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A BILL

ORDINANCE NO.

2018- 792

FOR

AN ORDINANCE

ADOPTING THE KEIZER MARIJUANA RETAILER PERMIT PROCESS; REPEAL OF ORDINANCE NOS. 2014-702, 2014-704, 2015-725, 2015-731, 2015-733, 2016-743, 2016-746, 2016-747, 2016-764, 2016-765, 2017-777, 2017-778, 2017-787, AND 2017-788

WHEREAS, Section 4 of the Keizer City Charter provides:

SECTION 4. 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;

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule, constitutional provisions reserved to Oregon Cities;

WHEREAS, the Oregon Legislature enacted House Bills in 2013 and 2015 which requires state agencies to develop and implement rules to carry out the intent and provisions of Oregon Laws as necessary to protect the public health and safety;

WHEREAS, pursuant to state legislation the state agencies has developed rules and process to license Marijuana Retailers;

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

1 WHEREAS, the City Council of the City of Keizer desires to allow operation of
2 Marijuana Retailers in the City in ways that protect and benefit the public health, safety
3 and welfare of existing and future residents and businesses of the City;

4 WHEREAS, the Council finds that the unique characteristics of Marijuana Retailer
5 operations and their potential impacts makes it necessary to establish particular time,
6 place, and manner requirements for such operations and a separate permitting process for
7 Marijuana Retailers;

8 NOW, THEREFORE, the City of Keizer ordains as follows:

9 Section 1. Purpose. The purpose of this Ordinance is to minimize any adverse
10 public safety and public health impacts that may result from allowing Marijuana
11 Retailers in the City by adopting particular time, place and manner requirements and
12 a permitting process for such Marijuana Retailers.

13 Section2. Definitions.

14 A. “Manager” means the City Manager of the City of Keizer or his/her
15 designee.

16 B. “Marijuana” means the plant Cannabis family Cannabaceae, any part of the
17 plant Cannabis family Cannabaceae and the seeds of the plant Cannabis
18 family Cannabaceae. It does not include industrial hemp, as defined in ORS
19 571.300.

20 C. “Marijuana Retailer” means a Person who sells marijuana items to a
21 consumer in this state and is licensed by the Oregon Liquor

1 Control Commission and/or a Medical Marijuana Dispensary or Facility
2 that is registered by the Oregon Health Authority under state law and that
3 sells, distributes, transmits, gives, dispenses or otherwise provides Medical
4 Marijuana to qualifying patients.

5 D. "Minor" means any Person under 21 years of age.

6 E. "Operator" means the Person who is the proprietor of a Marijuana Retailer,
7 whether in the capacity of Company Principal, owner, lessee, sub-lessee,
8 mortgagee in possession, licensee or any other capacity. If the Operator is
9 a corporation, the term Operator also includes each and every member of
10 the corporation's Board of Directors whose directorship occurs in a period
11 during which the Marijuana Retailer is in operation. If the Operator is a
12 partnership or limited liability company, the term Operator also includes
13 each and every member thereof whose membership occurs in a period
14 during which the Marijuana Retailer is in operation.

15 F. "Person" means natural Person, joint venture, joint stock company,
16 partnership, association, club, company, corporation, business, trust,
17 organization, or any group or combination acting as a unit, including the
18 United States of America, the State of Oregon and any political subdivision
19 thereof, or the manager, lessee, agent, servant, officer or employee of any
20 of them.

1 G. "Premises" means a location licensed by the State of Oregon as a Marijuana
2 Retailer business and includes all public and private enclosed areas at the
3 location that are used in the business operated at the location, including
4 offices, kitchens, restrooms, and storerooms. Premises does not include a
5 primary residence.

6 H. "Public Property" means all City of Keizer parks, and any real property
7 zoned Public, but does not include public right-of-way.

8 Section 3. Annual Permit Required. The Operator of any Marijuana Retailer in
9 the City must possess a valid annual Marijuana Retailer permit issued under this
10 Ordinance and must comply with the requirements of any and all state or local laws.

