

ORDINANCE NO. 1342

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO LAND USE, ZONING AND LICENSING; ALLOWING STATE-LICENSED MARIJUANA PRODUCTION AND PROCESSING FACILITIES IN THE LIGHT INDUSTRIAL (LI) ZONE AND STATE-LICENSED RETAIL FACILITIES IN THE COMMUNITY BUSINESS SOUTH (CB[S]) ZONE; AMENDING CHAPTER 5.04 MMC – BUSINESS LICENSES; AMENDING SECTION 17.08.020 MMC – DEFINITIONS; AMENDING SECTIONS 17.16.040A AND 17.16.040B MMC – PERMITTED, CONDITIONAL, TEMPORARY AND INTERIM USES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the voters of Washington State approved I-502 in November 2012 legalizing, taxing and regulating the recreational use of marijuana, codified in Chapter 69.50 RCW; and

WHEREAS, under I-502, the Washington State Liquor Control Board (LCB) is tasked with the responsibility to adopt the rules governing the licensing and operations of marijuana producers, processors, and retailers, and the Board is currently in the process of establishing those rules, expected to go into effect on Nov. 16, 2013; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice distributed a guidance memo to U.S. Attorneys regarding state implementation of recreational marijuana ballot measures and setting forth the federal government enforcement priorities, essentially acknowledging that as long as state regulation and enforcement is sufficiently robust and consistent with federal priorities, the federal government may choose not to interfere; and

WHEREAS, the 1,000-foot separations required by I-502 and included in the proposed licensing rules are about protecting children, which the City Council and the citizens of Mukilteo support; and

WHEREAS, the LCB has created three categories of state licenses and prohibits holders of a retail license from also holding a production or processing license; and

WHEREAS, an undue concentration of licensed marijuana facilities and medical cannabis collective gardens in the City of Mukilteo could be detrimental to the quality of life of Mukilteo residents and the economic well-being of the city; and

WHEREAS, the Mukilteo City Council and City of Mukilteo Planning Commission held a worksession on April 8, 2013 to discuss the issues related to recreational marijuana facilities;

WHEREAS, the Mukilteo City Council deems it to be in the public interest to establish zoning regulations related to state-licensed marijuana facilities and to require all such facilities to obtain a City of Mukilteo business license; and

WHEREAS, the intent to amend development regulations to allow state-licensed marijuana facilities and a SEPA Determination of Non Significance were noticed in accordance with City of Mukilteo procedures and regulations; and

WHEREAS, the City of Mukilteo Planning Commission held a public hearing on September 19, 2103 to consider this ordinance and forwarded a recommendation to the City Council; and

WHEREAS, nothing in this Ordinance is intended, nor shall be construed, to authorize or approve violation of federal or state law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. MMC 5.04.030(A)(3) - Amended. MMC 5.04030(A)(3), is hereby amended to read as follows:

5.04.030 Exemptions.

- A. The following shall be required to submit a completed license application to the finance director to determine if they are exempt from the licensing requirements, but shall not be required to pay a license fee:
1. Business activities including canvassing activities engaged in by any bona fide charitable or nonprofit organization, including but not limited to religious, civic, benevolent, fraternal, social or youth organizations;
 2. National banks, state banks, trust companies, mutual savings banks, and building and loan associations, with respect to their banking business, trust business, or saving and loan business;
 3. Any farmer, gardener or other person who sells, delivers or peddles any fruit, vegetables, berries, butter, eggs, fish, milk, poultry or meats or any farm produce or edibles raised, caught, produced or manufactured by such person, except for marijuana producers and processors;
 4. All honorably discharged veterans exempt from paying license fees as provided in RCW 73.04.050 and 73.04.060, as the same exist or may hereinafter be amended; or
 5. Any business or activity which is exempt from payment of such license fees as prescribed by this title by virtue of applicable provisions of the federal or state constitution or statutes.

Section 2. MMC 5.04.060C - Amended. MMC 5.04.060C – Procedure for issuance of license, is hereby amended to read as follows:

- C. An application for a business license shall be denied if:
1. It contains a material omission of fact, misrepresentation or fraud;
 2. The applicant has been convicted of a criminal offense and if the time elapsed since the criminal offense is less than ten years and the criminal offense for which the applicant was convicted directly relates to the specific business for which the license is sought. Applicants who have a current state license to operate a marijuana facility

who have applied for a business license to operate a marijuana business are exempted from the requirements of this subsection (2).

