CITY OF PHOENIX

PHOENIX, OREGON

ORDINANCE NO. 967

AN ORDINANCE AMENDING CHAPTER 5.18 OF THE CITY MUNICIPAL CODE PERTAINING TO THE REGULATION OF THE TIME, PLACE, AND MANNER OF COMMERCIAL CANNABIS FACILITIES

WHEREAS, the City of Phoenix duly enacted Ordinance 958 on December 14, 2014, thus establishing a Cannabis Facility License program and regulations on time, place, and manner for cannabis facilities; and

WHEREAS, the City amended its Land Development code to place reasonable regulations on the time, place, and manner of commercial cannabis cultivation operations; and

WHEREAS, the City of Phoenix now wishes to make minor amendments to its Cannabis Facility License regulations in Chapter 5.18 of its Municipal Code that will be consistent with and supportive of these amendments to its Land Development Code.

WHEREAS, the State of Oregon has adopted legislation permitting Medical Marijuana Dispensaries (MMDs) to sell "recreational" cannabis beginning October 1, 2015; and

WHEREAS, the State of Oregon has not enacted specific rules and guidance associated with the sale of "recreational" cannabis, and will not for the foreseeable future.

NOW THEREFORE, the City of Phoenix ORDAINS as follows:

Section 1. The Municipal Code of the City of Phoenix is hereby amended as proposed in Exhibit A.

Section 2. Emergency Adoption and Effective Date Provision. The City of Phoenix finds it necessary and desirable that this ordinance take effect immediately for the peace, health, and safety of the City. An emergency is hereby declared to exist and this ordinance shall take effect and be in full force and effect from and after the date of its passage and authentication by the Mayor.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 5th day of October 2015.

Mayor

ATTEST:

Recorder

EXHIBIT A
CHAPTER 5.18 OF THE CITY OF PHOENIX MUNICIPAL CODE, AS AMENDED BY ORDINANCE 967 ON OCTOBER 5, 2015, SHALL READ AS FOLLOWS:

Chapter 5.18 – Cannabis Facility License

Sections

5.18.010 Purpose
5.18.020 Definitions
5.18.030 License Required
5.18.040 Application Procedures
5.18.050 Standards for Review and Facility Operation
5.18.060 Period of Validity
5.18.070 Transfer of License Prohibited
5.18.080 Ineligibility for Noncompliance
5.18.090 Annual License Renewal Procedures
5.18.100 Revocation of License for Noncompliance
5.18.110 Appeal of Denial or Revocation of a Dispensary License Application
5.18.120 No Vested Rights
5.18.130 Enforcement

5.18.010 Purpose.

A. The City of Phoenix intends to protect the public health, safety, and welfare of persons and property within its jurisdiction.
B. The City of Phoenix wishes to protect the residential character and quality of life within its predominately residential neighborhoods.
C. The City of Phoenix endeavors to manage its public safety and other municipal resources in the most effective and efficient way possible.
D. The City of Phoenix has planned, and desires to create a thriving, walkable City Center, that attracts visitors of all ages and backgrounds and provides goods and services to the community within which it is located.
E. The City of Phoenix wishes to minimize potential adverse secondary effects upon children and other members of the public that may reasonably be anticipated to occur in the absence of the following regulation.

5.18.020 Definitions.

A. "Cannabis" or "marijuana" means all parts of the plant of the 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, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include industrial hemp, as defined by ORS 571.300, 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 there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

B. "Cannabis containing products" or "Cannabis derived products" means any compound, manufacture, salt, derivative, mixture, extract, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include industrial hemp, as defined by ORS 571.300, 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 there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

C. "Cannabis cultivation" means the agricultural or industrial practice of growing cannabis from seed or immature plant, as defined by the laws and administrative rules of the State of Oregon. It may include the harvesting and drying of cannabis cola and leaves that have been grown upon the same premises. Cannabis cultivation does not include the agricultural or industrial practice of growing industrial hemp, as defined by the laws and administrative rules of the State of Oregon. Nor does it include the mere incidental possession of immature cannabis plants by a cannabis processor or wholesale or retail distributor.

D. "Cultivation area" means the area within which plants are grown. All parts of a plant grown within a cultivation area shall be contained within the perimeter of the cultivation area. No part of a plant, except for rhizomal matter, roots, etc., grown within a cultivation area shall grow past the perimeter of the cultivation area.E

E. "Distribution of cannabis" means the physical transfer of any amount of cannabis, marijuana, or taxonomically related plant in any form by one person to any other person or persons, regardless of whether any consideration is paid or received.

