

ORDINANCE NO. 800

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE CHAPTER 7 BY ADDING A NEW SECTION 7.570 TO IMPOSE TIME, PLACE, AND MANNER REGULATIONS ON MEDICAL MARIJUANA PROCESSORS AND DISPENSARIES AND RECREATIONAL MARIJUANA RETAILERS, WHOLESALERS, PRODUCERS, AND PROCESSORS WITHIN THE CITY

WHEREAS, state law authorizes the operation of medical and recreational marijuana businesses and provides those businesses with immunity from state criminal prosecution; and

WHEREAS, although the State of Oregon has passed legislation authorizing marijuana businesses and providing criminal immunity under state law, the operation of those businesses remains illegal under federal law; and

WHEREAS, the City Council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the City and subject to the general and police powers of the City, except when local action has been clearly and unambiguously preempted by state statute; and

WHEREAS, whether a certain business should operate within a local jurisdiction is a local government decision, and local governments may enforce that decision through the general and police powers of that jurisdiction; and

WHEREAS, should voters of the November 8, 2016 election choose to permit marijuana businesses, as defined below, within the City limits, the City Council wishes to regulate the operation of marijuana businesses in the City in ways that protect and benefit the public health, safety, and welfare of existing and future residents and businesses in the City;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. The following is adopted and made part of the Wilsonville Code to impose time, place, and manner regulations on medical marijuana processors and dispensaries, and recreational marijuana retailers, wholesalers, producers, and processors within the City:

“7.570 Time, Place, and Manner Regulations

- (1) Findings. The City Council adopts as findings and conclusions all of the foregoing recitals. The City Council also finds as follows:

(a) The City’s licensing and regulatory system should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other license or regulatory requirement imposed by any other provisions of City ordinance or local, regional, state, or federal law.

(b) This Ordinance is intended to impose restrictions, not provide authorizations.

(c) The operation of a Marijuana Business without proper authority from either the Oregon Liquor Control Commission or the Oregon Health Authority is prohibited within the City.

(2) Definitions.

(a) “City Manager” means the City Manager of the City of Wilsonville or his/her designee.

(b) “CFR Schedule I or Schedule II” means those controlled substances designated in the Code of Federal Regulations Title 21, Chapter II, Part 1308.

(c) “Code Enforcement Officer” means the Clackamas County Sheriff or City employee designated by the City Manager to ensure compliance with local laws.

(d) “Consumer” means a person who purchases, acquires, owns, holds, or uses Marijuana Items other than for the purpose of resale.

(e) “Convicted” means found guilty by verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(f) “Felony” means a crime designated as a felony in any Oregon statute or a crime for which a person convicted under an Oregon statute may be sentenced to a maximum term of imprisonment of more than one year.

(g) “Financial Interest” exists when a person, the person’s immediate family, or a legal entity of which the person is a principal (1) receives or is entitled to receive, directly or indirectly, any of the benefits of the Marijuana Business; (2) rents or leases real property to the operator for use by the business; (3) rents or leases personal property to the operator at a commercially unreasonable rate; or (4) lends or gives money, real property, or personal property to the operator for use in the business. For purposes of this Section, monies owed to suppliers and contractors for the reasonable cost of goods and services received do not constitute a Financial Interest in a Marijuana Business.

(h) “Licensee” means a person who holds a license issued by the City to engage in a Marijuana Business in accordance with this Section.

(i) “Marijuana” means all parts of the plant cannabis family *Moraceae*, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(j) “Marijuana Business” means (1) any business licensed by the Oregon Liquor Control Commission to engage in the business of producing, processing, testing, wholesaling, or selling Marijuana or Marijuana Items, or (2) any business registered with the Oregon Health Authority for the growing, processing, or dispensing of Marijuana or Marijuana Items.

(k) “Marijuana Dispensary” means a medical marijuana dispensary.

(l) “Marijuana Items” means Marijuana, including all cannabis and products, concentrates, extracts, and edibles.

(m) “Marijuana Processor” means a person who processes Marijuana Items and is licensed by the state.

(n) “Marijuana Producer” means a person who produces Marijuana and is licensed by the state.

(o) “Marijuana Retailer” means a person who sells Marijuana to Consumers and is licensed by the state.

(p) “Marijuana Wholesaler” means a person who purchases Marijuana Items in Oregon for resale to a person other than a Consumer.

