

## ORDINANCE NO. 668

### AN ORDINANCE AMENDING THE CITY OF WINSTON ZONING ORDINANCE FOR THE PROVISION OF MEDICAL MARIJUANA FACILITIES AND DECLARING AN EMERGENCY

**Whereas**, the City of Winston Planning Commission held one workshop on April 8, 2015 and held a public hearing on April 15, 2015, and whereas the Winston City Council held a workshop on April 24, 2015, and whereas a public hearing was held on April 27, 2015 before the City Council to consider the following legislative amendments:

- Legislative amendments to the Winston Zoning Ordinance to add language to address the establishment of medical marijuana facilities, which includes incorporating state siting standards for registration of medical marijuana facilities and applying additional land use standards necessary to ensure public safety and address consistency with permitted uses in zones in which the facilities may be located. The amendments will modify Section 1.020 to add two new definitions [medical marijuana facilities (MMF) and person responsible for medical marijuana facility (PRF)] and will modify Section 4.140.1 to add medical marijuana facility and its associated statutory and local standards as a use permitted outright in the City's (C-G) General Commercial zone.

**Whereas**, after reviewing the recommendation of the Planning Commission and conducting a public hearing on April 27, 2015, and

**Whereas**, amendments to the City of Winston Zoning Ordinance are needed in order to address the provision of medical marijuana facilities within the jurisdictional boundaries of Winston; and

**Whereas**, the 2014 Legislature enacted SB 1531, which permitted local jurisdictions to enact a moratorium on medical marijuana facilities within their jurisdictions to provide additional time to address the regulation and siting of the facilities. The Winston City Council adopted an Ordinance declaring such a moratorium on April 21, 2014, with the moratorium effective until May 1, 2015; and

**Whereas**, this legislative amendment process has been expedited to have the amendments to permit medical marijuana facilities approved and adopted by the City prior to expiration of the City's moratorium on May 1, 2015.

#### **NOW THEREFORE, THE CITY OF WINSTON HEREBY ORDAINS AS FOLLOWS:**

##### SECTION ONE: FINDINGS OF FACT

- A. A public hearing on the proposed legislative amendments to the Zoning Ordinance text was held before the Planning Commission on April 15, 2015. Opportunity was provided for public participation during the hearing and the Planning Commission was provided written comment and oral testimony for their consideration.
- B. The Planning Commission forwarded a recommendation to City Council to adopt the proposed legislative amendments, which included several proposed revisions.

- C. A City Council conducted a public hearing on the proposed legislative amendments on April 27, 2015. Opportunity was provided for public participation during the hearing.
- D. The City Council accepted the recommendation of the Planning Commission with one modification to the proposed text of the amendments.
- E. On the basis of the facts contained in the record, the City Council finds there is sufficient justification and need to accept the Planning Commission recommendation and adopts as its own the Findings of the Staff Reports of the Planning Commission, which are included hearing by this reference.

SECTION TWO: AMENDING ZONING ORDINANCE TEXT.

The amendments to the Winston Zoning Ordinance Text are hereby attached to this ordinance and identified as Exhibit A, Adoption Draft dated April 27, 2015, and by this reference made part of this ordinance. This adoption draft has the same contents as the Third Draft, dated April 21, 2015, presented at the City Council hearing, except for the one approved modification to the proposed text and the updated cover sheet and footers to acknowledge adoption.

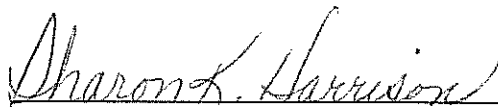
SECTION THREE: EFFECT OF AMENDMENT.

Ordinance No. 590 (Winston Zoning Ordinance) heretofore and herein amended; remains in full force and effect.

SECTION FOUR: EMERGENCY. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

First reading before the City Council on the 27th day of April, 2015.

Second reading and adoption by the City Council on the 27th day of April, 2015.

