

ORDINANCE NO. 987

AN ORDINANCE AMENDING THE STAYTON MUNICIPAL CODE TITLE 5, CHAPTERS 5.08 AND 5.12 RELATING TO BUSINESS LICENSES / PERMITS AND MARIJUANA FACILITIES REGULATIONS AND VIOLATIONS

WHEREAS, the State of Oregon has approved sales and use of recreational and medical marijuana;

WHEREAS, the State of Oregon has given local government the ability to set regulations based on time, manner, and place on the sales of marijuana;

WHEREAS, the governing body of the City of Stayton has approved marijuana facilities to operate within the City of Stayton and has directed staff to create regulations regarding the time, manner and place that marijuana facilities may operate;

WHEREAS, the City of Stayton desires to update the Stayton Municipal Code (SMC) Title 5.08 to allow marijuana facilities to operate within the City; and,

WHEREAS, the City of Stayton desires to update the SMC Title 5.12 establishing regulations in regard to time, manner and place for the marijuana facilities.

NOW THEREFORE, the City of Stayton ordains:

SECTION 1. SMC Section 5.08.110.1.f is amended to read as follows: (additions are underlined; deletions are ~~crossed out~~):

f. Marijuana Facilities ~~Dispensary~~

SECTION 2. SMC Section 5.08.110.3 is repealed.

SECTION 3. SMC Section 5.08.250 is amended to remove the fines and to specify that fines shall be established by resolution, to read as follows (additions are underlined; deletions are ~~crossed out~~):

A violation of this Title is punishable by a fine ~~of not less than One Hundred Dollars (\$100.00) but not to exceed Five Hundred Dollars (\$500.00). Each day that an activity continues after notice of the violation shall be considered a separate offense~~ set by Council Resolution.

SECTION 4. SMC Chapter 5.12 relating to Medical Marijuana Dispensaries/Facilities is amended to read as set forth in Exhibit A, attached hereto as incorporated herein, replacing and superseding the current text of SMC Title 5.12

SECTION 5. Upon enactment by the Stayton City Council and the Mayor's signature, the Ordinance shall become effective 30 days after enactment.

ADOPTED BY THE STAYTON CITY COUNCIL THIS 21ST DAY OF SEPTEMBER, 2015.

Signed: 9/21/15

CITY OF STAYTON
By: Henry A. Porter
Henry A. Porter, Mayor

Signed: 9/21/15

ATTEST
By: Keith Campbell
Keith Campbell, City Administrator

APPROVED AS TO FORM:
David A. Rhoten
David A. Rhoten, City Attorney

CHAPTER 5.12

~~MEDICAL MARIJUANA DISPENSARIES/FACILITIES~~

SECTIONS

5.12.010	Purpose
5.12.020	Definitions
5.12.030	Moratorium Declared
5.12.030A	Declaration
5.12.030B	Effective Date
5.12.030C	Remedies Not Exclusive
5.12.030	Enforcement
<u>5.12.030</u>	<u>Licensing</u>
<u>5.12.040</u>	<u>Location and Hours of Operation</u>
<u>5.12.050</u>	<u>Facility and Security</u>
<u>5.12.060</u>	<u>Product and Usage</u>
<u>5.12.070</u>	<u>Enforcement</u>
<u>5.12.0850</u>	<u>Severability</u>

5.12.010 PURPOSE

~~The purpose of this Chapter is to put into place reasonable regulations to govern Medical Marijuana Dispensaries or Facilities as allowed by state law. State law also allows for local government to place a temporary moratorium on medical marijuana dispensaries/facilities.~~

- A. This Chapter provides regulations that supplement the Oregon Revised Statutes (ORS), and administrative rules of the Oregon Health Authority's Medical Marijuana Program (OHA) and the Oregon Liquor Control Commission (OLCC), for the purpose of protecting the citizens and businesses of Stayton regarding marijuana matters.
- B. Certification and licensing by the State of Oregon is not a guarantee that a marijuana facility is permitted to operate under applicable local municipal regulations. All facilities shall comply with the regulations set forth in this Chapter, Title 17, and other applicable provision of this Code.