11 Section 4. Initial Permit Application and Fee Requirements.

12 A. Application forms for Marijuana Retailer permits will be available at the
13 Keizer Community Development Department. Applications for initial and
14 renewal Marijuana Retailer permits must be submitted to the Community
15 Development Department and must be signed under penalty of perjury. The
16 application documents must include at least the following:

- 17 1) The location of the proposed Marijuana Retailer.
- 18 2) The true names and addresses of the Persons or legal entities that
19 have an ownership interest in the Marijuana Retailer.
- 20 3) A detailed description of the type, nature and extent of the enterprise
21 to be conducted.

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- 4) Certification that the proposed Marijuana Retailer is licensed or registered pursuant to state law.
- 5) Certification that the proposed Marijuana Retailer has met all applicable requirements in the Keizer Development Code.
- 6) Certification that all current fees and taxes owed have been paid.
- 7) Detailed illustrations (to scale) of all proposed signage and location of such signage.
- 8) Such other information deemed necessary by the Manager.

- B. At the time of submission of an initial Marijuana Retailer permit application, the applicant must pay a Marijuana Retailer permit application fee. The fee amount shall be set by Council Resolution. No portion of the Marijuana Retailer permit fee is refundable in the event operation of the Marijuana Retailer is discontinued for any reason.
- C. A separate permit application must be submitted for each proposed Marijuana Retailer location.
- D. For purposes of determining priority between two or more Marijuana Retailer locations and when a Retailer is established for purposes of Section 6.H. and 6.I.D., the following shall apply:

- 1) An applicant may apply for a Keizer Marijuana Retailer Permit when they have received the required state license issued by the state agency.
- 2) The Keizer application will be preliminarily reviewed for completeness at the Community Development counter. If it appears complete at that time, including, but not limited to submittal of a copy of any state license, permit or registration and all other supporting material, the application will be accepted and have a date/time stamp placed on the application form. If the application does not appear complete, it will not be accepted and will be returned to the applicant. Acceptance is not representation that the application is complete or that a permit will be granted.
- 3) If two or more applications are submitted that may preclude one or the other from being established based on location, priority will be given to the prior accepted application.
- 4) If an application is accepted, but it is later determined that it is missing information or is otherwise insufficient, the Community Development Department shall give written notice to the applicant of such missing information or insufficiencies. If an applicant supplies the missing information or is otherwise able to correct the application within fourteen (14) days of written notice by the

1 Community Development Department, such application shall retain
2 its priority based on the date/time stamp, subject to the provisions
3 set forth below.

4 5) If an applicant does not provide the missing information or otherwise
5 is unable to correct such application within such fourteen (14) day
6 period, the application shall be denied. If an application is denied
7 for this or any other reason, such application will lose whatever
8 date/time priority it may have held.

9 6) If a Marijuana Retailer receives a Keizer Marijuana Retailer permit,
10 the priority for that Retailer shall be the date/time stamped on the
11 application form for as long as such permit is not expired or revoked.

12 Section 5. Permit Termination – Renewal – Fee.

13 A. A Marijuana Retailer permit terminates automatically one year from the
14 date of issuance, unless a permit renewal application is approved.

15 B. A Marijuana Retailer permit terminates automatically if federal or state
16 statutes, regulations or guidelines are modified, changed, or interpreted in
17 such a way by state or federal law enforcement officials as to prohibit
18 operation of the Marijuana Retailer under this Ordinance.

19 C. A permit renewal application shall include information similar in nature to
20 that provided on the permittee’s initial permit application and must be
21 submitted to the Community Development Department no less than thirty

1 (30) days prior to expiration of the permit. Late applications shall be subject
2 to a late fee. The late fee shall be set by Council Resolution.

3 D. At the time of submission of a Marijuana Retailer permit renewal
4 application, the permittee must pay a Marijuana Retailer permit renewal
5 application fee. The fees shall be set by Council Resolution.

6 Section 6. Permit Conditions. Any Marijuana Retailer must comply with the
7 following requirements, in addition to any other state or local requirements:

8 A. The Marijuana Retailer must continue to be licensed or registered in good
9 standing pursuant to state law.

10 B. The Marijuana Retailer must meet applicable laws and regulations,
11 including, but not limited to, state marijuana laws and regulations, building
12 and fire codes, and including the payment of all fines, fees, and taxes owing
13 to the City.

14 C. The Marijuana Retailer must not manufacture or produce any extracts, oils,
15 resins or similar derivatives of Marijuana on-site and must not use open
16 flames or gases in the preparation of any products.

