

ORDINANCE NO. 3642

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, REPEALING ORDINANCES 3631, 3632, AND 3641 AND AMENDING ORDINANCE 3627 BY PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS AND RECREATIONAL MARIJUANA RELATED FACILITIES AND USES IN EXISTING RESIDENTIAL NEIGHBORHOODS ZONED COMMERCIAL-LIMITED INDUSTRIAL.

WHEREAS, after following the City's land use process, on May 12, 2014 the City adopted Ordinance 3627 adopting specific zoning regulations pertaining to both recreational and medical marijuana uses in the City of Mount Vernon including where otherwise state allowed or licensed producers, processors and retailers of recreational marijuana shall be permitted within the City; and

WHEREAS, the City made specific findings through passage of Ordinance 3627 that residentially zoned areas and existing residential neighborhoods should be protected from marijuana related uses and their direct and secondary impacts including but not limited to: i) higher and more violent crime rates including burglary and armed robbery due to the high monetary value placed upon marijuana and predominately cash only business models, ii) potential for disruptive federal police enforcement activities including lawful searches and uses of force, iii) odor, iv) secondary smoke, v) mold, vi) fire and explosion risk, vii) an influx of traffic trips and pedestrian activity during unusual hours, viii) greater security issues associated with such activities, and ix) the potential for adulteration of neighboring lands and crops if seeds drift. The City reaffirms its findings within Ordinance 3627 including that such negative impacts remain and affect existing residential neighborhoods within the City; and

WHEREAS, the City finds that residential neighborhoods exist in Commercial-Limited Industrial (C-L) zoned areas where Ordinance 3627 limits and permits marijuana uses within the City; and

WHEREAS, the City of Mount Vernon is a code city organized under Title 35A RCW and plans under the Washington State Growth Management Act (GMA) pursuant to RCW 36.70A.040; and

WHEREAS, one of the planning goals set forth under the GMA is the protection of the environment and to enhance the state's high quality of life, including air and water quality; and

WHEREAS, the procedural requirements within MVMC Chapter 14.05 and Resolution 491 have been complied with; and

WHEREAS, ensuring the vitality and character of established residential neighborhoods is an element required by the GMA; and

WHEREAS, that City's comprehensive planning objective H0-1.2 is the promotion of infill development when compatible with abutting housing styles and with the character of existing neighborhoods ; 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 and 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, unless the City acts immediately to address collective gardens and marijuana production, processing, and retailing uses or related facilities, such uses or facilities may be able to locate in existing residential neighborhoods located in commercial zones and that without regulation such uses shall have an adverse direct, secondary, and cumulative impacts on the city and its citizens; and

WHEREAS, on June 4, 2014 the Mount Vernon City Council adopted Ordinance 3631; adopting interim land use regulations and official controls pursuant to RCW 35A.63.220 and RCW 36.70A.390 amendment Ordinance 3627 by prohibiting medical cannabis collective gardens and recreational marijuana-related facilities and uses in existing residential neighborhoods until the City adopted permanent zoning regulations; and

WHEREAS, consistent with RCW 35A.63.220 and RCW 36.70A.390 on July 23, 2014 the Mount Vernon City Council held a public hearing on interim ordinance 3631. Notice of this hearing was published in the Skagit Valley Herald on June 24, 2014 and copies of this notice were mailed to those property owners living within the existing residential neighborhoods and also within 300 feet of these neighborhoods that Ordinance 3631 identified.

NOW, THEREFORE,

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

SECTION 1. Findings. That the City Council adopts the recitals set forth above and those set forth herein as findings of fact justifying adoption of this Ordinance. The City Council incorporates the above recitals as if set forth fully herein.

SECTION 2. Additional Findings. The City Council adopts the following additional findings and conclusions:

A. That a Determination of Non-Significance (DNS) was issued on October 8, 2014 and published in the Skagit Valley Herald on October 11, 2014 with a comment period that ended on October 21, 2014 and an appeal period that ended on October 31, 2014. No comments or appeals were filed.

B. A Notice of Public Hearing was issued with the above-described DNS on October 8, 2014 and published on October 11, 2014. The combined DNS and Notice of Public Hearing, in addition to being published, was mailed to those property owners within the boundaries, and also within 300 feet of the boundaries, of those neighborhoods described and mapped in Ordinance 3631.

C. The Department of Commerce was notified of the code amendments proposed herein on October 8, 2014. Commerce granted expedited review of these amendments on October 23rd, 2014.

D. The City of Mount Vernon's Comprehensive Plan is hereby adopted by reference and shall be incorporated by this reference into the City's findings for this Ordinance.

E. That residential neighborhoods, regardless of their zoning designation, remain residential neighborhoods and remain places where families live, recreate, and children are likely to be present.

F. Regardless of a zoning designation that may allow for more intense uses, existing residential neighborhoods need to be protected from the unique, direct, secondary, and cumulative negative impacts associated with marijuana related uses analogous to where the State regulates such uses away from similar incompatible uses where families or children tend to congregate such as daycares, churches, libraries, arcades, schools and playgrounds.

G. The City finds that protection of the public, safety, health and welfare of its citizens, that protection of the public is best served by precluding commercial recreational and medical collective garden uses from existing residential neighborhoods where minor children and families are likely to congregate and be present.

H. The Mount Vernon Planning Commission held an open record public hearing on November 4, 2014. After hearing staff's presentation, public testimony, and deliberating, the Planning Commission made a recommendation contrary to staff's recommendation. The Planning Commission's recommendation to City Council was to only prohibit recreational marijuana retail uses and medical marijuana collective gardens; and to allow recreational marijuana producers and processors in the existing residential neighborhoods described and mapped in Ordinance 3631.