F. "Facility, cannabis" means real property, whether improved or not, whereupon cannabis, cannabis containing products, or products derived from cannabis are distributed, produced, processed, or cultivated. Premises whereupon a resident grower cultivates cannabis for personal consumption as permitted by Chapter 2 of the Phoenix Land Development Code and applicable laws and administrative rules of the State of Oregon are not cannabis facilities.

G. "Licensed activity" shall mean any single activity for which a cannabis facility license is required including retail and wholesale distribution, production or processing of cannabis containing or derived products, and cultivation.

H. "Operator" means the person who is the proprietor of a facility, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. If the operator is a corporation, the term operator also includes each and every member of the corporation's Board of Directors whose directorship occurs in a period during which the facility is in operation. If the operator is a partnership or limited liability company, the term operator also includes each and every member thereof whose membership occurs in a period during which the facility is in operation.

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

J. "Premises" means real property at or in which a Cannabis Facility is located.
K. "Production or processing of cannabis containing or derived products" means the production of substances and finished products by mixing, extraction, or other preparations of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the production of substances and finished products containing or derived from industrial hemp, as defined by ORS 571.300, 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 there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
L. "Purchase or sale" means the acquisition or furnishing for consideration by any person of cannabis or cannabis containing or derived products within the City.
M. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority."
N. Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide cannabis and/or cannabis containing or derived products to purchasers for money, credit, property or other consideration.

5.18.030 License Required.
It is unlawful for any persons acting as principal, clerk, agent or servant to engage in the cultivation, processing, production or distribution of cannabis, cannabis containing or derived products and byproducts, otherwise permitted under State law without first obtaining a license from the City of Phoenix. This license shall be an addition to any and all other licenses and permits held by applicant.

A. Cannabis facilities engaged in the retail distribution of cannabis must obtain separate licenses in order to engage in the retail distribution of cannabis that is intended for medicinal consumption under the OMMP and cannabis that is intended for non-medicinal, "recreational" consumption. The foregoing withstanding, only one licensed activity may be conducted at a particular cannabis facility.

B. Cultivation of cannabis conducted by a "resident grower" as defined by Chapter 2 of Phoenix Land Development Code shall not require a cannabis facility license but must comply with the provisions of Chapter 2 and all other applicable regulations and laws.

5.18.040 Application Procedures.
An applicant shall complete an application for a license on a form provided by the City and containing the following information:
A. A notarized statement that the applicant is the owner of record for the property at which the cannabis facility would operate, accompanied by proof of ownership, or, if the applicant is not the owner of record for the property, a notarized statement that the owner authorized the application for the license.

B. The full name, mailing address, email address, and telephone number of the owner of record for the property if the applicant is not the owner of record for the property.
C. Payment of an applicable license review fee established by resolution of the City Council.
D. A floor plan and site plan, with accurate dimensions and drawn to scale, depicting the enclosed and locked location in the building where cannabis and cannabis containing and derived products will be stored, and detailing security measures undertaken to secure that location and the premises in general;
E. For safety and building code requirements, a description detailing the electrical, plumbing, and any other building modifications and improvements utilized in the distribution, production, and/or cultivation of cannabis plants and cannabis containing and derived products;
G. Documentation of any building, development, or other permits and licenses as required and issued by the City or State including a business license as required by Chapter 5.04 of the Phoenix Municipal Code and any licenses issued by the State of Oregon authorizing the distribution, cultivation, or production of cannabis and cannabis containing or derived products.
H. The names and addresses of all persons that
   1. Have an ownership interest in the cannabis facility;
   2. Have loaned or given money or real or personal property to the applicant for use by the facility within the preceding year;
   3. Will act as an operator.
I. The Chief of Police shall conduct background checks to determine whether any person named therein has been convicted in any state for the manufacture or delivery of a controlled substance listed in CFR Schedule I or Schedule II once or more in the previous five years or twice or more in the person's lifetime.
J. Any additional information as may be deemed necessary by the Chief Law Enforcement Official or the Planning Director.
K. The City shall issue, in writing, a decision approving, approving with conditions, or denying the requested cannabis facility license within 60 days of submission of a completed application.

