



ORDINANCE NO. 2016-2798

AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE
REGARDING RECREATIONAL MARIJUANA PRODUCERS AND
PROCESSORS; AND DECLARING AN EMERGENCY

RECITALS:

1. Measure 91 was approved by Oregon voters in November 2014 and House Bill 3400 was enacted by the Oregon Legislature in 2015 related to recreational marijuana.
2. The Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on October 22, 2015 that were subsequently modified on November 20, 2015 for recreational marijuana under Chapter 845, Division 25.
3. The Newberg City Council established the Marijuana Subcommittee on September 8, 2015 to review and provide recommendations on local place, time and manner regulations for recreational marijuana.
4. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana producers and processors on January 4, 2016, under City Council Resolution 2015-3248.
5. The Marijuana Subcommittee met on January 12, 2016 and developed recommendations to the Planning Commission on recreational marijuana producers and processors.
6. After proper notice, the Newberg Planning Commission held a hearing on February 25, 2016 to consider the amendment for recreational marijuana producers and processors. The Commission considered testimony, deliberated, and found that adding regulations for recreational marijuana producers and processors would be in the best interests of the city. The Planning Commission approved Resolution 2016-313, which recommends that the City Council adopt the proposed amendments to the Newberg Development Code.
7. After proper notice, the Newberg City Council held a hearing on March 21, 2016 and continued the hearing to April 4, 2016 to consider the proposed amendment. The Council considered testimony and deliberated.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The Council finds that adding regulations for recreational marijuana producers and processors would be in the best interests of the city. The Council adopts the amendments to the Newberg Development Code as shown in Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.

2. The findings shown in Exhibit "B" are hereby adopted. Exhibit "B" is by this reference incorporated.
3. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect immediately upon passage by the council and signature of the mayor.

➤ EFFECTIVE DATE of this ordinance is April 5, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of April, 2016, by the following votes: **AYE:** 6 **NAY:** 0 **ABSENT:** 0 **ABSTAIN:** 0


Sue Ryan, City Recorder

ATTEST by the Mayor this 7th day of April, 2016.


Bob Andrews, Mayor

**Exhibit “A” to Ordinance 2016-2798
Development Code Amendments –File DCA-15-003
Recreational Marijuana Producers
and Processors**

Section 1. The Newberg Development Code 15.05.030 shall be amended to read as follows:

**Note: Existing text is shown in regular font.
Added text is shown in double-underline
Deleted text is shown in ~~strikethrough~~.**

15.05.030 Definitions

“Marijuana processor” means a person who processes marijuana items in this state.

“Marijuana producer” means a person who produces marijuana in this state.

Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:

See Exhibit A, Attachment 1

Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:

See Exhibit A, Attachment 2

Section 4. Newberg Development Code, Stream Corridor Overlay Subdistrict, Section 15.342.110 is amended to read as follows:

15.342.110 Prohibited uses and activities.

The following activities or uses are prohibited within this subdistrict:

A. Except as provided in NMC 15.342.040(R), the planting or propagation of any plant identified as a nuisance plant as determined by a qualified botanist or indicated as a nuisance plant on the Newberg plant list.

B. The removal of native trees that are greater than six inches in diameter at breast height, except as is otherwise permitted within this chapter.

C. Any use dealing with hazardous substances or materials, including but not limited to gas service stations.

D. Public pathways, except those in conjunction with public lands, public parks or public easements that have been acquired by other than eminent domain. [Ord. 2451, 12-2-96. Code 2001 § 151.475.]

E. Recreational Marijuana Producer and Recreational Marijuana Processor.

Section 5. Newberg Development Code, Civic Corridor Overlay Subdistrict, Section 15.350.030 is amended to read as follows:

15.350.030 Permitted buildings and uses.

All **uses** permitted in the underlying primary district are permitted within the CC subdistrict except as follows:

A. In addition to the **buildings** and **uses** permitted conditionally in NMC 15.305.020, the **planning commission** may grant a **conditional use permit** for any of the following **buildings** and **uses** in accordance with a Type III procedure:

1. Facilities which exist for the purpose of providing for the temporary care and/or lodging of adult indigent **persons**.

