

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 ORDINANCE # 491

4  
5  
6 **Amending Temporary Regulations for Recreational Marijuana Facilities adopted in**  
7 **Ordinance # 484 and declaring an emergency**  
8  
9

10 Findings:

11  
12 WHEREAS Lincoln County by Ordinances #479, #483, #484, and #488<sup>1</sup> adopted  
13 temporary marijuana regulations pending implementation of companion regulations around  
14 Measure 91 legalizing recreational marijuana. Recreational marijuana is undergoing review and  
15 establishment of a system of regulation through a process similar to the regulation of alcohol by  
16 the Oregon Liquor Control Commission (OLCC). The Measure charged OLCC with the  
17 responsibility to set forth the administrative rules governing this system. This regulatory system  
18 is separate from and in 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

<sup>1</sup> Ordinance #s 479 and 483 relate to medical marijuana temporary time, place and manner regulations; Ordinance # 484 adopted temporary regulations for recreational marijuana; Ordinance # 488 adopted provisions to tax recreational marijuana sales as authorized under state law.

1 Oregon Constitution, Oregon Law (Chapter 2013 for general law counties), and under the federal  
2 Controlled Substances Act, 21 USC 801, et.seq. arguably authorize other actions by the County,  
3 it is the Board's desire to continue in place a coordinated system of local regulations of medical  
4 and recreational marijuana facilities and uses consistent with the Oregon voters' ultimate  
5 decisions to legalize medical and recreational marijuana. That being said, the County reserves  
6 the right to continue to explore issues including locational and operational restrictions, and  
7 further controls, as the regulatory systems, both statewide and local unfold; and

8 WHEREAS consistent with those reserved rights, the Board initiated subsequent  
9 consideration of amendments to Ordinance #484 adopting temporary regulations of recreational  
10 marijuana. After public hearings by the Planning Commission and the Board of Commissioners  
11 the Board deliberated and made the following motion concerning the terms of the proposed  
12 Ordinance<sup>2</sup>:

13 Motion to adopt Planning Commission recommendations #s2 and 3. Those are set  
14 forth below. The Motion passed unanimously by the Board of Commissioners.

15 Recommendation #2. The Planning Commission recommends that the provision *be*  
16 *removed* from Ordinance #484 that requires recreational marijuana outlets and  
17 recreational marijuana wholesale facilities be sited on parcels of land located a  
18 minimum distance of 250 feet from any residentially zoned property (as measured  
19 from property boundary to property boundary).

20 Recommendation #3. The Planning Commission recommends that Ordinance #484  
21 be amended to apply different separation requirements for marijuana production  
22 facilities based on the land use zone in which they are located, as follows:

- 23 a. Recreational marijuana production facilities approved on properties Rural  
24 Residential RR-5 and Rural Residential RR-10 must be located at least 250  
25 feet from a dwelling no on the subject property.

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<sup>2</sup> An additional motion was made concerning modification of minimum acreage sizes in A-C zones. That decision will be incorporated into a separate amendment to Ordinance # 484, which will come before the Board of Commissioners at a later time.

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- 1           b. In Agricultural Conservation A-C and Timber Conservation T-C zones, *indoor*  
2           recreational marijuana production facilities must be located at least 250 feet  
3           from a dwelling not on the subject property.  
4           c. In the A-C and T-C zones, *outdoor* production of recreational marijuana must  
5           be located at least 500 feet from a dwelling not on the subject property.  
6           d. In the Planned Industrial I-P zone, no set minimum separation is required  
7           between a marijuana production facility and a dwelling not on the subject  
8           property.

9           WHEREAS the Board adopts the Final Order of the Planning Commission concerning  
10       these recommendations as further findings in support of this Ordinance.

11       Now, therefore,

12       The Lincoln County Board of Commissioners ordains as follows:

13       SECTION 1.

14       These amendments to Ordinance #484 are temporary regulations that supplement Lincoln  
15       County Code Chapter 1 and do not nullify or modify the obligation to meet all requirements of  
16       that Chapter and any other applicable state and local laws, including but not limited to land use  
17       and recreational marijuana laws and rules. These regulations apply only to the unincorporated  
18       areas of Lincoln County.

19  
20       SECTION 2.

