

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 ORDINANCE # 506

4
5
6 **Amending Temporary Regulations for Recreational Marijuana Facilities adopted in**
7 **Ordinance # 491 and declaring an emergency**
8
9

10 Findings:

11 WHEREAS Lincoln County by Ordinances #479, #483, #484, and #488¹ adopted
12 temporary marijuana regulations pending implementation of companion regulations around
13 Measure 91 legalizing recreational marijuana. Recreational marijuana is undergoing review and
14 establishment of a system of regulation through a process similar to the regulation of alcohol by
15 the Oregon Liquor Control Commission (OLCC). The Measure charged OLCC with the
16 responsibility to set forth the administrative rules governing this system. This regulatory system is
17 separate from and in addition to laws governing medical marijuana distribution; and

18 WHEREAS Oregon Legislature, Oregon Health Authority (OHA) and OLCC have
19 recognized the need to integrate and coordinate the regulation of medical and recreational
20 marijuana and have adopted or are considering adopting laws and regulations around the
21 marijuana regulatory system; and

22 WHEREAS while legal challenges to the state's authority to preempt local regulation of
23 medical marijuana facilities continue to slowly wend their way through the Oregon appellate
24 courts, and the inherent powers of the County and other local governments pursuant to the Oregon

¹ Ordinance #s 479 and 483 relate to medical marijuana temporary time, place and manner regulations; Ordinance # 484 adopted temporary regulations for recreational marijuana; Ordinance # 488 adopted provisions to tax recreational marijuana sales as authorized under state law.

NOTE: This Ordinance amends an existing uncodified Ordinance and does not replace any current provisions of the Lincoln County Code. Therefore the usual provision of **boldface** for amendments and ~~strikethrough~~ for deletions amend Ordinance #484 and not the Lincoln County Code.

1 Constitution, Oregon Law (Chapter ~~2013~~ **203** for general law counties), and under the federal
2 Controlled Substances Act, 21 USC 801, et.seq. arguably authorize other actions by the County, it
3 is the Board's desire to continue in place a coordinated system of local regulations of medical and
4 recreational marijuana facilities and uses consistent with the Oregon voters' ultimate decisions to
5 legalize medical and recreational marijuana. That being said, the County reserves the right to
6 continue to explore issues including locational and operational restrictions, and further controls,
7 as the regulatory systems, both statewide and local, unfold; and

8 WHEREAS consistent with those reserved rights, the Board initiated subsequent
9 consideration of amendments to Ordinance #484 adopting temporary regulations of recreational
10 marijuana. After public hearings by the Planning Commission and the Board of Commissioners
11 the Board deliberated and made the following motion concerning the terms of the proposed
12 Ordinance²:

13 Motion to adopt Planning Commission recommendations #s 2 and 3. Those are set
14 forth below. The Motion passed unanimously by the Board of Commissioners.

15 Recommendation #2. The Planning Commission recommends that the provision *be*
16 *removed* from Ordinance #484 that requires recreational marijuana outlets and
17 recreational marijuana wholesale facilities be sited on parcels of land located a
18 minimum distance of 250 feet from any residentially zoned property (as measured
19 from property boundary to property boundary).

20 Recommendation #3. The Planning Commission recommends that Ordinance #484 be
21 amended to apply different separation requirements for marijuana production facilities
22 based on the land use zone in which they are located, as follows:

² An additional motion was made concerning modification of minimum acreage sizes in A-C zones. That decision will be incorporated into a separate amendment to Ordinance # 484, which will come before the Board of Commissioners at a later time.

- 1 a. Recreational marijuana production facilities approved on properties Rural
2 Residential RR-5 and Rural Residential RR-10 must be located at least 250 feet
3 from a dwelling not on the subject property.
4 b. In Agricultural Conservation A-C and Timber Conservation T-C zones, *indoor*
5 recreational marijuana production facilities must be located at least 250 feet
6 from a dwelling not on the subject property.
7 c. In the A-C and T-C zones, *outdoor* production of recreational marijuana must
8 be located at least 500 feet from a dwelling not on the subject property.
9 d. In the Planned Industrial I-P zone, no set minimum separation is required
10 between a marijuana production facility and a dwelling not on the subject
11 property.
12

13 WHEREAS the Board adopts the Final Order of the Planning Commission concerning
14 these recommendations as further findings in support of this Ordinance; and

15 **WHEREAS, the Board adopted the above-referenced changes in Ordinance No. 491;**
16 **and**

17 **WHEREAS, the Planning Commission has since recommended that additional**
18 **changes be made to Ordinance No. 491 as outlined below, and the Board is in agreement**
19 **with such amendments;**

20 Now, therefore,

21 The Lincoln County Board of Commissioners ordains as follows:

22 SECTION 1.

23 These amendments to Ordinance #491 are temporary regulations that supplement Lincoln
24 County Code Chapter 1 and do not nullify or modify the obligation to meet all requirements of
25 that Chapter and any other applicable state and local laws, including but not limited to land use

1 and recreational marijuana laws and rules. These regulations apply only to the unincorporated
2 areas of Lincoln County.