  
\_\_\_\_\_  
Sharon K. Harrison, Mayor

ATTEST:

  
\_\_\_\_\_  
David M. Van Dermark, City Manager

**EXHIBIT A**

**2015 LEGISLATIVE  
AMENDMENTS TO THE**

**CITY OF WINSTON  
ZONING ORDINANCE**

**ADOPTION DRAFT**  
**April 27, 2015**

**PLANNING COMMISSION**  
Hearing April 15, 2015

**CITY COUNCIL**  
Hearing April 27, 2015  
1<sup>st</sup> & 2<sup>nd</sup> Readings April 27, 2015

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## LEGEND

Deletion	<del>Deletion</del> is marked with strike out function
Addition	<b><u>Addition</u></b> is marked with bold and underline
Comments	<i>Comments are provided in italics</i>

## WINSTON ZONING ORDINANCE AMENDMENTS

DRAFT - March 2015

### **AMENDMENTS RESULTING FROM THE PASSAGE OF HB 3460 IN THE 2013 LEGISLATURE, "MEDICAL MARIJUANA FACILITY REGISTRATION" & IMPLEMENTING ORS 475.314 & OARs 333-008-1000 - 333-008-1400, "MEDICAL MARIJUANA FACILITIES" (MMFs).**

HB 3460, enacted by the 2013 Legislature, directed the Oregon Health Authority (OHA) to establish, by rule, a medical marijuana facility (MMF) registration system to authorize the transfer of "usable marijuana" from registry identification cardholders, designated primary care givers of registry identification cardholders or marijuana grow sites to medical marijuana facilities and from medical marijuana facilities to registry identification cardholders or designated primary care givers of registry identification cardholders.

ORS 475, "Controlled Substances..." was revised in 2013 to include ORS 475.314 to establish statutory provisions for medical marijuana facility registration.

The 2014 Legislature enacted SB 1531, which permitted local jurisdictions to enact a moratorium on medical marijuana facilities within their jurisdictions to provide additional time to address the regulation and siting of medical marijuana facilities. The Winston City Council adopted an Ordinance declaring such a moratorium on April 21, 2014, with the moratorium effective until May 1, 2015.

In 2014, the OHA adopted administrative rules, OAR 333-008-1000 through 333-008-1400 (effective July 11, 2014) to implement ORS 475.314, the registration of medical marijuana facilities and adopt rules governing the registration and operation of medical marijuana facilities.

### **STATE REQUIREMENTS FOR MEDICAL MARIJUANA FACILITIES**

#### Registration Required

By state statute and rule, a medical marijuana facility may not be established or operated unless the facility has been registered by the OHA in accordance with OHA rules. A "person responsible for a medical marijuana facility," or PRF as they are identified in the rule, must submit an application to the OHA. To be considered complete, the application must include information, including fingerprints, required for a criminal background check. (Per OAR 333-008-1280, any criminal background information received by OHA about a PRF is confidential and is not subject to disclosure without a court order.)

#### Registration Application Approval by OHA

Prior to determining whether to approve or deny an application, the OHA must:

- a) Ensure the criminal background check has been completed and review the results;

- b) Contact the Oregon Medical Marijuana Program (OMMP) (the OHA program that registers growers) to ensure the proposed location of the facility is not the same location as a registered grow site;
- c) Determine whether the proposed facility is located within 1,000 feet of the property of a public or private elementary, secondary or career school; and
- d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility.

If the proposed facility complies with ORS 475.314 and the OHA rules and the PRF has passed the criminal background check, OHA will notify the PRF that the application has been approved and the facility is registered. The PRF will be provided with a proof of registration that includes a unique registration number. A facility's registration cannot be transferred to another location.

### Security Requirements

Security requirements for registered facilities are outlined in detail in OAR 333-008-1140 through 333-008-1180, and include:

- commercial grade door locks installed on every external door;
- marijuana is kept in a locked, secure area;
- marijuana transfer areas are posted as restricted access areas;
- a security alarm system that is installed by an alarm installation company and meets the specifications of OAR 333-008-1150;
- a fully operational video surveillance recording system that meets the specifications of OAR 333-008-1160;
- camera coverage and placement meeting the specifications of OAR 333-008-1170;
- video recording requirements meeting the specifications of OAR 333-008-1180.

The OHA will not approve the facility for operation until all security requirements are in place. A proposed facility that is in compliance with the statutes and rules but has not yet had a security system installed and/or other security requirements met, may be issued a provisional registration, valid for 60 days. Because a provisional registration may be issued by the OHA prior to all security requirements being in place, land use authorization should not be issued for a provisional registration, but only for an OHA final approval, which requires all security measures to be installed and allows the facility to be fully operational.

