

ORDINANCE NO. 3739

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, REPEALING INTERIM LICENSING AND ZONING REGULATIONS REGULATING THE SITING OF CANNABIS TRANSPORTATION LICENSEE BUSINESSES ADOPTED IN ORDINANCE 3732, ADOPTING PERMANENT REGULATIONS FOR CANNABIS TRANSPORTATION LICENSEE BUSINESSES IN CHAPTERS 17.56, 17.72, 14.10, AND 8.08 OF THE MOUNT VERNON MUNICIPAL CODE; ADOPTING FINDINGS OF FACT JUSTIFYING ITS ACTION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on May 10, 2017 the Mount Vernon City Council (Council) adopted Ordinance 3713 declaring an emergency and adopting interim control regulations for cannabis transportation licensee businesses; and

WHEREAS, consistent with RCW 35A.63.220 Council held a public hearing on June 28, 2017 that was continued to July 5, 2017 and adopted Ordinance 3720 that ratified, renewed, confirmed, and continued the interim land use regulations adopted through Ordinance 3713; and

WHEREAS, Council held a public hearing on November 8, 2017 and adopted Ordinance 3732 that kept the interim regulations in effect and adopted a work program; and

WHEREAS, the Department of Commerce was notified of the proposed amendments on May 12, 2017 and Commerce granted the City expedited review on May 15, 2017 (their identification number: 23711); and as such, the City is in compliance with RCW 36.70A.106 (1); and

WHEREAS, a SEPA Threshold Determination of Non-significance, non-project action, was issued on October 26, 2017 and published on October 30, 2017 and no comments were received or appeals filed; and

WHEREAS, the requisite Planning Commission hearing held on November 21, 2017; and the City Council hearing held on December 13, 2017 were preceded with appropriate notice published on October 30, 2017; and

WHEREAS, the requirements for public participation in the development of the land use regulations of this ordinance as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met; and

WHEREAS, the City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum has discussed this Memorandum, including the "warning signals" identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2); and

WHEREAS, the proposed amendments are found to be in compliance with the State Growth Management Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION ONE. Recitals Incorporated. That the City Council adopts the recitals set forth above as findings justifying adoption of this Ordinance and incorporates those recitals as if set forth fully herein.

SECTION TWO. PLANNING COMMISSION RECOMMENDATION ADOPTED. The City Council adopts the Planning Commission's findings of fact and conclusions of law, outlined below, in their entirety.

A. Planning Commission's Findings of Fact:

1. The procedural requirements outlined in MVMC Chapter 14.05, Procedures, have been satisfied by City staff. This includes the Notice of Public Hearing, the environmental review pursuant to the SEPA statute, and receiving expedited review from the State Department of Commerce.

B. Planning Commission's Conclusions of Law:

1. The proposed amendments ensure that the City's development regulations are internally consistent.
2. The requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met.
3. The proposed amendment is found to be in compliance with the State Growth Management Act.

C. Planning Commission Recommendation to the City Council:

At their public hearing on November 21, 2017 after review of the materials presented by City staff and holding a public hearing the Planning Commission made an unanimous recommendation to adopt the amendments to the Mount Vernon Municipal Code that are contained in this Ordinance.

SECTION THREE. Findings. That the City Council adopts the following as additional findings of fact justifying adoption of this Ordinance.

1. On March 12, 2014 the City adopted Ordinance 3627 adopting specific zoning regulations pertaining to both recreational and medical marijuana uses including collective gardens in the City of Mount Vernon.
2. The City made thirty specific findings adopted in the body of Ordinance 3627 and thirty further findings in Section Three including but not limited to that the state regulation of medical and recreation marijuana fail to adequately address negative impacts on the City warranting additional local controls.
3. The City findings in Ordinance 3627 include that direct and secondary negative impacts from marijuana uses exists when located in residentially zoned areas, commercial business districts, and other areas frequented by children and families.
4. Among the thirty specific findings and thirty further findings adopted into the body of Ordinance 3627, the City specifically found all other commercial and industrial zoning districts outside the Commercial-Limited Industrial zoning district permit are characterized as pre-developed areas with predominately retail uses, retail services, recreational uses, and pedestrian routes that attract a variety of persons including families and minor children.
5. The City findings concluded "that protection of the public is best served by limiting marijuana related uses to the Commercial-Limited Industrial zoning district identified herein, in areas where minor children and families are not likely to congregate or be present".

