

ORDINANCE NO. 235-15

**AN ORDINANCE REPEALING ORDINANCES 209-11 AND 214-12 AND ARTICLE 10 CHAPTER 7
"MEDICAL MARIJUANA 10-7-1" FOR THE CITY OF IRRIGON,
OREGON AND DECLARING AN EMERGENCY**

WHEREAS, the City Charter authorizes the City of Irrigon to exercise authority within the city over matters of City concern; and

WHEREAS, the City of Irrigon adopted Ordinance 214-12 amending Ordinance 209-11, creating Article 10 Chapter 7 of the Irrigon Development Code that was acknowledged by the Land Conservation and Development Commission on April 10, 2012; and

WHEREAS, the City did adopt a medical marijuana moratorium on April 22, 2014 as Ordinance 226-14 with a sunset of May 1, 2015; and

WHEREAS, the City plans to amend the City Development Code following a joint task force of Morrow County communities for the purpose of making determinations on medical marijuana dispensaries and medical marijuana grow facilities; and

WHEREAS, Article 10, Chapter 7 of the Irrigon Development Code attempted to manage the medical marijuana card program, an Oregon Health Authority function; and

WHEREAS, the City published proper public and agency hearing notices as required by City Development Code and State law; and

WHEREAS, the City of Irrigon Planning Commission held a public hearing to review the proposal on March 3, 2015; and

WHEREAS, the City of Irrigon Planning Commission considered and heard testimony from the residents of Irrigon, and after deliberation recommended approval and adopt the Final Findings of Fact; and

WHEREAS, testimony, including the proposed Findings of Fact and recommendation by of the City of Irrigon Planning Commission on March 3, 2015 was in conformance with Section 10-4A-5, Type IV Procedure (Legislative), of the City of Irrigon Development Code, and forwarded a recommendation of Approval to the City Council.

WHEREAS, the City of Irrigon City Council held public hearing to consider the recommendation from the Irrigon Planning Commission on March 17, 2015; and

WHEREAS, the City of Irrigon City Council accepted the Planning Commission's final findings of fact and recommendation for full repeal on March 17, 2015.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRRIGON ORDAINS AS FOLLOWS:

Section 1. Title of Ordinance

This Ordinance shall be known, and may be cited, by the title.

Section 2. Affected Documents

The following items are repealed and are hereby adopted as follows:

1. Exhibit [1] Repealing Article 10 Chapter 7 of the Irrigon Development Code, dated March 17, 2015, as attached.
2. Ordinance 214-12 Ordinance Amending 209-11 Prescribing the Permitting Legal Grow of Medical Marijuana, dated March 20, 2012.
3. Ordinance 209-11 Prescribing the Permitted Legal Growing of Medical Marijuana, dated October 18, 2011.

Section 3. Declaration of Emergency. The City Council declares that an emergency exists in order that no delay in implementing this ordinance.

Section 4. Effective Date

This Ordinance shall take effect on May 1, 2015 after adoption

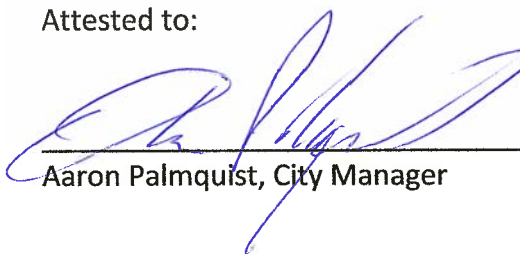
Passed by the Council this 17th day of April, 2015

Approved by:



Sam Heath, Mayor

Attested to:


Aaron Palmquist, City Manager

Final Findings of Fact
Repealing Ordinances 214-12, 209-11 and Article 10, Chapter 7 “Medical Marijuana”

REQUESTS: The repeal request is to remove Article 10, Chapter 7 Medical Marijuana from the Development Code. This provision seeks to administer the Medical Marijuana Card Program that is regulated by the Oregon Health Authority. It does not provide clear land use regulations. Any such regulations will be address under other provisions of the Development Code.