(q) “School” means a public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school teaching children as described in ORS 339.030 (1)(a).

(3) Rulemaking. The City Manager or the City Manager’s designee has authority to adopt administrative rules and procedures necessary for the proper administration and enforcement of ordinances relating to the operation of a Marijuana Business.

(4) Licensing.

(a) Local License Required. Marijuana Businesses must possess a valid license issued under this Section to operate within the City. The license required by this Section facilitates the registration and the City’s oversight of a Marijuana

Business. The license required by this Section should not be construed to constitute an authorization to engage in any activity prohibited by state, federal, or local law nor a waiver of any other regulatory or license requirement imposed by any other provision of City ordinance or local, regional, state, or federal law. By issuance of a license, the City is complying with state law and is not aiding nor abetting in a violation of federal law. If federal law preempts, the license may immediately be revoked.

(b) State Registration Required. To be eligible to apply for a license under this Section, Marijuana Businesses must be either registered with the Oregon Health Authority or licensed by the Oregon Liquor Control Commission and otherwise authorized by state law to operate a Marijuana Business.

(5) License Application.

(a) Application/Renewals. Applications for new and renewed licenses must be submitted to the City Finance Department on a form provided by the City. A separate application must be submitted for each proposed Marijuana Business. The initial or renewal application must include the following information:

1. Certification that the proposed Marijuana Business is licensed at that location as a Marijuana Business with the Oregon Health Authority or the Oregon Liquor Control Commission;

2. The applicant's name, residence address, and date of birth, and a copy of the applicant's current state issued photo identification;

3. The names and residence addresses of:

A. Any person or legal entity that has an ownership interest in the Marijuana Business, including all principals of the applicant;

B. Any person or legal entity with a Financial Interest in the proposed Marijuana Business within the preceding year;

C. Any person or legal entity that has leased or intends to lease real property to the applicant for use by the Marijuana Business and any person who manages that property; and

D. Any person who is anticipated at the time of the application to be an employee or volunteer at the proposed facility.

4. The business name;

5. The address and telephone number of the proposed Marijuana Business;

6. The mailing address for correspondence about the license;
7. A detailed description of the type, nature, and extent of the business, including a description of the category of Marijuana Business to be operated;
8. The proposed days and hours of operation;
9. A detailed description of the proposed accounting and inventory system of the Marijuana Business;
10. Certification that the licensed premises for the proposed Marijuana Business have met all applicable requirements of the City development and sign code;
11. Certification that all applicable taxes and fees have been paid;
12. A complete application for a criminal background check for the applicant and all principals, persons with a Financial Interest, employees, and volunteers of the proposed Marijuana Business;
13. The names of at least three natural persons who can give an informed account of the Marijuana Business and moral character of the applicant and principals;
14. The signature, under penalty of perjury, of the applicant if a natural person, or the signature of an authorized agent of the applicant if the applicant is other than a natural person;
15. Other information deemed necessary by the City Manager to complete review of the application or renewal; and
16. The City may inspect the proposed licensed premises prior to issuing a license and at any time during normal business hours following the issuance of a license. If, during the inspection, the City determines that the applicant or the licensed premises are not in compliance with this Section or any other section of the City's building, development, zoning, nuisance, or other City ordinance or code, the applicant will be provided with a notice of the failed inspection and that the requirements of this Section have not been met.

(b) Continuing Obligation to Update Information. All information provided in an initial or renewal application must be kept current at all times, including after a license is issued. Each Licensee shall notify the City Manager in writing within ten (10) business days of any change in the information provided to obtain the license.

(6) Issuance of License.

(a) Determination. Within one hundred eighty (180) days after receiving a complete initial or renewal application and license fee for a Marijuana Business license, the Finance Department will issue the license if the City Manager finds that the facility is licensed as a Marijuana Business with the Oregon Health Authority or the Oregon Liquor Control Commission and that all other requirements under this Section have been met. The City license will list the specific category of Marijuana Business license being issued.