17 D. Marijuana and tobacco products must not be smoked, ingested or otherwise
18 consumed on the Premises of the Marijuana Retailer.

19 E. Operating hours for retail sales to consumers must be no earlier than 7:00
20 a.m. or later than 10:00 p.m. on the same day.

1 F. The Marijuana Retailer must utilize an air filtration and ventilation system
2 which, to the greatest extent feasible, confines all objectionable odors
3 associated with the Marijuana Retailer to the Premises. For the purposes of
4 this provision, the standard for judging “objectionable odors” shall be that
5 of an average, reasonable Person with ordinary sensibilities after taking into
6 consideration the character of the neighborhood in which the odor is made
7 and the odor is detected.

8 G. The Marijuana Retailer must provide for secure disposal of Marijuana
9 remnants or by-products in accordance with state law.

10 H. The Marijuana Retailer must not be co-located on the same tax lot or within
11 the same building with any Marijuana social club, smoking club, grow site,
12 another Marijuana Retailer, Marijuana Processor, Marijuana Producer, or
13 Marijuana Wholesaler.

14 I. A Marijuana Retailer shall not be located:

15 A) Within 1500 feet from any public elementary or secondary school
16 for which attendance is compulsory under ORS 339.020;

17 B) Within 1500 feet from any private or parochial elementary or
18 secondary school, teaching children as described in ORS
19 339.030(1)(a); or

20 C) Within 1000 feet of any Public Property;

21 D) Within 1000 feet of another Marijuana Retailer.

1 Such distances shall be measured between the closest points of the
2 respective lot lines.

3 J. Signage shall not include logos or illustrations.

4 K. No Minor is allowed on the Premises, except as may be allowed under state
5 law.

6 L. Each Marijuana Retailer must display its current permit inside the Premises
7 in a prominent place easily visible to Persons conducting business in the
8 Marijuana Retailer business. All marijuana workers must have a valid state
9 card and present it upon request to a Keizer Police officer or Code
10 Compliance officer.

11 M. Viewing, sales or any other transfers of Marijuana products (including
12 wholesale viewing and sales) must occur completely inside the Marijuana
13 Retailer building and must be conducted only between the Marijuana
14 Retailer and Consumer or between the Marijuana Retailer and a state-
15 approved wholesaler/producer. No walk-up or drive-through service is
16 allowed. A Marijuana Retailer may only sell marijuana to Persons in the
17 types, amounts and manner pursuant to state law and regulations. Such
18 sales/transfers must occur completely inside the Marijuana Retailer
19 building.

20 N. The Marijuana Retailer shall not place, allow, or use any type of device or
21 apparatus designed to injure, maim, or kill by the contact of any person with

1 any string, wire, rod, stick, spring, or other contrive affixed to it or
2 connected with it or with its trigger, including, but not limited to, any spring
3 gun or set gun as prohibited under state law.

4 Section 7. Examination of Premises.

5 A. To determine compliance with the requirements of this Ordinance, Keizer
6 Development Code, and any and all applicable regulations, the Manager
7 may examine or cause to be examined by an agent or representative
8 designated by the Manager, at any reasonable time, the Premises of the
9 Marijuana Retailer, including wastewater from the Premise. Every
10 permittee is directed and required to furnish to the Manager the means,
11 Premises and opportunity for making such examinations and investigations.

12 B. As part of investigation of a crime or violation of this Ordinance which law
13 enforcement officials reasonably suspect has taken place, the Keizer Police
14 shall be allowed to view surveillance videotapes or digital recordings at any
15 reasonable time.

16 C. Without reducing or waiving any provisions of this Ordinance, the Keizer
17 Police Department and/or Code Compliance Officer shall have the same
18 access to the Marijuana Retailer, its records and its operations, as allowed
19 to state inspectors. Denial or interference with access shall be grounds for
20 revocation or suspension of a Marijuana Retailer Permit.

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1 Section 8. Administrative and Other Remedies for Noncompliance,
2 Administrative Appeals, and Penalties.

3 A. The Manager may deny, suspend, or revoke a Marijuana Retailer permit for
4 failure to comply with this Ordinance or rules adopted under this
5 Ordinance, for submitting falsified information to the City or a state agency,
6 or for noncompliance with any other City Ordinances or regulations, or
7 violation of any state laws.

