

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of the Amendment of Ordinances)
 594 and 636 to Recognize Authorized Marijuana)
 Use under the Oregon Medical Marijuana Act of) ORDINANCE 666
 1998 as an Affirmative Defense to Prosecutions)
 of County Ordinance Marijuana Violations;)
 Declaring an Emergency; Effective Immediately.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on January 28, 1999, commissioners Robert Johnstone, Thomas E.E. Bunn and Ted Lopuszynski being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

- A. Under Ordinance 594 the County prohibits the possession, manufacture, delivery and advertisement of drug paraphernalia and the possession of less than one ounce of marijuana in a county park. Under Ordinance 636, the County prohibits the possession of less than one ounce of marijuana seeds.
- B. On November 3, 1998, the voters of the State of Oregon approved Ballot Measure 67, the Oregon Medical Marijuana Act ("OMMA"). The OMMA allows medical use of marijuana by persons with defined "debilitating medical conditions" and allows authorized "designated primary caregivers" to possess marijuana when assisting persons entitled to use marijuana.
- C. This ordinance recognizes that state law preempts Ordinances 594 and 636 where a person charged with a county ordinance marijuana violation has used marijuana in accordance with OMMA. Recognition of preemption is achieved by creating certain affirmative defenses to prosecutions under Ordinance 594 and 636 for persons who establish that their marijuana use is allowed under OMMA. NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

Section 1. AMENDMENT OF ORDINANCE 594.

1.01 Section 1 of Ordinance 594 is hereby amended by adding a subsection (E) as follows:

"Section 1(E). "OMMA" means the Oregon Medical Marijuana Act ("the Act") of 1998 as approved by the voters of the State of Oregon as Ballot Measure 67 on November 3, 1997, or the Act as it may be subsequently amended by the People or the Legislature."

B.O. 99-61

1.02 Section 3 of Ordinance 594 is hereby repealed and replaced with the following language:

“Section 3. OFFENSES, PENALTIES AND AFFIRMATIVE DEFENSES.

“A. Offenses and Penalties.

“(1) Possession of Drug Paraphernalia. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance unless the controlled substance is possessed under prescription of a licensed medical practitioner authorized to prescribe or dispense drugs in the State of Oregon. Any person who violates this subsection is guilty of an infraction and upon conviction may be fined not more than \$500. Upon conviction, a law enforcement agency shall destroy any drug paraphernalia seized as evidence to support the conviction.

“(2) Manufacture or Delivery of Drug Paraphernalia. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance unless the controlled substance is possessed under prescription of a licensed medical practitioner authorized to prescribe or dispense drugs in the State of Oregon. Any person who violates this subsection is guilty of an infraction and upon conviction may be fined not more than \$500. Upon conviction, a law enforcement agency shall destroy any drug paraphernalia seized as evidence to support the conviction.

“(3) Advertisement of Drug Paraphernalia. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of an infraction and upon conviction may be fined not more than \$500.

“(4) Possession of Marijuana in County Park or within 1,000 Feet of County Park. It is unlawful within the unincorporated area of Yamhill County or within the city limits of any city whose governing body has consented to the application of this ordinance for any person to possess less than one avoirdupois ounce of marijuana within a county park or within 1,000 feet from the boundary of any county park. A "county

park" is any park owned or leased by Yamhill County, Oregon and designated as a county park. Any person who violates this subsection is guilty of an infraction and upon conviction may be fined not more than \$500.

"B. Affirmative Defenses.

"(1) Except as provided in subsection (3), it is an affirmative defense to a prosecution under Section 3(A) (1) that the person possessing drug paraphernalia establishes that the drug paraphernalia was used or intended to be used solely to:

"(a) ingest marijuana as a valid medical use in accordance with the OMMA, or

"(b) where the defendant is a "caregiver" within the meaning of the OMMA, the drug paraphernalia was possessed on behalf of a person entitled to use marijuana in accordance with the OMMA.

"(2) Except as provided in subsection (3), it is an affirmative defense to a prosecution under Section 3(A)(4) that the person possessing less than one ounce of marijuana in a county park possesses the marijuana solely to:

"(a) be ingested as a valid medical use in accordance with the OMMA, or

"(b) where the defendant is a "caregiver" within the meaning of the OMMA, the marijuana was possessed on behalf of a person entitled to use marijuana in accordance with the OMMA.

"(3) No affirmative defense is available under this section if the person engaged in the prohibited conduct in a public place as the term is defined in ORS 161.015(10), 1997 replacement part, or in public view.

"(4) When an affirmative defense described in subsections (1) or (2) is raised at a trial, the defendant has the burden of proving the defense by a preponderance of the evidence."

Section 2. AMENDMENT OF ORDINANCE 636.

2.01 Section 1 of Ordinance 636 is hereby amended by identifying the existing paragraph as subsection "(A)" and by adding a subsection (B) as follows:

"Section 1(B). "OMMA" means the Oregon Medical Marijuana Act ("the Act") of 1998 as approved by the voters of the State of Oregon as Ballot Measure 67 on November 3, 1997, or as the Act may subsequently be amended by the People or the Legislature."

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2.02 Section 2(B) of Ordinance 636 is hereby repealed and replaced with the following language:

"Section 2(B). Affirmative Defenses.

"(1) It is an affirmative defense to a prosecution under Section 2 that the person possessing the marijuana seeds possessed them solely to manufacture marijuana for a person entitled to ingest marijuana as a valid medical use in accordance with the OMMA.

"(2) It is an affirmative defense to a prosecution under Section 2 that the marijuana seeds are incapable of germination."

Section 3. SEVERABILITY.

3.01 All sections, subsections and paragraphs of this ordinance are severable. If any section, subsection or paragraph is ruled invalid for any reason by the court of last resort, the other portions of this ordinance shall be unaffected.

Section 5. EMERGENCY.

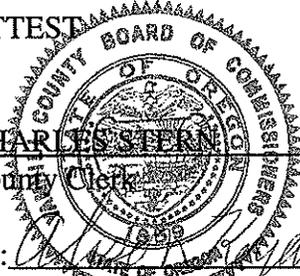
4.01 This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

AYES: Commissioners Johnstone, Bunn and Lopuszynski.

NAYS: None.

DONE at McMinnville, Oregon on January 28, 1999.

ATTEST
YAMHILL COUNTY BOARD OF COMMISSIONERS
CHARLES STERN
County Clerk
By: ALISON KOYAMA
Deputy



YAMHILL COUNTY BOARD OF COMMISSIONERS

Robert Johnstone
Chairman ROBERT JOHNSTONE
Thomas E. E. Bunn
Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:

John M Gray, Jr.
JOHN M GRAY, JR.
Yamhill County Counsel

Ted Lopuszynski
Commissioner TED LOPUSZYNSKI