2. **Hospitals**.

B. The following **uses** are prohibited within the CC subdistrict:

1. **Automobile sales**, new and used.

2. Car washes, coin-operated or mechanical.

3. Garages, repair.

4. Service stations. [Amended during 11/13 supplement; Ord. 2561, 4-1-02. Code 2001 § 151.526.3.]

5. Recreational Marijuana Producer and Recreational Marijuana Processor.

Section 6. Newberg Development Code, Bypass Interchange Overlay, Section 15.356.050 is amended to read as follows:

15.356.050 Prohibited uses.

A. Several commercial types of **uses** are permitted outright or with conditional **use** approval in Newberg's industrial districts (M-1, M-2, and M-3). The area within the Newberg UGB near the

Oregon 219 Interchange is generally planned for industrial **use**. To protect the interchange area from commercial development, the following **uses** are prohibited within the M-1, M-2, and M-3 districts within the boundaries of the bypass interchange overlay:

1. **Automobile sales**, new and used.
2. Billboards.
3. Car washes.
4. Convenience grocery stores.
5. **Restaurants** larger than 2,000 square feet or with drive-up service windows.
6. Service stations.
7. Drive-in theaters.
8. Auction sales.
9. Bakeries, retail.
10. **Building** material sales.
11. Driving ranges.
12. Feed and seed stores.
13. Miniature **golf courses**.
14. Skating rinks.
15. Recreational Marijuana Producer and Recreational Marijuana Processor.

B. The industrial commercial subdistrict of the M-4 district shall not be applied within the boundaries of the BI overlay. [Ord. 2734 § 1 (Exh. B), 3-7-11; Ord. 2708 § 2, 12-1-08; Ord. 2602, 9-20-04. Code 2001 § 151.531.4.]

Section 7. Newberg Development Code, Interim Industrial Overlay, Section 15.358.030 is amended to read as follows:

15.358.030 Permitted uses.

All **uses** of land and water that are permitted in the underlying zoning district(s) are also permitted in the interim industrial overlay, with the exception of those **uses** listed in NMC 15.358.050. In addition, the following are permitted:

- A. Contractor's equipment or storage.
- B. Construction material storage. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.2.]

C. Recreational Marijuana Producer (indoor).

Section 8. Newberg Development Code, Interim Industrial Overlay, Section 15.358.040 is amended to read as follows:

15.358.040 Conditional uses.

A. Use of land and water that are listed as conditional **uses** in the underlying zoning district(s) may also be allowed in the interim industrial overlay, with the exception of **uses** included in the list of prohibited **uses** in NMC 15.358.050.

B. Proposed conditional **uses** in the interim industrial overlay are subject to the standard conditional **use** criteria and procedures of this **code**. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.3.]

C. Recreational Marijuana Producer (outdoor).

Section 9. Newberg Development Code, Interim Industrial Overlay, Section 15.358.050 is amended to read as follows:

15.358.050 Prohibited uses.

The following **uses** are prohibited in the interim industrial overlay:

A. **Cemeteries.**

B. Garbage dumps, sanitary landfills.

C. **Parks.**

D. Permanent **buildings.**

E. **Wrecking yards** for motor vehicles, **building** materials, and other similar items.
[Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.4.]

