

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING 18.08, 18.32.025, 18.32.030, 18.40.030, 18.40.040, 18.52.020 AND 18.94.120 OF THE ASHLAND MUNICIPAL CODE ALLOWING MEDICAL MARIJUANA DISPENSARIES IN SPECIFIED PORTIONS OF THE COMMERCIAL (C-1), EMPLOYMENT (E-1), AND INDUSTRIAL (M-1) ZONING DISTRICTS**

Annotated to show ~~deletions~~ and **additions** to the code sections being modified. Deletions are **bold lined through** and additions are in **bold underline**.

**WHEREAS**, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293; 531 P 2d 730, 734 (1975); and

**WHEREAS**, the Oregon Legislature enacted House Bill 3460 in 2013 (ORS 475.314) which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities; and

**WHEREAS**, under Oregon law, local governments may regulate the operation and location of certain types of businesses within their jurisdiction limits except when such action has been specifically preempted by state statute; and

**WHEREAS**, the City Council determined it is necessary to establish rules and regulations permitting medical marijuana dispensaries as a new land use within the City and minimizing the potential impacts to nearby residential neighborhoods; and

**WHEREAS**, the Planning Commission of the City of Ashland conducted a duly advertised public hearing on the amendments to Title 18 Land Use of the Ashland Municipal Code on May 13, 2014, , and following deliberations, recommended approval of the amendments by a unanimous vote; and

**WHEREAS**, the City Council of the City of Ashland conducted a duly advertised public hearing on the above-referenced amendments on June 17, 2014 and, following the close of the public

hearing and record, deliberated and conducted first and second readings approving adoption of the ordinance in accordance with Article 10 of the Ashland City Charter; and

**WHEREAS**, the City Council of the City of Ashland has determined that in order to protect and benefit the public health, safety and welfare of existing and future residents of the City, it is necessary to amend the Ashland Land Use Ordinance in the manner proposed, that an adequate factual base exists for the amendments, that the amendments are consistent with the comprehensive plan and that such amendments are fully supported by the record of this proceeding.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** The above recitations are true and correct and are incorporated herein by this reference.

**SECTION 2.** Chapter 18.08 [Definitions] is hereby amended to include the following new definition:

**SECTION 18.08.486      Medical Marijuana Dispensaries.**

**Any facility registered by the Oregon Health Authority under ORS 475.300 to 475.346 that dispenses marijuana pursuant to ORS 475.314.**

**SECTION 3.** Section 18.32.025 [C-1 Retail Commercial District – Special Permitted Uses] is hereby amended to read as follows:

**SECTION 18.32.025      Special Permitted Uses.**

The following uses and their accessory uses are permitted outright subject to the requirements of this section and the requirements of Chapter 18.72, Site Design and Use Standards.

**A. Commercial laundry, cleaning and dyeing establishments.**

1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located, to the greatest extent feasible. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
2. The use shall comply with all requirements of the Oregon Department of Environmental Quality.

**B. Bowling alleys, auditoriums, skating rinks, and miniature golf courses.** If parking areas are located within 200' of a residential district, they shall be shielded from residences by a fence or solid vegetative screen a minimum of 4' in height.

**C. Automobile fuel sales, and automobile and truck repair facilities.** These uses may only be located in the Freeway Overlay District as shown on the official zoning map.

**D. Residential uses.**

1. At least 65% of the total gross floor area of the ground floor, or at least 50% of the total lot area if there are multiple buildings shall be designated for permitted or special permitted uses, excluding residential.
2. Residential densities shall not exceed 30 dwelling units per acre in the C-1 District, and 60 dwelling units per acre in the C-1-D District. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor area shall count as 0.75 of a unit.
3. Residential uses shall be subject to the same setback, landscaping, and design standards as for permitted uses in the underlying C-1 or C-1-D District.
4. Off-street parking shall not be required for residential uses in the C-1-D District.
5. If the number of residential units exceeds 10, then at least 10% of the residential units shall be affordable for moderate income persons in accord with the standards established by resolution of the Ashland City Council through procedures contained in the resolution. The number of units required to be affordable shall be rounded down to the nearest whole unit.