21       The following definitions apply to this Ordinance:

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

Page 3 -- ORDINANCE # 491

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

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

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

12  
13 SECTION 3.

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

17  
18 SECTION 4.

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

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

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

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

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

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

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

3 Special Standards in All Zones

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

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

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

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

17 (5) A RMPS must be located at least

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

19 b. 250 feet away from any residence not on the subject  
20 property **in the RR-5 and RR-10 Zones and 500 feet away from any**  
21 **residential dwelling on adjacent property in the A-C and T-C zones if**  
22 **an outdoor grow;**

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

- 1 d. The distance measurement for subsection b. above shall be  
2 made from the nearest corner of the accessory structure to the closest  
3 portion of any adjacent residence. Otherwise all distances are as  
4 measured from property boundary to property boundary.
- 5 **(6)** All production of marijuana must take place indoors in a detached accessory  
6 building. **Indoor production facilities in the Agricultural Conservation A-C and**  
7 **Timber Conservation T-C zones must be located at least 250 feet away from any**  
8 **residence not on the subject property.** Outdoor production of marijuana shall be  
9 permitted on Agricultural Conservation A-C and Timber Conservation T-C zoned  
10 properties, provided that the subject property is a minimum of 20 acres in size and the  
11 facility/crop is located no closer than 500 feet from a dwelling not located on the subject  
12 property. Permitted outdoor canopy sizes shall be limited to the maximum size consistent  
13 with the two-tier system employed by OLCC.
- 14 **(7) Set back requirements from adjacent residences not on the subject property**  
15 **in sections (5)(b) and (6) above do not apply to RMPS facilities in the I-P zone.**
- 16 **(8)** ~~(7)~~ All employees and volunteers of the RMPS must submit to a criminal  
17 background check by Lincoln County or its designees pursuant to ORS 181.533 and  
18 OAR 257-010-0025(1)(a). It shall be a violation of these standards to employ or allow a  
19 volunteer in the RMPS operation if the employee or volunteer has been convicted of the  
20 manufacture or delivery of a controlled substance in Schedule I or Schedule II within five  
21 years of the date of the background check, or if the employee or volunteer has been  
22 convicted more than once at any time, or if the employee or volunteer has been convicted  
23 of any felony involving children or crime prohibited within 1,000 feet of a school.
- 24 **(9)** ~~(8)~~ An indoor RMPS shall not exceed 5,000 square feet or the allowable square  
25 footage of an accessory use within the zone, whichever is smaller, in an RR-5 and RR-10  
26 zone.

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- 1           **(10)**   ~~(9)~~ An indoor RMPS shall not exceed the maximum size allowed by state rules or  
2           the allowable square footage of an accessory use within the zone, whichever is the  
3           smaller, in an A-C, T-C or I-P zone.
- 4           **(11)**   ~~(10)~~ Farming of a marijuana crop shall not be used to demonstrate compliance  
5           with the approval criteria for a dwelling. (See Section 34, Chapter 614, Oregon Laws  
6           2015).
- 7           **(12)**   ~~(11)~~ A farm stand shall not be used for the sale, or to promote the sale, of  
8           marijuana items. (See Section 34, Chapter 614, Oregon Laws 2015).
- 9           **(13)**   ~~(12)~~ A commercial activity carried on in conjunction with a marijuana crop is  
10          prohibited. (See Section 34, Chapter 614, Oregon Laws 2015).
- 11          **(14)**   ~~(13)~~ A change in use (including rezoning) of a neighboring property to a use  
12          identified in this Section after the RMPS has been established shall not result in the  
13          RMPS being in violation of this Section.

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SECTION 5.

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

- 21           (1)     Planned Industrial Zone I-P as a conditional use;
- 22           (2)     In Planned Industrial I-P, Agricultural Conservation A-C and Timber  
23           Conservation T-C zoned properties, production and processing facilities shall be  
24           permitted to co-locate on the same property with a conditional use approval.

25           Special Standards in All Zones

- 26           (1)     All state requirements met and maintained, including but not limited to licensing  
27           and state locational requirements.