I. Two open record public hearings were held before the Mount Vernon City Council; with the first held on November 12, 2014 and the second on December 3, 2014. Notice of both hearings were published in the Skagit Valley Herald and individual public hearing notices were mailed by the Community & Economic Development Department to property owners within the identified existing residential neighborhoods (shown on the accompanying Exhibit A) and within 300 feet of these neighborhoods prior to both hearings.

J. City staff provided the City Council with the Planning Commission's recommendation at the Council's open record public hearings on November 12, 2014 and December 3, 2014; thereby providing the Council with the choice of adopting either staff's recommendation (to limit all marijuana uses in the identified residentially zoned areas) or to choose the Planning Commission's recommendation (to allow recreational marijuana producers and processors). With these two choices presented the City Council choose to adopt staff's recommendation.

SECTION 3. REPEALER. The following Ordinances shall be repealed in their entirety only after this Ordinance is in full effect and force by operation of law as set forth in Section 8 of this Ordinance.

A. Ordinance No. 3631, enacted June 4, 2014.

Entitled:

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, ADOPTING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390 AMENDING ORDINANCE 3627 BY PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS AND RECREATIONAL MARIJUANA-RELATED FACILITIES AND USES IN EXISTING RESIDENTIAL NEIGHBORHOODS UNTIL THE CITY ADOPTS PERMANENT ZONING REGULATIONS; ENTERING LEGISLATIVE FINDINGS, DECLARING AN EMERGENCY, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

B. Ordinance No. 3632, passed and adopted July 23, 2014.

Entitled:

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, RATIFYING, RENEWING, CONFIRMING, AND CONTINUING INTERIM LAND USE REGULATIONS PREVIOUSLY ADOPTED BY COUNCIL THROUGH ORDINANCE 3631 PASSED ON JUNE 4TH 2014 PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390; PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS AND RECREATIONAL MARIJUANA-RELATED FACILITIES AND USES IN EXISTING RESIDENTIAL NEIGHBORHOODS AFTER PUBLIC HEARING ADOPTING FINDINGS OF FACT JUSTIFYING ITS ACTION, DECLARING AN EMERGENCY, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

C. Ordinance No. 3641, passed and adopted December 3, 2014.

Entitled:

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, RATIFYING, RENEWING, CONFIRMING, AND CONTINUING INTERIM LAND USE REGULATIONS PREVIOUSLY ADOPTED BY COUNCIL THROUGH ORDINANCE 3631 PASSED ON JUNE 4TH 2014 PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390; PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS AND RECREATIONAL MARIJUANA-RELATED FACILITIES AND USES IN EXISTING RESIDENTIAL NEIGHBORHOODS AFTER PUBLIC HEARING ADOPTING FINDINGS OF FACT JUSTIFYING ITS ACTION, DECLARING AN EMERGENCY, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

D. 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 4. AMENDED SECTION 17.56.020. Section 17.56.020 is hereby amended to read as follows:

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 users;
 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 on, 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 and retailers, along with collective gardens as defined in RCW 69.5 1A, as it is currently written or may be amended in the future, subject to all of the following restrictions, development, and performance standards:
1. Compliance with the State regulations for medical marijuana collective gardens found in RCW 69.5 1A and WAC 246-75 or for recreational marijuana producers, processors or retailers found in RCW 69.50 and WAC 314-55, 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. Medical marijuana collective gardens and recreational marijuana producers, processors or retailers may not be located within one-thousand feet (1,000) 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 entities' governing authority. Any collective garden, recreational marijuana producer, processor or retailer 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 non-conforming use subject to Chapter 17.102 of the MVMC.
- 3. Medical marijuana collective gardens shall comply with the 1,000 foot separation requirements mandated for recreational marijuana retailers, producers and processors as outlined within WAC 314-55 as it is currently written or as it may be amended in the future.
- 4. All marijuana uses shall be located in their entirety within a building that is: 1) enclosed on all sides with walls, 2) has a roof; and, 3) 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.
- 5. Signage shall comply with WAC 314-55 as currently written or as amended for both collective gardens and recreational marijuana uses.
- 6. 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.
- 7. Medical marijuana collective gardens and recreational marijuana producers and processors shall have a six (6)-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 setback 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 maturity) shrubs and ground cover installed around the street trees. The fencing shall have slats installed.
- 8. 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.
- 9. 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.

10. To determine that the requirements of this Chapter will be met, site plan review shall be conducted by the Community & 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.
11. 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.
12. The CEDD Director may adopt rules and regulations that he/she determines are reasonably necessary to implement the requirements of this chapter.
13. Existing residential neighborhoods. Medical marijuana collective gardens and recreational marijuana producers, processors, or retailers 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 hereto 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 this ordinance, made a part of this ordinance, and said map, and all notations, references and other information shown thereon thereafter shall be as much a part of this ordinance as through all matters and information set forth on said map were fully described in this ordinance. 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 hereto 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, medical marijuana collective gardens and recreational marijuana producers, processors, or retailers 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 17.56 MVMC. In the event of 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.

SECTION 5. Relationship to Federal Law. Collective gardens, production, processing , and retailing of marijuana is and remains illegal under federal law. Nothing in this chapter or as provided elsewhere in the Mount Vernon Municipal code authorizes or permits any person or entity to circumvent or violate federal law.

SECTION 6. Final Ordinance. City staff is hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

SECTION 7. 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 8. 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 3rd day of December, 2014.

Jill Boudreau, Mayor

SIGNED AND APPROVED this ____ day of ____, 2014.

ALICIA D. HUSCHKA, Finance Director

Approved as to form:

Kevin Rogerson, City Attorney

Published _____

