

ORDINANCE NO. 12-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, ESTABLISHING LAND USE REGULATIONS FOR MARIJUANA USES; CREATING A NEW CHAPTER 18.33 OF THE COVINGTON MUNICIPAL CODE (CMC) AND AMENDING RELATED CMC SECTIONS; AND REPEALING ORDINANCE NOs 06-2016 and 07-2016; PROVIDING FOR SAVINGS AND SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Initiative Measure No. 502, passed by Washington voters on November 6, 2012, and codified in Chapter 69.50 of the Revised Code of Washington (RCW), modified the State Controlled Substances Act to allow the possession of recreational marijuana for private and personal use and established a system for lawful production, processing, and retailing of recreational marijuana under state law; and

WHEREAS, Initiative Measure No. 502 and the Washington State Liquor and Cannabis Board (WSLCB) rules adopted thereunder establish licenses for producers, processors, and retailers of marijuana (collectively “marijuana businesses”); and

WHEREAS, in April 2015 the state legislature passed, and the governor signed into law, SB 5052, the Cannabis Patient Protection Act (the “Act”); and

WHEREAS, the Act establishes the WSLCB as the oversight body for all marijuana uses, both recreational and medical, provides guidance and rules for the regulation and licensing of medical marijuana, eliminates collective gardens to be replaced with medical marijuana collectives and personal grows, and requires special endorsements for marijuana retailers wishing to sell medical marijuana in addition to recreational marijuana; and

WHEREAS, the significant portions of the Act that affect the city’s zoning and licensing regulations does not go into effect until July 1, 2016; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued a formal opinion which concluded that I-502 does not prevent local governments from regulating or banning marijuana businesses; and

WHEREAS, the City has had, at all relevant times, a moratorium on medical marijuana production, processing, and distribution facilities (Ordinance No. 08-11, as amended); and

WHEREAS, the City has had, at all relevant times, interim zoning regulations (Ordinance No. 10-013, as amended) such that applicants have had clear notice of local zoning requirements for marijuana businesses; and

WHEREAS, the City’s interim regulations allow production and processing facilities only in the Industrial Zone (I) and marijuana retailers only in the General Commercial (GC) and Mixed Commercial (MC) zones; and

WHEREAS, one marijuana retailer has established in the City and no marijuana production or processing facilities have established in the City; and

WHEREAS, the City desires to adopt permanent regulations for all marijuana businesses at this time, even though the City will continue to monitor impacts and additional information related to this new industry in Covington and elsewhere in the state and will make additional change as may be determined by the City to be in its best interests; and

WHEREAS, a State Environmental Policy Act, RCW 43.21C, Final Determination of Non-Significance for the regulation of marijuana businesses was issued on April 13, 2016; and

WHEREAS, the Covington Planning Commission held a duly and properly noticed public hearing on May 6, 2016, providing an opportunity for the public to comment on the regulations set forth in this Ordinance, from which the planning commission made recommendations to the city council regarding permanent regulations for marijuana businesses; and

WHEREAS, the city council concludes that:

- a. Nothing in this Ordinance is intended to encourage any use or activity that violates federal law; and
- b. It is prudent to take a conservative approach to land use regulations related to marijuana businesses until there is more evidence concerning the community impacts from such uses in Covington and elsewhere in Washington state; and
- c. The proposed amendments and new code provisions are consistent with the applicable policies of the Covington Comprehensive Plan; and
- d. The proposed amendments and new code provisions promote the best long-term interests of the Covington community.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The “Whereas” provisions above shall constitute Findings of Fact and are incorporated by reference as if fully set forth herein.

Section 2. Medical Marijuana Moratorium Repealed. Ordinance No. 08-11, as amended, establishing a moratorium on all medical marijuana production, processing, and distribution facilities and related businesses is hereby repealed in its entirety.

Section 3. Interim Recreational Marijuana Regulations Repealed. Ordinance No. 10-13, as amended, establishing interim zoning regulations for recreational marijuana production, processing, and retail facilities is hereby repealed in its entirety.

Section 4. New Chapter 18.33 CMC Created. The following regulations governing all marijuana businesses are hereby adopted as follows and shall be codified as a new Chapter 18.33 CMC:

Chapter 18.33 CMC, Marijuana-Related Uses

18.33.010 Definitions.

Unless the context clearly indicates otherwise the terms within this chapter shall have the meanings established pursuant to Chapter 18.20 CMC. Any terms not defined in Chapter 18.20 CMC shall have meanings established pursuant to RCW 69.50.101.