(b) Denial. In addition to denial for failure to meet the requirements of this Section, the City Manager may deny a license if:

1. The applicant made an untrue, misleading, or incomplete statement on, or in connection with, the application for the license or a previous application for a license;

2. Notwithstanding the federal Controlled Substances Act, the applicant fails to meet all requirements of local, state, and federal laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations; or

3. The applicant, principals, employees, volunteers, or persons with a Financial Interest in the facility have been Convicted of a Felony, except the City may not consider a Conviction for the manufacture or delivery of Marijuana if the date of the Conviction is two (2) or more years before the date of the initial application or renewal.

(c) Notice of Denial. The City shall issue a notice of denial to an applicant in writing, specifying the reasons for the denial.

(7) Fee. An initial license application or renewal application must be accompanied by a license fee. The fee amount will be One Hundred Dollars (\$100) for the initial and each renewal application.

(8) Display of License. When requested, the Licensee shall show the license issued under this Section to any person with whom the Licensee is dealing as part of the licensed activity or to the City Manager, City Code Enforcement Officer, or any Clackamas County Sheriff.

(9) Term, Renewal, and Surrender.

(a) Termination. A license terminates automatically after one (1) year, unless a license renewal application has been approved.

(b) Renewal. A license may be renewed for additional one (1) year terms, as provided by this subsection (9).

(c) Renewal Application. Renewal applications shall be submitted, with the required license fee, to the Finance Department not less than sixty (60) days prior to the expiration date of the existing license.

(d) Termination Due to Change in Law. A license terminates automatically if federal or state statutes, regulations, or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the Marijuana Business under this Ordinance.

(e) Termination Due to Suspension, Revocation, or Termination by State Authority. A license terminates automatically upon the suspension, revocation, surrender, or termination of an Oregon Health Authority registry or an Oregon Liquor Control Commission issued Marijuana Business license for any reason.

(f) Surrender. A Licensee may surrender a Marijuana Business license by delivering written notice to the City that the Licensee thereby surrenders the license. A Licensee's surrender of a license under this subsection does not affect the Licensee's civil or criminal liability for acts the Licensee committed before surrendering the license.

(10) Transferability. Licenses issued under this Section shall not be transferred to any other person by operation of law or otherwise.

(11) Indemnification.

(a) Waiver. By accepting a Marijuana Business license issued under this Section, the Licensee waives and releases the City, its officers, elected officials, employees, volunteers, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of a Marijuana Business owner or operator, principal, person, or legal entity with a Financial Interest in the Marijuana Business, or any person or entity that has leased real property to the Marijuana Business, employee, volunteer, client, or customer, for a violation of federal, state, or local laws and regulations.

(b) Indemnification. By accepting a Marijuana Business license issued under this Section, the Licensee(s), jointly and severally if there is more than one, agree to defend, indemnify, and hold harmless the City, its officers, elected officials, employees, volunteers, agents, insurers, and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the Marijuana Business that is the subject of the license.

(12) Criminal Background Checks.

(a) Background Check Required / Disqualification. All applicants, principals, employees, and persons with a Financial Interest in the Marijuana Business must submit to a criminal background check performed by the City Police Chief before a license will be issued. If any of the foregoing persons has been Convicted of a Felony, the license will be denied or revoked, unless the Conviction was for the manufacture or delivery of Marijuana and the date of the Conviction is at least two (2) years prior to the date of the application or renewal.

(13) Standards of Operation.

(a) Registration and Compliance with State Law. The Marijuana Business's state license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission and the Marijuana Business must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation, those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.

(b) Compliance with Other Laws. The Marijuana Business must comply with all applicable laws and regulations, including, but not limited to, development, land use, zoning, building, and fire codes.

(c) Hours of Operation. Operating hours for a Marijuana Business must be as follows: for a business engaged in sales or transfer of Marijuana or Marijuana Items to a Consumer, no earlier than 10:00 a.m. and no later than 6:00 p.m., Monday through Saturday. Marijuana Businesses engaged in sales or transfer of Marijuana or Marijuana Items to a Consumer shall not operate on Sundays. General industrial uses with no on-site retail activity are exempt from this restriction.

(d) Odors. The Marijuana Business must use an air filtration and ventilation system which is certified by an Oregon Licensed mechanical engineer to ensure, to the greatest extent feasible, that all objectionable odors associated with the Marijuana are confined to the licensed premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities, after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

(e) Lighting. Marijuana Businesses must maintain adequate outdoor lighting over each exterior exit, consistent with Wilsonville Code Section 4.199.10.

