

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 ORDINANCE # 484

4 _____
5
6 **Creating Temporary Regulations for Recreational Marijuana Facilities and declaring an**
7 **emergency**
8 _____
9

10 Findings:
11

12 WHEREAS Lincoln County by Ordinances #479 and #483 adopted temporary marijuana
13 regulations pending implementation of companion regulations around Measure 91 legalizing
14 recreational marijuana. Recreational marijuana is undergoing review and establishment of a
15 system of regulation through a process similar to the regulation of alcohol by the Oregon Liquor
16 Control Commission (OLCC). The Measure charged OLCC with the responsibility to set forth
17 the administrative rules governing this system. This regulatory system is separate from and in
18 addition to laws governing medical marijuana distribution; and

19 WHEREAS Oregon Legislature, Oregon Health Authority (OHA) and the OLCC have
20 recognized the need to integrate and coordinate the regulation of medical and recreational
21 marijuana and have adopted or are considering adopting laws and regulations around the
22 marijuana regulatory system; and

23 WHEREAS while legal challenges to the state's authority to preempt local regulation of
24 medical marijuana facilities continue to slowly wend their way through the Oregon appellate
25 courts, and the inherent powers of the County and other local governments pursuant to the
26 Oregon Constitution, Oregon Law (Chapter 2013 for general law counties), and under the federal
27 Controlled Substances Act, 21 USC 801, et.seq. arguably authorize other actions by the County,

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1 it is the Board's desire to continue in place a coordinated system of local regulations of medical
2 and recreational marijuana facilities and uses consistent with the Oregon voters' ultimate
3 decisions to legalize medical and recreational marijuana. That being said, the County reserves
4 the right to continue to explore issues including but not limited to taxation (both in the authority
5 to tax the product and the impacts on other local tax systems including property taxes), locational
6 and operational restrictions, and further controls, as the regulatory systems, both statewide and
7 local unfold; and

8 WHEREAS after public hearings by the Planning Commission and the Board of
9 Commissioner's the Board deliberated and made the following motions concerning the terms of
10 the proposed Ordinance:

11 (1) Motion to allow outdoor grows in A-C and T-C zoned lands under the conditions as
12 recommended by the Planning Commission, but changing the distance away from a
13 residence not on the subject property to 500 feet. Commission Hunt declared his
14 opposition to any outdoor grows. Motion passed 2-1 with Commissioner Hunt
15 opposed for the reason stated.

16 (2) Motion to adopt the proposed Ordinance with change as noted above. Motion passed
17 unanimously.

18 The Lincoln County Board of Commissioners ordains as follows:

19 SECTION 1.

20 These temporary regulations supplement Lincoln County Code Chapter 1 and do not
21 nullify or modify the obligation to meet all requirements of that Chapter and any other applicable
22 state and local laws, including but not limited to land use and recreational marijuana laws and
23 rules. These regulations apply only to the unincorporated areas of Lincoln County.

24
25 SECTION 2.

26 The following definitions apply to this Ordinance:

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1 (1) Recreational Marijuana Production Site (RMPS) -- means a location, licensed
2 under OAR Chapter 845 Division 25, where marijuana is produced for commercial recreational
3 use. Production of marijuana means the manufacture, planting, cultivation, growing or
4 harvesting of marijuana for recreational use. Production does not include the drying of
5 marijuana by a marijuana processor, if the marijuana processor is not otherwise producing
6 marijuana.

7 (2) Recreational Marijuana Processor (RMP) -- means a business, licensed by OLCC,
8 that will transform the raw marijuana into another product or extract. "Processes" means the
9 processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid
10 concentrates or cannabinoid extracts. It does not include packaging or labeling of marijuana
11 items. Marijuana processing does not include drying marijuana by a marijuana producer, which
12 is "preparation" of farm products and part of the definition of farm use under OAR 660-033-
13 0020(7)(b)(A).

14 (3) Recreational Marijuana Wholesaler (RMW) -- means a business, licensed by
15 OLCC, that purchases marijuana items for resale to a person other than a consumer.

16 (4) Recreational Marijuana Retail Outlet (RMRO) -- is a facility, licensed by OLCC,
17 that is allowed to sell marijuana items to persons 21 years of age and older.
18

19 SECTION 3.

20 Notwithstanding any other provision of this Ordinance, persons 21 years of age and older
21 may grow up to four (4) plants per residence, regardless of how many people live in the
22 residence, in any zone. No more than four plants per residence are allowed under this Section.
23

24 SECTION 4.

25 RMPSs are authorized in the following zones under the conditions and standards set
26 forth. Other standards and conditions applicable under Chapter 1 of the Lincoln County Code,
27 or otherwise under state or local laws or rules, including but not limited to setbacks, lot coverage,

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1 parking, special standards and signage apply to these uses in the same manner as any other use in
2 the underlying zone.