3. The premises on or in which the business will be operated violates a building, zoning, fire or any other applicable laws of the city;
4. The business for which the license is sought will result in a danger to the public health, safety or welfare, or the violation of any state or local law, ordinance or regulation;
5. The applicant has had a similar license revoked by the city within a period of one year prior to the date of making application for a license hereunder; provided, that any applicant denied a license under the provisions of this chapter may reapply if and when the reasons for denial no longer exist; or
6. The applicant fails to pass the necessary criminal records or background check and it is determined that it is not in the public interest to grant such a license.

Section 3. MMC 5.04.140A - Amended. MMC 5.04.140A – Suspension or revocation of license, is hereby amended to read as follows:

- A. The finance director may suspend or revoke any business license when the licensee, licensee’s officers, employees or agents, do any of the following:
 1. Knowingly causes, aids, abets or conspires with another to cause any person to violate any of the laws of this state or the city which may affect the licensee’s business; or
 2. Has obtained a license or permit by fraud, misrepresentation, concealment or through inadvertence or mistake; or
 3. Has been convicted of a criminal offense and if the time elapsed since the criminal offense is less than ten years and the criminal offense for which the licensee was convicted directly relates to the specific business for which the license was sought, except for business licenses issued to operators of a marijuana facility who have a current state license to operate a marijuana facility; or
 4. Conducts business operations in an unlawful manner or in such a manner as to constitute a breach of the peace, or menace to the health, safety or general welfare of the public; or
 5. Fails to pay any license fee established by this chapter when the same is due.

Section 4. MMC 17.08.020 - Amended. Section 17.08.020, MMC – definitions, is hereby amended so the following existing definitions read as follows:

School, Elementary, Middle, Junior or Senior High. “Elementary school,” “middle school,” “junior high school” or “senior high school,” including public, private, and parochial schools means an institution of learning recognized by the Washington State Superintendent of Public Instruction.

Section 5. MMC 17.08.020 - Amended. Section 17.08.020, MMC – definitions, is hereby amended to add the following new definitions:

"Child care center" means an entity that regularly provides child day care, preschool and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC. Child care centers include "Commercial Day Care", "Family Day Care" and "Day Nursery" entities.

"Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices.

"Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

"Marijuana facility" means a state-licensed marijuana production, processing, or retail facility or a medical cannabis collective garden. Marijuana facilities shall not be a home occupation as defined in MMC 17.08 – Definitions.

"Marijuana processing facility" means an entity licensed by the State of Washington to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. A marijuana processing facility shall not be a home occupation as defined in MMC 17.08 – Definitions.

"Marijuana production facility" means an entity licensed by the State of Washington to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producers. A marijuana production facility shall not be a home occupation as defined in MMC 17.08 – Definitions.

"Marijuana retail facility" means an entity licensed by the State of Washington to sell only usable marijuana, marijuana-infused products and marijuana paraphernalia to persons twenty-one years of age and older. A marijuana retail facility shall not be a home occupation as defined in MMC 17.08 – Definitions.

"Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

"Recreation center or facility" means a supervised center that provides a broad range of activities and events including programming for persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government. Examples include, but are not limited to, the Mukilteo YMCA and Mukilteo Boy's & Girl's Club.

Section 6. MMC 17.16.040A - Amended. Table 17.16.040 in Section 17.16.040A, MMC – Permitted, Conditional, Temporary and Interim Use Matrix is hereby amended to include the "Use" lines to read as shown on "Exhibit A" attached to this ordinance and incorporated herein by reference as if set forth in full.

Section 7. MMC 17.16.040B - Amended. Section 17.16.040B(60), MMC – Reference Notes for Permitted Use Matrix is hereby amended to read as follows:

60. Medical Cannabis Collective Gardens. All medical cannabis collective gardens shall meet the following development standards:

a. The definitions set forth in RCW 69.51A.010 and Section 17.08.020 shall apply.