3
4 SECTION 2.

5 The following definitions apply to this Ordinance:

6 (1) Recreational Marijuana Production Site (RMPS) -- means a location, licensed
7 under OAR Chapter 845 Division 25, where marijuana is produced for commercial recreational
8 use. Production of marijuana means the manufacture, planting, cultivation, growing or harvesting
9 of marijuana for recreational use. Production does not include the drying of marijuana by a
10 marijuana processor, if the marijuana processor is not otherwise producing marijuana.

11 (2) Recreational Marijuana Processor (RMP) -- means a business, licensed by OLCC,
12 that will transform the raw marijuana into another product or extract. "Processes" means the
13 processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid
14 concentrates or cannabinoid extracts. It does not include packaging or labeling of marijuana
15 items. Marijuana processing does not include drying marijuana by a marijuana producer, which
16 is "preparation" of farm products and part of the definition of farm use under OAR 660-033-
17 0020(7)(b)(A).

18 (3) Recreational Marijuana Wholesaler (RMW) -- means a business, licensed by
19 OLCC, that purchases marijuana items for resale to a person other than a consumer.

20 (4) Recreational Marijuana Retail Outlet (RMRO) -- is a facility, licensed by OLCC,
21 that is allowed to sell marijuana items to persons 21 years of age and older.

22
23 SECTION 3.

24 Notwithstanding any other provision of this Ordinance, persons 21 years of age and older
25 may grow up to four (4) plants per residence, regardless of how many people live in the residence,
26 in any zone. No more than four plants per residence are allowed under this Section.

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1 SECTION 4.

2 RMPSs are authorized in the following zones under the conditions and standards set forth.
3 Other standards and conditions applicable under Chapter 1 of the Lincoln County Code, or
4 otherwise under state or local laws or rules, including but not limited to setbacks, lot coverage,
5 parking, special standards and signage apply to these uses in the same manner as any other use in
6 the underlying zone.

7 (1) Rural Residential Zone RR-5 and RR-10 as a conditional use;

8 (2) Planned Industrial Zone I-P as a conditional use;

9 (3) Agricultural Conservation Zone A-C as outright use subject to special standards.
10 Before use is established, must apply to County and comply with the special standards.

11 (4) Timber Conservation Zone T-C as outright use subject to special standards.
12 Before use is established, must apply to County and comply with the special standards.

13
14 Special Standards in All Zones

15 (1) All state requirements met and maintained, including but not limited to licensing
16 and state locational requirements.

17 (2) All applicable building and fire codes are met and maintained for any structures
18 used for production of marijuana.

19 (3) The RMPS may not be co-located within the same building or on the same
20 property with any marijuana social club or smoking club.

21 (4) The RMPS must utilize an air filtration and ventilation system that confines all
22 odors associated with the RMPS to the premises as defined herein. The air filtration and
23 ventilation system, to the greatest extent feasible, shall confine all objectionable odors
24 associated with the facility to the premises. For the purposes of this provision, the standard
25 for judging “objectionable odors” shall be that of an average, reasonable person with

1 ordinary sensibilities after taking into consideration the character of the neighborhood in
2 which the odor is made and the odor is detected.

3 (5) A RMPS must be located at least

4 a. 1,000 feet away from any other registered RMPS, **unless it is**
5 **located in an I-P Zone, in which case there is no distance requirement under**
6 **this criterion. When this criterion does apply, the distance measurement shall**
7 **be calculated from the nearest corner of the facility to the nearest corner of**
8 **the other facility;**

9 b. 250 feet away from any residence not on the subject property in the
10 RR-5 and RR-10 Zones and 500 feet away from any residential dwelling on
11 adjacent property in the A-C and T-C zones if an outdoor grow;

12 c. 1,000 feet away from the boundary of any property containing a
13 pre-school or pre-kindergarten, head start program, community learning center, or
14 certified child care facility regulated under ORS Chapters 329, 329A and 657, and
15 any public park (state, city or county);

16 d. The distance measurement for subsection b. above shall be made
17 from the nearest corner of the accessory structure to the closest portion of any
18 adjacent residence. Otherwise all distances are as measured from property
19 boundary to property boundary.