APPLICANT: City of Irrigon
PO Box 428
Irrigon, OR 97844

PROPERTY LOCATION: The proposal is to remove this current legislation from the Irrigon Municipal Code (IMC) and affects the commercial zones within the City of Irrigon. Based on recommendation this provision will be replaced by other more efficient language and structure guidance as to land uses.

I SUMMARY OF APPLICATION AND PROCESS:

For several years Oregon has had a medical marijuana program. This program is regulated by the Oregon Health Authority (OHA). Under the program individuals with certain medical conditions can obtain a medical marijuana card. In addition, the card allows for individuals to grow marijuana for prescribed medical purposes.

In October 2011 The City of Irrigon adopted Ordinance 209-11 for permitting and prescribing the legal growing of medical marijuana. Due to some language adoption that did not meet state statute the City of Irrigon amend the aforementioned ordinance with Ordinance 214-12 and created Chapter 7 with land use provisions of Article Ten of the Development Code. There continued to be some perceived and actual disconnects within the state system and statutes.

During the 2013 legislative session House Bill (HB) 3460 was passed which allowed medical marijuana dispensaries to be established. The vaguely written legislation notes that such type facility must be located in industrial, commercial, mixed use, or agriculture land. However, House Bill 3460 was then later followed up by Senate Bill (SB) 1531 that passed in the 2014 special session. In SB 1531 allowed local jurisdictions to enact a moratorium in order to better define local regulation for such type facilities (dispensaries, laboratories and grow sites).

The City of Irrigon, Morrow County, and the other four incorporated jurisdictions to enacted the moratorium which is to expire on April 30, 2015. As a region all entities have been working together to develop best practices for local control on such facilities with all of Morrow County. During the process of working to establish what would be best for the City of Irrigon it was clearly identified that Article Ten, Chapter Seven of the Irrigon Development Code is not properly written or cited. The State of Oregon has the authority and responsibility to manage and direct the medical card holder program. On the other hand the

City of Irrigon does have the ability and authority to regulate land use functions as they relate to time, place, and manner for dispensaries/facilities and grow sites.

Staff recommends that Chapter Seven of the Development Code, Article Ten, along with associated ordinances, be repealed and proceed forward with the hearings and future action as it pertains to Development Code Definitions and Development Code uses.

Staff initiated repealing process to ensure clarity and consistency in relation to the Medical Marijuana Program and statutes.

Based on the testimony of those in attendance at the March 3, 2015 Planning Commission public hearing the Planning Commission recommended that Article 10, Chapter 7 of the IMC and all related Ordinances enacted be repealed by the City Council.

II SUMMARY OF APPLICABLE CRITERIA: To approve the Planning Commission will need to hold a public hearing and show that requests meet the necessary criteria according the City of Irrigon's Development Code. Those criteria are presented below in bold print with responses in regular print.

City of Irrigon Development Code

10-4A-5: TYPE IV PROCEDURE (LEGISLATIVE)

A. Pre-application Conference: *A pre-application conference is required for all type IV applications initiated by a party other than the city. The requirements and procedures for a pre-application conference are described in subsection 10-4A-5C of this article.*

Response:

This Type IV procedure was initiated by the City, so this provision does not apply.

B. Application Requirements:

- 1. Application Forms:** *Type IV applications shall be made on forms provided by the city planning official or designee.*
- 2. Submittal Information:** *The application shall contain:*
 - a.** *The information requested on the application form;*
 - b.** *A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);*
 - c.** *The required fee; and*
 - d.** *One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.*

Response:

This Type IV procedure has been initiated by the City, so an application and fee do not apply. This Type IV proposal consists of the following materials:

1. Proposed Development Code Amendments, (Exhibit [1]), previous enacted Ordinances 209-11 and 214-12. The proposal staff report, of which these findings of fact are a part,

and the attached exhibits constitute the narrative statement that demonstrates how this proposal satisfies the relevant approval criteria and standards established in Section 10-4A-5(F) below.