18.33.020 Marijuana-Related Uses—Generally.

- (1) The production, processing, and retailing of marijuana is and remains illegal under federal law. Nothing in this chapter is an authorization to circumvent federal law or provide permission to any person or entity to violate federal law.
- (2) This chapter incorporates the requirements and procedures set forth in chapter 69.50 RCW and 314-55 WAC. Except as otherwise specifically provided herein, in the event of any conflict between the provisions of this chapter and the provisions of chapter 69.50 RCW or chapter 314-55 WAC, the more restrictive provision shall control.
- (3) The regulations under chapter 69.50 RCW and chapter 314-55 WAC, now or as may hereafter be amended, shall apply to all marijuana producers, processors, retailers, and retail outlets in addition to the provisions of this chapter.
- (4) Only marijuana producers, marijuana processors, and marijuana retailers licensed by the Washington State Liquor Control Board may locate in the City and then only pursuant to the license issued by the Washington State Liquor Control Board.
- (5) Marijuana producers, marijuana processors, and marijuana retailers are required to acquire all additional necessary business licenses and permits, and comply with all other applicable City ordinances and regulations.
- (6) The City may, prior to issuance of any license or permit, perform an inspection of the proposed premises to determine compliance with any applicable requirements of this chapter and all other applicable City ordinances and regulations.

18.33.030 Marijuana Producers and Processors.

Marijuana producers and marijuana processors licensed by the Washington State Liquor Control Board are permitted only in the Industrial (I) zone, subject to the requirements and other general provisions as set forth in this title, except where modified by this chapter.

- (1) Marijuana producers and marijuana processors shall not operate as an accessory to a primary use or as a home occupation.

(2) All marijuana production and processing activities shall occur within an enclosed structure and the facility shall be designed, located, constructed, and buffered to blend in with its surroundings and mitigate significant adverse impacts on adjoining properties and the community. Special attention shall be given to minimizing odor, noise, light, glare, and traffic impacts.

18.33.040 Marijuana Retailers.

Marijuana retailers licensed by the Washington State Liquor Control Board are permitted only in the General Commercial (GC) and Mixed Commercial (MC) zones, subject to the requirements and other general provisions as set forth in this title, except where modified by this chapter.

(1) Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation.

(2) Any marijuana odor shall be contained within the marijuana retail outlet so that the odor of marijuana cannot be detected from any abutting use or property by a person with a normal sense of smell. If any marijuana odor can be smelled from any abutting use or property, the marijuana retailer shall be required to implement measures necessary to contain the odor, including, but not limited to, installation of ventilation equipment.

(3) In addition to the security requirements in Chapter 315-55 WAC, during business hours, all marijuana retailers shall store all useable marijuana, marijuana-infused product, and cash in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or securely attached thereto. For useable marijuana products that must be kept refrigerated or frozen, these products must be stored in a locked refrigerator or freezer container in a manner approved by the Director, provided the container is affixed to the building structure.

18.33.050 Sensitive Use Buffers.

(1) Marijuana producers and marijuana processors shall not locate within one thousand feet (1,000 ft.) of the following uses or any use included in Chapter 314-55 WAC now or as hereafter may be amended, unless otherwise regulated in state law:

- (a) Public or private elementary or secondary school, or any facility owned or operated by such school;
- (b) Child care center, preschool, nursery school, or other childcare facility;
- (c) Public park, trail, or playground;
- (d) Any real property designated in the Capital Improvement Plan for future park use;
- (e) Recreation center or facility;
- (f) Church, temple, synagogue, mosque, or chapel;
- (g) Public transit center;
- (h) Public library; or
- (i) Any game arcade admission to which is not restricted to persons aged twenty-one (21) years or older.

(2) Marijuana retailers and marijuana retail outlets shall not locate:

(a) Within one thousand feet (1,000 ft.) of the following uses:

- (i) Public or private elementary or secondary school, or any facility owned or operated by such school; or
- (ii) Child care center, preschool, nursery school, or other childcare facility.

(b) Within five hundred feet (500ft) of the following uses or any use included in Chapter 314-55 WAC now or as hereafter may be amended, unless otherwise required in applicable state law:

- (i) Public park, trail, or playground;
- (ii) Any real property designated in the Capital Improvement Plan for future park use;
- (iii) Recreation center or facility;
- (iv) Church, temple, synagogue, mosque, or chapel;
- (v) Public transit center;
- (vi) Public library; or
- (vii) Any game arcade admission to which is not restricted to persons aged twenty-one (21) years or older.