20 (6) All production of marijuana must take place indoors in a detached accessory
21 building. Indoor production facilities in the Agricultural Conservation A-C and Timber
22 Conservation T-C zones must be located at least 250 feet away from any residence not on
23 the subject property. Outdoor production of marijuana shall be permitted on Agricultural
24 Conservation A-C and Timber Conservation T-C zoned properties, provided that the
25 subject property is a minimum of 10 acres in size and the facility/crop is located no closer
26 than 500 feet from a dwelling not located on the subject property. Permitted outdoor

1 canopy sizes shall be limited to the maximum size consistent with the two-tier system
2 employed by OLCC.

3 (7) Set back requirements from adjacent residences not on the subject property in
4 sections (5)(b) and (6) above do not apply to RMPS facilities in the I-P zone.

5 (8) All employees and volunteers of the RMPS must submit to a criminal background
6 check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-010-
7 0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the
8 RMPS operation if the employee or volunteer has been convicted of the manufacture or
9 delivery of a controlled substance in Schedule I or Schedule II within five years of the
10 date of the background check, or if the employee or volunteer has been convicted more
11 than once at any time, or if the employee or volunteer has been convicted of any felony
12 involving children or crime prohibited within 1,000 feet of a school.

13 (9) An indoor RMPS shall not exceed 5,000 square feet or the allowable square
14 footage of an accessory use within the zone, whichever is smaller, in an RR-5 and RR-10
15 zone.

16 (10) An indoor RMPS shall not exceed the maximum size allowed by state rules or the
17 allowable square footage of an accessory use within the zone, whichever is the smaller, in
18 an A-C, T-C or I-P zone.

19 (11) Farming of a marijuana crop shall not be used to demonstrate compliance with the
20 approval criteria for a dwelling. (See Section 34, Chapter 614, Oregon Laws 2015).

21 (12) A farm stand shall not be used for the sale, or to promote the sale, of marijuana
22 items. (See Section 34, Chapter 614, Oregon Laws 2015).

23 (13) A commercial activity carried on in conjunction with a marijuana crop is
24 prohibited. (See Section 34, Chapter 614, Oregon Laws 2015).

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1 (14) A change in use (including rezoning) of a neighboring property to a use identified
2 in this Section after the RMPS has been established shall not result in the RMPS being in
3 violation of this Section.
4

5 SECTION 5.

6 RMPs are authorized in the following zones under the conditions and standards set forth. Other
7 standards and conditions applicable under Chapter 1 of the Lincoln County Code, or otherwise
8 under state or local laws or rules, including but not limited to setbacks, lot coverage, parking,
9 special standards and signage apply to these uses in the same manner as any other use in the
10 underlying zone.

11 (1) Planned Industrial Zone I-P as a conditional use;

12 (2) In Planned Industrial I-P, Agricultural Conservation A-C and Timber Conservation
13 T-C zoned properties, production and processing facilities shall be permitted to co-locate
14 on the same property with a conditional use approval.

15 Special Standards in All Zones

16 (1) All state requirements met and maintained, including but not limited to licensing
17 and state locational requirements.

18 (2) All applicable building and fire codes are met and maintained for any structures
19 used for processing of marijuana.

20 (3) The RMP may not be co-located within the same building or on the same property
21 with any other marijuana facility except as noted in Section 5(2) above. The RMP must utilize an
22 air filtration and ventilation system that confines all odors associated with the RMP to the
23 premises as defined herein. The air filtration and ventilation system, to the greatest extent
24 feasible, shall confine all objectionable odors associated with the facility to the premises. For the
25 purposes of this provision, the standard for judging “objectionable odors” shall be that of an

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1 average, reasonable person with ordinary sensibilities after taking into consideration the character
2 of the neighborhood in which the odor is made and the odor is detected.