C. Notice of Hearing:

- 1. Required Hearings: A minimum of two (2) hearings, one before the planning commission and one before the city council, are required for all type IV applications, except annexations where only a hearing by the city council is required.**

Response:

This proposal has received public hearings by the Planning Commission on March 3, 2015 and the City Council on March 17, 2015.

- 2. Notification Requirements: Notice of public hearings for the request shall be given by the city planning official or designee in the following manner:**
 - a. At least twenty (20) days, but not more than forty (40) days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with Oregon Revised Statutes 227.186, and mailed to:**
 - (1) Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment).**
 - (2) Any affected governmental agency.**
 - (3) Any person who requests notice in writing.**
 - (4) For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with Oregon Revised Statutes 227.175.**
 - (5) Owners of airports shall be notified of a proposed zone change in accordance with Oregon Revised Statutes 227.175.**
 - b. At least ten (10) days before the scheduled planning commission public hearing date, and fourteen (14) days before the city council hearing date, public notice shall be published in a newspaper of general circulation in the city.**
 - c. The city planning official or designee shall:**
 - (1) For each mailing of notice, file an affidavit of mailing in the record as provided by subsection C2a of this section; and**
 - (2) For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection C2b of this section.**
 - d. The Oregon department of land conservation and development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least forty five (45) days before the first public hearing at which**

public testimony or new evidence will be received. The notice to DLCD shall include a DLCD certificate of mailing.

e. Notifications for annexation shall follow the provisions of this chapter.

Response:

This proposal does not involve a zone change, an annexation, or land where airports are located. Notices of the March 3, 2015 Planning Commission hearing was published in the East Oregonian on February 11, 2015. Affidavits of notice mailing and publishing were filed with Paula Smootz – Eastern Oregonian on February 11, 2015. Notice to the Department of Land Conservation and Development (DLCD) was sent on January 27, 2015, pursuant to current DLCD rules requiring notice at least 35 days before the first public hearing. Notice to Property Owners on February 9, 2015.

3. Content of Notices: The published notices shall include the following information:

- a. The number and title of the file containing the application, and the address and telephone number of the city planning official or designee's office where additional information about the application can be obtained;*
- b. The proposed site location;*
- c. A description of the proposed site and the proposal in enough detail for people to determine what change is proposed, and the place where all relevant materials and information may be obtained or reviewed;*
- d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the council and available at city hall (see subsection E of this section); and*

Response:

The published notices included a brief description, dates, time, places, and item requiring such notice. Additional postings were made via the City web page and postings at various city locations. Agencies noticed were; Angela Houck, Department of Land Conservation and Development, Irrigon Rural Fire Protection District, Morrow County School District, Morrow County Health District, Morrow County Planning Department, and ODOT Region 5.

4. CITIZEN INVOLVEMENT (Irrigon Comprehensive Plan) - To develop a citizen involvement program that insures opportunity for citizens to participate in all phases of the planning process:

It Shall Be City Policy:

- To encourage people to attend and participate in planning commission and city council meetings and hearings.*
- To establish advisory committee as necessary to study community problems and make recommendations for their solution.*
- To make technical reports available for public inspection.*

Response:

The map update offered several opportunities to inform and involve the community, including public hearings on March 3, 2015. A separate City Council meeting, held on March 17, 2015 provided the public opportunity to review the proposed Safe School Routes map. Draft of the map and supporting materials were made available via email to City Councilors, Planning Commissioners, and available at City Hall for public review and/or request.

D. Decision Making Criteria: The recommendation by the planning commission and the decision by the city council shall be based on the following factors:

- 1. Approval of the request is consistent with the statewide planning goals; and***
- 2. Approval of the request is consistent with the comprehensive plan; and***
- 3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.***

Response:

The intent of this proposal is to provide the city with a clearer process and determination with medical marijuana to be determined under other legislative action for prescription within the Irrigon Development Code. The proposal's consistency with Statewide Planning Goals and the City of Irrigon Comprehensive Plan is demonstrated in the findings of fact below.