6. The City identified through adoption of Ordinance 3627 that the sole and only permitted use for commercial recreational retail, processing, and production of marijuana is within the Commercial-Limited Industrial zoning district and further subject to the conditions set forth in Ordinance 3627 and all companion legislation.
7. City officials including but not limited to the Mayor, officials vested with authority over interpretation of the City's land use regulations in the City's Planning Department, and officials vested with authority to investigate and enforce the City's land use regulations have consistently represented to businesses (including but not limited to providing comments during the licensing process to the State Liquor and Cannabis Board) seeking to locate otherwise state permitted marijuana uses outside the City's Commercial-Limited Industrial Zoning District that local regulations do not permit such uses outside the Commercial-Limited Industrial zoning district and are further subject to conditions set forth within the City's applicable land use regulations.
8. The City Council re-affirms the City Council's original and collective legislative intent of Ordinance 3627 adopting all the findings by reference herein and all findings within subsequent companion legislation including Ordinance 3642 concluding that:
 - a. State regulation of medical and recreation marijuana are not adequate to address the impacts on the City;
 - b. Additional local controls are warranted;
 - c. That the sole permitted use for any and all state licensed recreational marijuana producers, processors, and retailers shall be within the City's Commercial-Limited Industrial Zoning District; and,
 - d. That any state sanctioned recreational marijuana retail, processing, or production outside the Commercial-Limited Industrial Zoning District constitutes a public nuisance has been and continues to be prohibited.
9. The City Council finds that current land use regulations do not identify or address the newly classified use of transporters adopted by the State in 2016.
10. Pursuant to RCW 69.51A.130, no civil or criminal liability may be imposed by any court on cities, towns, or counties or other municipalities and their officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.
11. In conformity with the responsibilities of the City of Mount Vernon to meet the public health, safety and welfare requirements and to provide zoning and land use regulations pursuant to State law, and the City's authority to regulate land use activity within its corporate limits, the City intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations that will exclude from certain zones from any production processing, selling, delivery, or transport of marijuana.
12. The City Council finds that it is necessary to adopt this ordinance to avoid unanticipated negative impacts on the community and the public health, safety and welfare associated with marijuana transporters.
13. Cities and towns have clear authority in Article 11 of the Washington State Constitution to enact zoning laws and development regulations through their general police powers.

SECTION FOUR. That section 17.56.020, Permitted Uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.56.020 Permitted uses.

Permitted primary uses in the C-L district include:

A. Commercial Uses.

1. Retail stores;
2. Personal services;
3. Offices, banks, and financial institutions;
4. Hotels, motels and lodging houses;
5. Eating and drinking establishments;
6. Theaters, bowling alleys, skating rinks, and other entertainment uses;
7. Laundry and dry cleaning pickup stations;
8. Commercial or public parking garages and/or commercial or public surface parking;
9. Park and ride;
10. Outside sales of operable vehicles, boats, and mobile homes or equipment;
11. Drive-in banks and eating establishments;
12. Gasoline service stations, automobile repair garages conducted inside a building and car washes;
13. Day nurseries;
14. Public utility installations, excluding repair and storage facilities;
15. Private vocational and technical schools;
16. Plumbing, electric, and carpenter shops;
17. Printing and newspaper offices;
18. Publishing plants;
19. Pet stores and veterinary clinics;
20. Upholstery and furniture repair shops;
21. Farm implement sales;
22. Other commercial uses which have similar environmental influences and impacts;
23. Contractor's offices.

B. Public and Quasi-Public Uses. Governmental buildings, including fire and police stations, administrative offices, and public recreational facilities and uses.

C. Industrial Uses.

1. Administrative, insurance, and research facilities;
2. Experimental or testing laboratories;
3. Manufacturing of electric or electronic instruments and devices;
4. Manufacturing, assembly or packaging of products from previously prepared materials;
5. Warehouses and distribution and wholesale uses;
6. Manufacturing and assembly;
7. Other industrial uses which have similar environmental influences and impacts.

D. Public works facilities.

E. Residential uses that received required permits from Skagit County and/or the city of Mount Vernon existing as of February 15, 2005 (the date of annexation), may expand their existing residential uses without having to obtain an expansion of a nonconforming use permit or a variance. However, all residential building and/or site expansions/improvements shall be limited to the lot of record on which the residential use was originally permitted, and they shall also comply with the development standards outlined within Chapter 17.15 MVMC and all other applicable sections of the municipal code, such as the critical areas ordinance, stormwater requirements, etc.

