

ORDINANCE NO. 2089

AN ORDINANCE AMENDING TITLE IV OF THE NEWPORT MUNICIPAL CODE TO REQUIRE A RECREATIONAL MARIJUANA FACILITIES BUSINESS LICENSE ENDORSEMENT FOR COMMERCIAL MARIJUANA PRODUCERS, PROCESSORS, WHOLESALERS, RETAILERS AND LABORATORIES OPERATING WITHIN THE CITY OF NEWPORT, OREGON

Whereas, in November of 2014, Oregon voters approved Measure 91, legalizing the sale and consumption of marijuana subject to Oregon law; and

Whereas, the Oregon Liquor Control Commission (OLCC) is tasked with developing and implementing state regulations for licensing businesses involved in the production, processing, transport, sales, testing, and delivery of marijuana for commercial recreational use (collectively “recreational marijuana facilities”); and

Whereas, OLCC adopted temporary administrative rules outlining how they intend to regulate recreational marijuana facilities on October 22, 2015 and is required to begin accepting applications for licenses on January 4, 2016; and

Whereas, HB 3400 was enacted by the 2015 Oregon Legislature, and was signed into law by the Governor on June 30, 2015, amending Measure 91; and

Whereas, HB 3400 provides that local governments may adopt ordinances that impose reasonable regulations on the operation of OLCC licensed premises, including authority to prohibit a premises for which a license has been issued from locating within 1,000 feet of another premises for which a license has been issued; and

Whereas, marijuana is classified as a Schedule I controlled substance under the Federal Controlled Substances Act, the use, possession, and sale of which is currently illegal under federal law; and

Whereas, this conflict between state and federal law creates uncertainty about cities’ ability to regulate recreational marijuana facilities within their boundaries in compliance with both state and federal law; and

Whereas, pursuant to Article IX, Section 2 of the Oregon Constitution and the Newport Charter, the City of Newport is a home rule municipality with all the powers that the constitutions, statutes, and common law of the United States and the State of Oregon expressly or impliedly grant or allow the City; and

Whereas, the City Council requested that the Newport Planning Commission evaluate whether or not the City Council should regulate recreational marijuana facilities in light of HB 3400, administrative rules adopted by OLCC, and the City’s home rule authority; and

Whereas, the Planning Commission considered the matter at a work session on October 26, 2015 and there was general consensus amongst the members present that the Council should amend the City's business license code to require a business license endorsement for recreational marijuana facilities comparable to what is currently in place for medical marijuana dispensaries; and

Whereas, the Planning Commission further believed that the City Council should put in place a 1,000 foot spacing requirement between marijuana retailers; and

Whereas, the Commission's rationale for such changes, with which the City Council concurs, is (a) the Newport Police Department needs the additional enforcement tools contained in the ordinance so that it can effectively navigate the difficult position it is in because of the difference between state and federal laws, and (b) allowing retail marijuana businesses to concentrate in a specific area, particularly one that is tourist-oriented, could change how residents and visitors experience the area in a manner that negatively impacts existing tourist-oriented businesses; and

Whereas, after conducting a public hearing, the City Council determined that a 1,000 foot spacing requirement should be put in place between marijuana retailers and established child care facilities, reasoning that children at such facilities are just as impressionable as those that attend an elementary or secondary school where the State has imposed a 1,000 foot spacing requirement; and

Whereas, given the level of investment that operators of existing medical marijuana facilities have made in their respective businesses, it is appropriate for the City to view such facilities, where licensed by the Oregon Health Authority to sell limited marijuana retail products, as recreational marijuana facilities. This will afford the business operators an opportunity to obtain an OLCC retail marijuana license without risk of being denied a Newport business license as a result of the 1,000 foot spacing requirement; and

Whereas, the City Council reviewed maps of established child care facilities, elementary, and secondary schools and determined that a reasonable amount of land exists outside of the 1,000 foot buffers for marijuana retailers to establish businesses in accordance with the City of Newport Comprehensive Plan and Zoning Ordinance.