III RECOMMENDATION OF THE IRRIGON PLANNING COMMISSION:

Based on public testimony and the deliberations of the Planning Commission it is recommended that the City of Irrigon hold their scheduled hearing and consider the following:

- Amend the Irrigon Development Code by repealing Article 10, Chapter 7 – Medical Marijuana and all related Ordinances.
- The risk to children, impacts to the public gathering locations, and the general nuisance caused by medical marijuana are a concern. However, the State of Oregon has a Medical Marijuana Program and the Oregon Health Authority regulates the Card Holder Program. This provision in the IMC does not meet generally acceptable land use practices and procedures.
- Findings in support of this recommendation are outlined above under the review criteria.

VI DELIBERATION OF THE IRRIGON CITY COUNCIL 3/17/2015:

Based on public testimony and the deliberations the City Council accepted the recommendation of the Planning Commission.

Proposed Development Code Repealing Amendment (3-17-15)

The code amendment (repeal) proposed in Table 1 is recommended to better address compliance and consistency with Oregon Revised Statutes (ORS). Land Use conditions and standards will be address by separate action and place appropriately in Article X, Chapter 2 of the Irrigon Development Code.

Proposed code amendment in Table 1 is presented in adoption ready format. New language that is proposed to be added is underlined and strike-out for recommended deletions. The draft amendment (repeal) is presented in the order of appearance in the development code.

Table 1: Proposed Amendments to the Irrigon Development Code

| Irrigon Development Code |
|---|
| Chapter 7 Medical Marijuana |
| <p>10-7-1: REGULATIONS:</p> <p>A. Marijuana may be grown and used pursuant to the provisions of the Oregon medical marijuana act, Oregon Revised Statutes 475.300 et seq., within the corporate limits of the city of Irrigon according to the following regulations:</p> <ol style="list-style-type: none"> 1. Marijuana may be grown only after obtaining a zoning permit from the city of Irrigon for the growing of marijuana. 2. The site must be registered with the state of Oregon and the registration card for the person for whom the marijuana is being grown be prominently displayed at the grow site. 3. Marijuana may only be grown indoors or in a greenhouse. 4. The grow site must conform to current electrical codes and must be inspected for conformance to the code prior to the issuance of a permit. 5. Growing and/or distributing of marijuana for more than one registered cardholder not legally residing at that location, may only be done from a commercial zone. 6. Growing of marijuana within one thousand feet (1,000') of a school is prohibited. 7. The zoning permit must be renewed on an annual basis. 8. The permit site is subject to have two (2) inspections a year, such inspections can be done without notice. 9. Conviction of a violation of any provision of this chapter may be cause for revocation of the zoning permit. (Ord. 214-12, 3-20-2012) <p>10-7-2: VIOLATION; PENALTY:</p> <p>Every person violating any provision of this chapter shall be assessed a civil infraction in an amount not to exceed four hundred fifty dollars (\$450.00). For each violation of this chapter which is of a continuing nature, a separate infraction will be deemed to occur on each calendar day the infraction continues to exist. (Ord. 214-12, 3-20-2012)</p> |

ORDINANCE 214-12

AN ORDINANCE AMENDING ORDINANCE 209-11, AN ORDINANCE
PRESCRIBING THE PERMITTED LEGAL GROWING OF MEDICAL
MARIJUANA IN IRRIGON, BY CHANGING SECTION A.(5)

WHEREAS: Ordinance 209-11 was adopted with unintended language under Section A(5) which prohibited the growing of medical marijuana for more than one card holder except within a commercial zone, and

WHEREAS: Ordinance 213-12 corrects the wording to read as follows:

NOW THEREFORE, The City Council of the City of Irrigon ordains as follows:

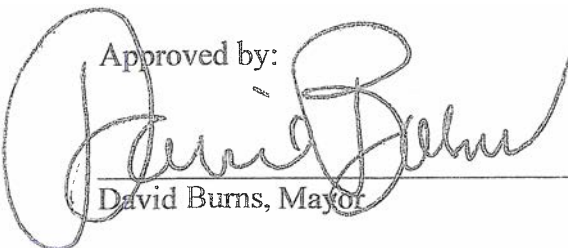
A. Marijuana may be grown and used pursuant to the provisions of the Oregon Medical Marijuana Act, ORS 475.300 et. seq., within the corporate limits of the City of Irrigon according to the following regulations:

1. Marijuana may be grown only after obtaining a zoning permit from the City of Irrigon for the growing of marijuana.
2. The site must be registered with the State of Oregon and the registration card for the person for whom the marijuana is being grown be prominently displayed at the grow site.
3. Marijuana may only be grown indoors or in a greenhouse.
4. The grow site must conform to current electrical codes and must be inspected for conformance to the code prior to the issuance of a permit.
5. Growing and/or distributing of marijuana for more than one registered card holder not legally residing at that location, may only be done from a commercial zone.
6. Growing of marijuana within 1,000 feet of a school is prohibited.
7. The zoning permit must be renewed on an annual basis.
8. The permit site is subject to have two (2) inspections a year, such inspections can be done without notice.
9. Conviction of a violation of any provision of this ordinance may be cause for revocation of the zoning permit.

B. Every person violating any provision of the ordinance shall be assessed a civil infraction in an amount not to exceed \$450.00. For each violation of this ordinance which is of a continuing nature, a separate infraction will be deemed to occur on each calendar day the infraction continues to exist.

Passed by the Council this 20th day of March, 2012

Approved by:



David Burns, Mayor

Attested to:



Gerald Breazeale, City Manager

ORDINANCE 209-11

AN ORDINANCE PRESCRIBING THE PERMITTED LEGAL GROWING OF MEDICAL MARIJUANA IN IRRIGON

WHEREAS: The City of Irrigon recognizes the legal right granted to growers and users of marijuana for medical purposes by the State of Oregon, and

WHEREAS: the unregulated use and growing of medical marijuana could pose a health and safety issue for neighbors and residents, and

WHEREAS: the Irrigon Planning Commission has considered the implications of the growing and use of marijuana within the city limits of Irrigon, and

WHEREAS: the Irrigon Planning Commission has over the course of several months developed policies to allow the legal growing and use of medical marijuana that will preserve the legal right to grow and use marijuana for medicinal purposes while protecting the health and safety of Irrigon residents.

NOW THEREFORE, The City Council of the City of Irrigon ordains as follows:

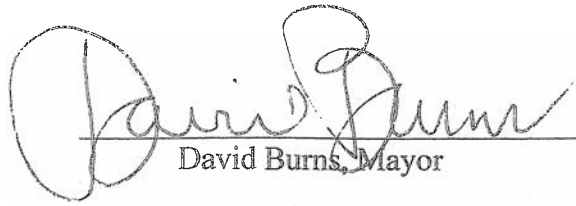
A. Marijuana may be grown and used pursuant to the provisions of the Oregon Medical Marijuana Act, ORS 475.300 et. seq., within the corporate limits of the City of Irrigon according to the following regulations:

1. Marijuana may be grown only after obtaining a zoning permit from the City of Irrigon for the growing of marijuana.
2. The site must be registered with the State of Oregon and the registration card for the person for whom the marijuana is being grown be prominently displayed at the grow site.
3. Marijuana may only be grown indoors or in a greenhouse.
4. The grow site must conform to current electrical codes and must be inspected for conformance to the code prior to the issuance of a permit.
5. Growing and/or distributing of marijuana for more than one registered card holder may only be done from a commercial zone.
6. Growing of marijuana within 1,000 feet of a school is prohibited.
7. The zoning permit must be renewed on an annual basis.
8. Conviction of a violation of any provision of this ordinance may be cause for revocation of the zoning permit.

B. Every person violating any provision of the ordinance shall be assessed a civil infraction in an amount not to exceed \$450.00. For each violation of this ordinance which is of a continuing nature, a separate infraction will be deemed to occur on each calendar day the infraction continues to exist.

Passed by the Council this 18th day of October, 2011

Approved by:


David Burns, Mayor

Attested to:


Gerald Breazeale, City Manager

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