3 (1) Rural Residential Zone RR-5 and RR-10 as a conditional use;

4 (2) Planned Industrial Zone I-P as a conditional use;

5 (3) Agricultural Conservation Zone A-C as outright use subject to special standards.

6 Before use is established, must apply to County and comply with the special standards.

7 (4) Timber Conservation Zone T-C as outright use subject to special standards.

8 Before use is established, must apply to County and comply with the special standards.

9 **Special Standards in All Zones**

10 (1) All state requirements met and maintained, including but not limited to licensing
11 and state locational requirements.

12 (2) All applicable building and fire codes are met and maintained for any structures
13 used for production of marijuana.

14 (3) The RMPS may not be co-located within the same building or on the same
15 property with any marijuana social club or smoking club.

16 (4) The RMPS must utilize an air filtration and ventilation system that confines all
17 odors associated with the RMPS to the premises as defined herein. The air filtration and
18 ventilation system, to the greatest extent feasible, shall confine all objectionable odors
19 associated with the facility to the premises. For the purposes of this provision, the
20 standard for judging "objectionable odors" shall be that of an average, reasonable person
21 with ordinary sensibilities after taking into consideration the character of the
22 neighborhood in which the odor is made and the odor is detected.

23 (5) A RMPS must be located at least

24 a. 1,000 feet away from any other registered RMPS;

25 b. 250 feet away from any residence not on the subject
26 property;

27 c. 1,000 feet away from the boundary of any property
28 containing a pre-school or pre-kindergarten, head start program,

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community learning center, or certified child care facility regulated under ORS Chapters 329, 329A and 657, and any public park (state, city or county);

d. The distance measurement for subsection b. above shall be made from the nearest corner of the accessory structure to the closest portion of any adjacent residence. Otherwise all distances are as measured from property boundary to property boundary.

(6) All production of marijuana must take place indoors in a detached accessory building. Outdoor production of marijuana shall be permitted on Agricultural Conservation A-C and Timber Conservation T-C zoned properties, provided that the subject property is a minimum of 20 acres in size and the facility/crop is located no closer than 500 feet from a dwelling not located on the subject property. Permitted outdoor canopy sizes shall be limited to the maximum size consistent with the two-tier system employed by OLCC.

(7) All employees and volunteers of the RMPS must submit to a criminal background check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the RMPS operation if the employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the background check, or if the employee or volunteer has been convicted more than once at any time, or if the employee or volunteer has been convicted of any felony involving children or crime prohibited within 1,000 feet of a school.

(8) An indoor RMPS shall not exceed 5,000 square feet or the allowable square footage of an accessory use within the zone, whichever is smaller, in an RR-5 and RR-10 zone.

(9) An indoor RMPS shall not exceed the maximum size allowed by state rules or the allowable square footage of an accessory use within the zone, whichever is the smaller, in an A-C, T-C or I-P zone.

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1 (10) Farming of a marijuana crop shall not be used to demonstrate compliance with the
2 approval criteria for a dwelling. (See Section 34, Chapter 614, Oregon Laws 2015).

3 (11) A farm stand shall not be used for the sale, or to promote the sale, of marijuana
4 items. (See Section 34, Chapter 614, Oregon Laws 2015).

5 (12) A commercial activity carried on in conjunction with a marijuana crop is
6 prohibited. (See Section 34, Chapter 614, Oregon Laws 2015).

7 (13) A change in use (including rezoning) of a neighboring property to a use identified
8 in this Section after the RMPS has been established shall not result in the RMPS being in
9 violation of this Section.

10
11 SECTION 5.

12 RMPs are authorized in the following zones under the conditions and standards set forth. Other
13 standards and conditions applicable under Chapter 1 of the Lincoln County Code, or otherwise
14 under state or local laws or rules, including but not limited to setbacks, lot coverage, parking,
15 special standards and signage apply to these uses in the same manner as any other use in the
16 underlying zone.

17 (1) Planned Industrial Zone I-P as a conditional use;

18 (2) In Planned Industrial I-P, Agricultural Conservation A-C and Timber
19 Conservation T-C zoned properties, production and processing facilities shall be
20 permitted to co-locate on the same property with a conditional use approval.

