

ORDINANCE NO. 5887

AN ORDINANCE AMENDING SECTION 5.08.026 OF THE ALBANY MUNICIPAL CODE ESTABLISHING REGULATIONS FOR RECREATIONAL MARIJUANA USES 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, retail sales and use of products classified under federal law as a Class 1 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 State of Oregon, through statutes and rules, has recognized geographical separation of recreational marijuana facilities as an appropriate way to mitigate the impacts of business activities which remain subject to criminal prosecution under 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 recreational marijuana businesses, and not to medical 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, upon approval of City voters, the City shall impose a local sales tax of up to 3% on the sales of recreational marijuana by marijuana retailers; and

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

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

SECTION 1: AMENDING AMC 5.08.026.

AMC 5.08.026 is hereby amended to read as follows:

**5.08.026. – Recreational Marijuana**

(1) Definitions.

(a) “Marijuana” means all parts of the plant cannabis family moraceae, 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 as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended.

(b) “Marijuana processor” means an individual or entity licensed by the Oregon Liquor Control Commission to process marijuana.

(c) “Marijuana producer” means an individual or entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.

(d) “Marijuana retailer” means an individual or entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.

(e) “Marijuana wholesaler” means an individual or entity licensed by the Oregon Liquor Control Commission to purchase items in this state for resale to a person other than a consumer

(f) “Marijuana Uses” means a marijuana processor, marijuana producer, ~~marijuana retailer~~ or marijuana wholesaler. A Marijuana Use is not an authorized home occupation.

(g) “Within 300 feet” means a straight line measurement in a radius extending for 300 feet or less in every direction between any point on the boundary line of real property on which the Marijuana Use is located and the real property boundary line containing any property zoned residential as described in Article 3 of the Albany Development Code (ADC); zoned Mixed-Use as described in Article 5 of the ADC; zoned Office Professional (OP) as described in the ADC or zoned Neighborhood Commercial (NC) as described in the ADC.

(2) Applicable Zones.

A. In addition to such limitations and regulations as may be imposed by State law on recreational Marijuana Uses pursuant to ORS 475B, no such Marijuana Use, Marijuana Use

facility, marijuana testing or research facility nor any person operating as an employee or agent of such facility shall operate ~~or~~, locate, ~~or dispense marijuana~~ within 300 feet of any property zoned Residential as described in Article 3 of the Albany Development Code (ADC); zoned Mixed-Use as described in Article 5 of the ADC; zoned Office Professional (OP) as described in the ADC or zoned Neighborhood Commercial (NC) as described in the ADC. In addition, all marijuana producers and marijuana processors shall be located indoors in a fully enclosed facility.

B. Retail sales of marijuana which may be authorized by Oregon 2014 Initiative Measure 91 and/or any administrative regulations adopted pursuant thereto shall be subject to the same locational limitations and regulations applicable to medical marijuana facilities pursuant to AMC 5.08.025 including the sanction for violation set forth therein.

C. In addition to such limitations and regulations as may be imposed by State law on Marijuana Uses and retail facilities pursuant to ORS 475B, no such Marijuana Use facility, marijuana retail facility, nor any person operating as an employee or agent of such facility shall locate or operate a Marijuana Use facility or dispense marijuana without an annual payment to the City of Albany in an amount to be determined by resolution as a fee to defray law enforcement costs associated with reasonable inspections, oversight, and enforcement actions associated with the operation of Marijuana Use facilities within the jurisdictional limits of the City of Albany.

-BD. Violation of this section shall be a misdemeanor punishable under the general penalty set forth at Chapter 1.04 AMC.

Section 6: 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.

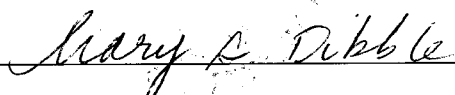
Passed by Council: Dec 7, 2016

Approved by Mayor: Dec 7, 2016

ATTEST:

Dec 7, 2016

Effective Date: \_\_\_\_\_

  
\_\_\_\_\_  
City Clerk

A handwritten signature in black ink, appearing to read "S. Karpa", is written over a horizontal line.

Mayor