

ORDINANCE _____

AN ORDINANCE AMENDING THE CARLTON MUNICIPAL CODE TO ESTABLISH REGULATIONS AND PERMIT REQUIREMENTS RELATING TO PRODUCTION OF MEDICAL MARIJUANA, ADOPTING PERMIT APPLICATION CRITERIA AND PROCEDURES, PROVIDING FOR SECURITY AND SAFETY AND ESTABLISHING ENFORCEMENT, VIOLATIONS AND PENALTY PROVISIONS.

WHEREAS, the City Council deems it necessary and desirable to amend the Carlton Municipal Code to adopt a new Chapter regulating the lawful production of Medical Marijuana within the City of Carlton, Oregon; and

WHEREAS, the City Council finds that the production and cultivation of medical marijuana has a significant potential to adversely affect nearby property owners and can constitute an attractive nuisance to persons not authorized to use marijuana unless properly secured and regulated.

NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF CARLTON, OREGON, as follows:

SECTION 1. The Carlton Municipal Code (hereafter "CMC") is hereby amended to add a new Chapter 8.60 entitled "*MEDICAL MARIJUANA REGULATIONS*" to read as follows:

8.60.010 MEDICAL MARIJUANA PRODUCTION; PURPOSE

Purpose. The purpose and intent of this CMC Section 8.60 is to regulate the production of medical marijuana in a manner that protects the health, safety and welfare of the community. This section is not intended to interfere with a patient's right to medical marijuana, as provided in the Oregon Medical Marijuana Act, ORS 475.300 et seq. (hereafter " the OMMA"), nor does it criminalize medical marijuana possession or production by specifically defined individuals in the OMMA.

8.60.020 Applicability. No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The production of medical marijuana in the City of Carlton, Oregon is controlled by the provisions of this Section 8.60 of the City's Municipal Code.

8.60.030 Release of Liability and Hold Harmless. The owner of a medical marijuana grow site, as a condition of operating such grow site under t Section 8.60.040 shall release the City, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of production site owners, operators, employees, or clients for violation of state or federal laws in a form satisfactory to the City. In addition, the owner of each medical marijuana grow site shall indemnify and hold harmless the City and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or third parties due to the operations at the

medical marijuana production site and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution or production of medical marijuana.

8.60.035 Confidential Treatment of Permits Records and Identities.

1. The City Manager shall create and maintain records of the persons who have applied for or to whom the city has issued a permit under this chapter. Except as provided in this section, or as may otherwise be required by court order, as permitted by ORS 475.331 the records kept shall be confidential and not subject to public disclosure.

2. The City Manager shall develop a system by which local law enforcement agencies may verify the location of permitted grow sites.

3. Names and other information from the list established pursuant to subsection (1) of this section may be released to:

(a) The city Building Official as necessary to perform official duties relating to the application; and

(b) Authorized city law enforcement employees.

4. Authorized employees of state or local law enforcement agencies that obtain identifying information from the city permit records as authorized under this section may not release or use the information for any purpose other than verification that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site that is complying with the requirements of this chapter.

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8.60.040 Medical Marijuana Production for Personal Use. A registry identification cardholder shall be allowed to produce medical marijuana within his/her private residence. A primary caregiver shall only produce medical marijuana at the residence of the registry identification cardholder for whom he/she is the primary caregiver. Medical marijuana for personal use shall be in conformance with the following standards:

1. The medical marijuana production area shall not exceed 200 square feet and not exceed ten feet in height per residence or permitted accessory structure ;
 - a. Medical marijuana production lighting shall not exceed 1200 watts unless approved by the City Building Official;
 - b. The use of gas products for medical marijuana production is prohibited unless approved by the City Building Official;
 - c. In accordance with the OMMA, the sale of medical marijuana is prohibited;
 - d. From a public right of way, there shall be no exterior evidence of medical marijuana production either within or outside the residence or permitted accessory structure;
 - e. The registry identification cardholder shall reside in the residence where the medical marijuana production occurs;
 - f. The registry identification cardholder shall not participate in medical marijuana production in any other residential location within the City of Carlton;
 - g. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana production;

- h. The medical marijuana production area shall be in compliance with the current, adopted edition of the Oregon Building Code or the local adopted building code, particularly related to natural ventilation or mechanical ventilation; and
- i. The medical marijuana grow site shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste.
- j. The medical marijuana grow site shall be secured from unauthorized entry at all times.

2. Any proposed medical marijuana grow site by a registry identification cardholder or primary caregiver that does not meet the grow area standards described in the Code shall require an analysis of the need for additional production area. Documentation, such as a physician's recommendation or verification of more than one registry identification cardholder living in the residence, shall be submitted with the request showing why the production area standard is not feasible. The request for analysis shall grant written permission from the property owner if not the registry identification cardholder.

3. The registry identification cardholder or primary caregiver that intends to or has commenced growing activities at a medical marijuana grow site shall notify the City Manager of such activity or proposed activity and demonstrate compliance with the provisions of this Section 8.60.040 in accordance with procedures established by the City Manager.