Operation of Registered Facilities, OAR 333-008-1200, outlines responsibilities of a PRF of a registered facility and includes that the PRF must have written detailed policies and procedures, as well as training for employees on the policies and procedures, that at a minimum cover: security; testing; transfers; operation; required record keeping; labeling, and; violations and enforcement.

## Annual Renewal Required

A facility's registration expires one year from application approval and must be renewed by OHA on an annual basis. A criminal background check (including fingerprints) on the PRF must be conducted every year at the time of application renewal by the OHA.

## **LOCAL ACTION REQUIRED**

With the moratorium on the establishment of medical marijuana facilities expiring on May 1, 2015, Legislative Amendments to the City of Winston Zoning Ordinance (WZO) are needed to incorporate the state siting standards for registration of medical marijuana facilities and to apply any additional land use standards necessary to ensure public safety and address consistency with permitted uses in zones in which the facilities may be located.

The state's standards require that an MMF may not be located:

- at a registered grow site;
- within 1,000 ft. of a public or private elementary, secondary or career school;
- within 1,000 ft. of another MMF;

and the facility may not be a mobile facility.

Additional local standards that should apply are that an MMF may not be located:

- within 1,000 ft. of a licensed preschool or daycare facility;
- within 500 ft. of any property with an established church;
- within 200 ft. of any property zoned for (PR) public reserve or parks;

and the maximum hours of operation are to be from 9:00 a.m. through 7:00 p.m.

## **PROPOSED LEGISLATIVE AMENDMENTS TO THE WINSTON ZONING ORDINANCE**

***ACTION: ADD DEFINITION OF MEDICAL MARIJUANA FACILITY (MMF) AND PERSON RESPONSIBLE FOR A MEDICAL MARIJUANA FACILITY (PRF) INTO SECTION 1.020, DEFINITIONS (PGS. 12 & 14).***

### **SECTION 1.020. Definitions.**

**MEDICAL MARIJUANA FACILITY (MMF): a facility registered by the Oregon Health Authority (OHA) under OAR 333-008-1050 to, as outlined in ORS 475.314, authorize the transfer of usable marijuana and immature marijuana plants from:**

- A registry identification cardholder, the designated primary care giver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or**
- A medical marijuana facility to a registry identification cardholder or the designated primary care giver of a registry identification cardholder.**

**PERSON RESPONSIBLE FOR A MEDICAL MARIJUANA FACILITY or “PRF”: means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in OAR 333-008-1000 through 333-008-1400, “Medical Marijuana Facilities,” and has been approved by the Oregon Health Authority for registration of that facility.**

***ACTION: ADD STATUTORY PROVISIONS FOR A MEDICAL MARIJUANA FACILITY AS A USE PERMITTED OUTRIGHT IN THE (C-G) GENERAL COMMERCIAL ZONE AT SECTION 4.140, (PG. 43)***

Page 43, Add Item dd. to Section 4.140.1, (C-G) General Commercial zone:

SECTION 4.140.1 Uses Permitted Outright

**dd. A Medical Marijuana Facility, subject to the following standards:**

- (i) **No portion of the facility shall be located within 1000 feet of the property boundary of another medical marijuana facility.**
- (ii) **No portion of the facility shall be located within 1000 feet of the property boundary of a public or private elementary, secondary or career school\* attended primarily by minors.**
- (iii) **No portion of the facility shall be located within 1000 feet of the property boundary of a registered Head Start facility, or a licensed preschool or daycare facility.**
- (iv) **No portion of the facility shall be located within 500 feet of the property boundary of an established tax-exempt church.**
- (v) **No portion of the facility shall be located within 200 feet of any property with a Public plan designation or zoned for (PR) Public Reserve and/or parks, unless an arterial street runs between the facility and those properties.**
- (vi) **The facility shall not be located at a registered grow site.**
- (vii) **The maximum hours of operation for the facility shall be 9:00 a.m. through 7:00 p.m.**
- (viii) **No mobile facility or services shall be authorized.**
- (ix) **Proof of an approved Oregon Health Authority (OHA) registration shall be provided, demonstrating that the facility is in full compliance with ORS 475.314 and OAR 333-008-1000 through 333-008-1400, which includes a criminal background check of the person responsible for the facility, a security alarm system installed by an alarm installation company, and a fully operational video surveillance recording system.**



- (x) **The facility shall comply all applicable parking, setback, signage and other property development standards of the C-G zone.**

**\*As defined in OAR 333-008-1010, "career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.**

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