ORDINANCE NO. 3434
AN ORDINANCE ADDING CHAPTER 9.14 TO THE ROSEBURG MUNICIPAL CODE TO ESTABLISH REGULATIONS RELATING TO THE OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND DECLARING AN EFFECTIVE DATE OF NOVEMBER 1, 2014

WHEREAS, in 2013 the Oregon Legislature enacted House Bill 3460 (ORS 475.314) which required the Oregon Health Authority to develop and implement a process to register medical marijuana dispensaries; and

WHEREAS, in 2014, the Oregon Legislature enacted Senate Bill 1531 permitting local jurisdictions to enact a moratorium on such dispensaries within their jurisdictions; and

WHEREAS, on March 24, 2014, the Roseburg City Council adopted Ordinance No. 3427 declaring a moratorium on medical marijuana facilities until May 1, 2015 unless repealed earlier and directed the City Manager to form a Citizen's Advisory Committee ("Committee") to propose appropriate zoning locations for medical marijuana facilities and regulations relating to the business operations of such facilities; and

WHEREAS, the Committee forwarded a recommendation to the Planning Commission to include medical marijuana dispensaries as permitted uses in the C-3 and MU Zones with certain limitations, which the Commission approved on August 4, 2014 and forwarded to the City Council; and

WHEREAS, on September 22, 2014, the City Council adopted Ordinance No. 3433 implementing the land use regulations relating to medical marijuana dispensaries as approved by the Planning Commission with an effective date of November 1, 2014; and

WHEREAS, the Citizen's Advisory Committee has also recommended proposed rules regulating the business operations of such facilities which the Council desires to adopt and have in place when the land use regulations outlined in Ordinance No. 3433, as referenced above, become effective;

NOW THEREFORE, THE ROSEBURG CITY COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Chapter 9.14 entitled "Medical Marijuana Dispensary Regulations" is hereby added to Title 9 of the Roseburg Municipal Code to read as follows:

MEDICAL MARIJUANA DISPENSARY REGULATIONS

9.14.005 Definitions
9.14.010 Purpose
9.14.020 Operator's License Application, Term and Fee
9.14.030 Dispenser's Permit Application, Term and Fee
9.14.040 Dispensary Operating Regulations

9.14.050 Inspection of Books and Premises
9.14.060 City Indemnification
9.14.070 Denial, Suspension and Revocation; Appeals and Penalties

9.14.005 DEFINITIONS. As used in this Chapter, unless the context in which used clearly requires a different meaning, the following words and phrases shall mean:

"CFR Schedule I or Schedule II" means the controlled substances designated in the Code of Federal Regulations Title 21, Chapter II, Part 1308.

"Dispensary Operator" or "Operator" means the PRF (person responsible for a medical marijuana facility) for such dispensary, as defined in OHA rules.

"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 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, cake or the sterilized seed of the plant which is incapable of germination.

"Medical Marijuana" means all parts of marijuana plants that may be used to treat or alleviate a qualified patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

"Medical Marijuana Dispensary" or "Dispensary" means any facility or operation designed, intended or used for the purposes of delivering, dispensing or transferring marijuana to Oregon Medical Marijuana Registry Identification Card holders pursuant to ORS 475.300-475.346.

"Oregon Health Authority", "OHA" or "Authority" means the division of the State that administers the provisions of the Oregon Medical Marijuana Act and all policies and procedures pertaining thereto as set forth in state law.

"OMMP" or "Oregon Medical Marijuana Program" means the state medical marijuana registry program administered by the Oregon Health Authority Public Health Division.

"OMMP Qualified Patient", "Qualified Patient", or "Patient" means a person who has been issued a medical marijuana card from the Oregon Health Authority to engage in the medical use of marijuana and, if the person has a designated primary caregiver under ORS 475.312, the person's designated primary caregiver.

