

ORDINANCE NO. 247

AN ORDINANCE AMENDING SECTION 155.2.1.111 TO ADD MARIJUANA PRODUCERS TO THE LIST OF CONDITIONAL USES THAT REQUIRE A CONDITIONAL USE PERMIT IN THE R-1 ZONE; ADDING A NEW SECTION 155.2.1.270 TO ADD SPECIAL STANDARDS THAT RECREATIONAL MARIJUANA PRODUCERS AND RECREATIONAL MARIJUANA PRODUCTION MUST MEET IN THE R-1 ZONE, ADDING NEW PROVISIONS TO TERMINATE ANY CONDITIONAL USE PERMIT GRANTED UNDER THE TERMS OF THIS SECTION 155.2.1 UPON ANY CHANGE OF USE OR OWNERSHIP OF THE REAL PROPERTY FOR WHICH THE CONDITIONAL USE PERMIT WAS GRANTED; AMENDING SECTION 155.2.2.111 TO ADD RECREATIONAL MARIJUANA PROCESSORS TO THE LIST OF CONDITIONAL USES THAT REQUIRE A CONDITIONAL USE PERMIT IN THE COMMUNITY COMMERCIAL DISTRICT; ADDING A NEW SECTION 155.2.2.220 TO ADD SPECIAL STANDARDS THAT MUST BE MET FOR RECREATIONAL MARIJUANA PROCESSORS IN THE COMMUNITY COMMERCIAL DISTRICT, ADDING NEW PROVISIONS TO TERMINATE ANY CONDITIONAL USE PERMIT GRANTED UNDER THE TERMS OF THIS SECTION 155.2.2 UPON ANY CHANGE OF USE OR OWNERSHIP OF THE REAL PROPERTY FOR WHICH THE CONDITIONAL USE PERMIT WAS GRANTED; CORRECTING FORMATTING ERRORS AND OTHER MATTERS RELATED THEREO.

WHEREAS, the City of Dunes City, through its City Council, is responsible for enacting ordinances for the effective and efficient operation of the City of Dunes City for the benefit of its residents; and

WHEREAS, State law authorizes the operation of recreational and medical marijuana businesses and provides those businesses with immunity from state criminal prosecution; and

WHEREAS, although the State of Oregon has passed legislation authorizing marijuana businesses and providing criminal immunity under state law, the operation of those businesses remains illegal under federal law; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City Council of Dunes City wants to regulate the operation of recreational marijuana businesses 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; and

WHEREAS, this Ordinance is intended to impose restrictions, not provide authorizations; and

WHEREAS, the operation of a recreational marijuana business without proper authority from the Oregon Liquor Control Commission is prohibited within the City;

NOW, THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1. Amend Section 155.2.1.111 to add the term “Recreational Marijuana Producers” to the list of uses required to obtain a conditional use permit in the R-1 Zone.

Section 2. Add a new Section 155.2.1.270 to read as follows:

“155.2.1.270 Recreational Marijuana Producers

“For purposes of this Section 155.2.1.270, the following definitions apply:

“Marijuana means all parts of the plant Cannabis family *cannabaceae*, 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 stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

“Recreational Marijuana Producer means the growing, or other production, of five (5) or more plants of the Cannabis family *cannabaceae*, or any part of the plant Cannabis family *cannabaceae* and the seeds of the plant by any business licensed by the Oregon Liquor Control Commission.

“Recreational Marijuana Business means any business licensed by the Oregon Liquor Control Commission to engage in the business of producing, processing, wholesaling, researching, testing, or selling marijuana or marijuana items.

“A. In addition to all other requirements set forth in Section 155.2.1, Recreational Marijuana Producers shall comply with the following additional standards:

“1. All Recreational Marijuana Producers shall hold, in good standing, a license issued by the Oregon Liquor Control Commission.

“2. The facility must comply with all applicable laws and regulations of the Dunes City Code including, but not limited to, the development, land use, zoning, building, fire, and business license codes.