5.12.020 DEFINITIONS

For the purposes of this Chapter, any word or phrase defined by the Oregon Revised Statutes or an administrative rule of the Oregon Health Authority or Oregon Liquor Control Commission and not defined below shall have the same meaning as defined by statute or rule; otherwise, the following words and phrases mean:

FINANCIAL INTEREST: A financial interest exists when a person, the person's immediate family, or legal entity to which the person is a principal (1) receives or is entitled to receive directly or indirectly any of the profits of the enterprise; (2) rents or leases real property to the operator for use by the business; (3) rents or leases personal property to the operator for a commercially unreasonable rate; or (4) lends or gives money, real property, or personal property to the operator for use in the business.

INSPECTION, FORMAL: A scheduled inspection of the facilities, its owners, or operators to insure compliance with state and local regulations. This may include but not limited to owner and employee background checks, police reports, product inspection, security inspections, sales tracking procedures, financial, operational and facility information, payroll reports, and interviews with staff.

INSPECTION, INFORMAL: An unscheduled "walk through" of the facility to ensure compliance and assist with the safety of the public and the facility staff. Informal inspections should not interfere with day to day business unless an immediate issue needs to be addressed.

MARIJUANA: All parts of the plant of the Cannabis (Moraceae) family, 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, as may be defined by Oregon Revised Statutes. 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 therefrom), fiber, oil, cake or the sterilized seed of the plant which is incapable of germination.

MARIJUANA FACILITY: Any facility or business that dispenses, sells, gives, wholesales, produces, or processes either medical or recreational marijuana pursuant to Oregon Revised Statute.

MARIJUANA PROCESSING SITE: Location where processing of marijuana occurs.

MARIJUANA PROCESSOR: A person who processes marijuana.

MARIJUANA PRODUCER: A person who produces marijuana.

MARIJUANA RETAILER: A person who sells marijuana items to a consumer.

MARIJUANA WHOLESALER: A person who provides marijuana items for resale to a retailer.

MEDICAL MARIJUANA DISPENSARY: A business which sells medical marijuana products.

OPERATOR: The person who is the proprietor of a facility, whether in the capacity of company principal, owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. If the operator is a corporation, the term operator also includes its officers and each and every member of the corporation's board of directors whose directorship occurs in a period during which the facility is in operation. If the operator is a partnership or limited liability company, the term operator also includes each and every member thereof whose membership occurs in a period during which the facility is in operation.

PROCESSES: The processing, compounding or conversion of marijuana into marijuana products or marijuana extracts; The processing, compounding, or conversion of marijuana either directly or indirectly by extraction from substances of natural origin or independently by means of chemical syntheses or by a combination of extraction and chemical synthesis; the packaging or repackaging of marijuana items or the labeling or relabeling of any package or container if marijuana items.

PRODUCES: The manufacture, planting, cultivation, growing, or harvesting of marijuana.

RETAIL MARIJUANA FACILITY: A business that sells recreational use marijuana products to the consumer.

~~5.12.030 — MORATORIUM DECLARED~~

- ~~A. — DECLARATION: The City of Stayton hereby declares a moratorium prohibiting the operation of any medical marijuana facility or dispensary in any area subject to the jurisdiction of the City of Stayton as the areas now exist or may be expanded.~~
- ~~B. — EFFECTIVE DATE: The moratorium imposed hereby is effective from and after the enactment of this Chapter and continues until May 1, 2015, unless otherwise lawfully rescinded or extended.~~
- ~~C. — REMEDIES NOT EXCLUSIVE: The remedies available under Senate Bill 1531 (2014) for a violation of the moratorium imposed by SMC Chapter 5.12 are not exclusive of any other remedies available under any applicable federal, state or local law. It is within the discretion of the City of Stayton to seek cumulative remedies for a violation of the moratorium imposed by this Chapter. Violations of this Chapter may be enforced according to SMC Chapter 5.08.~~

~~5.12.030 — ENFORCEMENT~~

- ~~A. The Chief of Police is charged with the enforcement of the provisions of this Chapter.~~