Page 7 -- ORDINANCE # 491

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

3 (3) The RMP may not be co-located within the same building or on the same property  
4 with any other marijuana facility except as noted in Section 5(2) above. The RMP must utilize an  
5 air filtration and ventilation system that confines all odors associated with the RMP to the  
6 premises as defined herein. The air filtration and ventilation system, to the greatest extent  
7 feasible, shall confine all objectionable odors associated with the facility to the premises. For the  
8 purposes of this provision, the standard for judging “objectionable odors” shall be that of an  
9 average, reasonable person with ordinary sensibilities after taking into consideration the  
10 character of the neighborhood in which the odor is made and the odor is detected.

11 (4) A RMP must be located at least  
12 a. 1,000 feet away from any other registered RMP;  
13 b. 250 feet away from any residence not on the subject property;  
14 c. 1,000 feet away from the boundary of any property containing a pre-  
15 school or pre-kindergarten, head start program, community learning center, or certified  
16 child care facility regulated under ORS Chapters 329, 329A and 657, and any public park  
17 (state, city or county);  
18 d. The distance measurement for subsection b. above shall be made from the  
19 nearest corner of the accessory structure to the closest portion of any adjacent residence.  
20 Otherwise all distances are as measured from property boundary to property boundary.

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

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

26 (7) All employees and volunteers of the RMP must submit to a criminal background  
27 check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-010-  
28 0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the

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1 RMP operation if the employee or volunteer has been convicted of the manufacture or  
2 delivery of a controlled substance in Schedule I or Schedule II within five years of the  
3 date of the background check, or if the employee or volunteer has been convicted more  
4 than once at any time, or if the employee or volunteer has been convicted of any felony  
5 involving children or crime prohibited within 1,000 feet of a school.

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

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

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

13  
14 SECTION 6.

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

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

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

24 Special Standards for RMW in all zones

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

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

Page 9 -- ORDINANCE # 491

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

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

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

6 (7) A RMW must be located at least:

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

8 ~~b. 250 feet away from any residentially zoned property;~~

9 b. (e) 1,000 feet away from the boundary of any property containing a pre-  
10 school or pre-kindergarten, head start program, community learning center, or  
11 certified child care facility regulated under ORS Chapters 329, 329A and 657, and  
12 any public park (state, city or county). In an I-P zone, a RMW may be located  
13 within 1,000 feet of any public park (state, city or county).;

14 c. (d) All distances are as measured from property boundary to property  
15 boundary.

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

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

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28 SECTION 7.

Page 10 -- ORDINANCE # 491

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

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

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

10 Special Standards for RMRO in all zones

11 (10) All state requirements met and maintained, including licensing and state locational  
12 requirements.

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

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

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

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

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

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

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

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

Page 11 -- ORDINANCE # 491

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1           ~~b. 250 feet away from any residentially zoned property;~~

2           b.     e. 1,000 feet away from the boundary of any property containing a pre-  
3 school or pre-kindergarten, head start program, community learning center, or  
4 certified child care facility regulated under ORS Chapters 329, 329A and 657, and  
5 any public park (state, city or county). In an I-P zone, a RMRO may be located  
6 within 1,000 feet of any public park (state, city or county);

7           ~~c.     d.~~ All distances are as measured from property boundary to property  
8 boundary.

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

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

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21           SECTION 8.

22           Severability.

23           (1) The sections, subsections, paragraphs and clauses of this Ordinance are severable.  
24           The invalidity of one section, subsection, paragraph, or clause shall not affect the  
25 validity of the remaining sections, subsections, paragraphs and clauses.

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

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SECTION 9.

Rescission; Codification; Emergency

(1) This Ordinance is temporary and amends existing Ordinance #484. County Counsel will not codify this Ordinance into the Lincoln County Code.

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

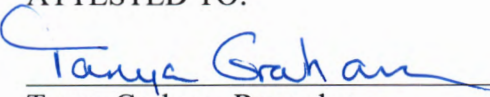
DATED this 4<sup>th</sup> day of January, 2017.

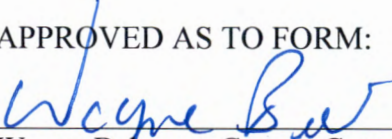
LINCOLN COUNTY BOARD OF COMMISSIONERS

  
DOUG HUNT, Commissioner

  
TERRY N. THOMPSON, Commissioner

excused  
BILL HALL, Chair

ATTESTED TO:  
  
Tanya Graham, Recorder

APPROVED AS TO FORM:  
  
Wayne Belmont, County Counsel

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