

ORDINANCE NO. 5892

AN ORDINANCE AMENDING SECTION 5.08.025 OF THE ALBANY MUNICIPAL CODE ESTABLISHING REGULATIONS FOR ALL MEDICAL MARIJUANA BUSINESSES AND FACILITIES IN THE CITY OF ALBANY AND DECLARING AN EMERGENCY

WHEREAS, state law authorizes the operation of medical and recreational 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, at the time of the adoption of the City's Comprehensive Plan, the use of products classified under federal law as a Class I narcotic was never envisioned; 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 wants to regulate the operation of 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, based upon the foregoing, the City Council finds that the regulations set forth hereafter are not land use regulations, but are instead business regulations aimed at mitigating the impact of activities that remain unlawful under federal law and consistent with the regulatory approach taken by the State of Oregon; and

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

WHEREAS, this ordinance is intended to apply only to medical marijuana businesses, and not to recreational marijuana businesses or to personal possession, growing, or use of marijuana as authorized by the State in ORS 475B.245 to ORS 475B.255; and

WHEREAS, the operation of a marijuana business without proper authority from the Oregon Health Authority is prohibited within the city.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

SECTION 1: AMENDING AMC 5.08.025

AMC 5.08.025 is hereby amended to read as follows:

5.08.025 Limitations on operation of medical marijuana facilities.

- (1) In addition to such limitations and regulations as may be imposed by State law on medical marijuana facilities which dispense marijuana pursuant to ORS 475B.350, no such facility, nor any person operating as an employee or agent of such facility, shall operate, locate, or dispense marijuana within 300 feet of any property zoned residential as described in Article 3 of the Albany Development Code (ADC) or zoned mixed-use as described in Article 5 of the ADC, and the Office Professional (OP) and Neighborhood Commercial (NC) zones as described in the ADC. This restriction does not apply to property that is zoned Industrial Park (IP), Light Industrial (LI) or Heavy Industrial (HI).
- (2) In addition to such limitations and regulations as may be imposed by State law, all other medical marijuana businesses, including, but not limited to growers and processors, and medical marijuana facilities are subject to the same restrictions as those for recreational marijuana as set forth in AMC 5.08.026(2)(a), inclusive of applicable definitions. This subsection does not apply to those businesses and facilities legally in existence prior to April 12, 2017.
- (3) In addition to such limitations and regulations as may be imposed by State law on medical marijuana facilities which dispense marijuana pursuant to ORS 475B.350, no such facility nor any person operating as an employee or agent of such facility shall locate or operate a medical marijuana facility or dispense medical marijuana without an annual payment to the City of Albany in an amount to be determined by resolution to defray law enforcement costs associated with reasonable inspections, oversight, and enforcement actions associated with the operation of medical marijuana facilities within the jurisdictional limits of the City of Albany.
- (4) Violation of this section shall be a misdemeanor punishable under the general penalty set forth at Chapter 1.04 AMC. (Ord. 5833 § 1, 2014).

SECTION 2: EMERGENCY CLAUSE

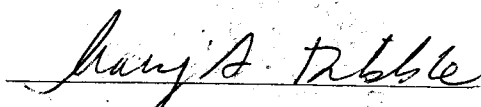
In as much as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, or to facilitate the prompt and timely completion of important City business, an emergency is hereby declared to exist; and this ordinance shall take effect and be in full force and effect when signed by the Mayor.

Passed by Council: June 14, 2017

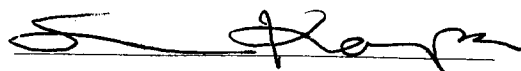
Approved by Mayor: June 14, 2017

ATTEST:

Effective Date: June 14, 2017



City Clerk



Mayor