F. State-licensed recreational marijuana producers, processors, transporters and retailers, including those with a medical marijuana endorsement, subject to all of the following restrictions, development, and performance standards:

1. Compliance with the state regulations for recreational marijuana producers, processors or retailers found in Chapter 69.50 RCW and Chapter 314-55 WAC, as they are currently written or as they may be amended in the future, shall be demonstrated. In the case of a conflict between state and city regulations the regulation that imposes the greater restriction shall prevail.
2. Recreational marijuana producers, processors or retailers and transporters who store, no matter how temporarily, any marijuana, usable marijuana, marijuana concentrates, or marijuana infused products on premise including inside vehicles stored on their premise or who in any manner possesses marijuana, usable marijuana, marijuana concentrates, or marijuana infused products intended for commercial transportation except when engaged in travel directly from the shipping licensee to the receiving licensee, may not be located within 1,000 feet of any of the following listed areas or uses. The measurement of this separation shall be taken in a straight line from the closest property line of the marijuana related use to the closest property line of the following listed uses:
 - a. Residentially zoned areas including the R-1, R-2, R-3, R-4, R-0, and residentially zoned districts within the city's urban growth areas (UGAs).
 - b. Properties owned or under contract by a public entity such as a school district or the city where a future primary or secondary school or park is planned when such plans have been approved or adopted by the public entity's governing authority. Any recreational marijuana producer, processor, retailer, or transporter in existence prior to a property acquired or under contract by a public entity such as a school district or the city where a future primary or secondary school or park is planned shall constitute a pre-existing legal nonconforming use subject to Chapter 17.102 MVMC.

3. All marijuana uses shall be located in their entirety within a building that is: (a) enclosed on all sides with walls, (b) has a roof, and (c) is constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Greenhouses, temporary structures, or other structures serving a similar purpose shall not be permitted.

4. Signage shall comply with Chapter 314-55 WAC and Chapter 17.87 MVMC, Signs, as they are currently written or as amended for recreational marijuana uses. Should these regulations conflict with each other the most restrictive regulation shall apply.

5. Ventilation Required. All marijuana uses shall be ventilated so that the odor of marijuana shall not be detectable from a public place, including, but not limited to: sidewalks, roads, parking lots; or from a property owned or leased by another person.

a. Marijuana uses located in buildings that have, or have the potential to have, other tenants shall have separate heating, cooling, and ventilation systems.

6. Recreational marijuana producers and processors shall have a six-foot-tall chain link fence installed around the perimeter of such uses. This fence shall be set back at least 10 feet from the front yard and may need to be set back in other areas to ensure vision triangles are not obstructed. Along the front yard, on the street side of the fence, street trees shall be installed 30 feet on center with low growing (less than one foot in height at maturity) shrubs and ground cover installed around the street trees. The fencing shall have slats installed.

7. Marijuana plants, products and paraphernalia shall not be grown or on display in any location where the plants, products or paraphernalia are visible from the public right-of-way or a public place.

8. In no case shall a customer or patient pick up or drop off marijuana or marijuana related products through a drive-through opening in a structure. This regulation is not intended to apply to the transport of marijuana products from a producer to a processor; or a processor to a retail outlet.

9. To determine that the requirements of this chapter will be met, site plan review shall be conducted by the community and economic development department. The submittal requirements outlined for site plan review found in MVMC 14.05.210(B) shall be submitted along with the following:

a. A plan for ventilation of the marijuana use that illustrates and describes the ventilation systems that will be used to prevent any odor of marijuana off the premises. Such plan shall include all ventilation systems used to control the environment for the plants and describe how such systems operate with the systems preventing any odor leaving the premises. In addition this plan shall also include all ventilation systems used to mitigate noxious gases or other fumes used or created as part of the production process.

b. A description of all toxic, flammable, or other materials regulated by a federal, state, or local government that would have authority over the business if it was not a marijuana use, that will be used or kept at the location, the location of such materials, and how such materials will be stored.

10. Inspection. An inspection of the proposed marijuana related use by the city shall be required prior to opening such a use. Such inspection shall occur after the premises are ready for operation, but prior to the stocking of the business with any marijuana, and prior to the opening of the business to any patients or the public. The inspection is to verify that the business facilities are constructed and can be operated in accordance with the application submitted and the applicable requirements of the code and any other applicable law, rule or regulation.

11. The CEDD director may adopt rules and regulations that he/she determines are reasonably necessary to implement the requirements of this chapter.