(3) The buffer restrictions in subsections (1) and (2) of this section shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed use is to be located to the nearest point of the parcel of property from which the proposed land use is to be separated.

18.33.060 Enforcement - Penalty.

(1) Any violation of this chapter is declared to be a public nuisance per se and, in addition to any other remedy provided by law or equity, may be abated by the City under applicable provisions of this code or state law.

(2) No person or entity may violate or fail to comply with any provision of this chapter. Each person or entity commits a separate offense for each and every day they commit, continue, or permit a violation of any provision of this ordinance.

18.33.070 Legal Non-Conforming Uses

No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer as those terms are defined in this title, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Covington Municipal Code and that use shall not be entitled to claim legal non-confirming use status.

Section 5. Chapter 18.20 CMC Amended. Chapter 18.20 CMC, established by Ordinance No. 12-2016, as amended (CMC Title 18, Zoning), is hereby amended by the addition of the following:

18.20.744 Marijuana

“Marijuana” shall have the meaning established pursuant to RCW 69.50.101(v), as currently adopted and hereafter amended.

18.20.744.1 Marijuana processor

“Marijuana processor” shall have the meaning established pursuant to RCW 69.50.101(x), as currently adopted and hereafter amended.

18.20.744.2 Marijuana producer

“Marijuana producer” shall have the meanings established pursuant to RCW 69.50.101(y), as currently adopted and hereafter amended.

18.20.744.3 Marijuana retail outlet

“Marijuana retail outlet” shall have the meanings established pursuant to RCW 69.50.101(oo), as currently adopted and hereafter amended.

18.20.744.4 Marijuana retailer

“Marijuana retailer” shall have the meanings established pursuant to RCW 69.50.101(bb), as currently adopted and hereafter amended.

18.20.744.5 Marijuana-infused products

“Marijuana-infused products” shall have the meanings established pursuant to RCW 69.50.101(cc), as currently adopted and hereafter amended.

18.20.744.6 Marijuana, useable

“Marijuana, useable” or “useable marijuana” shall have the meanings established pursuant to RCW 69.50.101(tt), as currently adopted and hereafter amended.

Section 6. Section 18.25.080 CMC Amended. Section 18.25.080(A) CMC, Manufacturing land uses, established by Ordinance No. 42-02, as amended (CMC Title 18, Zoning), is hereby amended to include “Marijuana Production and Processing” as a permitted “P” use.

Section 7. Section 18.31.080 CMC Amended. Section 18.31.080(3) CMC, established by Ordinance No. 10-10, as amended (CMC Title 18, Zoning), is hereby amended to include “Marijuana Retailer and Retail Outlets” under the “Commercial” subheading as: Not Permitted (NP) in the Town Center (TC); Permitted (P) in Mixed Commercial (MC); Permitted (P) in General Commercial (GC); and Not Permitted (NP) in Mixed Housing Office (MHO); subject to the applicable one thousand (1000) foot and five hundred (500) foot sensitive use buffers outlined in CMC 18.33.050.

Section 8. Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 9. 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 preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 10. Savings. The enactment of this Ordinance shall not affect any case, proceeding, appeal, or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 11. Corrections. Upon the approval of the city attorney, the city clerk is authorized to make any necessary technical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerk errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 12. Supersede. The provisions of this Ordinance shall supersede the provisions of Ordinance Nos. 08-11, as amended, the City's moratorium on medical marijuana, and Ordinance Nos. 10-13, as amended, the City's interim zoning regulations for recreational marijuana.

Section 13. Effective Date. This ordinance shall be published in the official newspaper of the city and shall take full force and effect five (5) days after publication.

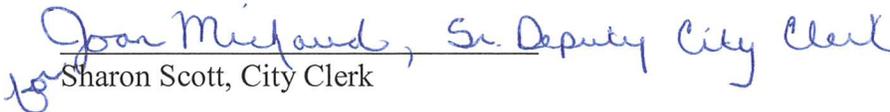
PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, at a regular meeting thereof on the 28th day of June, 2016, and signed in authentication of its passage.



Mayor Jeff Wagner

PUBLISHED: July 1, 2016
EFFECTIVE: July 6, 2016

ATTESTED:



Sharon Scott, City Clerk

APPROVED AS TO FORM ONLY:



Sara Springer, City Attorney