9.14.010 PURPOSE. The purpose of this Chapter is to ensure that medical marijuana dispensaries operated within the City limits of Roseburg are in full compliance with the requirements of the Oregon Medical Marijuana Act as well as, the City's land use and development regulations, building and fire codes and all provisions of this Chapter, and to ensure safe access to medical marijuana for patients registered through the Oregon Medical Marijuana Program, while protecting the health, safety and welfare of the citizens of Roseburg.

9.14.020 OPERATOR'S LICENSE APPLICATION, TERM AND FEE.

A. Operator's License Application. Pursuant to the provisions of this Chapter, no person shall operate a medical marijuana dispensary within the City without first obtaining a medical marijuana dispensary operator's license from the City Recorder. Applications for a medical marijuana dispensary operator's license shall be available from the City Recorder's Office. Completed applications must be submitted to the City Recorder along with a copy of the applicant's OMMP registration certificate issued by the Oregon Health Authority pursuant to ORS 475.300 – 475.346, a copy of the applicant's driver's license or other government-issued photo identification, a current passport sized photograph of the applicant and payment of the original operator's application investigation fee and license fee as set by Council resolution. The application shall require the following information:

1. The business name, mailing address, physical location and telephone number under which the medical marijuana dispensary shall be operated;

2. The days and hours during which the dispensary shall be open for business;

3. The true name, residence address, date and place of birth and driver's license number or other government-issued photo identification number of the person intending to operate the dispensary;

4. A statement that the dispensary operator shall at all times comply with the regulations established by the Oregon Health Authority and this Chapter, as well as all other state and local laws relating to the dispensing and distribution of medical marijuana, including the City's land use and development regulations, building codes and fire codes relating to such dispensaries;

5. A statement whether the dispensary operator has ever been convicted of any felony during the applicant's lifetime, or of a misdemeanor within the past five (5) years that relates to fraud, theft or the manufacture or delivery of a Schedule I or Schedule II controlled substance.

6. A statement that the dispensary operator shall not employ, or accept volunteer services from, any person to dispense medical marijuana or perform any other dispensary-related tasks, whom has not obtained a medical marijuana dispenser's permit from the City; and

7. Any other information the City Recorder deems relevant and necessary to conduct any investigation or background check (including fingerprints) of the applicant and to ensure the proper protection of the public health, safety and welfare. All information provided on the operator's application must be kept current at all times; any change in such information must be reported to the City Recorder's office within ten (10) days of such change.

B. Term of Dispensary Operator's License. Licenses to operate a medical marijuana dispensary shall be issued on a calendar year basis for a term of one year or portion thereof beginning upon the date of approval of the original application. Persons issued a dispensary operator's license shall also be issued a medical marijuana dispenser's permit, but shall not be required to pay the permit fee set forth in Subsection 9.14.030(C) of this Chapter. All dispensary licenses shall expire on December 31st of the year issued. If a licensee intends to continue to operate the following license year, not less than thirty days prior to the license expiration, the licensee shall complete a license renewal application and pay the annual license fee. Criminal history checks will be performed on the original and each renewal application. A dispensary operator's license shall not be sold, assigned, mortgaged or otherwise transferred.

C. Dispensary Operator's License Fee. Upon submission of an original application for a medical marijuana dispensary operator's license, the applicant shall submit a non-refundable application investigation fee and the annual license fee as set by Council resolution. If an applicant applies for a medical marijuana dispensary license after July 1st, the annual license fee shall be reduced by one-half for the remaining portion of the first license year.

9.14.030 <u>DISPENSER'S PERMIT APPLICATION, TERM AND FEE</u>.

