

1 **BEFORE THE BOARD OF COMMISSIONERS**

2 **FOR LINCOLN COUNTY, OREGON**

3 ORDINANCE # 492

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5  
6 **Amending Temporary Regulations for Recreational Marijuana Facilities adopted in**  
7 **Ordinance # 484 and declaring an emergency**  
8 \_\_\_\_\_  
9

10 Findings:

11  
12 WHEREAS Lincoln County by Ordinances #479, #483, #484, #488 and #491<sup>1</sup> adopted  
13 (and amended) temporary marijuana regulations pending implementation of companion  
14 regulations around Measure 91 legalizing recreational marijuana. Recreational marijuana is  
15 undergoing review and establishment of a system of regulation through a process similar to the  
16 regulation of alcohol by the Oregon Liquor Control Commission (OLCC). The Measure charged  
17 OLCC with the responsibility to set forth the administrative rules governing this system. This  
18 regulatory system is separate from and in addition to laws governing medical marijuana  
19 distribution; and

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

24 WHEREAS while legal challenges to the state's authority to preempt local regulation of  
25 medical marijuana facilities continue to slowly wend their way through the Oregon appellate

\_\_\_\_\_  
<sup>1</sup> Ordinance #s 479 and 483 relate to medical marijuana temporary time, place and manner regulations; Ordinance #  
484 and #491 adopted and amended, respectively, 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 amends Ordinances #484 and #491 and not the Lincoln County Code.

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

9 WHEREAS consistent with those reserved rights, the Board initiated subsequent  
10 consideration of amendments to Ordinance #484 adopting temporary regulations of recreational  
11 marijuana. After public hearings by the Planning Commission and the Board of Commissioners  
12 the Board deliberated and made the following motion concerning the terms of the proposed  
13 Ordinance<sup>2</sup>:

14 Planning Commission Recommendation #1 was to maintain the minimum acreage  
15 requirement (20 acres) to be eligible to produce (grow) recreational marijuana  
16 outdoors on Agricultural Conservation A-C zoned properties. Commissioner  
17 Thompson moved and Commissioner Hall seconded a motion to move forward with  
18 changing the minimum acreage requirement to 10 acres for property to be eligible to  
19 produce (grow) recreational marijuana on Agricultural Conservation A-C zoned  
20 properties. The motion passed 2-1 with Commissioner Hunt voting no.

21  
22 WHEREAS the Board adopts the Final Order of the Planning Commission concerning  
23 these recommendations as further findings in support of this Ordinance with the notation that  
24 Commissioner Hunt agrees with the Planning Commission recommendation #1 but  
25 Commissioners Thompson and Hall find that a lessening of the minimum acreage requirement is  
26 needed.

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<sup>2</sup> Other motions on Planning Commission Recommendations #2 and #3 are incorporated into Ordinance # 491.

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1 Now, therefore,

2 The Lincoln County Board of Commissioners ordains as follows:

3 SECTION 1.

4 These amendments to Ordinance #484 as amended by Ordinance #491 are temporary  
5 regulations that supplement Lincoln County Code Chapter 1 and do not nullify or modify the  
6 obligation to meet all requirements of that Chapter and any other applicable state and local laws,  
7 including but not limited to land use and recreational marijuana laws and rules. These  
8 regulations apply only to the unincorporated areas of Lincoln County.

9  
10 SECTION 2.

11 The following definitions apply to this Ordinance:

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

18 (2) Recreational Marijuana Processor (RMP) -- means a business, licensed by OLCC,  
19 that will transform the raw marijuana into another product or extract. "Processes" means the  
20 processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid  
21 concentrates or cannabinoid extracts. It does not include packaging or labeling of marijuana  
22 items. Marijuana processing does not include drying marijuana by a marijuana producer, which  
23 is "preparation" of farm products and part of the definition of farm use under OAR 660-033-  
24 0020(7)(b)(A).

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

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

3  
4 SECTION 3.

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

8  
9 SECTION 4.

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

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

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

17 (3) Agricultural Conservation Zone A-C as outright use subject to special standards.

18 Before use is established, must apply to County and comply with the special standards.

19 (4) Timber Conservation Zone T-C as outright use subject to special standards.