**E. Drive-up uses as defined and regulated as follows:**

1. Drive-up uses are defined as any establishment which by design, physical facilities, service or by packaging procedures encourages or permits customers to receive services, obtain goods other than automobile fuel, or be entertained while remaining in their motor vehicles. The components of a drive-up use include kiosks, canopies or other structures; windows; stalls; queuing lanes and associated driveways. Drive-up uses may be approved in the C-1 District only, and only in the area east of a line drawn perpendicular to Ashland Street at the intersection of Ashland Street and Siskiyou Boulevard.
2. Drive-up uses are prohibited in Ashland's Historic Interest Area as defined in the Comprehensive Plan. The four existing non-conforming financial institution drive-up use in operation in the Historic Interest Area as of August 7, 2012 may redevelop or relocate within the C-1 and C-1-D zoned portions of Ashland Historic Interest Area subject to the following requirements:
  - a. Relocation or redevelopment of a drive-up use within the C-1 or C-1-D zoned portions of the Historic Interest Area shall be subject to a Type II Site Review procedure as a Special Permitted Use.
  - b. Relocated or redeveloped drive-up uses may only be placed on a secondary building elevation, and only accessed from an alley or driveway. A secondary building elevation is defined as a building's side or rear elevation which does not face a street, other than an alley.
  - c. Driveways serving relocated or redeveloped drive-up uses shall not enter from or exit to a higher order street frontage or through a primary elevation of the building, and driveways or queuing lanes shall be not placed between a building and the right-of-way other than an alley.
  - d. No demolition of or exterior change to a building considered to be a historic resource shall be permitted to accommodate the relocation or redevelopment of a drive-up use.
  - e. Regardless of the number of drive-up windows/lanes in use in the current location, with a relocation or remodel the number of windows/lanes shall be reduced to one (1).

3. Drive-up uses are subject to the following criteria:
  - a. The average waiting time in line for each vehicle shall not exceed five minutes. Failure to maintain this average waiting time may be grounds for revocation of the approval.
  - b. All facilities providing drive-up service shall provide at least two designated parking spaces immediately beyond the service window or provide other satisfactory methods to allow customers requiring excessive waiting time to receive service while parked.
  - c. A means of egress for vehicular customers who wish to leave the waiting line shall be provided.
  - d. The grade of the stacking area to the drive-up shall either be flat or downhill to eliminate excessive fuel consumption and exhaust during the wait in line.
  - e. The drive-up shall be designed to provide as much natural ventilation as possible to eliminate the buildup of exhaust gases.
  - f. Sufficient stacking area shall be provided to ensure that public rights-of-way are not obstructed.
  - g. The sound level of communications systems shall not exceed 55 decibels at the property line and shall otherwise comply with the Ashland Municipal Code regarding sound levels.
  - h. The number of drive-up uses shall not exceed the 12 in existence on July 1, 1984. Drive-up uses may be transferred to another location in accord with all requirements of this section. The number of drive-up window stalls shall not exceed 1 per location, even if the transferred use had greater than one stall.
  - i. A separate ministerial "Drive-Up Transfer" permit shall be obtained for the transfer of any drive-up use when such transfer is not associated with a Site Review or Conditional Use permit application in order to formally document transfer of the use.
  - j. Drive-up uses which are discontinued without a properly permitted transfer shall be deemed to have expired after unused for six (6) months. Discontinuation of a drive-up use is considered to have occurred when the drive-up use is documented as having ceased on site through a ministerial, Site Review or Conditional Use permit review, or upon on-site verification by the Staff Advisor.
  - k. All components of a drive-up use shall be removed within sixty (60) days of discontinuation of the use through abandonment, transfer, relocation or redevelopment.

**F. Kennel and veterinary clinics** where animals are housed outside, provided the use is not located within 200' of a residential district.

**G. Medical marijuana dispensaries meeting all of the following requirements:**

- 1. The dispensary must be located on a property with a boundary line adjacent to a boulevard, except that dispensaries are not permitted in the Downtown Design Standards zone.**
- 2. The dispensary must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary is prohibited.**
- 3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain**

**Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.**

**4. The dispensary must not have a drive-up use.**

**5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.**

**6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**

**SECTION 4.** Section 18.32.030 [C-1 Retail Commercial District – Conditional Uses] is hereby amended to read as follows:

**SECTION 18.32.030 Conditional Uses.**

The following uses and their accessory uses are permitted when authorized in accordance with the chapter on Conditional Use Permits:

A. Electrical substations.

B. Automobile fuel sales, and automobile and truck repair facilities, except as allowed as a special permitted use in 18.32.025.