A. Dispenser Permit Application. No person shall be employed by, or provide volunteer services for, a medical marijuana dispensary operator to dispense medical marijuana to OMMP patients, or perform any other dispensary-related tasks, without first obtaining a medical marijuana dispenser's permit from the City Recorder. A dispenser's permit shall be required for each OMMP facility at which a person dispenses or performs any other dispensary-related tasks. Completed applications for a medical marijuana dispenser's permit shall be submitted to the City Recorder, along with a copy of the applicant's driver's license or other government-issued form of identification, a current passport sized photograph of the applicant and payment of the non-refundable application investigation fee and dispenser's permit fee as set by Council resolution. The application for a dispenser's permit shall provide the following information:

1. The name, address, telephone number and the name of the licensed operator for which the dispenser will be employed by or provide volunteer services for;

2. The applicant's true name, residence address, date and place of birth and driver's license number or other government-issued photo identification number;

3. A statement that the applicant is fully aware and knowledgeable of the rules and regulations established by the Oregon Health Authority and this Chapter, as well as all other state and local laws relating to the dispensing and distribution of medical marijuana including the City's land use and development regulations, building codes and fire codes relating to such dispensaries; and

4. A statement whether the applicant has ever been convicted of any felony during the applicant's lifetime, or of a misdemeanor within the past five (5) years that relates to fraud, theft or the manufacture or delivery of a Schedule I or Schedule II controlled substance.

5. Any other information the City Recorder deems relevant and necessary to conduct any investigation or background check (including fingerprints) of the applicant and to ensure the proper protection of the public health, safety and welfare. All information provided on the dispenser's application must be kept current at all times; any change in such information must be reported to the City Recorder's office within ten (10) days of such change.

B. Term of Dispenser's Permit. Medical marijuana dispenser permits shall be issued on a calendar year basis for a term of one year or portion thereof beginning upon the date of approval of the original application. All dispenser permits shall expire on December 31st of the year issued. If a dispenser intends to continue dispensing for a licensed medical marijuana dispensary operator the following year, not less than thirty days prior to the permit expiration, the dispenser shall complete a permit renewal application and pay the annual permit fee. Criminal history checks will be performed on the original and each renewal application.

C. Dispenser's Permit Fee. Upon submission of an original application for a medical marijuana dispenser's permit, the applicant shall submit a non-refundable application investigation fee and the annual permit fee as set by Council resolution. If an applicant applies for a dispenser's permit after July 1st, the annual permit fee shall be reduced by one-half for the remaining portion of the first year of the permit.

9.14.040 <u>DISPENSARY OPERATING REGULATIONS</u>. Each licensed medical marijuana dispensary operator shall comply with the following operating regulations in addition to any other state or local rules and regulations:

A. Medical marijuana dispensaries shall open for business no earlier than 9:00 a.m. and close no later than 9:00 p.m. any day of the week except Sunday, on which day dispensaries must close by 6:00 p.m.

B. Medical marijuana dispensaries must at all times be operated in strict compliance with Oregon Administrative Rules, Oregon Revised Statutes, this Chapter, building and

fire codes and all other rules and regulations directly or indirectly relating to medical marijuana and the receipt, distribution, dispensing, transferring, advertising and packaging thereof, as well as the security requirements, possession limits, and location and zoning requirements of medical marijuana dispensaries.

C. The operator's certificate issued by the Oregon Health Authority and license certificate issued by the City must be prominently displayed in an easily visible location inside the dispensary at all times. All dispensers employed by, or any person serving as a volunteer dispenser or providing any other dispensary-related services for the dispensary operator, must have their dispenser's permit issued by the City on their persons at all times while working or volunteering at the dispensary.

D. The dispensary must not manufacture or produce any extracts, oils, resins or similar derivatives of marijuana on-site and must not use open flames or butane or other corrosive gases in the preparation of any product.

E. The dispensary must be located in a permanent building and may not locate in a trailer, cargo container or motor vehicle and shall not offer drive-through or delivery services. Outdoor storage of merchandise, raw materials or other material associated with the dispensary is prohibited.

F. No marijuana or paraphernalia shall be displayed or kept in a dispensary so as to be visible from the outside of the licensed premises. Marijuana and tobacco products must not be inhaled (smoked or vaporized), ingested (orally, sublingually or rectally), topically applied or otherwise consumed, in any manner that creates any pharmaceutical effect or chemical influences on a person while on the premises of the dispensary.