“3. 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.

“4. Facilities must use an air filtration and ventilation system which is certified by an Oregon licensed mechanical engineer to ensure, to the greatest extent feasible, that all objectionable odors associated with the marijuana production is confined to the licensed premises. For purposes 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.

“5. Facilities must maintain adequate outdoor lighting over each exterior exit, however, such lighting shall be placed and directed in a manner to avoid reflection or glare on adjacent properties.

“6. Heat and glare created by the Recreational Marijuana Producer must not be discernible at or beyond the property line.

“7. No unreasonable noise, as described in Section 91.04 of the Dunes City Code of Ordinances, will be created or allowed to exceed the requirements as set forth in said Section 91.04 of the Dunes City Code of Ordinances.

“8. Written evidence must be provided to show that a plan showing and describing the security measures to be utilized within and around the facilities has been provided to the Lane County Sheriff’s Department and Siuslaw Valley Fire and Rescue.

“9. Written evidence must be provided to show that all applicable fees have been paid and there are no governmental liens, fines or violations existing against the property proposed for use by the Marijuana Producer.

“10. Written evidence must be provided to show the water source that will serve the property proposed by the Recreational Marijuana Producer.

“11. Recreational Marijuana Producers may not be located within one thousand feet (1,000’) from the following facilities, measured in a straight line from the closest property line on which the Recreational Marijuana production will take place to the closest edge of the property line on which the facility is located. These distance limitations between facilities are based upon the facilities surrounding the proposed Recreational Marijuana Producer facility at the time the proposed Recreational Marijuana Producer facility’s application for a Conditional Use Permit is first submitted pursuant to Section 155.2.1.111:

“a. A public park;

“b. A campground or resort which serves children under eighteen (18) years of age; or

“c. A school bus stop location which serves children under eighteen (18) years of age, at the location of the stop at the time the Conditional Use Permit is issued.

“12. No more than one Marijuana Business may be located on the same property, parcel, address, or tax lot.

“13. No drive-up or drive through services shall be permitted.

“14. Any other conditions deemed necessary by the Planning Commission or the City Council to protect the public health and safety of the residents of Dunes City.”

Section 3. Add Subsection B to 155.2.1.270 to read as follows:

“B. Termination of Conditional Use Permit for Recreational Marijuana Producers.

“Should the real property for which a Conditional Use Permit for Recreational Marijuana Producers has been issued pursuant to this Section 155.2.1 no longer be used for the purpose of producing or growing recreational marijuana, or should said real property change ownership in any manner, the Conditional Use Permit shall be automatically terminated, effective immediately.”

Section 4. Amend Section 155.2.2.111 to add the term “Recreational Marijuana Processors” to the list of uses that require a Conditional Use Permit in the Community Commercial District of Dunes City.

Section 5. Add a new Section 155.2.2.220 to read as follows:

“155.2.2.220 Recreational Marijuana Processors.

“For purposes of this Section 155.2.2.220, the following definitions apply:

“Marijuana means all parts of the plant Cannabis family *cannabaceae*, 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 stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

“Recreational Marijuana Processor means any business licensed by the Oregon Liquor Control Commission for processing, wholesaling, researching, testing, or selling marijuana or marijuana items.

“Marijuana Business means any business licensed by the Oregon Liquor Control Commission to engage in the business of producing, processing, wholesaling, researching, testing, or selling marijuana or marijuana items.

“A. In addition to all other requirements set forth in Section 155.2.2, Recreational Marijuana Processors shall comply with the following additional standards:

“1. All Recreational Marijuana Processors shall hold, in good standing, a license issued by the Oregon Liquor Control Commission.

“2. The facility must comply with all applicable laws and regulations of the Dunes City Code including, but not limited to, the development, land use, zoning, building, fire, and business license codes.

“3. 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.