5.18.050 Standards for Review and Facility Operation

In order to qualify for a cannabis facility license, the facility must meet all of the following standards:

A. Cannabis facilities may not operate within R-1, R-2, R-3, or C-C land use districts. Production of cannabis containing and derived products is further prohibited in these districts and in the C-H district. This provision shall not be read so as to release cannabis facilities from other requirements to obtain additional land use and building permits as required by the Phoenix Land Development Code and state building and fire codes.
B. A cannabis facility shall be located more than 250 feet from any R-1, R-2, or R-3, residential zones or a property that is legally used for residential purposes. The minimum separation between the cannabis facility or use and any and all residential property, as defined by this section, shall be calculated using the method described below in 5.18.050.F.

C. A cannabis facility shall be located more than 250 feet from any park or recreational facility meeting the following standards:
   1. A public park or recreation facility that has been identified in the City's Comprehensive Plan, with the exception of the Bear Creek Greenway;
   2. A public library;
   3. A commercial or residential recreational facility, which serves children under 18 years of age;
   4. The minimum separation between the cannabis facility and any and all parks and recreation facilities property as defined by this section shall be calculated using the method described below in 5.18.050.F.

D. All cannabis facilities shall be located more than 1,000 feet from any public or private school, with an average weekday attendance (during any continuous 3 month period during the preceding 12 months) of not fewer than 30 children who are under 18 years of age. This minimum separation between the cannabis facility and any and all schools shall be calculated using the method described below in 5.18.050.F.

E. The cannabis facility shall be located at least 1,000 feet from another cannabis facility.

F. Minimum distance shall be measured using the following method:
   1. The entrance to the cannabis facility that is nearest to the nearest residential, school, park or recreational facility property, as defined by this section shall be identified.
   2. A straight line shall be drawn from that point to the nearest point on the property line of the nearest residential, school, park or recreational facility property.
   3. To measure minimum distance between two cannabis facilities, the entrances to each facility closest to one another shall be identified, and a straight line shall be drawn between these two entrances.
   4. The distance as measured using the procedures in 5.18.050.E.1-3 must be less than the minimum spatial separation distances delineated in 5.18.050 B, C, D, and E.

G. The cannabis facility shall be located in a permanent building and may not be located in a motor vehicle, cargo container, tent, trailer or other temporary structure.

H. All cannabis and cannabis containing and derived products shall be contained within a secure, locked case, cabinet, safe, or similar enclosure that is not accessible without restricted means of entry.

I. At no time shall cannabis and cannabis containing and derived products or any items, effect, paraphernalia, accessory or thing which is designed or marketed for use with cannabis and cannabis containing and derived products be visible by passers-by.

J. Outdoor storage of cannabis, cannabis containing and derived products, or other raw materials for use in the production of cannabis containing or derived products, is strictly prohibited.

K. The exterior of the building within which the cannabis facility is located shall be consistent in appearance with buildings in immediate vicinity and comply with any applicable architectural design standards. Any modification to the premises or exterior of a building in which a cannabis facility is located shall be subject to Chapter 4.2 of the Phoenix Land Development Code.

L. Drive-up or drive-through facilities are expressly prohibited for cannabis facilities.
M. Cannabis facilities shall provide for secure disposal of cannabis remnants, waste and byproducts; such materials and substances shall not be disposed of in unsecured refuse collection containers.
N. A cannabis facility engaged in the distribution of cannabis to the general public, whether the intended use of the cannabis is for medical or non-medical purposes, shall only operate between the hours of 8:00AM and 8:00PM.
O. Cannabis and cannabis containing or derived products shall not be consumed on the premises, unless the Cannabis Facility is registered with the State of Oregon Health Authority as a Medical Marijuana Facility, and only then may this activity occur according to applicable state statutes and the rules promulgated there from.
P. The facility shall utilize an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the 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.
Q. No minor is allowed on the premises unless the minor is a registry identification cardholder, is accompanied by a parent or guardian, and the Cannabis Facility is registered with the State of Oregon Health Authority as a Medical Marijuana Facility, and only then may this activity occur according to applicable state statutes and the rules promulgated there from.
R. A person who has been convicted in any state for the manufacture or delivery of a controlled substance listed in CFR Schedule I or Schedule II once or more in the previous five years or twice or more in the person's lifetime shall not
   1. Be an operator of a cannabis facility;
   2. Have an ownership interest of 5% or more in the facility or in any entity that has a 25% or more ownership interest in the facility;
   3. Provide equity or debt financing for the facility; or
   4. Have an ownership interest of 5% or more in any entity that provides or has provided equity or debt financing for the facility.
S. All cannabis facilities that are licensed by the State of Oregon shall provide proof of current registration as required by state law and administrative rules.
T. A cannabis facility shall display its current permit inside the facility in a prominent place easily visible to persons conducting business in the facility.
U. Cannabis facilities engaged in commercial cultivation shall meet the standards and requirements established in the Phoenix Land Development Code.
V. Cannabis facilities engaged in commercial cultivation may also be required to post a performance bond or other form of financial surety, the amount of which shall be calculated by City staff to recover all reasonably anticipated costs associated with the removal and disposal of cannabis plants and related materials and equipment.