G. The dispensary must utilize an air filtration and ventilation system which, to the greatest extent feasible, confines all marijuana-related odors within the dispensary rather than allowing such odors to escape outside. Sufficient measures and means of preventing odors, debris, fluids and other substances from exiting the dispensary must be in effect at all times.

H. The dispensary shall require each person who delivers, transfers or provides marijuana to the dispensary to sign a written waiver/release stating the person releases all claims to the marijuana and agrees that the dispensary will destroy any marijuana that tests positive for pesticides, mold or mildew. The dispensary will document who the marijuana was received from, how much was received and the date it was destroyed. The dispensary must provide for secure disposal of all marijuana that has tested positive for pesticides, mold, or mildew as well as, all remnants and by-products of all marijuana received, but shall not place such material within the dispensary's exterior refuse containers.

I. No minors shall be allowed in the dispensary.

9.14.050 INSPECTION OF BOOKS AND PREMISES.

A. For purposes of confirming compliance with this Chapter, the City Manager, or his designee shall be authorized to inspect the premises of a dispensary and all dispensary financial, operational and facility information, including books, records, payroll records and state and federal tax returns. The operator shall be required to furnish the means, facilities and opportunity for such inspection.

B. As part of the investigation of any crime which law enforcement officials reasonably suspect has taken place in a dispensary or in connection with the operation of a dispensary, upon request, the Roseburg Police Department shall have the authority to view dispensary video surveillance records and recordings, and audio records and recordings when available.

9.14.060 CITY INDEMNIFICATION.

A. By accepting a medical marijuana dispensary operator's license or a dispenser's permit issued pursuant to this Chapter, the licensee and/or permittee 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 dispensary owners, operators, employees, volunteers, clients or customers for a violation of federal, state or local laws and regulations.

B. By accepting a license or permit issued pursuant to this Chapter, the licensee and/or permittee, jointly and severally, if more than one, agree to indemnify and hold harmless the City, its officers, elected officials, employees, volunteers and 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 medical marijuana dispensary that is subject of the license.

9.14.070 DENIAL, SUSPENSION AND REVOCATION, APPEALS AND PENALTIES.

A. In addition to the grounds set forth in Chapter 9.100, the City Recorder may deny, suspend or revoke a dispensary operator's license or a dispenser's permit for failure to meet the requirements of this Chapter or to comply with the rules adopted by this Chapter or any other local or state requirement relating to medical marijuana facilities.

B. A decision to deny an application for an operator's license or a dispenser's permit shall be submitted in writing setting forth the reasons therefore and advising the applicant of the right to appeal the Recorder's decision pursuant to RMC 9.100.

C. A decision to suspend or revoke an operator's license or a dispenser's permit pursuant to this Section shall be in writing, setting for the reasons therefore, and giving the operator or dispenser written notice by first-class mail at least five days prior to the effective date of the suspension or revocation. Such notice shall also advise the

operator or dispenser of the right to appeal the Recorder's decision pursuant to RMC 9.100.

D. The remedies provided in this Section are not exclusive and shall not prevent the City from exercising any other remedy available under law, either simultaneously or otherwise, including but not limited to seeking penalties as provided in Chapter 1.06 of this Code.

SECTION 2. If any section, subsection, paragraph, sentence or word in this ordinance is deemed to be invalid or beyond the authority of the City, either on its' face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this ordinance, and the application thereof; and to that end, sections, subsections, paragraphs, sentences and words of this Chapter shall be deemed severable.

SECTION 3. Following Council's adoption and approval by the Mayor, this ordinance shall become effective on November 1, 2014, to coincide with the effective date of Ordinance 3433 establishing the City's zoning and land use regulations relating to medical marijuana dispensaries.

ADOPTED BY THE ROSEBURG CITY COUNCIL ON THIS 22ND DAY OF SEPTEMBER, 2014.

APPROVED BY THE MAYOR ON THIS 22ND DAY OF SEPTEMBER, 2014.

Larry Rich

LARRY RICH, MAYOR

ATTEST:

Sheila R. Cox

SHEILA R. COX, CITY RECORDER