a walk-up window or a drive through.
17. Labeling. All products containing medical marijuana intended to be ingested (i.e. edibles) must be labeled with the product's serving size and the amount of tetrahydrocannabinol in each serving.
18. Accounting Systems. The medical marijuana facility must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the City of Rainier finds the books and records of the facility are deficient in any way or if the facility's accounting system is not auditable, the facility must modify the accounting system to meet the requirements of the Rainier City Administrator.
19. Accounting Records. Every facility must keep and preserve, in an accounting format, records of all sales made by the dispensary and such other books or accounts as may be required by the City of Rainier. Each facility must keep and

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preserve for a period of at least 2 years records containing at least the following information:

- a. Daily wholesale purchases (including grow receipts) and retail sales, including a cash receipts and expenses journal;
- b. State and federal income tax returns;
- c. True names and any aliases of any owner, operator, employee or volunteer of the facility;
- d. True names and addresses and any aliases of persons that have, or have had within the preceding year, a financial interest in the facility; and
- e. The City of Rainier Administrator may require additional information as he or she deems necessary.

Location

1. A Marijuana Facility authorized by ORS 475.300 et seq., shall not locate
 - a. Within a residence or mixed use property that includes a residence.
2. A Marijuana Facility authorized by ORS 475.300 et seq., shall be located more than;
 - a. 400 feet from any residential zone; and
 - b. 1000 feet from another Marijuana Facility; and
 - b. 1000 feet from of the real property comprising a public or private elementary, secondary or career school attended primarily by minors, public library, public park, recreation center or facility, licensed child care facility as defined by ORS 329A.250, public transit center or any game arcade where admission is not restricted persons age 21 or older.
 - c. The distance shall be measured in a straight line from premises to premises with premises being defined as the closest portion inside area of a building.

Signs

1. Signage shall comply with City of Rainier Sign code, in addition to City of Rainier Sign code; signs, displays, posters;
 - a. Will use the term cannabis if they need to reference marijuana.

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- b. All signage will be tasteful and may not include any images or illustrations of cannabis plant matter where viewable to the public.
- c. All signage placement and size should be compliant with Rainier City Sign code.
- d. Final design of such signage must be approved in writing by the City of Rainier.

Examination of Books, Records and Premises

1. Examination of Books, Records and Premises. To determine compliance with the requirements of this chapter and other chapters of _____ [*city's code*], a licensee shall allow the City of Rainier to examine or cause to be examined by an agent or representative designated by the Rainier City Administrator at any reasonable time, the premises of the facility, including wastewater from the facility, and any and all facility financial, operational and facility information, including books, papers, payroll reports, and state and federal income tax returns. Every licensee is directed and required to furnish to City of Rainier Administrator the means, facilities and opportunity for making such examinations and investigations.
2. Compliance with Law Enforcement. As part of investigation of a crime or a violation of this chapter which law enforcement officials reasonably suspect has taken place on the facility's premises or in connection with the operation of the facility, the Rainier City Police shall be allowed to view surveillance videotapes or digital recordings at any reasonable time. Without reducing or waiving any provisions of this chapter, the Rainier City Police shall have the same access to the facility, its records and its operations as allowed to state inspectors.

Civil Enforcement

1. Enforcement. The City Administrator may deny, suspend or revoke a license issued under this chapter for failure to comply with this chapter and rules adopted under this chapter, for submitting falsified information to the city or the Oregon Health Authority, or for noncompliance with any other city ordinances or state law.
2. Civil Penalty. In addition to the other remedies provided in this section, any person or entity, including any person who acts as the agent of, or otherwise assists, a person or entity who fails to comply with the requirements of this chapter or the terms of a license issued under this chapter, who undertakes an activity regulated by this chapter without first obtaining a license, who fails to

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comply with a cease and desist order issued pursuant to this chapter, or who fails to comply with state law shall be subject to a civil penalty not to exceed \$1000 per violation, per day.

3. **Other Remedies.** In addition to the other remedies provided in this section, the city may institute any legal proceedings in circuit court necessary to enforce the provisions of this chapter. Proceedings may include, but are not limited to, injunctions to prohibit the continuance of a licensed activity, and any use or occupation of any building or structure used in violation of this chapter.
4. **Remedies not Exclusive.** The remedies provided in this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under city ordinance or state law.

Public Nuisance

1. **Public Nuisance.** Any premises, house, building, structure or place of any kind where marijuana is grown, processed, manufactured, sold, bartered, distributed or given away in violation of state law or this chapter, or any place where medical marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this chapter, is a public nuisance.
2. **Action to Remedy Public Nuisance.** The city may institute an action in Municipal or Circuit court in the name of the city to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The city shall not be required to give bond in such an action.

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Confidentiality

1. Confidentiality. Except as otherwise required by law, it shall be unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial or employee information submitted or disclosed to the city under the terms of this chapter. Nothing in this section shall prohibit the following:
 - a. The disclosure of names and facility addresses of any licensee under this chapter or of other individuals associated with the marijuana facility, such as other owners;
 - b. The disclosure of general statistics in a form which would prevent identification of financial information regarding a facility;
 - c. The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the city under this chapter;
 - d. The disclosure of information upon request of a local, state or federal law enforcement official; or
 - e. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures or when such disclosure is ordered under the Oregon public Records law.

ENACTED THIS 19th day of October, 2015, by the City Council of the City of Rainier and signed by the Mayor on the 19th day of October, 2015.

CITY OF RAINIER

APPROVED AS TO FORM:

BY: _____
Jerry Cole, Mayor

BY: _____
Stephen D. Petersen,
City Attorney

ATTEST:

BY: _____
Debra Dudley,
City Administrator/ Finance Director/ City Recorder