“4. Facilities must use an air filtration and ventilation system which is certified by an Oregon licensed mechanical engineer to ensure, to the greatest extent feasible, that all objectionable odors associated with the marijuana processing is confined to the licensed premises. For purposes 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.

“5. Facilities must maintain adequate outdoor lighting over each exterior exit, however, such lighting shall be placed and directed in a manner to avoid reflection or glare on adjacent properties.

“6. Heat and glare created by the Recreational Marijuana processing must not be discernible at or beyond the property line.

“7. No unreasonable noise, as described in Section 91.04 of the Dunes City Code of Ordinances, will be created or allowed to exceed the requirements as set forth in said Section 91.04 of the Dunes City Code of Ordinances.

“8. Written evidence must be provided to show that a plan showing and describing the security measures to be utilized within and around the facilities has been provided to the Lane County Sheriff’s Department and Siuslaw Valley Fire and Rescue.

“9. Written evidence to show that all applicable fees have been paid and there are no governmental liens, fines or violations existing against the property proposed for use by the Recreational Marijuana Processor.

“10. Written evidence to show the water source that will serve the property proposed by the Recreational Marijuana Processor.

“11. Recreational Marijuana Processors may not be located within one thousand feet (1,000’) from the following facilities, measured in a straight line from the closest property line on which the Recreational Marijuana processing will take place to the closest edge of the property line on which the facility is located. The distance limitations between facilities are based upon the facilities surrounding the proposed Recreational Marijuana Processor location at the time of submission of a completed application for Conditional Use Permit:

“a. A public park;

“b. A campground or resort which serves children under eighteen (18) years of age; or

“c. A school bus stop location which serves children under eighteen (18) years of age, at the location of the stop at the time the Conditional Use Permit is issued.

“12.No more than one Recreational Marijuana Business may be located on the same property, parcel, address, or tax lot.

“13.No drive-up or drive through services shall be permitted.

“14.Any other conditions deemed necessary by the Planning Commission or the City Council to protect the public health and safety of the residents of Dunes City.”

Section 6. Add Subsection B 155.2.2.221 to read as follows:

“B. Termination of Conditional Use Permit for Recreational Marijuana Processors.

“Should the real property for which a Conditional Use Permit for Recreational Marijuana Processors has been issued pursuant to this Section 155.2.2 no longer be used for the purpose of processing recreational marijuana, or should said real property change ownership in any manner, the Conditional Use Permit shall be automatically terminated, effective immediately.”

Section 7. EFFECTIVE DATE. This Ordinance shall take effect at 12:01 a.m. on the 7th day of November, 2018, only if the question regarding a ban of all marijuana businesses in the Dunes City limits, found in Ordinance No. 245 adopted by the Dunes City Council on September 13, 2017 fails to be passed by the citizens of Dunes City.

Section 8. SEVERABILITY. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, or superseded by State or federal legislation, rules, regulations or decisions, the remainder of this Ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted only to the extent required by law. In the event such federal or State law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding, without the requirement of further action on the part of the City.

Section 9. OTHER REMEDIES. Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance. Non-exclusive remedies for enforcement are all those available under State and County laws including seizure of property, civil and criminal penalties.

Section 10. CAPTIONS. The captions to sections through this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

Section 11. SCRIVENER'S ERRORS. Any scrivener's errors in this Ordinance may be corrected by Resolution of the City Council.

Passed at the first reading in regular meeting of the City Council of Dunes City, Oregon, on the _____ day of _____, 2018.

Ayes: _____ Nays: _____ Abstain: _____ Absent: _____ Vacant: _____

Passed at the second reading and placed on final passage, and adopted by the City Council of Dunes City, Oregon on this _____ day of _____, 2018.

Ayes: _____ Nays: _____ Abstain: _____ Absent: _____ Vacant: _____

ADOPTED BY THE DUNES CITY COUNCIL THIS _____ DAY OF _____, 2018.

Robert Forsythe, Mayor

ATTEST:

Jamie Mills, City Recorder