3 (4) A RMP must be located at least

4 a. 1,000 feet away from any other registered RMP **unless it is located in an**
5 **I-P Zone, in which case there is no distance requirement under this criterion. When**
6 **this criterion does apply, the distance measurement shall be calculated from the**
7 **nearest corner of the facility to the nearest corner of the other facility;**

8 b. 250 feet away from any residence not on the subject property, **except**
9 **where located in an I-P zone;**

10 c. 1,000 feet away from the boundary of any property containing a pre-school
11 or pre-kindergarten, head start program, community learning center, or certified child care
12 facility regulated under ORS Chapters 329, 329A and 657, and any public park (state, city
13 or county);

14 d. The distance measurement for subsection b. above shall be made from the
15 nearest corner of the accessory structure to the closest portion of any adjacent residence.
16 Otherwise all distances are as measured from property boundary to property boundary.

17 (5) All processing of marijuana must take place indoors in a detached accessory
18 building.

19 (6) Processing shall be limited to dry, water or CO-2 processes, **provided that the**
20 **process does not involve the use of high heat or pressure**, on properties zoned A-C or
21 T-C. Any process involving butane or other flammable materials is prohibited in these
22 zones.

23 (7) All employees and volunteers of the RMP must submit to a criminal background
24 check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-010-
25 0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the
26 RMP operation if the employee or volunteer has been convicted of the manufacture or

1 delivery of a controlled substance in Schedule I or Schedule II within five years of the
2 date of the background check, or if the employee or volunteer has been convicted more
3 than once at any time, or if the employee or volunteer has been convicted of any felony
4 involving children or crime prohibited within 1,000 feet of a school.

5 (8) An indoor RMP shall not exceed 300 square feet or the allowable square footage
6 of an accessory use within the zone, whichever is smaller, in an RR-5 and RR-10 zone.

7 (9) An indoor RMP shall not exceed 1,500 square feet or the allowable square footage
8 of an accessory use within the zone, whichever is the smaller, in an A-C, T-C or I-P zone.

9 (10) A change in use (including rezoning) of a neighboring property to a use identified
10 in this Section after the RMP has been established shall not result in the RMP being in
11 violation of this Section.

12
13 SECTION 6.

14 RMWs are authorized in the following zones under the conditions and standards set forth.
15 Other standards and conditions applicable under Chapter 1 of the Lincoln County Code, or
16 otherwise under state or local laws or rules, including but not limited to setbacks, lot coverage,
17 parking, special standards and signage apply to these uses in the same manner as any other use in
18 the underlying zone.

19 (1) Retail Commercial Zone C-1 and General Commercial Zone C-2 as outright
20 permitted use subject to special standards. Before use is established, must apply to County and
21 comply with the special standards.

22 (2) Planned Industrial Zone I-P as a conditional use.

23
24 Special Standards for RMW in all zones

25 (2) (1) All state requirements met and maintained, including licensing and state
26 locational requirements.

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- 1 ~~(3)~~ (2) All applicable building and fire codes are met and maintained.
- 2 ~~(4)~~ (3) The RMW may not be co-located within the same building or on the same
3 property with any marijuana social club or smoking club. -
- 4 ~~(5)~~ (4) Hours of operation are limited to 10:00 am to 7:00 pm.
- 5 ~~(6)~~ (5) Entrances and off- street parking areas to RMW shall be well lit and not
6 visually obscured from public view / right of way.
- 7 ~~(7)~~ (6) A RMW must be located at least:
- 8 a. 1,000 feet away from any other registered RMW, **unless it is located in an**
9 **I-P Zone, in which case there is no distance requirement under this criterion. When**
10 **this criterion does apply, the distance measurement shall be calculated from the**
11 **nearest corner of the facility to the nearest corner of the other facility;**
- 12 b. 1,000 feet away from the boundary of any property containing a pre-school
13 or pre-kindergarten, head start program, community learning center, or certified child care
14 facility regulated under ORS Chapters 329, 329A and 657, and any public park (state, city
15 or county). In an I-P zone, a RMW may be located within 1,000 feet of any public park
16 (state, city or county);
- 17 c. All distances are as measured from property boundary to property
18 boundary.
- 19 ~~(8)~~ (7) All employees and volunteers of the RMW must submit to a criminal
20 background check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-
21 010-0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the
22 RMW operation if the employee or volunteer has been convicted of the manufacture or delivery
23 of a controlled substance in Schedule I or Schedule II within five years of the date of the
24 background check, or if the employee or volunteer has been convicted more than once at any
25 time, or if the employee or volunteer has been convicted of any felony involving children or crime
26 prohibited within 1000 feet of a school.

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1 (9) (8) A change in use (including rezoning) of a neighboring property to a use
2 identified in this Section after the RMW has been established shall not result in the RMW being
3 in violation of this Section.