C. New and used car sales, boat, trailer, and recreational vehicles sales and storage areas, except within the Historic Interest Area as defined in the Comprehensive Plan.

D. Hotels and motels.

E. Temporary uses.

F. Outdoor storage of commodities associated with a permitted, special permitted or conditional use.

G. Hostels, provided that the facility be subject to an annual Type I review for at least the first three years, after which time the Planning Commission may approve, under a Type II procedure, a permanent permit for the facility.

H. Building material sales yards, but not including concrete or asphalt batch or mixing plants.

I. Churches or similar religious institutions.

J. Wireless Communication Facilities not permitted outright and authorized pursuant to Section 18.72.180.

K. Structures which are greater than forty (40) feet in height, but less than fifty-five (55) feet, in the "D" Downtown Overlay District.

**L. Medical marijuana dispensaries, except as allowed as a special permitted use in 18.32.025, and meeting all of the following requirements:**

**1. The dispensary must be located 200 feet or more from a residential zone, except that dispensaries are not permitted in the Downtown Design Standards zone.**

**2. The dispensary must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary is prohibited.**

**3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain**

**Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.**

**4. The dispensary must not have a drive-up use.**

**5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.**

**6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**

**SECTION 5.** Section 18.40.030 [E-1 Employment District – Special Permitted Uses] is hereby amended to read as follows:

**SECTION 18.40.030 Special Permitted Uses.**

The following uses and their accessory uses are permitted outright subject to the requirements of this section, including all requirements of 18.72, Site Design and Use Standards.

A. Bottling plants, cleaning and dyeing establishments, laundries and creameries.

1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located to the greatest extent feasible. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

2. The use shall comply with all requirements of the Oregon Department of Environmental Quality.

B. Wholesale storage and distribution establishments. Provided, however, that for the uses specified in subsection A and B above, no deliveries or shipments shall be made from 9pm to 7am where the property on which the use is located is within 200 feet of any residential district.

C. Recycling depots, provided the use is not located within 200' of a residential district.

D. Kennels and veterinary clinics where animals are housed outside, provided the use is not located within 200' of a residential district.

E. Residential uses. As indicated as R-Overlay on the official zoning map, and in conformance with the Overlay Zones chapter 18.56.

F. Cabinet, carpentry, machine, and heating shops, if such uses are located greater than 200' from the nearest residential district.

G. Manufacture of food products, but not including the rendering of fats or oils. For any manufacture of food products with 200' of a residential district:

1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located, to the greatest extent feasible. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected. Odors which are in violation of this section include but are not limited to the following:

- a. Odors from solvents, chemicals or toxic substances.
  - b. Odors from fermenting food products.
  - c. Odors from decaying organic substances or human or animal waste.
2. Mechanical equipment shall be located on the roof or the side of a building with the least exposure to residential districts. Provided, however, that it may be located at any other location on or within the structure or lot where the noise emanating from the equipment is no louder, as measured from the nearest residential district, than if located on the side of the building with least exposure to residential districts. Mechanical equipment shall be fully screened and buffered.
- H. Cold Storage Plants, if such uses are located greater than 200' from the nearest residential district.
- I. Automobile and truck repair facilities, excluding auto body repair and paint shops. All cars and trucks associated with the use must be screened from view from the public right-of-way by a total sight obscuring fence. Facilities of 3 bays or larger shall not be located within 200' of a residential district.
- J. Medical marijuana dispensaries meeting all of the following requirements:**
- 1. The dispensary must be located on a property with a boundary line adjacent to a boulevard.**
  - 2. The dispensary must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary is prohibited.**
  - 3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.**
  - 4. The dispensary must not have a drive-up use.**
  - 5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products must not be placed within the dispensary's exterior refuse containers.**
  - 6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**

**SECTION 6.** Section 18.40.040 [E-1 Employment District – Conditional Uses] is hereby amended to read as follows:

**SECTION 18.40.040 Conditional Uses.**

The following uses and their accessory uses are permitted when authorized in accordance with the chapter on Conditional Use Permits:

- A. Electrical substations.
- B. Mini-warehouses and similar storage areas.
- C. Contractor equipment storage yards or storage and rental of equipment commonly used by a contractor.
- D. Automobile fuel sales.