12. Existing Residential Neighborhoods. Recreational marijuana producers, processors, retailers and transporters who store, no matter how temporarily, any marijuana, usable marijuana, marijuana concentrates, or marijuana infused products on premise include inside vehicles store on their premise or who in any manner possesses marijuana, usable marijuana, marijuana concentrates, or marijuana infused products intended for commercial transportation except when engaged in travel directly from the shipping licensee to the receiving licensee, shall not be located within the boundaries of existing residential neighborhoods located in the C-L district determined and defined by the adoption of the city’s zoning map attached to the ordinance codified in this section labeled as Exhibit A, and will be on file at the office of the city clerk, covering such neighborhoods showing the geographical area and location of said neighborhoods. Such zoning map shall be, upon adoption of the ordinance codified in this section, made a part of this section, and said map, and all notations, references and other information shown thereon thereafter shall be as much a part of this section as through all matters and information set forth on said map were fully described in this section. Below is a general description of existing residential neighborhoods:

- a. Skagit County assessor’s parcel numbers P66113, P66115, P66117, P66118, P66120, P66121, P66122, P29528, P29532, P29534, P29536, all abutting Hollydale Acres Lane and commonly known as the Hollydale Acres neighborhood.
- b. Skagit County assessor’s parcel numbers P28106, P28169, P28168, commonly known as Evergreen Mobile Park.
- c. Skagit County assessor’s parcel numbers P28649, P28648, P28647, P28653, commonly known as Mountain View Mobile Park.

If any conflict or inconsistency exists between the adopted zoning map attached the ordinance codified in this section and the above text, the adopted map shall govern. Rules on interpretation over map boundary lines shall be governed by MVMC 17.09.040.

14. Notwithstanding any provisions in the Mount Vernon Municipal Code to the contrary, recreational marijuana producers, processors, retailers, and transporters who store, no matter how temporarily, any marijuana, usable marijuana, marijuana concentrates, or marijuana infused products on premise including inside vehicles stored on their premise or who in any manner possesses marijuana, usable marijuana, marijuana concentrates, or marijuana infused products intended for commercial transportation except when engaged in travel directly from the shipping licensee to the receiving licensee shall be a permitted use only in the city’s C-L district further subject to the regulations and controls set forth in this chapter. In the event a conflict exists with other provisions of the Mount Vernon Municipal Code that could be interpreted to allow such uses elsewhere, it is the legislative intent of the city that this section shall control. (Ord. 3689 § 6, 2016; Ord. 3642 § 4, 2014; Ord. 3627 § 14, 2014; Ord. 3597 § 3, 2013).

SECTION FIVE. That section 8.08.040, Nuisances specifically defined, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

8.08.040 Nuisances specifically defined.

The following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances:

The erecting, maintaining, using, placing, depositing, causing, allowing, leaving, or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any street, avenue, alley, park, parkway, or other public or private place in the city, of any one or more of the following places, conditions, things, or acts to the prejudice, danger, or annoyance of others:

- A. Excavations or naturally occurring holes, including, but not limited to, sinkholes, privies, vaults, cesspools, sumps, pits, wells, or any other similar conditions, which are not secure and which constitute a concealed danger or other attractive nuisance.

B. The discharge of sewage, human excrement, or other wastes in any location or manner, except through systems approved for the conveyance of such to approved public or private disposal systems which are constructed and maintained in accordance with the provisions of the plumbing code, as adopted and amended by Chapter 15.04 MVMC, and all other adopted laws pertaining to such systems.

C. Filthy, littered, trash-covered, or overgrown premises or abutting street and alley rights-of-way for which a property owner is responsible, as defined in MVMC 8.08.030, to include, but not be limited to:

1. Accumulated human or animal wastes which are improperly handled, contained, or removed from the premises, including bones, meats, hides, skins, or any part of the animal, fish, or fowl.
2. Overgrown, uncultivated, or unkempt vegetation of any type, including, but not limited to, shrubs, brush, trees, weeds, blackberries, and grasses over one foot in height. Where erosion control issues or indigenous species are present or if the area is classified as a critical area or buffer, an exception or modification may be made to these requirements.
3. Inappropriate disposal or accumulation of vegetation waste, including, but not limited to, grass clippings, cut brush, cut trees, and/or cut weeds.
4. An accumulation of garbage, litter, debris, rubble, hazardous waste, or blight, which includes, but is not limited to, improperly stored bottles, cans, paper, glass, plastic, cardboard, auto parts, tires, scrap metal, scrap wood, discarded or broken appliances, furniture, equipment, bicycles or parts thereof, barrels, boxes, crates, pallets, mattresses, clothing, household goods, construction materials, lumber, metal, improperly piled or stored firewood, or anything in which flies may breed or multiply, which provides harborage for rats or other vermin, or which may be a fire hazard.
5. All places used or maintained as dumps, junk yards, or automobile or machinery disassembly yards or buildings, not licensed and/or located in an improper use zone, or which are operating outside of specific conditions set forth for the operation of such businesses.
6. Inoperable, abandoned, disassembled, or dilapidated appliances, machinery, or vehicles. These provisions shall not apply to vehicle storage areas as defined in Chapter 10.24 MVMC.¹

D. The existence of any fences or other structures which are in a falling, decayed, dilapidated, or unsafe condition.

E. Any unsightly, abandoned, or deteriorated building or structure; or any building or structure constructed with inappropriate materials, or improperly fastened together or anchored against the forces of nature.

