

**ORDINANCE NO. 3732**

**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**

**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**, due to the complexities involved with drafting regulations involving cannabis uses, and to ensure a through and robust public process the Development Services Department has created a work plan and is requesting Council adopt this work plan; and

**WHEREAS**, RCW 35A.63.220 and RCW 36.70A.390, as well as interpretative judicial decisions, authorize adoption of interim zoning controls and regulations with certain limitations, including the requirement to hold a public hearing on the adopted interim zoning controls/regulations at the time of adoption or within 60 days of its adoption and adopt findings of facts justifying its action and, if appropriate, a work plan; and

**WHEREAS**, On July 5, 2017, the City held a public hearing regarding the interim controls proposed herein; and

**WHEREAS**, the City has begun the process of studying permanent development regulations addressing the issue following the City's public participation program including having begun environmental review and scheduled public hearing on proposed permanent regulations; and

**WHEREAS**, the City needs additional time to complete its public participation process and study the potential impacts of the regulated use; and

**WHEREAS**, RCW 35A.63.220 and RCW 36.70A.390 allow the City to renew an interim zoning ordinance for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

**WHEREAS**, November 8<sup>th</sup>, 2017 the City held a public hearing on the renewal of the interim regulations during a regularly held meeting of the City Council.

**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. Findings.** That the City Council adopts the following as additional findings of fact justifying adoption of this Ordinance enacting the interim and official controls herein. The Council may adopt additional findings in the event that additional public hearings are held or evidence presented to the City Council.

1. RCW 35A.63.220 and RCW 36.70A.390 authorize cities to adopt interim zoning and interim official controls to preserve the public safety, health, welfare, economic vitality and continued economic growth of the City while new plans and regulations are considered and prepared and to hold a public hearing at the time of adoption or within 60 days of the commencement of the interim zoning and interim official controls. The City adopted such an emergency ordinance on May 10, 2017 by adoption of Ordinance 3713 and has held public hearings on its continuance within 60 days on June 28, 2017 that was continued to July 5, 2017. The City has not completed its study of the issue and needs more time to consider and prepare new plans and regulations regarding cannabis transportation licensee businesses; and
2. The City Council ratifies and re-adopts all findings of fact previously adopted within Ordinances 3713 and 3720 in their entirety (including recitals therein) justifying that: i) an emergency exists and ii) the continuance of interim controls regulating cannabis transportation licensee businesses is justified until the City can fully study the issue and that permanent development regulations be adopted through the City's normal process; and
3. That without the continuance of interim controls set forth herein, there is great potential that unregulated cannabis transportation licensee businesses could be sited or allowed to operate in an unregulated manner resulting in well recognized adverse direct and secondary impacts including but not limited to: foul odors and having cannabis businesses operating within or near existing residential neighbors or other areas frequented by families and children; and
4. As set forth in its findings adopted in Ordinance 3713 which are hereby incorporated in this Ordinance, the City Council affirms that, pending completion of permanent development regulations pertaining to cannabis transportation licensee businesses and the adoption of permanent zoning and permitting regulations, that cannabis transportation licensee businesses without regulation tailored to public safety, health, and welfare issues has and will continue to cause direct, secondary, and cumulative negative impacts in the community. Specifically, staff has reported to Council and Council finds unregulated cannabis transportation licensee businesses have the potential to generate 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) fire and explosion risk, vi) an influx of traffic trips and pedestrian activity during unusual hours, vii) greater security issues associated with such activities; and
5. That full public participation and thorough study of the cannabis transportation licensee businesses impacts in the community have not been completed and are ongoing; and
6. That in the absence of adoption of this ordinance current city regulations do not address cannabis transportation licensee businesses; and
7. That an emergency exists within the City, and that adoption of the proposed interim regulations herein is necessary for the immediate preservation of the public peace, health, safety, welfare, economic vitality and continued economic growth of the City until additional review has been completed and any necessary code revisions have been adopted by the City Council and is a legitimate exercise of the City's police power.

**SECTION THREE. Work Program.** The City Council hereby directs that the Development Services Department continue their study of the issue of cannabis transportation licensee businesses within the City and including drafting proposed permanent regulations to be considered through the City's public participation process including allowing for public input and providing for public hearings at both the Planning Commission and City Council. Additionally, the City Council adopts the work program accompanying this Ordinance identified as **Exhibit A** and hereby incorporates this work program as if set forth fully herein.

**SECTION FOUR. Interim Regulations Adopted.** That the City Council renews and adopts the following interim land use regulations (labeled as A to C) originally adopted within Ordinance 3713:

**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, transporters 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, 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 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, 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 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, 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 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, and transporters not located within the City's Commercial-Limited Industrial District in compliance with the conditions set forth in Chapter 17.56.

**C. That 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, 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 Section 26 of 2SSB 5052 adopted herein by this reference are prohibited in all zoning districts within the City.

**SECTION FIVE. 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 SIX. 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 SEVEN. 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. Without an immediate interim regulation on the City's acceptance of business licenses, building applications, permits or other types of land use/development permits/approvals, such applications could become vested under regulations subject to change by the City in this comprehensive review and regulation amendment/adoption process. This Ordinance will not affect any existing rights, or any vested applications previously submitted to the City. This Ordinance, including but not limited to the interim controls, zoning, and regulations contained within and all attachments shall be effective for a six month period of time (unless renewed or extended subsequent to an additional public hearing and findings as required by law) or when the City's comprehensive review and possible amendment/adoption of regulations have been completed repealing the interim regulations and controls,



whichever is sooner. The City Council shall make this decision to terminate the interim controls and regulations by ordinance, and termination shall not otherwise be presumed to have occurred. The City shall hold all necessary public hearings and adopt new findings as required under RCW 35A.63.220 and RCW 36.70A.390 if necessary and justified to continue the imposition of the interim regulations until the City's review has been completed.

**SECTION EIGHT. 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.

**PASSED AND ADOPTED** this 8<sup>th</sup> day of November, 2017.

**SIGNED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Doug Volesky, Finance Director

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Jill Boudreau, Mayor

Approved as to form:

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Kevin Rogerson, City Attorney

Published \_\_\_\_\_

**EXHIBIT A  
WORK PROGRAM**

<b>MILESTONES</b>	<b>DESCRIPTION</b>	<b>TIMING</b>	<b>STATUS</b>
Planning Commission Guidance	Present to the Commission background information and regulation options. Request Commission input with regard to refining regulatory options and goals.	November 7, 2017	Complete
SEPA Analysis	Development Services staff to compile the data necessary and then complete a SEPA checklist for a non-project action.	September 2017 to October 5, 2017	Complete
SEPA Process	Development Services staff to complete the process necessary to comply with the SEPA process.	DNS issued on October 26, 2017	Complete on November 20, 2017
Commerce Review	Draft regulations remitted to the WA State Department of Commerce to commence their required review.	Letter from Commerce received on May 15, 2017	Complete
Public Noticing	Public hearing notices distributed, published, and placed on the City's website	Public Hearing Notices Published 10.30.2017	Complete
City Council Updates and Involvement	Throughout the process the City Council will receive updates and will be asked to provide recommendations.	November 15, 2017	Pending
Public Hearing(s) before Planning Commission	Open record public hearing(s) before the Planning Commission for them to make recommendation(s) to the City Council.	November 21, 2017	Pending
Public Hearing(s) before City Council	Open record public hearing(s) before the City Council for them to make final decision(s) on the new development regulations.	December 13, 2017	Pending

**EXHIBIT B**  
**ORDINANCES 3713 & 3720**