5.12.030 LICENSING

- A. No person shall establish, maintain or operate a marijuana facility within the City unless a City of Stayton Marijuana Facility license for that use is obtained from the City. The Stayton Police Chief shall issue a Facility License if the applicant fulfills all requirements of this Title.
- B. Each facility must continue to be licensed/registered and in good standing as an Oregon Marijuana Facility pursuant to state law.
- C. No facility or person will be issued a City license without proof of liability insurance for the facility, with coverage of not less than one million dollars per occurrence and two million dollars aggregate. The City may increase this minimum requirement under special circumstances that may cause an increase in risk such as, but not limited to, building location to another business or property.
- D. Facility License Term: Each facility must renew the City of Stayton marijuana business license each year. Facility licenses shall be issued on a calendar year basis for a term of one year or portion thereof beginning upon the date of approval of the original application. All facility licenses shall expire on December 31st of the year issued. If a licensee intends to continue to operate during the following license year, not less than thirty days prior to the license expiration, the licensee shall complete a license renewal application and pay the annual license fee. A facility's license shall not be sold, assigned, mortgaged or otherwise transferred.
- E. Criminal background checks will be performed by the City on facility operators, entity company principals, employees, volunteers of a facility, or those who have a financial interest in the facility. Criminal background checks will be performed on the applicants in the original application and each renewal application as allowed by Oregon Revised Statute.
- F. Facility License Fee: Upon submission of an original application for a marijuana facility license, the applicant shall submit a non-refundable application background investigation fee and the annual marijuana facility license fee as set by Council resolution. If an applicant applies for a marijuana facility license after July 1st, the annual license fee shall be reduced by one-half for the remaining portion of the first license year. The background investigation fee will not be reduced. The background investigation fee will be set based on the number of employees/staff as a criminal history check will be conducted on each employee. No portion of the license fee or background investigation fee is refundable in the event the operation of the facility is discontinued for any reason.
- G. The facility owner/operator shall notify the City and provide information for any new employees or volunteers throughout the year. A background investigative fee will be collected on each new employee or volunteer.

- H. The application for a license must include the information necessary for background checks of a criminal record of any and all owner(s), manager(s), operator(s), employee(s), agent(s), or volunteer(s). The City of Stayton will conduct all necessary background checks prior to issuing a facility license.
- I. The City shall deny a license if any facility operators, company principals, employees, volunteers of a facility, or those who have a financial interest in the facility do not meet the requirements set by the State of Oregon or if they meet the requirements for denial. In addition, the person may not have been convicted for the following crimes in the past 5 years:
1. Felony Person Crimes
 2. Misdemeanors related to drug charges
 3. Driving Under the Influence of Intoxicants
 4. Crimes of Fraud and Deceit
- J. Once the facility is licensed, the licensee must notify the City, remit the appropriate investigation fee, and submit necessary information for background checks of a criminal record of any new owner, manager, operator, employee, agent, or volunteer. Failing to update the City accordingly may result in a fine and/or revocation of the license.
- K. The City may deny an initial application or renewal license due to background checks of owners and employees, et.al, failure to comply with State laws and regulations, previous violations of the SMC 8.20 Chronic Nuisance Property, or failure to comply with SMC Title 17.
- L. If the City chooses to deny the approval of a facility license, the applicant will be sent a certified letter of denial stating the reason for the denial. Denial of an initial license application may be appealed to the Administrator within 30 days of receiving the reason for denial. The Administrator's decision is the City's final administrative decision.
- M. The marijuana facility will be given 60 days from the date of denial to correct the reason for the initial application denial if correction is possible.
- N. The license authorized by the City shall be displayed in a manner visible to persons conducting business in the facility.
- O. Each facility must allow reasonable scheduled formal inspections during the annual license renewal process or for reported issues. Without reducing or waiving any provisions of this Chapter, the Stayton Police Department shall have the same access to the facility, its records, and its operation as allowed to State inspectors. Denial or interference with access shall be grounds for revocation or suspension of the facility license.

- P. Each facility must allow for reasonable informal inspections at any time.
- Q. Each facility must comply with all State or local laws and regulations including, but not limited to, building and fire codes, including payment of all fines, fees, and taxes owing to the City.

5.12.040 LOCATION AND HOURS OF OPERATION

- A. No marijuana facility may be located within 1,000 feet of another marijuana facility and 200 feet from any residence. However, if the residence is an apartment within a Commercial, Industrial or Downtown zone, as described in Chapter 17.16, and is part of an existing mixed-use structure such as a second story apartment above a business, the facility is not required to be more than 200 feet from the residence.
- B. Marijuana facilities may not be located within 1,000 feet of a public or private school. A school is one described by ORS, OLCC, and OHA. However, if a school moves to within a 1,000 feet of a pre-existing marijuana facility, the facility is not required to move unless the facility changes ownership.
- C. Distances from the facility will be calculated from the closest point with respect to property lot lines.
- D. The hours of operation for a Medical Marijuana Dispensary or Retail Marijuana Facility may not be outside of 9am to 7pm.