(f) Sales. Sales or any other transfers of Marijuana must occur inside the licensed premises and must be conducted only between the Marijuana Business and individuals 21 years of age and older. Every customer must have their valid identification checked, regardless of appearance with respect to age.

- (g) Retail Facility Size. A Marijuana Dispensary or Marijuana Retailer may not occupy a retail space larger than 3,000 square feet.
- (h) On-Site Use. Marijuana and tobacco products must not be smoked, ingested, consumed, or otherwise used on the licensed premises.
- (i) On-Site Manufacturing. With the exception of Marijuana Processors, manufacturing or processing of any extracts, oils, resins, or similar derivatives of Marijuana is prohibited at any licensed premises. Marijuana Processors may engage in processing in industrial zones only.
- (j) Outdoor Storage. Outdoor storage of merchandise, raw materials, or other material associated with the Marijuana Business is prohibited.
- (k) Secure Disposal. The Marijuana Business must provide for legal and secure disposal of Marijuana remnants or byproducts, and Marijuana remnants or byproducts shall not be placed within the Marijuana Business's exterior refuse containers.
- (l) Home Occupation. A Marijuana Business may not be operated as a home occupation.
- (m) Drive-Through, Walk-Up. A Marijuana Business may not have a walk-up window or a drive-through.
- (n) Labeling. All products containing Marijuana intended to be ingested (i.e., edibles) must be labeled with the product's serving size and the amount of tetrahydrocannabinol in each serving, in accordance with Oregon Health Authority and Oregon Liquor Control Commission rules. Packaging and naming of products cannot be attractive to minors and must not be packaged, labeled, or marketed featuring cartoons, design or brand names that resemble a non-cannabis Consumer product of the type that is typically marketed to minors, symbols or celebrities that are commonly used to market products to minors, or images of minors.
- (o) Accounting Systems. The Marijuana Business must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the City Manager finds the books and records of the facility are deficient in any way, or if the Marijuana Business's accounting system is not auditable, the Marijuana Business must modify the accounting system to meet the requirements of the City Manager.
- (p) Accounting Records. Every Marijuana Business must keep and preserve, in an accounting format established by the City Manager, records of all sales made by the Marijuana Business and such other books or accounts as may be

required by the City Manager. Each Marijuana Business must keep and preserve for a period of at least six (6) years records containing at least the following information:

1. Daily wholesale purchases (including grow receipts) if licensed as a Marijuana Wholesaler, and retail sales if licensed as a Marijuana Retailer, including a cash receipts and expenses journal;
2. State and federal income tax returns;
3. State quarterly sales tax returns for retail sales;
4. True names and any aliases of any owner, operator, employee, or volunteer of the Marijuana Business;
5. True names and addresses and any aliases of persons that have, or have had within the preceding year, a Financial Interest in the Marijuana Business; and
6. The City Manager may require additional information as he or she deems necessary.

(q) Security Plan and System. Each Marijuana Business must submit a copy of the security plan required by OAR 845-025-1400 and must comply with the following requirements:

1. Non-residential door locks must be installed on every external door of a licensed premises where Marijuana Items are present;
2. A licensed premises must have a fully operational security alarm system, equipped with motion detection, which is to be activated at all times when the licensed premises is closed for business; and
3. A licensed premises must have a fully operational high resolution video surveillance recording system that records a minimum of 24 hours a day and stores for a minimum of thirty (30) days.

(14) Location.

(a) Restrictions on Location: Marijuana Dispensary or Marijuana Retailer. A Marijuana Retailer shall not locate:

1. Within a residence or mixed-use property that includes a residence;
2. Within 1,000 feet of another Marijuana Business;

3. Within 2,000 feet of a Residential Zone, School, City park, or any City-owned property.

(b) Restrictions on Location: Marijuana Wholesaler. A Marijuana Wholesaler shall not locate:

1. Within a residence or mixed-use property that includes a residence;
2. Within 1,000 feet of another Marijuana Business;
3. Within 2,000 feet of a Residential Zone, School, City park, or any City-owned property.

(c) Restrictions on Location: Marijuana Producer. A Marijuana Producer shall not locate:

1. Within a residence or mixed-use property that includes a residence;
2. Within 1,000 feet of another Marijuana Business;
3. Within 2,000 feet of a Residential Zone, School, City park, or any City-owned property.