F. Recreational Marijuana Processor.

Exhibit A, Attachment 1

Chapter 15.305 ZONING USE

15.305.020 Zoning use table - Use Districts.

Newberg Development Code – Zoning Use Table

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards	
100	AGRICULTURAL USES																				
Def.	Horticulture	P	P	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)		
Def.	Livestock and poultry farming	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Def.	Home gardening	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Home livestock and poultry raising	S	S															S		NMC Title 6	
200	RESIDENTIAL USES																				
Def.	Dwelling, single-family detached	P(2)	P	P(3)		P		C(4)	C(5)									P	P(6)	Subject to density limits of NMC15.405.010(B)	
Def.	Dwelling, single-family attached	S(2)	S	S(3)		S		C(4)	C(5)									P	P(6)	NMC15.415.050; subject to density limits of NMC15.405.010(B)	
Def.	Manufactured home on individual lot	S(2)	S	S(3)	P(7)	S													P(6)	NMC15.445.050 – 15.445.070; subject to density limits of NMC15.405.010(B)	
Def.	Manufactured dwelling park		S	S	S																NMC15.445.075 – 15.445.160
Def.	Mobile home park		S	S	S																NMC15.445.075 – 15.445.160
Def.	Manufactured home subdivision		S		S																NMC15.445.075 – 15.445.160
Def.	Dwelling, two-family (duplex)	P(2)	P	P	C	P		C(4)	P(8)/C(5)										P		Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, multifamily	C	P	P	C	P		C(4)	P(8)/C(5)										P		Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, accessory	C	S	S		S													S		Chapter 15.445 NMC, Article V
Def.	Dwelling, mixed use						P(9)	P(10)	P(8)/C(5)	P(11)	C	C									
Def.	Dwelling, caretaker										P	P	P	C						P(12)	Limited to one per lot, and allowed whenever the use requires the on-site residence of such person.
Def.	Dormitory		C	P		P													P		
Def.	Home occupation (no more than one outside paid employee)	S	S	S(13)	S	S	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S	S	S(13)		NMC15.415.060
Def.	Home occupation (more than one outside paid employee)	C	C	C(13)	C	C	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C	C	C(13)		NMC15.415.060
300	INSTITUTIONAL AND PUBLIC USES																				
310	INSTITUTIONAL CARE AND HOUSING																				
Def.	Family child care home	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)									P	P(13)	Chapter 657A ORS
312	Day care	P	P	P	C	P	P	P	P		C	C	C	C	P					P(14)	Chapter 657A ORS
Def.	Residential care home (5 or fewer people)	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)									P	P(13)	ORS 197.665
Def.	Residential care facility (6 – 15 people)	C	P	P	C	P		C	C										P		ORS 197.665
315	Group care facility (16+ people)	C	C	C		C		C											P		
316	Hospital	C	C	C		C		P	P										P		
Def.	Prison										C	C	C	C							
320	ASSEMBLY																				
321	Religious institution, place of worship	P	P	P	P	P	P	P	P	P		P(29)							C	P	
322	Private club, lodge, meeting hall			C	C			P	P	C									P		
330	SCHOOLS																				

- (16) Allowed in areas designated in industrial area plans.
- (17) Limited to facilities owned or operated by a public agency.
- (18) Parking garages are a conditional **use**, and must have first floor **street** frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
- (19) A **conditional use permit** is required if the facility is less than 2,000 feet from the nearest **telecommunication facility**.
- (20) Businesses in the C-1 zone that have hours of operation between 10:00 p.m. and 7:00 a.m. require a conditional use permit.
- (21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a **conditional use permit**. Otherwise, drive-up service windows, except those in service on April 1, 2002, are prohibited. Changes in **use** will not be allowed.
- (22) Retail sales of goods on site not allowed.
- (23) Limited to secondhand stores.
- (24) Store size is limited to 2,000 square feet gross floor area.
- (25) Store size is limited to 5,000 square feet gross floor area.
- (26) **Use** must demonstrate that it is compatible with **airport** operations.
- (27) Limited to service stations.
- (28) Limited to card lock fueling only. Retail services are limited to self-vending services.
- (29) Permitted provided the **structure** is designed for easy conversion to industrial **use**, including not having fixed seating.
- (30) Limited to 10,000 square feet maximum floor area.
- (31) Allowed indoors only.
- (32) Allowed indoors only. Outdoor **use** requires a **conditional use permit**.
- (33) Must be aviation-related. See Chapter 15.332 NMC.
- (34) Limited to expansion or change of existing heavy manufacturing uses.
- (35) Shall not be located at the same address as a state-registered marijuana grow site, or within 1,000 feet of the real property comprising a public park, 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). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a dispensary. The premises consist of the dispensary building, or the portion of the building used for a dispensary. Shall not be located within 1,000 feet of another medical marijuana dispensary. Operating hours are limited to the hours between 9:00 a.m. and 8:00 p.m.
- (36) Allows up to 12 mature plants; indoor operations only.
- (37) Indoor use only.
- (38) The use is not allowed within 1,000 feet of the real property comprising a public park, 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). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a recreational processor.