20 Before use is established, must apply to County and comply with the special standards.

21 Special Standards in All Zones

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

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

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

1 (4) The RMPS must utilize an air filtration and ventilation system that confines all odors  
2 associated with the RMPS to the premises as defined herein. The air filtration and  
3 ventilation system, to the greatest extent feasible, shall confine all objectionable odors  
4 associated with the facility to the premises. For the purposes of this provision, the  
5 standard for judging “objectionable odors” shall be that of an average, reasonable  
6 person with ordinary sensibilities after taking into consideration the character of the  
7 neighborhood in which the odor is made and the odor is detected.

8 (5) A RMPS must be located at least

9 a. 1,000 feet away from any other registered RMPS;

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

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

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

23 (6) All production of marijuana must take place indoors in a detached accessory building.  
24 Indoor production facilities in the Agricultural Conservation A-C and Timber  
25 Conservation T-C zones must be located at least 250 feet away from any residence  
26 not on the subject property. Outdoor production of marijuana shall be permitted on  
27 Agricultural Conservation A-C and Timber Conservation T-C zoned properties,  
28 provided that the subject property is a minimum of ~~20~~ 10 acres in size and the

1 facility/crop is located no closer than 500 feet from a dwelling not located on the  
2 subject property. Permitted outdoor canopy sizes shall be limited to the maximum  
3 size consistent with the two-tier system employed by OLCC.

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

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

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

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

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

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

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

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  
3 being in 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  
13 Conservation T-C zoned properties, production and processing facilities shall be  
14 permitted to co-locate 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  
26 average, reasonable person with ordinary sensibilities after taking into consideration the  
27 character of the neighborhood in which the odor is made and the odor is detected.

28 (4) A RMP must be located at least

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- 1 a. 1,000 feet away from any other registered RMP;
- 2 b. 250 feet away from any residence not on the subject property;
- 3 c. 1,000 feet away from the boundary of any property containing a pre-
- 4 school or pre-kindergarten, head start program, community learning center, or certified
- 5 child care facility regulated under ORS Chapters 329, 329A and 657, and any public park
- 6 (state, city or county);
- 7 d. The distance measurement for subsection b. above shall be made from the
- 8 nearest corner of the accessory structure to the closest portion of any adjacent residence.
- 9 Otherwise all distances are as measured from property boundary to property boundary.
- 10 (5) All processing of marijuana must take place indoors in a detached accessory
- 11 building.
- 12 (6) Processing shall be limited to dry, water or CO-2 processes on properties zoned
- 13 A-C or T-C. Any process involving butane or other flammable materials is prohibited in
- 14 these zones.
- 15 (7) All employees and volunteers of the RMP must submit to a criminal background
- 16 check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-010-
- 17 0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the
- 18 RMP operation if the employee or volunteer has been convicted of the manufacture or
- 19 delivery of a controlled substance in Schedule I or Schedule II within five years of the
- 20 date of the background check, or if the employee or volunteer has been convicted more
- 21 than once at any time, or if the employee or volunteer has been convicted of any felony
- 22 involving children or crime prohibited within 1,000 feet of a school.
- 23 (8) An indoor RMP shall not exceed 300 square feet or the allowable square footage
- 24 of an accessory use within the zone, whichever is smaller, in an RR-5 and RR-10 zone.
- 25 (9) An indoor RMP shall not exceed 1,500 square feet or the allowable square footage
- 26 of an accessory use within the zone, whichever is the smaller, in an A-C, T-C or I-P zone.

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

5 SECTION 6.

6 RMW are authorized in the following zones under the conditions and standards set forth.  
7 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 (1) Retail Commercial Zone C-1 and General Commercial Zone C-2 as outright  
12 permitted use subject to special standards. Before use is established, must apply to County and  
13 comply with the special standards.

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

15 Special Standards for RMW in all zones

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

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

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

21 (5) Hours of operation are limited to 10:00 am to 7:00 pm.

22 (6) Entrances and off- street parking areas to RMW shall be well lit and not visually  
23 obscured from public view / right of way.

24 (7) A RMW must be located at least:

25 a. 1,000 feet away from any other registered RMW;

26 b. 1,000 feet away from the boundary of any property containing a pre-  
27 school or pre-kindergarten, head start program, community learning center, or  
28 certified child care facility regulated under ORS Chapters 329, 329A and 657, and

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1 any public park (state, city or county). In an I-P zone, a RMW may be located  
2 within 1,000 feet of any public park (state, city or county).;

3 c. All distances are as measured from property boundary to property  
4 boundary.