(d) Restrictions on Location: Marijuana Processor. A Marijuana Processor shall not locate:

1. Within a residence or mixed-use property that includes a residence;
2. Within 1,000 feet of another Marijuana Business;
3. Within 2,000 feet of a Residential Zone, School, City park, or any City-owned property.

(e) Distances. For purposes of this subsection (14), all distances shall be measured from the closest property line.

(15) Examination of Books, Records, and Premises.

(a) Examination of Books, Records, and Premises. To determine compliance with the requirements of this Section and applicable provisions of the City Code, a Licensee shall allow the Code Enforcement Officer to examine, or cause to be examined by an agent or representative designated by the City Manager, at any reasonable time, the licensed premises, including wastewater from the facility, and any and all Marijuana Business financial, operational, and licensed premises information, including books, papers, payroll reports, state and federal income tax returns, and quarterly sales tax returns for Marijuana Retailers. Every Licensee is

directed and required to furnish to the designated City representative the means, facilities, and opportunity for making such examinations and investigations.

(b) Compliance with Law Enforcement. As part of investigation of a crime or a violation of this Section which law enforcement officials reasonably suspect has taken place on the facility's premises or in connection with the operation of the Marijuana Business, the Code Enforcement Officer shall be allowed to view surveillance videotapes or digital recordings at any reasonable time. Without reducing or waiving any provisions of this Section, the Clackamas County Sheriff shall have the same access to the licensed premises, its records, and its operations as allowed to state inspectors.

(16) Civil Enforcement.

(a) Enforcement. The City Manager may deny, suspend, or revoke a license issued under this Section for failure to comply with this Section, for submitting falsified information to the City or the Oregon Liquor Control Commission, or for noncompliance with any other City ordinance or state law.

(b) Civil Penalty. In addition to the other remedies provided in this subsection (16), any person or entity, including any person who acts as the agent of or otherwise assists a person or entity, who fails to comply with the requirements of this Section or the terms of a license issued under this Section, who undertakes an activity regulated by this Section without first obtaining a license, who fails to comply with a cease and desist order issued pursuant to this Section, or who fails to comply with state law, shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500) per violation. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued, or permitted by such person and may be punished accordingly pursuant to Wilsonville Code Section 1.012.

(c) Other Remedies. In addition to the other remedies provided in this subsection (16), the City may institute any legal proceedings in Circuit Court necessary to enforce the provisions of this Section. Proceedings may include, but are not limited to, injunctions to prohibit the continuance of a licensed activity and any use or occupation of any building or structure used in violation of this Section.

(d) Remedies Not Exclusive. The remedies provided in this subsection (16) are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this Section prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under City ordinance or state law.

(17) Public Nuisance.

(a) Public Nuisance. Any premises, house, building, structure, or place of any kind where Marijuana is grown, processed, manufactured, sold, bartered, distributed, or given away in violation of state law, Wilsonville Code Chapter 6, or this Section, or any place where Marijuana is kept or possessed for sale, barter, distribution, or gift in violation of state law, Wilsonville Code Chapter 6, or this Section, is a public nuisance.