8 1) Any suspension or revocation pursuant to this section shall be in
9 writing, setting forth the reasons therefor, and giving the permittee
10 written notice by first-class United States Mail at least ten (10)
11 calendar days prior to effective date of the revocation or suspension.

12 2) A decision to deny, suspend, or revoke a Marijuana Retailer permit
13 may be appealed by filing a Notice of Appeal in writing physically
14 delivered to the Manager on or before the effective date. Unless
15 Manager has declared imminent danger to the public will exist, the
16 Manager’s decision to revoke or suspend is stayed pending appeal.
17 The matter shall be heard by the Keizer Hearings Officer who shall
18 determine, by preponderance of the evidence, whether the
19 Manager’s decision should be upheld or reversed, or upheld in part
20 and reversed in part. The hearing shall be conducted no later than
21 twenty (20) days from the date of appeal, unless a different date is

1 stipulated by the City and the applicant, or good cause is shown for
2 setting the matter forward. Testimony at the hearing shall be taken
3 upon oath or affirmation of the witnesses. The Hearings Officer
4 shall consider only the matters set forth in the Notice of Appeal. The
5 Findings and Decision of the Hearings Officer shall be served upon
6 the appellant by first class mail within ten (10) days after the hearing
7 concludes. The Hearings Officer decision shall be effective ten (10)
8 days following the date of the decision. The Findings and Decision
9 of the Hearings Officer shall be final and conclusive, subject only to
10 writ of review under ORS 34.010 to 34.100, which shall be the sole
11 remedy.

12 B. In addition to the remedies of suspension and revocation, failure to comply
13 with any requirements of this Ordinance constitutes an infraction under the
14 Civil Infraction Ordinance. Violations are subject to fines not to exceed
15 \$500.00 per day. Each day in violation constitutes a separate offense. Any
16 Person, including employees, handlers, and volunteers are jointly and
17 severably liable for such offenses.

18 C. The remedies provided in this Section are not exclusive and shall not
19 prevent the City from exercising any other remedy available under the law,
20 nor shall the provisions of this Ordinance prohibit or restrict any prosecutor
21 from pursuing criminal charges under state law. Such remedies include,

1 but are not limited to, any equitable remedies such as temporary restraining
2 orders or other injunctive relief.

3 Section 9. Confidentiality. Except as otherwise required by law, it shall be
4 unlawful for the City, any officer, employee or agent to divulge, release or make
5 known in any manner any employee information submitted or disclosed to the City
6 under the terms of this Ordinance. Nothing in this Section shall prohibit:

7 A. The presentation of evidence to a court, or other tribunal having jurisdiction
8 in the prosecution of any criminal or civil claim by the City under this
9 Ordinance; or

10 B. The disclosure of information when such disclosure of conditionally
11 exempt information is ordered under public records law procedures.

12 Section 10. Severability. If any section, subsection, paragraph, sentence or word
13 in this Ordinance is deemed to be invalid or beyond the authority of the City, either on its
14 face or is applied, the invalidity of such provision shall not affect the other sections,
15 subsections, paragraphs, sentences, or words of this Ordinance, and the application
16 thereof; and to that end sections, subsections, paragraphs, sentences and words of this
17 Ordinance shall be deemed severable.

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1 Section 11. Repeal of Ordinance Nos. 2014-702, 2014-704, 2015-725, 2015-731,
2 2015-733, 2016-743, 2016-746, 2016-747, 2016-764, 2016-765, 2017-777, 2017-778,
3 2017-787, and 2017-788. Ordinance Nos. 2014-702, 2014-704, 2015-725, 2015-731,
4 2015-733, 2016-743, 2016-746, 2016-747, 2016-764, 2017-765, 2017-777, 2017-778,
5 2017-~~878~~⁷⁸⁷, and 2017-788 are hereby repealed in their entirety.

6 Section 12. Effective Date. This Ordinance shall take effect thirty (30) days after
7 its passage.

8 PASSED this 6th day of August, 2018.

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10 SIGNED this 6th day of August, 2018.

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Cathy Clark
Mayor
[Signature]
City Recorder