5.18.060 Period of Validity.
A license granted under these provisions shall be effective and valid for a period of up to one year from issuance or, in the case of facilities licensed by a State agency, until the expiration of that registration whichever occurs first.

5.18.070 Transfer of License Prohibited.
No license issued under the forgoing provisions may be sold, transferred, or otherwise assigned from the original license holder to another person or corporate entity.

5.18.080 Ineligibility for Noncompliance.
No license shall be issued to or renewed for a cannabis facility that

A. Is not in compliance with the building and property management codes enacted by the City and the International Fire Code;
B. Has not been issued a valid certificate of occupancy, if applicable;
C. Is in violation of Chapter 3.17 of the Phoenix Municipal Code.

5.18.090 Annual License Renewal Procedures.
Prior to the expiration of the original one year license, a license renewal application fee as established by the City Council, shall be filed with the City. Any changes to the information provided on the original application shall be indicated on the license renewal application.

A. Prior to license renewal approval, the Chief Law Enforcement Official, or designee thereof, and the City's building inspector and/or Planning Director, may inspect the licensed facility. The inspection shall include, at minimum, a review of storage areas and security measures.
B. All requirements established in this section must be satisfied in order for a person to be eligible to renew its license to distribute cannabis and cannabis containing and derived products.
C. The applicant must be current on all applicable Cannabis Facility Taxes and fees as established in Chapter 3.17 of the Municipal Code.
D. If the Chief Law Enforcement Official, Planning Director, or designee thereof determines that the cannabis facility is in compliance with these requirements, a one year license renewal shall be issued.
E. A license renewal application shall be submitted requesting renewal annually at least 30 days prior to expiration of the current permit. The premises used as a cannabis facility may be inspected by the Chief Law Enforcement Official, Planning Director, or a designee thereof, and the City's building official, to ensure compliance with this ordinance.

5.18.100 Revocation of License for Noncompliance.
In the event of any noncompliance with this provision after a license has been issued, the license may be revoked upon any of the following findings by order of the Chief Law Enforcement Official, a designee thereof, the Planning Director, or the City's building official, until noncompliance has been corrected as determined by the aforementioned agent(s):

A. A violation of any state or local regulations, the provisions of this ordinance, or the provisions of the license;
B. Operation of a cannabis facility that cultivates, distributes, produces cannabis or cannabis containing products, or otherwise assists a patient, client, or customer, in

the use of cannabis or cannabis products in an unlawful manner or in a manner contrary to the public health, safety, and welfare;

C. Any attempt to transfer, assign, or sell a license to another location or to use the same improperly;
D. The information provided with the license application was falsified, incomplete, and/or inaccurate;
E. Failure to pay any duly enacted fees or taxes

5.18.110 Appeal of Denial or Revocation of a Cannabis Facility License Application.

An application for an original or renewal license which has been denied, or an existing license that has been revoked by the Chief Law Enforcement Official, a designee thereof, the Planning Director, or the City's building official, may be appealed to the Phoenix City Council.

5.18.120 No Vested Rights.

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any amendment thereto.

5.18.130 Enforcement.

A. A person who violates any provision of this chapter, or the terms, conditions, or provisions of a license, is responsible for a municipal civil infraction, and shall be subject to all fines as established from time to time by resolution of the City Council.
B. In order to secure, remove, and dispose of cannabis plants or cannabis containing or derived products that remain upon the premises of a cannabis facility after it has ceased operations, the City may enter upon the premises.
C. Nothing in this section shall be construed to limit the remedies available to the City in the event of a violation by a person of this chapter and/or a license. Each act of violation, and each day upon which a violation exists or continues, shall constitute a separate offense.