21 **Special Standards in All Zones**

22 (1) All state requirements met and maintained, including but not limited to licensing
23 and state locational requirements.

24 (2) All applicable building and fire codes are met and maintained for any structures
25 used for processing of marijuana.

26 (3) The RMP may not be co-located within the same building or on the same property
27 with any other marijuana facility except as noted in Section 5(2) above. The RMP must utilize an
28 air filtration and ventilation system that confines all odors associated with the RMP to the

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premises as defined herein. The air filtration and ventilation system, to the greatest extent feasible, shall confine 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 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.

(4) A RMP must be located at least

a. 1,000 feet away from any other registered RMP;

b. 250 feet away from any residence not on the subject property;

c. 1,000 feet away from the boundary of any property containing a pre-school or pre-kindergarten, head start program, community learning center, or certified child care facility regulated under ORS Chapters 329, 329A and 657, and any public park (state, city or county);

d. The distance measurement for subsection b. above shall be made from the nearest corner of the accessory structure to the closest portion of any adjacent residence. Otherwise all distances are as measured from property boundary to property boundary.

(5) All processing of marijuana must take place indoors in a detached accessory building.

(6) Processing shall be limited to dry, water or CO-2 processes on properties zoned A-C or T-C. Any process involving butane or other flammable materials is prohibited in these zones.

(7) All employees and volunteers of the RMP must submit to a criminal background check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the RMP operation if the employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the background check, or if the employee or volunteer has been convicted more than once at any time, or if the employee or volunteer has been convicted of any felony involving children or crime prohibited within 1,000 feet of a school.

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(8) An indoor RMP shall not exceed 300 square feet or the allowable square footage of an accessory use within the zone, whichever is smaller, in an RR-5 and RR-10 zone.

(9) An indoor RMP shall not exceed 1,500 square feet or the allowable square footage of an accessory use within the zone, whichever is the smaller, in an A-C, T-C or I-P zone.

(10) A change in use (including rezoning) of a neighboring property to a use identified in this Section after the RMP has been established shall not result in the RMP being in violation of this Section.

SECTION 6.

RMW are authorized in the following zones under the conditions and standards set forth. Other standards and conditions applicable under Chapter 1 of the Lincoln County Code, or otherwise under state or local laws or rules, including but not limited to setbacks, lot coverage, parking, special standards and signage apply to these uses in the same manner as any other use in the underlying zone.

(1) Retail Commercial Zone C-1 and General Commercial Zone C-2 as outright permitted use subject to special standards. Before use is established, must apply to County and comply with the special standards.

(2) Planned Industrial Zone I-P as a conditional use.

Special Standards for RMW in all zones

(2) All state requirements met and maintained, including licensing and state locational requirements.

(3) All applicable building and fire codes are met and maintained.

(4) The RMW may not be co-located within the same building or on the same property with any marijuana social club or smoking club. .

(5) Hours of operation are limited to 10:00 am to 7:00 pm.

(6) Entrances and off- street parking areas to RMW shall be well lit and not visually obscured from public view / right of way.

(7) A RMW must be located at least:

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- 1 a. 1,000 feet away from any other registered RMW;
- 2 b. 250 feet away from any residentially zoned property;
- 3 c. 1,000 feet away from the boundary of any property containing a pre-
- 4 school or pre-kindergarten, head start program, community learning center, or certified
- 5 child care facility regulated under ORS Chapters 329, 329A and 657, and any public park
- 6 (state, city or county). In an I-P zone, a RMW may be located within 1,000 feet of any
- 7 public park (state, city or county).;
- 8 d. All distances are as measured from property boundary to property
- 9 boundary.

10 (8) All employees and volunteers of the RMW must submit to a criminal background
11 check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-010-
12 0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the RMW
13 operation if the employee or volunteer has been convicted of the manufacture or delivery of a
14 controlled substance in Schedule I or Schedule II within five years of the date of the background
15 check, or if the employee or volunteer has been convicted more than once at any time, or if the
16 employee or volunteer has been convicted of any felony involving children or crime prohibited
17 within 1000 feet of a school.

18 (9) A change in use (including rezoning) of a neighboring property to a use identified
19 in this Section after the RMW has been established shall not result in the RMW being in
20 violation of this Section.

21

22 SECTION 7.

23 RMROs are authorized in the following zones under the conditions and standards set
24 forth. Other standards and conditions applicable under Chapter 1 of the Lincoln County Code, or
25 otherwise under state or local laws or rules, including but not limited to setbacks, lot coverage,
26 parking, special standards and signage apply to these uses in the same manner as any other use in
27 the underlying zone.