Now, therefore, the City of Newport ordains as follows:

Section 1. The above referenced recitals are hereby adopted as support for the amendments, below.

Section 2. Title IV of the Newport Municipal Code is hereby amended to read as follows:

CHAPTER 4.20 RECREATIONAL AND MEDICAL MARIJUANA FACILITIES

4.20.010 Definitions

The following definitions apply within this chapter:

Child Care Facility: means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except care provided:

- a. In the home of the child;
- b. By the child's parent, or legal guardian;
- c. By a person related to the child by blood or marriage;
- d. On an occasional basis by a person not ordinarily engaged in providing child care;
- e. By providers of medical services;
- f. By a babysitter;
- g. By a person who cares for children from only one family other than the person's own family;
- h. By a person who cares for no more than three children other than the person's own children; or
- i. By a person who is a member of the child's extended family, as determined by the State of Oregon, Office of Child Care.

Medical Marijuana Facility: a facility licensed by the Oregon Health Authority to:

1. Accept the transfer of usable marijuana and immature marijuana plants from a registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or
2. Transfer usable marijuana and immature marijuana plants to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder; or
3. Sell limited marijuana retail product(s) consistent with state law and under rules promulgated by the Oregon Health Authority.

Medical Marijuana Facility Endorsement: a business license endorsement issued by the City of Newport to a Medical Marijuana Facility pursuant to the terms and conditions of this chapter.

Person Responsible for a Medical or Recreational Marijuana Facility: an individual who owns, operates, or otherwise has legal responsibility for a Medical or Recreational Marijuana Facility.

Recreational Marijuana Facility: a facility licensed by the Oregon Liquor Control Commission to produce, process, transport, sell, test or deliver marijuana for commercial recreational purposes.

Recreational Marijuana Facility Endorsement: a business license endorsement issued by the City of Newport to a Recreational Marijuana Facility pursuant to the terms and conditions of this chapter.

Registry Identification Card: a document issued by the Oregon Health Authority that identifies an individual authorized to engage in the medical use of marijuana and, if the individual has a designated primary caregiver under ORS 475.312, the individual's designated primary caregiver.

Registry Identification Cardholder: an individual 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 individual's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

4.20.015 Business License Endorsement Requirement

No person shall establish, conduct, maintain, manage, or operate a Medical or Recreational Marijuana Facility in the City of Newport without a valid business license issued by the City of Newport pursuant to chapter 4.05 of this Title and a Medical or Recreational Marijuana Facility Endorsement issued by the City of Newport pursuant to this chapter.

4.20.020 Application Requirements

- A. The Person Responsible for a Medical or Recreational Marijuana Facility must apply for a Medical or Recreational Marijuana Facility Endorsement on a form provided by the city. In addition to the information required by section 4.05.040 of this Title, an applicant for a Medical or Recreational Marijuana Facility Endorsement must provide the city with the following information:
- B. The name and contact information (including at least a telephone number) of the Person Responsible for the Medical or Recreational Marijuana Facility;

- C. The address or location of the Medical or Recreational Marijuana Facility;
- D. Proof of registration with the State of Oregon.
 - 1. For a Medical Marijuana Facility, proof of registration shall be obtained from the Oregon Health Authority at the location indicated on the application, including the Medical Marijuana Facility's registration number.
 - 2. For a Recreational Marijuana Facility, proof of registration shall be a copy of a license issued by the Oregon Liquor Control Commission at the location indicated on the application, including the Recreational Marijuana Facility license number;
- E. Criminal background check requests, on a form provided by the city, from the Person Responsible for the Medical or Recreational Marijuana Facility and any employees of the Medical or Recreational Marijuana Facility; and
- F. The executed agreement required by section 4.20.025 of this Chapter.