F. Any building or structure where construction was commenced and the building or structure was left unfinished for more than one year.

G. Burning or disposal of refuse, sawdust, or other material in such a manner as to cause or permit ashes, sawdust, soot, or cinders to be cast upon the streets or alleys of the city, or to cause or permit the smoke, ashes, soot, or gases arising from such burning to become annoying or to injure or endanger the health, comfort, or repose of said persons.

H. The erection or continuance of use of any building, room, or other place in the city for exercise of any trade, employment, or manufacture which, by emitting noxious exhausts, particulate matter, offensive odors, or other related annoyances, is discomforting, offensive, or detrimental to the health of individuals or of the public.

I. The conduct of a business which, by reason of the participation, encouragement, cooperation, or sufferance of the operator or his or her agent, becomes a place of, haven for, or is commonly the location of, breaches of the peace, lewd behavior, prostitution, or the illegal use or sale of drugs.

J. The smell of marijuana when detectable from a public place, including, but not limited to: sidewalks, roads, parking lots; or from a property owned or leased by another person or entity shall constitute a nuisance under this chapter.

K. Effective July 1, 2016, collective marijuana gardens previously permitted by state law pursuant to Section 49 of 2SSB 5052 repealing state laws permitting collective marijuana gardens.

L. Medical marijuana cooperatives as defined in Chapter 69.51A RCW adopted herein by this reference.

M. Recreational retailers, processors, producers and transporters not located within the city's commercial-limited industrial district in compliance with the conditions set forth in Chapter 17.56 MVMC. (Ord. 3689 § 7, 2016; Ord. 3627 § 8, 2014; Ord. 3349 § 5, 2007).

SECTION SIX. That section 17.72.130, Marijuana Uses Prohibited, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.72.130 Marijuana uses prohibited.

A. Only those marijuana uses identified as permitted in Chapter 17.56 MVMC shall be allowed in the city and only in the city's commercial-limited industrial zoning district subject to the conditions set forth in Chapter 17.56 MVMC. Marijuana retail stores, producers, processors and transporters who store, no matter how temporarily, any marijuana, usable marijuana, marijuana concentrates, or marijuana infused products on premise including inside vehicles stored on their premise or who in any manner possesses marijuana, usable marijuana, marijuana concentrates, or marijuana infused products intended for commercial transportation except when engaged in travel directly from the shipping licensee to the receiving licensee, shall not be allowed in any other zoning district of the city and shall not be considered a permitted use, unclassified use, special use, or conditional use in any other zoning district within the city.

B. Effective July 1, 2016, all collective marijuana gardens are prohibited in all zoning districts within the city.

C. Medical marijuana cooperatives defined in Chapter 69.51A RCW adopted herein by this reference are prohibited in all zoning districts within the city. (Ord. 3689 § 8, 2016).

SECTION SEVEN. REPEALER. The following Ordinance shall be repealed in its entirety only after this Ordinance is in full effect and force by operation of law as set forth in Section Eleven of this Ordinance.

A. Ordinance No. 3732, passed and approved on November 8, 2017.

Entitled:

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, DECLARING AN EMERGENCY, ADOPTING AND RENEWING INTERIM REGULATIONS AND A WORKPLAN TO ESTABLISH PERMANENT REGULATIONS TO REGULATE THE SITING OF CANNABIS TRANSPORTATION LICENSEE BUSINESSES AFTER STUDY AND PUBLIC PROCESS

B. Repeal shall not revive ordinances.

The repeal of an ordinance shall not repeal the repealing clause of an ordinance or revive any ordinances which have been repealed thereby.

SECTION EIGHT. City staff is hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

SECTION NINE. SEVERABILITY. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

SECTION TEN. Savings Clause. All previous ordinances which may be repealed in part or their entirety by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

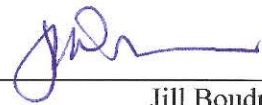
SECTION ELEVEN. This ordinance shall be in full force and effect five days after its passage, approval, and publication as provided by law.

PASSED AND ADOPTED this 13th day of December, 2017.

SIGNED AND APPROVED this 21st day of December, 2017.

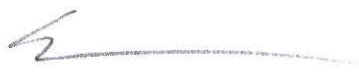


Doug Volesky, Finance Director



Jill Boudreau, Mayor

Approved as to form:



Kevin Rogerson, City Attorney

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