

Ordinance No. ***-16

Introduced:

Adopted:

Chapter 16.39

RECREATIONAL AND MEDICAL MARIJUANA

Sections:

- 16.39.010 Findings and purpose.
- 16.39.020 Applicability.
- 16.39.030 Location criteria.
- 16.39.040 Marijuana uses allowed in identified zones.
- 16.39.050 Licenses required.
- 16.39.060 Signs and advertising.
- 16.39.070 Report of disturbance and unlawful activity.
- 16.39.080 Visibility of activities; control of emissions.
- ~~16.39.090 No city liability – Indemnification.~~
- 16.39.100 Adoption by reference.

16.39.010 Findings, purpose, and intent.

(1) In November 2012, Washington voters passed Initiative 502, which established precedent for the production, processing and retail sale of marijuana for recreational purposes. Pursuant to chapter 69.50 RCW, the State has adopted rules establishing a state-wide regulatory and licensing program for marijuana uses (chapter 315-55 WAC). It is therefore desirable for the city to establish local regulations to address such uses.

~~(2) In April 2015, the Washington State Legislature amended the statutory definitions relating to medical marijuana in RCW 69.51A.010, and also eliminated the regulations applicable to “collective gardens” and adopted provisions allowing medical marijuana “cooperatives” effective July 1, 2016.~~

~~(3) The purpose of these regulations is to establish where recreational and medical marijuana producers, processors and retail outlets and medical marijuana cooperatives may locate in the city, and to describe the restrictions upon such uses. In addition to compliance with this chapter, every recreational marijuana processor, producer and retail outlet, and every medical marijuana cooperative, shall obtain a city business license under chapter 5.12 POMC.~~

~~(4) These regulations are intended to ensure that state-licensed marijuana uses are located and developed in a manner that is consistent with the desired character and standards of the city of Port Orchard, minimizes potential incompatibilities and impacts, and protects the public health, safety, and general welfare of the citizens of Port Orchard.~~

~~(5) No part of this chapter is intended to or shall be deemed to conflict with or circumvent federal law, or provide permission to any person or entity to violate federal law. including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 et seq., the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. Nothing in this chapter shall be construed to~~

Comment [A1]: Deleted this as it's redundant with the provision requiring business license below – a requirement/regulation should only be in one location for simplicity and ease of enforcement (i.e clarity in the course of the requirement).

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supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of ~~medical cannabis or recreational~~ marijuana in any manner not authorized by chapters 69.50 or 69.51A RCW. Nothing in this chapter shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. ~~It is the intention of the city council that this chapter be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass. (Ord. 003-14 § 3 (Exh. A))~~

(5) This chapter incorporates certain 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.

16.39.020 Applicability.

(1) The provisions of this chapter shall apply city-wide. The specific development standards provided herein shall be in addition to the zoning and development standards generally applicable to the proposed use and the relevant zoning district.

(2) The regulations under chapter 69.50 RCW and chapter 314-55 WAC, now or as may hereafter be amended, shall apply to all marijuana businesses and medical marijuana cooperatives, as applicable, in addition to the provisions of this chapter.

~~(3) No person or use that purports to be a recreational or medical marijuana producer, processor, or retailer, or a medical marijuana cooperative collective garden, as defined and regulated herein and in chapters 69.50 and 69.51A RCW and chapter 314-55 WAC, that was engaged in that activity prior to the enactment of this chapter shall be deemed to have been a legally established use or entitled to claim legal nonconforming status. (Ord. 003-14 § 3 (Exh. A))~~

(4) 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.

16.39.030 Location criteria.

~~(1) As provided in chapters RCW 69.50.331 and 69.51A.250 RCW and chapter WAC 314-55-050 WAC, No recreational or medical marijuana business producer, processor or retail outlet, or medical marijuana cooperative may locate within 1,000 feet of any of the following:~~

- (a) Elementary or secondary school;
- (b) Playground;
- (c) Recreation center or facility;
- (d) Child care center;
- (e) Public park;

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Comment [A2]: Collectives haven't been established yet, so the intent is to not allow collective gardens to establish as a prior nonconforming use.

Comment [A3]: I deleted the reference to state law, because, presumably, state law could change these buffer requirements, while still allowing local jurisdictions to adopt more stringent requirements. Removing the references to state law prevents any future confusion if the state requirements change.

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- (f) Public transit center;
- (g) Library; or
- (h) Any game arcade (where admission is not restricted to persons age

21 or older.

(2) The methodology for measuring the buffers described above shall be as provided in WAC 314-55-050.

(3) It shall be the responsibility of the owner or operator of the proposed state-licensed marijuana use to demonstrate and ensure that a proposed location is not within one of the buffers outlined above.

(4) No ~~recreational~~-marijuana ~~business producer, processor or retail outlet~~ may locate within any residentially zoned district or within any residential unit in the city.

(5) No medical marijuana cooperative may be located within one mile of a marijuana retail outlet, as provided in chapter 69.51A RCW. (Ord. 003-14 § 3 (Exh. A))

Comment [A4]: The City can also prohibit cooperatives from being in residential zones/units per RCW 69.50.331(8) and 69.51A.250 – should this be added or not?

SBS COMMENT: I would recommend to reserve adding that for now until we see if such uses actually do present any issues.

