

ORDINANCE NO. 3659

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 PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS, GROUP COOPERATIVES UNTIL THE CITY ADOPTS PERMANENT ZONING REGULATIONS AND RE-AFFIRMING OTHER MARIJUANA USES ARE LIMITED TO THE COMMERCIAL LIMITED INDUSTRIAL ZONING DISTRICT; ENTERING LEGISLATIVE FINDINGS, PROVIDING FOR SEVERABILITY, DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in April 2015, Governor Inslee signed into law (with partial veto) 2 SSB 5052, that among other things, eliminated collective gardens authorizing the establishment of Liquor Control Board certified “cooperatives” in place of collective gardens as well as a number of other marijuana regulations that go into effect with different timeframes; and

WHEREAS, in June 2015, Governor Inslee signed into law 2E2SHB 2136 further amending the states marijuana regulatory system; Section 1001 of 2E2SHB 2136 makes it clear that cities, towns, and counties may prohibit cooperatives within their jurisdiction; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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.”; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City is aware that businesses have sought, continue to seek, and have obtained state licensure for the retail sale, processing, and producing of marijuana in areas outside the City’s Commercial-Limited Industrial Zoning District; and

WHEREAS, 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:

- i) state regulation of medical and recreation marijuana are not adequate to address the impacts on the City,
- ii) additional local controls are warranted,
- iii) 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
- iv) 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; and

WHEREAS, the City Council finds that current land use regulations do not identify or address the newly classified use of cooperatives recently adopted by the state; and

WHEREAS, the City Council finds there exist direct and secondary negative impacts to permitting marijuana cooperatives without taking careful, deliberate steps to evaluate such marijuana uses such uses including but not limited to following its land use process it is required to perform under Washington State’s Growth Management Act and performing all required environmental analysis; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize cities to adopt interim land use regulations, official controls and moratoria to preserve the status quo while new plans or regulations are considered and prepared and to renew such interim regulations, official controls, and moratoria and the Mount Vernon City Council deems it to be in the public interest to adopt the regulations and prohibitions set forth in this ordinance under this authority; and

WHEREAS, RCW 36.70A.390 and/or RCW 35A.63.220 authorizes that, so long as a subsequent public hearing is held and a work plan is adopted, a moratorium can be in place for up to one year; and

WHEREAS, that without the adoption of this interim moratorium, there is potential that marijuana cooperatives could be sited within existing residential neighborhoods or other areas within the City characterized by families and children once state law goes into effect; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorizes the City to adopt a moratorium or interim control on development and to hold a public hearing on the moratorium or interim control within 60 days of the commencement of the moratorium, and

WHEREAS, the City needs time to review existing information and the effects of marijuana cooperatives, to review new regulations and laws put into place by the State of Washington, and to review the Mount Vernon Municipal Code in a comprehensive fashion to determine whether it sufficiently addresses the impacts of such uses, in those areas and if not, to adopt appropriate permanent regulations; and

WHEREAS, the City Council finds that an emergency exists within the City, and that imposing a moratorium on cooperatives (as defined in by 2 SSB 5052) reaffirming state licensed marijuana recreational producers, retailers, and processors are limited to the City's Commercial Limited-Industrial Zone District are both necessary for the immediate preservation of the public peace, health, safety and welfare and for the support of City government and its existing institutions until additional review has been completed and any necessary code revisions have been adopted by the City Council; 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).

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 as its findings of fact justifying adoption of this Ordinance enacting the moratorium and official controls as set forth herein and incorporates those recitals as if set forth fully herein. The Council may adopt additional findings in the event that additional public hearings are held or evidence presented to the City Council.

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

- A. That pursuant to WAC 197-11-880, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act.
- B. 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.
- C. That the City Council adopts the findings of fact in Ordinances 3627 and 3642 as if set forth fully herein.
- D. That the City adopts the proposed work plan which includes tasks for related studies with target completion dates providing for a longer period than six months attached as Exhibit "A" and incorporated herein by this reference.

SECTION 3. Interim Controls Imposed. Pursuant to the provisions of RCW 36.70A.390 and RCW 35A.63.220 the City hereby imposes the following interim controls imposing a moratorium on cooperatives and reaffirming recreational marijuana uses are limited to the Commercial Limited Industrial Zoning District as follows:

- A. That Section 17.56.020 of the Mount Vernon Municipal Code is hereby amended 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 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 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 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. **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-O, 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 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. 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.
4. Signage shall comply with WAC 314-55 as currently written or as amended for recreational marijuana uses.
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 (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 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 & 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, 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.

13. Notwithstanding any provisions in the Mount Vernon Municipal Code to the contrary, 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.

B. That Section 8.08.040 of the Mount Vernon Municipal Code is hereby amended 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.

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 Section 26 of 2SSB 5052 adopted herein by this reference.

M. Recreational retailers, processors, and producers not located within the City's Commercial-Limited Industrial District in compliance with the conditions set forth in Chapter 17.56.

C. That a new section 17.72.130 of the Mount Vernon Municipal Code is hereby amended to read as follows:

17.72.130 Marijuana Uses Prohibited

- A. Only those marijuana uses identified as permitted in Chapter 17.56 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. Marijuana retail stores, producers, or processors 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 Section 26 of 2SSB 5052 adopted herein by this reference are prohibited in all zoning districts within the City.

SECTION 5. Relationship to Federal Law. Collective gardens, cooperatives, 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. Effective Period. This ordinance is immediately adopted and shall apply for one year from the date of its adoption unless earlier terminated or not renewed after a subsequent public hearing is held.

SECTION 7. Hearing To Be Held. Pursuant to RCW 36.70A.390 and/or RCW 35A.63.220, the City Council shall hold a public hearing on this interim zoning ordinance within 60 days of its adoption.

SECTION 8. City to Consider Permanent Regulations. The City Council hereby directs that the City Community and Economic Development Department begin research on the effects of SB 5052, collectives gardens and cooperatives, and begin the process of drafting proposed permanent regulations to be considered through the City's public participation process including allowing for public input and providing for public hearings before the Planning Commission and City Council.

SECTION 9. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 10. Effective Date and Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority plus one of the whole membership of the Council, and that the same is not

subject to a referendum. If this ordinance is not adopted immediately, applications for uses, building applications, permits or other types of land use/development permits/approvals could arguably become vested leading to development and land uses incompatible with the regulations eventually adopted by the City in its comprehensive review and formal regulation amendment/adoption process. Therefore, the interim zoning ordinance must be adopted immediately as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications, proliferation of incompatible land uses and efforts to incorrectly interpret existing regulations, in an attempt to vest rights for an indefinite period of time.

SECTION 11. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, this Interim Ordinance shall be transmitted to the Washington State Department of Commerce as required by law.

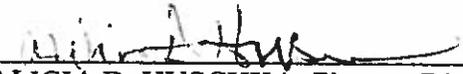
SECTION 12. Publication. This Ordinance shall be published by an approved summary consisting of the title.

PASSED AND ADOPTED this 9th day of September, 2015



Jill Boudreau, Mayor

SIGNED AND APPROVED this 10 day of Sept, 2015.



ALICIA D. HUSCHKA, Finance Director

Approved as to form:



Kevin Rogerson, City Attorney

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