4.20.025 Agreement

The city will not issue a Medical or Recreational Marijuana Facility Endorsement unless and until the Person Responsible for the Medical or Recreational Marijuana Facility submits an executed agreement, on a form required by the city, agreeing to the following conditions:

- A. The Person Responsible for the Medical or Recreational Marijuana Facility and any employees working at the Medical or Recreational Marijuana Facility will cooperate with the city during an inspection authorized by section 4.20.050 of this Title;
- B. The city will have the same access to any and all video surveillance records and recordings of a Medical Marijuana Facility as the Oregon Health Authority does pursuant to OAR 333-008-1180(2)(e) or of a Recreational Marijuana Facility that the Oregon Liquor Control Commission does pursuant to OAR 845-025-1430;
- C. The city will have the same access to any and all documentation required to be maintained under rules adopted by the Oregon Health Authority as the Oregon Health Authority does pursuant to OAR 333-008-1210(5) or rules adopted by the Oregon Liquor Control Commission as the Oregon Liquor Control Commission does pursuant to OAR 845-025-1200 ;

- D. The Person Responsible for a Medical or Recreational Marijuana Facility will direct the security company required by OAR 333-008-1150(4)(b) or OAR 845-025-1420(2)(b) to notify the City of Newport Police Department any time the alarm system required by OAR 333-008-1150 or OAR 845-025-1420 is triggered at the Medical or Recreational Marijuana Facility;
- E. The Person Responsible for the Medical or Recreational Marijuana Facility understands and agrees that neither the issuance of a business license nor the issuance of a Medical or Recreational Marijuana Facility Endorsement constitute a permit to engage in any activity prohibited by law or as a waiver of any other regulatory or license requirement imposed by the city or by any federal, state, or local law; and
- F. The Person Responsible for the Medical or Recreational Marijuana Facility agrees to notify the city of any employees hired by the Medical or Recreational Marijuana Facility after issuance of the Medical or Recreational Marijuana Facility Endorsement and prior to their first day of employment, will provide the city with criminal background check requests, on a form provided by the city, from the new employees.

4.20.030 Background Checks

The City of Newport Police Department will conduct background checks pursuant to this chapter to determine whether an individual has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:

- A. Once or more within the last five years; or
- B. Twice or more in the individual's lifetime.

The City of Newport Police Department may accept a background check performed by the Oregon Health Authority or the Oregon Liquor Control Commission in lieu of conducting its own background check.

4.20.035 Fees

An applicant for a Medical or Recreational Marijuana Facility Endorsement must pay a surcharge in an amount established by resolution of the City Council in addition to the business license application fee established under section 4.05.020 of this Title.

4.20.040 Issuance

- A. A Medical or Recreational Marijuana Facility Endorsement will only be issued if:

1. The application is complete and accurate;
 2. The agreement required by section 4.20.025 is fully executed;
 3. The Medical or Recreational Marijuana Facility has been registered and/or licensed by the responsible state agency at the location indicated in the application;
 4. The applicant is otherwise eligible for a City of Newport business license issued under Chapter 4.05 of this Title;
 5. The applicant has paid all the required fees;
 6. Neither the Person Responsible for the Medical or Recreational Marijuana Facility nor any employee of the Medical or Recreational Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:
 - a. Once or more within the last five years; or
 - b. Twice or more in the individual's lifetime; and
 7. In cases where a Recreational Marijuana Facility is involved in retail sales of marijuana items, such facility is located at least 1,000 feet from another Recreational Marijuana Facility that is engaged in retail sales of marijuana items. A Medical Marijuana Facility licensed by the Oregon Health Authority to sell limited marijuana retail products shall be considered a Recreational Marijuana Facility for the purposes of this requirement.
 8. In cases where a Recreational Marijuana Facility is involved in retail sales of marijuana items, such facility is located at least 1,000 feet from an established child care facility identified and depicted on a map prepared by the City of Newport titled "Child Care Facilities in the City of Newport."
- B. For the purpose of determining the distance between marijuana retailers or a marijuana retailer and child care facility, to establish compliance with the requirements of section 4.20.040(A) of this Title, "within a 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property of an established marijuana retailer or child care facility and the closest point of the licensed premises.