8.60.050 Medical Marijuana Production for Non-Personal Use. The OMMA permits registry identification cardholders to select an individual, in addition to a primary caregiver, to grow medical marijuana for them. To produce medical marijuana for non-personal use in the City of Carlton, the designated producer shall properly register with the Oregon Health Authority per the OMMA and comply with the following requirements:

1. Medical marijuana producers shall apply for and obtain a permit from the City. An application to the City for a grow site permit will include but not be limited to the following information:
 - a. Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
 - b. Authorization for a the staff screening process, if applicable, including appropriate background checks;
 - c. The hours and days of the week that the production site will be ~~available~~ for inspection. Inspections shall be undertaken at the time of initial permit application, and at any time thereafter when there is probable cause to believe a violation is occurring. Inspections shall be governed by the inspection provisions of the Uniform Building Code or any inspection procedure ordinance adopted by the City. In the event voluntary access is not permitted for the purposes of inspection a court ordered search warrant will be required to enter the premises.

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- d. Text and graphic materials showing the site, floor plan and facilities of the medical marijuana production site. The material shall also show adjacent structures and land uses;
 - e. A description of the security measures securing the grow site , including but not limited to, fencing, locks, lighting, alarms, and automatic law enforcement notification;
 - f. The process the applicant will follow for tracking medical marijuana quantities and inventory controls to assure compliance with the OMMA;
 - g. Description of measures taken to minimize or offset energy use from the production of processing or medical marijuana;
 - h. Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system;
 - i. Information showing compliance with the growing standards set forth in subsections 8.60.40 and
 - j. Other information reasonably required by the City Manager and Chief of Police.
2. Medical marijuana production sites for non-personal use shall comply with the following requirements:
- a. The medical marijuana production area shall not exceed 200 square feet per person for whom the medical marijuana is grown and shall and not exceed ten feet in height per residence unless due to the pre-existing height of the growing area ;
 - b. Medical marijuana production lighting shall not exceed 4800 watts unless approved by the Building Official;
 - c. The use of gas products for medical marijuana production is prohibited unless approved by the Building Official;
 - d. In accordance with the OMMA, the sale of medical marijuana is prohibited;
 - e. From a public right of way, there shall be no exterior evidence of medical marijuana production either within or outside the structure;
 - f. The registry identification cardholder shall not participate in medical marijuana production in any other location within the City of Carlton;
 - g. The medical marijuana production area shall be in compliance with the current, adopted edition of the Oregon Building Code or the local adopted building code, particularly related to natural ventilation or mechanical ventilation; and
 - h. The medical marijuana grow site shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste.
 - i. The medical marijuana production area shall be secured from unauthorized entry at all times.

8.60.060 Medical Marijuana Production Permit Revocation. A permit issued under this Section may be suspended or revoked by the City Manager for any of the following violations:

1. Conviction of any person required to be named on the application of the permit of any provision of this Section;
2. Misrepresentation or omission of any material fact, or false or misleading information, on the application, or any other information provided to the City related to the medical marijuana business;
3. Conviction of any person required to be named on the application of a crime which, if occurring prior to submittal of the application, could have been cause for denial of the permit application;
4. Allowing distribution of medical marijuana, including but not limited to delivery to a registry identification cardholder in violation of this Section or any other applicable law, rule or regulation;
5. Allowing the operation of a production site in violation of the specifications of the permit application, any conditions of approval by the City or any other applicable law, rule or regulation;
6. Failing to permit a lawful inspection of the production site by the City Manager or the City Manager's designee undertaken to assure compliance with the provisions of this Section 8.60.
7. Temporary or permanent closure, or other sanction of the production site by the City, or by the Yamhill County or the Oregon Health Authority or other governmental entity with jurisdiction, for failure to comply with health and safety provisions of this Section or otherwise applicable to the production site or any other applicable law.

8.60.070 Revocation not Exclusive Penalty. Nothing in this Section shall be deemed to prohibit the City from imposing other penalties authorized by the City's Code, including filing a complaint in a court of competent jurisdiction.

8.60.080 Appeal to city council. Any person aggrieved by any decision of the City Manager may appeal to the city council by filing a notice of appeal with the City Recorder within 10 days of the serving or mailing of the notice of the decision given by the City Manager. The City Recorder shall transmit the notice, together with the file of the appealed matter, to the City Council, which shall fix a time and place for hearing the appeal. The City Council shall give the appellant not less than 10 days written notice of the time and place of hearing of the appeal.

8.60.090 Violations. No person may operate a medical marijuana grow site or a medical marijuana production area within the City of Carlton, Oregon without complying with the provisions of Sections 8.60.010 to 8.60.90. Any noncompliance of any applicable provision of Section 8.60 shall constitute a municipal violation subject to the jurisdiction and penalty powers of the municipal court

8.60.100 Penalty. Any person violating any of the provisions of CMC Sections 8.60.010 through 8.60.090 shall, upon conviction thereof be punished by a fine of not more than three hundred dollars (\$300.00). Such fine for conviction shall be in addition to any or all

administrative penalties or permit revocation assessed in accordance with Section 8.60.060. Each day's violation shall constitute a separate offense, punishable as set forth in this section."

SECTION 2. Effective date. This ordinance shall be in full force and effect upon the thirtieth (30th) day after its passage by the Council and approval by the Mayor.

PASSED by the City Council of the City of Carlton, County of Yamhill and State of Oregon, on the ___ day of _____, 2012 by the following votes:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Approved by the Mayor this ___ day of _____, 2012.

Mayor

ATTEST: _____
City Recorder

