

ORDINANCE NO. 3 , 2024

AN ORDINANCE ENACTING NEW SECTION 150.0206 PROHIBITING RECREATIONAL MARIJUANA BUSINESSES AS A PERMITTED USE WITHIN THE CITY OF MONTGOMERY ZONING CODE

WHEREAS, the Ohio voters at the November 2023 General Election approved Issue 2, and the enactment of Chapter 3780 of the Revised Code which legalized certain forms of recreational marijuana under State law while preserving the powers of municipalities to regulate, zone and/or prohibit land uses related thereto; and

WHEREAS, after enactment of Issue 2 and Chapter 3780 of the Revised Code, Council referred this matter to the Planning Commission to consider a legislative text amendment to the Zoning Code which would prohibit recreational marijuana-related businesses and/or home occupations within all zoning districts of the City of Montgomery; and

WHEREAS, the Planning Commission, with the Administrative Staff, carefully studied zoning regulations for such businesses and whether accepting or prohibiting such uses within the community would be consistent with the vision and planning for the City; and

WHEREAS, with notice and an opportunity for testimony as proscribed by law, the Planning Commission held a public hearing on any proposed text amendment, and on February 19, 2024 noting no discernable negative impact in restricting such businesses, the Planning Commission by a 6-0 vote recommended approval of a text amendment prohibiting Adult Use Cannabis Dispensaries and Adult Use Cannabis Operators within the City; and

WHEREAS, upon the Planning Commission’s recommendation, with notice and an opportunity for testimony as proscribed by law, Council held a public hearing on a proposed text amendment on April 3, 2024, and weighing the recommendation from the Planning Commission, Council unanimously accepted such recommendation and authorized proposed legislation to be added to Council’s Agenda for consideration.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. Section 150.0206, *Recreational Marijuana*, of the Montgomery Zoning Code is hereby adopted and made a part of the codified Ordinances of the City of Montgomery to read as follows:

§ 150.0206

(A) *Legislative Purpose.* Although recreational marijuana is in some respects legal under applicable state law with the passage of Issue 2 and the enactment of Chapter 3780 of the Ohio Revised Code, it remains illegal under federal law. The purpose of this section is to prohibit an Adult Use Cannabis Operator as a business or home occupation use within all zoning districts of the City. This section is expressly adopted as authorized by ORC § 3780.25 as an exercise of the City’s power of local self-government and Home Rule authority reserved to the City under the City Charter and Section 3, Article XVIII of the Constitution of the State of Ohio.

(B) *Definitions.*

(1) “Adult Use Cannabis” or “Cannabis” or “Marijuana” means Marihuana as defined in RC § 3719.01.

(2) “Adult Use Cannabis Operator” means a Level I Adult Use Cultivator, a Level II Adult Use Cultivator, a Level III Adult Use Cultivator, an Adult Use Processor, and an Adult Use Dispensary, all of which are further defined under RC § 3780.01, *Definitions*.

(C) Prohibition.

No Adult Use Cannabis Operator or home occupation which is an Adult Use Cannabis Operator may be established, operated or maintained within the City, nor shall any provision of the Zoning Code be construed to permit the use of any property for such purpose. This prohibition shall apply within all zoning districts within the City.

(D) Home Grow Exceptions.

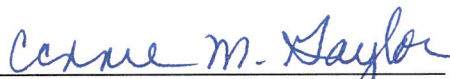
Nothing in this section shall restrict or preempt State authority under RC § 3780.29 to permit Adult Use Cannabis consumers from lawfully cultivating, growing and possessing cannabis plants at the individual’s primary residence. The limitations and controls for cultivating, growing and processing such cannabis plants at an individual’s primary residence shall be controlled by the laws and regulations of the State of Ohio. The cultivating, growing and possessing of cannabis plants at an individual’s primary residence shall not authorize the sale or distribution of Adult Use Cannabis as restricted herein as a prohibited use within the City.

SECTION 3. All sections, subsections, parts and provisions of this Ordinance are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective for any reason shall not affect or render invalid any other section, subsection, part or provision of this Ordinance.

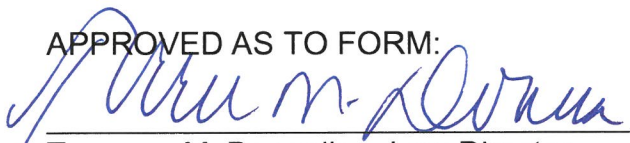
SECTION 4. In the event that any portion of this section shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction, that portion shall be considered severable and the remainder of this section shall remain in full force and effect.

SECTION 5. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: May 1 2024

ATTEST: 
Connie M. Gaylor, Clerk of Council


Ronald G. Messer, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon, Law Director