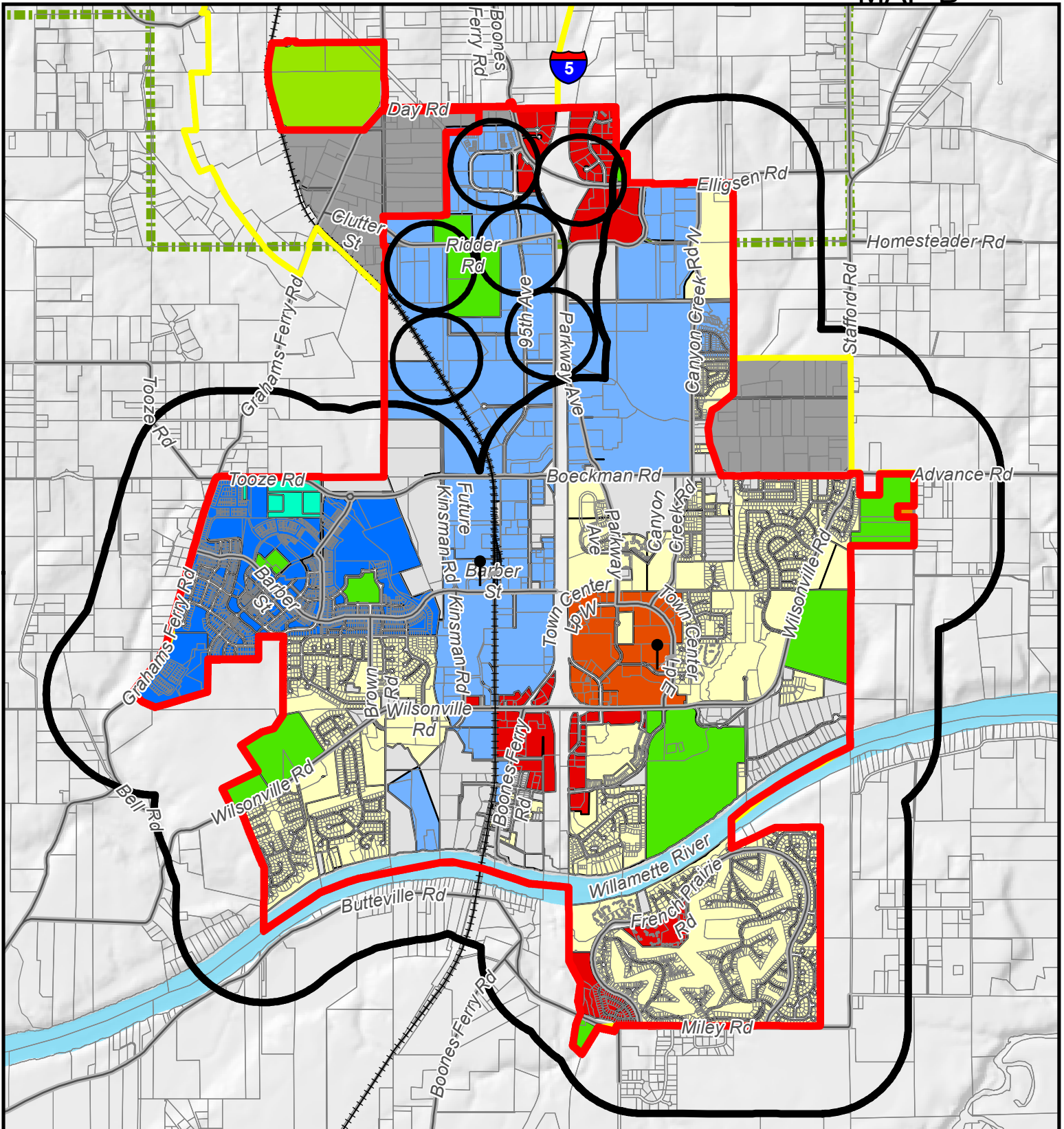
(b) Action to Remedy Public Nuisance. The City may institute an action in Circuit Court in the name of the City to abate, and to temporarily and permanently enjoin, such nuisance. The Court has the right to make temporary and final orders as in other injunction proceedings. The City shall not be required to give bond in such an action.

(18) Severability. If any provision of this Section of the City Code is found to be void or unenforceable to any extent, the rest of the Section shall remain in full force and effect, to the greatest extent allowed by law.

(19) Changes to Federal Enforcement Policy. Should the federal government change its policy with respect to enforcement of Marijuana, nothing in this Section is meant to interfere with or conflict with any federal requirement or enforcement.”

2. The City Recorder is directed to add Wilsonville Code Section 7.570, as approved above, and to make such format, style, and conforming changes to match the format and style of the Businesses Chapter of the Wilsonville Code.
3. Except as set forth above, Chapter 7 of the Wilsonville Municipal Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 17th day of October, 2016, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon, and scheduled for second reading on November 7, 2016, commencing at the hour of 7 p.m., at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon. This Ordinance is effective thirty (30)



The City of Wilsonville, Oregon

Clackamas and Washington Counties

Recreational Marijuana Discussion Map
DRAFT

- 2000' Buffer
- 1000 Feet Buffer From Center Point
- City Limits
- UGB
- City Hall & WES
- Residential Zoning, Parks & WWL Schools
- Exclusive Farm Use
- Planned Development Commercial
- Planned Development Industrial
- Planned Development Residential
- Public Facilities
- Residential
- Residential Agriculture Holding
- Urban Growth Boundary
- Village



9/30/2016