5 (8) All employees and volunteers of the RMW 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 RMW  
8 operation if the employee or volunteer has been convicted of the manufacture or delivery of a  
9 controlled substance in Schedule I or Schedule II within five years of the date of the background  
10 check, or if the employee or volunteer has been convicted more than once at any time, or if the  
11 employee or volunteer has been convicted of any felony involving children or crime prohibited  
12 within 1000 feet of a school.

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

16  
17 SECTION 7.

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

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

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

27 Special Standards for RMRO in all zones

- 1 (10) All state requirements met and maintained, including licensing and state locational  
2 requirements.
- 3 (11) All applicable building and fire codes are met and maintained.
- 4 (12) No manufacture or production of any extracts, oils, resins or similar derivatives of  
5 marijuana on the premises of the RMRO and no open flames shall be allowed in the preparation  
6 of any product.
- 7 (13) The RMRO may not be co-located within the same building or on the same  
8 property with any other marijuana facility.
- 9 (14) The RMRO must utilize an air filtration and ventilation system that, to the greatest  
10 extent feasible, shall confine all objectionable odors associated with the facility to the premises.  
11 For the purposes of this provision, the standard for judging “objectionable odors” shall be that of  
12 an average, reasonable person with ordinary sensibilities after taking into consideration the  
13 character of the neighborhood in which the odor is made and the odor is detected.
- 14 (15) Hours of operation are limited to 10:00 am to 7:00 pm.
- 15 (16) Entrances and off- street parking areas to RMRO shall be well lit and not visually  
16 obscured from public view / right of way.
- 17 (17) A RMRO must be located at least:
- 18 a. 1,000 feet away from any other registered RMRO;
- 19 b. 1,000 feet away from the boundary of any property containing a pre-  
20 school or pre-kindergarten, head start program, community learning center, or  
21 certified child care facility regulated under ORS Chapters 329, 329A and 657, and  
22 any public park (state, city or county). In an I-P zone, a RMRO may be located  
23 within 1,000 feet of any public park (state, city or county);
- 24 c. All distances are as measured from property boundary to property  
25 boundary.
- 26 (18) All employees and volunteers of the RMRO must submit to a criminal  
27 background check by Lincoln County or its designees pursuant to ORS 181.533 and OAR 257-  
28 010-0025(1)(a). It shall be a violation of these standards to employ or allow a volunteer in the  
Page 11 -- ORDINANCE # 492

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1 RMRO operation if the employee or volunteer has been convicted of the manufacture or delivery  
2 of a controlled substance in Schedule I or Schedule II within five years of the date of the  
3 background check, or if the employee or volunteer has been convicted more than once at any  
4 time, or if the employee or volunteer has been convicted of any felony involving children or  
5 crime prohibited within 1000 feet of a school.

6 (19) A change in use (including rezoning) of a neighboring property to a use identified  
7 in this Section after the RMRO has been established shall not result in the RMRO being in  
8 violation of this Section.

9

10 SECTION 8.

11 Severability.

12 (1) The sections, subsections, paragraphs and clauses of this Ordinance are severable.

13 The invalidity of one section, subsection, paragraph, or clause shall not affect the  
14 validity of the remaining sections, subsections, paragraphs and clauses.

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

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SECTION 9.

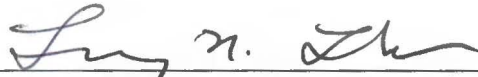
Rescission; Codification; Emergency

(1) This Ordinance is temporary and amends existing Ordinances #484 and #491. County Counsel will not codify this Ordinance into the Lincoln County Code.

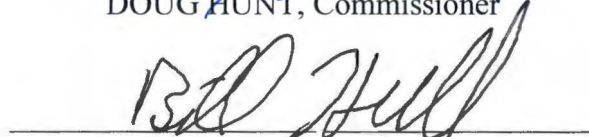
(2) In accordance with the legislative findings supporting this Ordinance, and this Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Ordinance shall take effect upon its passage.

DATED this 11 day of January, 2017.

LINCOLN COUNTY BOARD OF COMMISSIONERS

  
TERRY N. THOMPSON, Chair

  
DOUG HUNT, Commissioner

  
BILL HALL, Commissioner

ATTESTED TO:

  
Tanya Graham, Recorder

APPROVED AS TO FORM:

  
Wayne Belmont, County Counsel

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