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1 (3) Retail Commercial Zone C-1 and General Commercial C-2 Zone as outright use
2 subject to special standards. Before use is established, must apply to County and comply with
3 the special standards.

4 (4) Planned Industrial Zone I-P as a conditional use.

5 **Special Standards for RMRO in all zones**

6 (10) All state requirements met and maintained, including licensing and state locational
7 requirements.

8 (11) All applicable building and fire codes are met and maintained.

9 (12) No manufacture or production of any extracts, oils, resins or similar derivatives of
10 marijuana on the premises of the RMRO and no open flames shall be allowed in the preparation
11 of any product.

12 (13) The RMRO may not be co-located within the same building or on the same
13 property with any other marijuana facility.

14 (14) The RMRO must utilize an air filtration and ventilation system that, to the greatest
15 extent feasible, shall confine all objectionable odors associated with the facility to the premises.
16 For the purposes of this provision, the standard for judging "objectionable odors" shall be that of
17 an average, reasonable person with ordinary sensibilities after taking into consideration the
18 character of the neighborhood in which the odor is made and the odor is detected.

19 (15) Hours of operation are limited to 10:00 am to 7:00 pm.

20 (16) Entrances and off- street parking areas to RMRO shall be well lit and not visually
21 obscured from public view / right of way.

22 (17) A RMRO must be located at least:

- 23 a. 1,000 feet away from any other registered RMRO;
24 b. 250 feet away from any residentially zoned property;
25 c. 1,000 feet away from the boundary of any property containing a pre-
26 school or pre-kindergarten, head start program, community learning center, or certified
27 child care facility regulated under ORS Chapters 329, 329A and 657, and any public park

1 (state, city or county). In an I-P zone, a RMRO may be located within 1,000 feet of any
2 public park (state, city or county);

3 d. All distances are as measured from property boundary to property
4 boundary.

5 (18) All employees and volunteers of the RMRO must submit to a criminal
6 background check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-
7 010-0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the
8 RMRO operation if the employee or volunteer has been convicted of the manufacture or delivery
9 of a controlled substance in Schedule I or Schedule II within five years of the date of the
10 background check, or if the employee or volunteer has been convicted more than once at any
11 time, or if the employee or volunteer has been convicted of any felony involving children or
12 crime prohibited within 1000 feet of a school.

13 (19) A change in use (including rezoning) of a neighboring property to a use identified
14 in this Section after the RMRO has been established shall not result in the RMRO being in
15 violation of this Section.

16
17 SECTION 8.

18 Severability.

19 (1) The sections, subsections, paragraphs and clauses of this Ordinance are severable.

20 The invalidity of one section, subsection, paragraph, or clause shall not affect the
21 validity of the remaining sections, subsections, paragraphs and clauses.

22 (2) If any section or all of this Ordinance is invalidated, County reserves the right to
23 continue its interpretation of existing County Code provisions as applied to
24 recreational marijuana uses including RMPS, RMP, RMW, and RMROs.

25
26 SECTION 9.

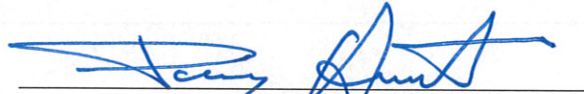
27 Rescission; Codification; Emergency

1 (1) This Ordinance is temporary. County Counsel will not codify this Ordinance into the
2 Lincoln County Code.

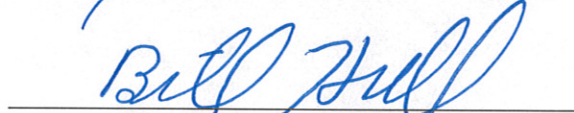
3 (2) In accordance with the legislative findings supporting this Ordinance, and this
4 Ordinance being necessary for the immediate preservation of the public peace, health and safety,
5 an emergency is declared to exist and this Ordinance shall take effect upon its passage.

DATED this 30th day of December, 2015.

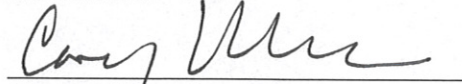
LINCOLN COUNTY BOARD OF COMMISSIONERS


DOUG HUNT, Chair


TERRY N. THOMPSON, Commissioner


BILL HALL, Commissioner

ATTESTED TO:


Casey Miller, Recorder

APPROVED AS TO FORM:


Wayne Belmont, County Counsel