1 Code reviser's note: Section 25 of Ordinance 2763 provides:

SECTION 25: Grace period for previously permitted or conditional uses. Where an **applicant** demonstrates that a particular **use** was a permitted or conditional **use** on a specific property immediately prior to adoption of this ordinance, but that the **use** is no longer either a permitted or conditional **use** on that property due to this ordinance, the **applicant** may establish the **use** as either a permitted or conditional **use**, as provided in the prior **code**, provided the **use** is legally commenced prior to January 1, 2018.

Exhibit A, Attachment 2

15.305.030 Zoning use table - Use Subdistricts.

600	MISCELLANEOUS USES	R-1/PD	<u>R-1/0.1</u>	<u>R-1/0.4</u>	R-1/6.6	R-1/SP	R-2/PD	R-2/SP	SD/LDR	SD/MMR	R-3/PD	RP/SP	RP/LU	AO	ARO	C-1/SP	C-2/LU	C-2/PD	C-2/SP	C-3/LU	SD/V	SD/NC	SD/H	CC	CF/RF	RF	IO	M-1/SP	SD/E	FHO	II	AIO	H	SC	BI	
	Medical Marijuana Processor																											P	P							
	Medical Marijuana Grow Site	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
	<u>Recreational Marijuana Processor</u>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	X	X	X	X	X	X
	<u>Recreational Marijuana Producer (Indoor)</u>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	X	P	X	X	X	X	
	<u>Recreational Marijuana Producer (Outdoor)</u>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	C	C	X	C	X	X	X	X	

Key:

P: Permitted use

S: Special **use** – **Use** requires a special **use permit**

C: Conditional **use** – Requires a **conditional use permit**

X: Prohibited use

(#): See notes for limitations

**Exhibit “B” to Ordinance 2016-2798
Findings –File DCA-15-003
Recreational Marijuana Producers
and Processors**

**Findings –File DCA-15-003
Recreational Marijuana Producers and Processors**

I. Statewide Planning Goals - relevant goals

Goal 1, Citizen Involvement, requires the provision of opportunities for citizens to be involved in all phases of the planning process.

Finding: The City Council initiated the potential development code amendment at a public meeting on January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on March 21, 2016 and April 4, 2016, and decided whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

Goal 2, Land Use Planning, requires the development of a process and policy framework that acts as a basis for all land use decisions.

Finding: The Recreational Marijuana Producer and Processor proposal is supportive of this goal because it was developed following city procedures for legislative action.

II. Newberg Comprehensive Plan - relevant policies

A. CITIZEN INVOLVEMENT GOAL: To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.

Finding: The City Council initiated the potential development code amendment at a public meeting on January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on March 21, 2016 and April 4, 2016, and decided whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

B. LAND USE PLANNING GOAL: To maintain an on-going land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

Finding: The Recreational Marijuana Producers and Processors proposal is supportive of this goal because it was developed following city procedures for legislative action.

H. THE ECONOMY GOAL: To develop a diverse and stable economic base.

1. General Policies

c. The City will encourage the creation of a diversified employment base, the strengthening of trade centers and the attraction of both capital and labor intensive enterprises.

g. The City shall encourage business and industry to locate within the Newberg City limits.

Finding: The city encourages new businesses to develop within the city. A Recreational Producer or Processor operation is a legal operation under State law. Allowing Recreational Marijuana Producer as a permitted use indoors in industrial districts or subdistricts or as a conditional use for outdoor operations; prohibiting Recreational Marijuana Producer in commercial, community facility, institutional and airport districts and subdistricts; and allowing Recreational Marijuana Processor as a permitted use in M-1, M-2, M-3, M-4, and SD/E and as a conditional use in C-2 with a 1,000 foot buffer requirement from schools and parks is consistent with this Comprehensive Plan goal.

III. Conclusion: The proposed development code amendments meet the applicable requirements of the Statewide Planning Goals, and the Newberg Comprehensive Plan, and should be approved.