4
5 SECTION 7.

6 RMROs are authorized in the following zones under the conditions and standards set
7 forth. Other standards and conditions applicable under Chapter 1 of the Lincoln County Code, or
8 otherwise under state or local laws or rules, including but not limited to setbacks, lot coverage,
9 parking, special standards and signage apply to these uses in the same manner as any other use in
10 the underlying zone.

11 (3) (1) Retail Commercial Zone C-1 and General Commercial C-2 Zone as outright
12 use subject to special standards. Before use is established, must apply to County and comply with
13 the special standards.

14 (4) (2) Planned Industrial Zone I-P as a conditional use.

15 Special Standards for RMRO in all zones

16 (10) (1) All state requirements met and maintained, including licensing and state
17 locational requirements.

18 (11) (2) All applicable building and fire codes are met and maintained.

19 (12) (3) No manufacture or production of any extracts, oils, resins or similar derivatives
20 of marijuana on the premises of the RMRO and no open flames shall be allowed in the
21 preparation of any product.

22 (13) (4) The RMRO may not be co-located within the same building or on the same
23 property with any other marijuana facility.

24 (14) (5) The RMRO must utilize an air filtration and ventilation system that, to the
25 greatest extent feasible, shall confine all objectionable odors associated with the facility to the
26 premises. For the purposes of this provision, the standard for judging “objectionable odors” shall

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1 be that of an average, reasonable person with ordinary sensibilities after taking into consideration
2 the character of the neighborhood in which the odor is made and the odor is detected.

3 ~~(15)~~ **(6)** Hours of operation are limited to 10:00 am to 7:00 pm.

4 ~~(16)~~ **(7)** Entrances and off- street parking areas to RMRO shall be well lit and not
5 visually obscured from public view / right of way.

6 ~~(17)~~ **(8)** A RMRO must be located at least:

7 a. ~~1,000 feet away from any other registered RMRO;~~

8 **b a.** 1,000 feet away from the boundary of any property containing a pre-school
9 or pre-kindergarten, head start program, community learning center, or certified
10 child care facility regulated under ORS Chapters 329, 329A and 657, and any
11 public park (state, city or county). In an I-P zone, a RMRO may be located within
12 1,000 feet of any public park (state, city or county);

13 **e b.** All distances are as measured from property boundary to property
14 boundary.

15 ~~(18)~~ **(9)** All employees and volunteers of the RMRO must submit to a criminal
16 background check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-
17 010-0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the
18 RMRO operation if the employee or volunteer has been convicted of the manufacture or delivery
19 of a controlled substance in Schedule I or Schedule II within five years of the date of the
20 background check, or if the employee or volunteer has been convicted more than once at any
21 time, or if the employee or volunteer has been convicted of any felony involving children or crime
22 prohibited within 1000 feet of a school.

23 ~~(19)~~ **(10)** A change in use (including rezoning) of a neighboring property to a use
24 identified in this Section after the RMRO has been established shall not result in the RMRO being
25 in violation of this Section.

26 SECTION 8.

1 Severability.

2 (1) The sections, subsections, paragraphs and clauses of this Ordinance are severable.
3 The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the
4 remaining sections, subsections, paragraphs and clauses.

5 (2) If any section or all of this Ordinance is invalidated, County reserves the right to
6 continue its interpretation of existing County Code provisions as applied to recreational marijuana
7 uses including RMPS, RMP, RMW, and RMROs.

8
9 SECTION 9.

10 Rescission; Codification; Emergency

11 (1) This Ordinance is temporary and amends existing Ordinance #491. County Counsel
12 will not codify this Ordinance into the Lincoln County Code.

13 (2) In accordance with the legislative findings supporting this Ordinance, and this
14 Ordinance being necessary for the immediate preservation of the public peace, health and safety,
15 an emergency is declared to exist and this Ordinance shall take effect upon its passage.

DATED this 7th day of November, 2018.

LINCOLN COUNTY BOARD OF COMMISSIONERS




DOUG HUNT, Commissioner



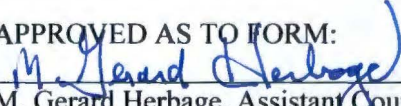
CLAIRE HALL, Commissioner



TERRY N. THOMPSON, Chair

ATTESTED TO: 

Kristi Whitaker, Recorder

APPROVED AS TO FORM: 

M. Gerard Herbage, Assistant County Counsel

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