5.12.050 FACILITY AND SECURITY

- A. Marijuana facilities are required to utilize air filtration which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purpose of this provision, the standard for judging "objectionable odors" shall be that of an average, 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.
- B. All marijuana products must be kept in a secure and locked storage unit including refrigerated products.
- C. Marijuana facilities must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the facility's exterior refuse containers.
- D. No loitering outside of the facility within 15 feet of the entrance of the facility
- E. Alarm systems must have a City of Stayton permit in accordance with Title 8.

- F. Marijuana facilities may not use or implement any type of device or apparatus that is designed to injure, maim, or kill by the contact of any person with any string, wire, rod, stick, spring, or other contrive affixed to it or connected with it or with its trigger for the purpose of activating the device including, but not limited to, any spring gun or set gun as prohibited by law.
- G. If security officers are used for marijuana facility security they must be certified through the Oregon Department of Public Safety Standards and Training and registered with the Stayton Police Department.
- H. All criminal incidents, whether attempted or actual, must be reported to the Stayton Police Department as soon as they occur or as soon as they are discovered.

5.12.060 PRODUCT AND USAGE

- A. No marijuana products may be consumed on the facility's premises in any form including persons with medical cards.
- B. No person under the age of 21 may be present on the premises at any time. Exception: OLCC/OHA and/or Stayton Police underage decoy persons may be on the premise for the purpose of compliance checks.
- C. No marijuana products may be sold or given to a person under the age of 21.
- D. No marijuana products may be sold or given to an individual knowing the product will be sold or given to a person under the age of 21 or used in violation of State law.
- E. All sales or transfers of marijuana products must occur completely inside the marijuana facility building.
- F. No marijuana sales or transfers may be conducted through a "drive up" or "walk up" window service.
- G. Items used or designed specifically for using, smoking, ingesting, inhaling, or processing of marijuana such as pipes, bongs, vaporizers, etc. may only be sold in a licensed marijuana retail facility or medical marijuana dispensary .
- H. Cannabinoid extract products may only be produced in an Oregon State licensed facility in an industrial zone.
- I. Cannabinoid concentrates may only be produced following State statute or rules.

5.12.070 ENFORCEMENT

- A. The Stayton Chief of Police or designee is charged with the enforcement of the provisions of this Chapter.
- B. As part of investigation of a crime or violation of ORS or this Chapter, which law enforcement officials reasonably suspect has taken place on the premises of the facility, the Stayton Police shall be allowed to view surveillance video or digital records at any reasonable time.
- C. Violations of this Chapter are punishable by a fine set by City Council resolution. Fines for violations of this Title may be based per violation or per day the facility is out of compliance and continues to operate. For example if an employee is fined for consuming product on the premises, that person may receive a one-time fine for the violation. If the facility operates without a license it may be fined per day that it continues to operate without being in compliance.
- D. For non-safety issue violations the facility may be allowed up to 10 days to become compliant before a fine may be declared.
- E. The Stayton Chief of Police has the authority to revoke the facility license based on serious or continued uncorrected violations of the SMC. If the license is revoked, a report shall be submitted to the Stayton Municipal Court. On application of the affected party, a revocation hearing shall be held at the Municipal Court within 30 days. The Municipal Court Judge shall rule whether to uphold the revocation or reinstate the license. A report shall then be submitted to the OLCC/OHA notifying them of the status of the facility. After the initial revocation hearing and within the current license year, the facility owner/operator may request an additional hearing with the Municipal Court Judge to show they have corrected the violation(s) for which the license was revoked. The Municipal Court Judge may then rule as to whether the license may be reinstated or continue to be revoked. If the facility requests reinstatement after the current licensing year, it shall re-apply for a new license after a reinstatement hearing. The Municipal Court Judge ruling is the final decision of the City.
- F. The City is not responsible for any loss, including financial loss due to a revocation or denial of a facility license.

~~A. The Chief of Police is charged with enforcement of the moratorium.~~

5.12.080 SEVERABILITY

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