- C. In the event that a child care facility is established within 1,000 feet of a marijuana retailer for which a business license endorsement has been issued, the marijuana retailer located at that premises may remain at that location unless the City of Newport revokes the endorsement pursuant to section 4.20.055 of this Title.
- D. A Medical Marijuana Facility licensed by the Oregon Health Authority to sell limited marijuana retail products as of January 7, 2016 that later becomes a marijuana retailer regulated by the Oregon Liquor Control Commission may be located within 1,000 feet of a child care facility.
- E. The endorsement issued by the city must include at least the address or other location of the Medical or Recreational Marijuana Facility and the name of the Person Responsible for the Medical or Recreational Marijuana Facility.
- F. If an application for a Medical or Recreational Marijuana Facility Endorsement is denied, the city will notify the applicant in writing of the denial and the reasons for the denial as provided in section 4.05.050B of this Title.

4.20.045 Endorsement Non-Transferable; Notification of Change in Person Responsible

- A. A Medical or Recreational Marijuana Facility Endorsement is not assignable or transferable.
- B. A Medical or Recreational Marijuana Facility Endorsement authorizes the operation of the Medical or Recreational Marijuana Facility only at the location displayed on the endorsement.
- C. If the Medical or Recreational Marijuana Facility notifies a state agency of a change in the Person Responsible for the Medical or Recreational Marijuana Facility the Medical or Recreational Marijuana Facility shall concurrently notify the city of the change and shall apply for a new Medical Marijuana Facility Endorsement.

4.20.050 Inspection

- A. The city may conduct a complaint inspection at any time following the receipt of a complaint that alleges that a Medical or Recreational Marijuana Facility is in violation of any of the terms of this chapter;
- B. The city may conduct an inspection at any time city staff have reason to believe that a Medical or Recreational Marijuana Facility is in violation of any of the terms of this chapter; and

- C. If an individual at a Medical or Recreational Marijuana Facility fails to permit city staff to conduct an inspection, the city may seek an administrative warrant authorizing the inspection.

4.20.055 Revocation

- A. The City Manager may revoke a Medical Marijuana Facility Endorsement if:

1. The Person Responsible for the Medical Marijuana Facility knowingly makes a material false statement or omission in connection with the issuance of the endorsement; or
2. The Oregon Health Authority revokes the registration of the Medical Marijuana Facility to which the endorsement has been issued; or
3. The Medical Marijuana Facility transfers usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver unless specifically authorized to do so by the Oregon Health Authority; or
4. The Medical Marijuana Facility accepts a transfer of usable marijuana or immature plants without a valid authorization from the patient; or
5. The Medical Marijuana Facility possesses a mature marijuana plant at the Medical Marijuana Facility; or
6. The Medical Marijuana Facility fails to notify the City Manager of a change in the Person Responsible for the Medical Marijuana Facility and to apply for a new Medical Marijuana Facility Endorsement; or
7. The Medical Marijuana Facility is in violation of any of the terms of the agreement required by section 4.20.025 of this chapter; or
8. City staff discover that the Person Responsible for the Medical Marijuana Facility or any employee of the Medical Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:
 - a. Once or more within the last five years; or
 - b. Twice or more in the individual's lifetime.

- B. The City Manager may revoke a Recreational Marijuana Facility Endorsement if:

1. The Person Responsible for the Medical Marijuana Facility knowingly makes a material false statement or omission in connection with the issuance of the endorsement; or
2. The Oregon Liquor Control Commission revokes the license of the Recreational Marijuana Facility to which the endorsement has been issued; or
3. The Recreational Marijuana Facility imports into this state or exports from this state any marijuana items (i.e. marijuana, cannabinoid products, cannabinoid concentrates, or cannabinoid extracts); or
4. The Recreational Marijuana Facility gives marijuana items as a prize, premium or consideration for lottery, contest, game of chance or game of skill, or competition of any kind; or
5. The Recreational Marijuana Facility sells, gives, or otherwise makes available any marijuana items to any person who is visibly intoxicated; or
6. The Recreational Marijuana Facility misrepresents any marijuana item to a customer or to the public; or
7. The Recreational Marijuana Facility is operated in a noisy, disorderly or insanitary manner or supplies adulterated marijuana items; or
8. The Recreational Marijuana Facility fails to notify the City Manager of a change in the Person Responsible for the Recreational Marijuana Facility and to apply for a new Recreational Marijuana Facility Endorsement; or
9. The Recreational Marijuana Facility sells any marijuana item through a drive up window; or
10. The Recreational Marijuana Facility is engaged in the delivery of marijuana to a consumer off the licensed premises except as permitted by OAR 845-025-2880; or
11. The Recreational Marijuana Facility is in violation of any of the terms of the agreement required by section 4.20.025 of this chapter; or
12. The Recreational Marijuana Facility sells or offers to sell a marijuana item that does not comply with the minimum standards prescribed by the stator laws of the State of Oregon; or

13. City staff discover that the Person Responsible for the Recreational Marijuana Facility or any employee of the Recreational Marijuana Facility, whether paid or unpaid, is under the influence of intoxicants while on duty; or
 14. City staff discover that the Person Responsible for the Recreational Marijuana Facility or any employee of the Recreational Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:
 - a. Once or more within the last five years; or
 - b. Twice or more in the individual's lifetime.
- C. If a Medical or Recreational Marijuana Facility Endorsement is revoked, the city will notify the licensee in writing of the revocation and the reasons for the revocation as provided in sections 4.05.060B of this Title, except that revocation of a Medical or Recreational Marijuana Facility Endorsement will take effect immediately upon revocation of the Medical Marijuana Facility's registration by the Oregon Health Authority or Recreational Marijuana Facility license by the Oregon Liquor Control Commission.
- D. Notwithstanding section 4.05.060 of this Title, a business license with a Medical or Recreational Marijuana Facility Endorsement will not be revoked solely for violation of federal laws regarding the manufacture, delivery, or possession of marijuana if the conduct that violates federal law is allowed under state law.

4.20.060 Appeal

The decision by the City Manager to deny or revoke a Medical or Recreational Marijuana Facility Endorsement may be appealed to the City Council as provided in Section 4.05.075 of this Title. Appeal of the City Council's denial or revocation of a Medical or Recreational Marijuana Facility Endorsement shall be by writ of review filed in the Circuit Court of Lincoln County.

4.20.065 Violation

Violation of any of the provisions of this chapter is a civil infraction with a maximum penalty of \$500.00. Each day during which a violation occurs constitutes a separate offense. Violations of separate provisions of this chapter constitute separate infractions. The penalties imposed by this

section are in addition to and not in lieu of any other remedies available to the city.

Section 3. Severability

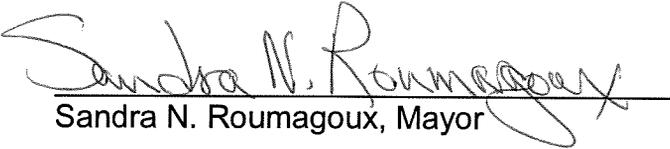
Each section of this ordinance, and any part thereof, is severable. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

Section 4. Effective Date

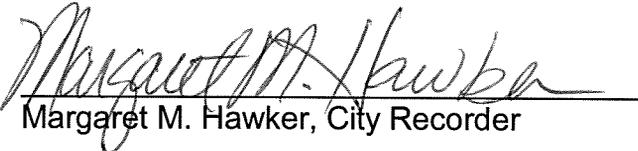
This ordinance shall take effect 30 days after passage.

Date adopted and read by title only: December 7, 2015.

Signed by the Mayor on December 8, 2015.


Sandra N. Roumagoux, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

Approved as to form:


Steve Rich, City Attorney