- E. New and used car sales, boat, trailer and recreational vehicles sales and storage areas, provided that the use is not located within the Historic Interest Area as defined in the Comprehensive Plan.
- F. Hotels and motels.
- G. Any use which involves outside storage of merchandise, raw materials, or other material associated with the primary use on the site.
- H. Private college, trade school, technical school, or similar school.
- I. Cabinet, carpentry, machine, and heating shops, if such uses are located less than or equal to 200' from the nearest residential district.
- J. Cold storage plants, if such uses are located less than or equal to 200' from the nearest residential district.
- K. Automotive body repair and painting, including paint booths.
  - 1. The use shall not be located within 200' of the nearest residentially zoned property.
  - 2. All objectionable odors associated with the use shall be confined to the lot, to the greatest extent feasible. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
  - 3. The use shall comply with all requirements of the Oregon Department of Environmental Quality.
- L. Churches and similar religious institutions.
- M. Nightclubs and Bars.
- N. Theaters (excluding drive-in) and similar entertainment uses.
- O. Temporary uses.
- P. Wireless Communication Facilities not permitted outright and authorized pursuant to Section 18.72.180.

**Q. Medical marijuana dispensaries, except as allowed as a special permitted use in 18.40.030, and meeting all of the following requirements:**

- 1. The dispensary must be located 200 feet or more from a residential zone.**
- 2. The dispensary must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary is prohibited.**
- 3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.**
- 4. The dispensary must not have a drive-up use.**
- 5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.**
- 6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**



**SECTION 7.** Section 18.52.020 [M-1 Industrial District –Permitted Uses] is hereby amended to read as follows:

**SECTION 18.52.020 Permitted Uses.**

The following uses and their accessory uses are permitted outright:

- A. Any manufacturing, processing, assembling, research, wholesale or storage use.
- B. Railroad yards and freight stations, trucking and motor freight stations and facilities.
- C. Public and public utility service buildings, structures and uses.
- D. **Permitted, special permitted and** ~~C~~conditional uses in the Employment District listed in Section **18.40.020**, 18.40.030 and 18.40.040 of this Chapter, except residential uses. **Medical marijuana dispensaries must meet the special use requirements of 18.40.030.J.**
- E. Building materials sales yards.
- F. ~~Permitted uses in the Employment District listed in Section 18.40/020 of this Chapter.~~

**SECTION 8.** Section 18.94.120 [Home Occupations – Prohibited Uses] is hereby amended to read as follows:

**SECTION 18.94.120 Prohibited Uses.**

The following uses are prohibited as home occupations:

- A. Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor beyond allowable levels as determined by local, state or federal standards.
- B. Any activity involving on-site retail sales, except as allowed in the Historic Railroad District or items that are incidental to the occupational use, such as the sale of beauty products from salons, lesson books or sheet music for music teachers, or computer software for computer consultants.
- C. Any uses described in this section or uses with similar objectionable impacts because of automobile traffic, noise, glare, odor, dust, smoke or vibration:
  - 1. Ambulance service;
  - 2. Ammunition or firearm sales;
  - 3. Ammunition reloading business;
  - 4. Animal hospital, veterinary services, kennels or animal boarding;
  - 5. Auto and other vehicle repair, including auto painting;
  - 6. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles or large equipment on-site; **and**
  - 7. Medical marijuana dispensaries.**

**SECTION 9. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 10. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, or another word,

and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions, and text descriptions of amendments (i.e. Sections 1-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2014, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Barbara M. Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
John Stromberg, Mayor

Reviewed as to form:

\_\_\_\_\_  
David Lohman, City Attorney







# Medical Marijuana Dispensaries Eligible Locations

## eligible locations

-  commercially zoned properties (E-1, C-1 & M-1) adjacent to a boulevard
-  E-1 and C-1 zoned lands further than 200' from Residential zoned property (Conditional Use Permit)

## exclusion areas

-  Downtown Design Standards Overlay
-  commercially zoned lands within 200' of residentially zoned property
-  1000' buffer from a school
-  commercially zoned property within 1000' of a school

 boulevards