16.39.040 Marijuana uses allowed in identified zones.

(1) Marijuana ~~uses businesses (marijuana producer, marijuana processor, and marijuana retailer)~~ shall only be allowed in those zoning districts where it is specifically identified as a permitted use. See land use tables set forth in POMC 16.30.050 (processing), 16.30.090 (production), and 16.30.100 (retail). Medical marijuana cooperatives are an allowed use in all zoning districts.

Comment [A5]: If cooperatives are prohibited in residential zones/units (see previous comment), this section and POMC 16.30 will need to be revised to reflect this. If cooperatives are not prohibited in these zones, the exception should be stated here.

(2) ~~In accordance with WAC 314 55 147, marijuana~~ Marijuana retail ~~outlets~~ uses shall not be open to the public between the hours of 12:00 a.m. and 8:00 a.m.

(3) An existing nonconforming use located within a zoning district that would otherwise not permit marijuana uses, such as an old convenience store in a residential zone, shall not be allowed to convert to a marijuana use. ~~(Ord. 003-14 § 3 (Exh. A))~~

16.39.050 Licenses required.

(1) A valid, current license is required from the Washington State Liquor ~~and Cannabis Control~~ Board for operation of any ~~recreational or medical~~-marijuana-~~business producer, processor or retail outlet~~. A copy of this license shall be submitted to the city as part of the complete application for a city business license.

(2) A valid, current registration is required from the Washington State Liquor and Cannabis Board for operation of any medical marijuana cooperative. A copy of this registration shall be submitted to the city as part of the complete application for a city business license.

(2) No ~~recreational or medical~~-marijuana ~~business producer, processor, or retail outlet, or medical marijuana cooperative~~ may operate or open for business prior to receipt of a city business license. The process for obtaining a city business license is set forth in chapter 5.12 POMC. (Ord. 003-14 § 3 (Exh. A); Ord. ***-16)

16.39.060 Signs and advertising.

(1) All signage and advertising for a ~~recreational~~-marijuana ~~business producer, processor, or retail outlet~~ shall comply with the applicable provisions of this code, the

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sign code, zoning code, and ~~state law WAC 314-55-155~~ (and all applicable rules and regulations promulgated thereunder).

(2) The city may enforce this section pursuant to chapters 16.01 and 16.65 POMC. For violations of ~~WAC 314-55-155 and 314-55-525~~ state law, the city may report the violation to the Washington State Liquor and Cannabis Control Board. (~~Ord. 003-14 § 3 (Exh. A)~~)

16.39.070 Report of disturbance and unlawful activity.

(1) All ~~licensees~~ marijuana businesses, and any agent, manager or employee thereof, shall immediately report to the city police department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed and permitted premises, including, but not limited to, any unlawful resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

(2) Each marijuana business licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

WARNING:

The City of Port Orchard Police Department must be notified of all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed establishment.

(3) It shall not be a defense to a prosecution of a code enforcement action under this section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed. (Ord. 003-14 § 3 (Exh. A))

16.39.080 Visibility of activities; control of emissions.

(1) All activities of the ~~recreational and medical~~ marijuana business, including, but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted out of the public view.

(2) No ~~recreational or medical~~ marijuana or paraphernalia shall be displayed or kept in a marijuana business so as to be visible from outside the licensed premises.

(3) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the ~~recreational~~ marijuana business must be in effect at all times. In the event that any odors, dust, fluids or other substances exit a recreational marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for the immediate, full

Comment [A6]: Sara: I'm confused by the apparent contradiction between signage limits in WAC 314-55-155 (2013) and RCW 60.50.357 (effective 7/1/2016). The WAC still says only 1 sign, located on the premises, but the revised RCW says 2 signs and they don't have to be on premises although can't be within 1,000 ft of school, park, etc. Which rules?

SBS COMMENT: Easy fix for now is just to make it a general requirement. Not upon the city to interpret and determine what state law is applicable, especially since the state sign laws on marijuana are not content neutral and we'll be punting all reported violations of state marijuana signs laws to WSLCB directly.

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clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. (~~Ord. 003-14 § 3 (Exh. A)~~)

~~**16.39.090 No city liability; indemnification.**~~

~~(1) By accepting a city business license issued pursuant to this chapter and chapter 5.12 POMC, the licensee waives and releases the city, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.~~

~~(2) By accepting a city business license issued pursuant to this chapter and chapter 5.12 POMC, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the city, its officers, elected officials, employees, volunteers and agents, insurers and self insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational or medical marijuana business that is the subject of the license. (Ord. 003-14 § 3 (Exh. A))~~

~~**16.39.100 Adoption by reference.**~~

~~The city hereby adopts chapter 314-55 WAC, RCW 69.50.101 and RCW 69.51A.010 by reference, as well as RCW 69.50.101. A copy of these rules and the statutes adopted by reference is on file in the office of the city clerk for use and examination by the public. A copy of these rules and statutes has also been on file while this chapter has been under consideration by the council and after adoption. (Ord. 003-14 § 3 (Exh. A))~~

Comment [A7]: Redundant with same provision in business license chapter, and should live there, as need to have consideration for such indemnification, and consideration comes with issuance of the business license.

Provisions above requiring a business license are sufficient for this chapter.

Comment [A8]: I would strongly recommend to delete this provision and to not adopt the state codes by reference. We already require marijuana businesses to comply with applicable state regulations, and this adoption by reference only clouds other sections of the code that we've made more restrictive than the state code. It's code overkill, essentially, and could create more issues than clarity. Our ability to enforce our code and the state code remain unchanged, even if this is deleted.