

ORDINANCE NO. 15-164-02

AN ORDINANCE OF THE CITY OF JOHN DAY PROHIBITING MARIJUANA ESTABLISHMENTS; PROHIBITING THE SALE OF MARIJUANA RETAIL PRODUCTS; AND DECLARING AN EMERGENCY

WHEREAS, Section 133, Chapter 614, Oregon Laws 2015 (Enrolled House Bill 3400) allows a city to prohibit various establishments relating to the producing, processing, wholesaling, selling, and dispensing of marijuana if not less than 55% of votes cast in the county in which the city is located during the statewide general election held on November 4, 2014 were in opposition to Ballot Measure 91, Chapter 1, Oregon Laws 2015 (the "Ballot Measure"); and

WHEREAS, the City of John Day ("City") is located in Grant County, Oregon (the "County") and 64.8% of votes cast in the County during the statewide general election held on November 4, 2014 were in opposition to the Ballot Measure; and

WHEREAS, the issue of whether a local government believes a certain type of business should operate within its jurisdictional limits is a local government decision, the enforcement of which is subject to the general and police powers of that jurisdiction; and

WHEREAS, the John Day City Council (the "Council") believes it is in the best interests of the health, safety, and welfare of City's citizens to prohibit (ban) marijuana establishments relating to the producing, processing, wholesaling, selling, and/or dispensing of marijuana within City's jurisdictional limits.

NOW, THEREFORE, the City of John Day ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Short Title. This Ordinance No. 15-164-02 may be referred to as the "Marijuana Banning Ordinance" and will be cited and referred to herein as this "Ordinance."
3. Purpose. The purpose of this Ordinance is to minimize any adverse public safety and health impacts that may result from allowing marijuana establishments to operate in City's jurisdictional limits.
4. Prohibited Establishments; Sales.

4.1 Establishments Prohibited. City hereby prohibits (bans) the establishment of the following in any area subject to City's jurisdiction (collectively, the "Ban"): (a) marijuana processing sites required to be registered under Section 85, Chapter 614, Oregon Laws 2015; (b) medical marijuana dispensaries required to be registered under ORS 475.314; (c) marijuana producers required to be licensed under Section 19, Chapter 1, Oregon Laws 2015; (d) marijuana processors required to be licensed under Section 20, Chapter 1, Oregon Laws 2015; (e) marijuana wholesalers required to be licensed under Section 21, Chapter 1, Oregon Laws 2015; (f) marijuana retailers required to be licensed under Section 22, Chapter 1, Oregon Laws 2015; and/or (g) any combination of the entities described in this Section 4.1.

4.2 Limited Marijuana Retail Product Sales Prohibited. Without otherwise limiting the marijuana ban provided under Section 4.1, City hereby prohibits the sale of limited marijuana retail products through medical marijuana dispensaries in any area subject to City's jurisdiction. "Limited marijuana retail product" means the seeds of marijuana, the dried leaves and flowers of marijuana, and a marijuana plant that is not flowering.

5. Ban Application. The Ban imposed under this Ordinance applies to any decision, action, and/or recommendation by City, including, without limitation, the issuance of building permits, land use permits, business and regulatory licenses, and/or any other form of approval. This Ban extends to any decision by the Oregon Health Authority ("OHA") acting under ORS 475.314, as amended, and/or Section 85, Chapter 614, Oregon Laws 2015. This Ban extends to any decision by the Oregon Liquor Control Commission ("OLCC") acting under Sections 19, 20, 21, and/or 22, Chapter 1, Oregon Laws 2015.

6. Enforcement; Penalties. This Ban will be enforced by any sworn peace officer authorized to enforce the laws of City and/or any other City official authorized to administer City's land use, development, nuisance, and/or building regulations. In addition, City may initiate appropriate suit or legal action in a court of competent jurisdiction to enforce this Ordinance. Any violation of this Ordinance is punishable by a fine not to exceed \$500.00 per violation. City will be entitled to collect from any person violating this Ordinance City's attorney fees and other fees, costs, and expenses incurred by City to enforce this Ordinance. Each violation, and each day that a violation continues, constitutes a separate civil infraction. The remedies available under this Ordinance are not exclusive of any other remedies available under any applicable federal, state, and/or local laws, regulations, and/or ordinances. It is within the discretion of City to seek cumulative remedies for a violation of the Ban.

7. Notice to OHA; Notice to OLCC. City's city manager or city attorney will notify OHA of City's adoption of this Ordinance and provide the text of this Ordinance to OHA in a form and manner prescribed by OHA. City's city manager or city attorney will notify OLCC of City's adoption of this Ordinance and will provide the text of this Ordinance to OLCC in a manner prescribed by OLCC.

8. Interpretation; Severability; Errors. This Ordinance repeals and supersedes all ordinances, resolutions, and/or policies in conflict with this Ordinance, including, without limitation, City's medical marijuana facilities time, place, and manner ordinance, Ordinance No. 15-163-01. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, rule, regulation, code, or ordinance includes the law, rule, regulation, code, or ordinance as now in force and which may hereafter be amended. The provisions of this Ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors.

9. Emergency Declaration. The Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City's citizens. The Council further finds that a delay of thirty (30) days prior to the effective date of this Ordinance may result in acts,

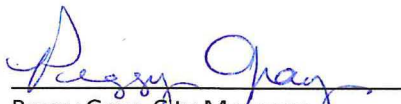
omissions, and/or conditions detrimental to City and the public welfare. Therefore, an emergency is declared to exist and this Ordinance will be in full force and effect upon its passage and adoption by the Council and approval of the mayor.

This Ordinance was PASSED and ADOPTED by the Council by a vote of 6 for and 1 against and APPROVED by the mayor on this 17th day of August 2015.



Ron Lundbom, Mayor

ATTEST:



Peggy Gray, City Manager