- b. Location.
 - i. No more than one collective garden shall be located on a single parcel.
 - ii. Shall be located fully within a permanent structure designed to comply with the city building code and constructed under a building permit from the city regardless of the size or configuration of the structure.
 - iii. Shall not be located in a mobile structure.
 - iv. No collective garden shall be located within one thousand feet of the following. The measurement shall be taken in a straight line from property boundary to property boundary.
 - (A) Another existing collective garden; or
 - (B) Public park; or
 - (C) Community center; or
 - (D) Elementary, middle, junior or senior high school (public and private); or
 - (E) Day care center; or
 - (F) Youth oriented facility; or
 - (G) Single-family, multifamily or PCB(S) zoning district.
- c. No production, processing or delivery of cannabis may be visible to the public nor may it be visible through windows.
- d. A collective garden must meet all requirements under RCW 69.51A.085, including but not limited to limitations on number of members, number of plants, amount of usable cannabis on site, maintenance of each member's valid documentation of qualifying patient status.
- e. All fertilizers, chemicals, gases and hazardous materials shall be handled in compliance with all applicable local, state and federal regulations. No fertilizers, chemicals, gases or hazardous materials shall be allowed to enter either a sanitary sewer or stormwater sewer system nor be released into the atmosphere outside of the structure where the garden is located.
- f. No odors shall be allowed to migrate beyond the interior portion of the structure where the garden is located.
- g. A medical cannabis collective garden safety license pursuant to Chapter 5.70 MMC shall be obtained prior to the start of operations of the collective garden.
- h. Collective gardens shall be operated in compliance with public safety and development laws that similar activities are required to comply with, including but not limited to:
 - i. City of Mukilteo health and safety regulations as set forth in Title 8; and
 - ii. City of Mukilteo public peace, morals and welfare regulations as set forth in Title 9; and
 - iii. City of Mukilteo public services regulations as set forth in Title 13; and
 - iv. City of Mukilteo buildings and construction regulations as set forth in Title 15; and
 - v. City of Mukilteo zoning regulations as set forth in Titles 17 and 17B; and
 - vi. Alderwood water and wastewater district requirements; and
 - vii. Snohomish County public utility district No. 1 requirements; and
 - viii. State of Washington Chapter 70.160 RCW, smoking in public places regulations; and
 - ix. Americans with Disabilities Act requirements.

Section 8. MMC 17.16.040B - Amended.

Section 17.16.040B, MMC – Reference Notes for Permitted Use Matrix is hereby amended to add a new reference note to read as follows:

66. Marijuana retail, processing and production facilities. All state-licensed marijuana facilities shall meet the following development standards:
- a. All facilities must be state-licensed and comply with all of the standards for state-licensed marijuana facilities.
 - b. No marijuana facility shall be allowed as a home occupation.
 - c. The definitions set forth in RCW 69.50.101-.102, WAC 314-55-010 and MMC 17.08.020 shall control. In the event of conflict, the provisions of MMC 17.08.020 shall prevail.
 - d. Location.
 - i. No more than one facility shall be located on a single parcel.
 - ii. Marijuana retail and processing facilities shall be located fully within a permanent structure designed to comply with the city building code and constructed under a building/tenant improvement permit from the city regardless of the size or configuration of the structure.
 - iii. Marijuana production facilities shall be located:
 - (A) Fully within a permanent structure designed to comply with the city building code and constructed under a building/tenant improvement permit from the city regardless of the size or configuration of the structure; or
 - (B) In non-rigid greenhouses, other structures, or an expanse of open or clear ground fully enclosed by a physical barrier enclosed by a sight obscuring wall or fence eight (8) feet high.
 - iv. Marijuana facilities shall not be located in a mobile structure.
 - v. No state-licensed marijuana facility shall be located within 1,000 feet of the perimeter of the parcel on which any of the entities listed below are located. The distance shall be measured in the manner set forth in WAC 314-55-050(10).
 - (A) Elementary or secondary school (public or private);
 - (B) Playground;
 - (C) Recreation center or facility;
 - (D) Child care center;
 - (E) Public park;
 - (F) Public transit center;
 - (G) Library;
 - (H) Any game arcade which allows admission to persons under 21 years of age.
 - vi. No state-licensed marijuana retail facility shall be located within 1,000 feet of the perimeter of a parcel on which a state-licensed marijuana production or processing facility or medical cannabis collective garden is located nor shall a state-licensed marijuana production or processing facility be located within 1,000 feet of the perimeter of a parcel on which a state-licensed marijuana retail facility or medical cannabis collective garden is located. The distance shall be measured in the manner set forth in WAC 314-55-050(10).

- e. No production, processing or delivery of marijuana may be visible to the public nor may it be visible through windows.
- f. All fertilizers, chemicals, gases and hazardous materials shall be handled in compliance with all applicable local, state and federal regulations. No fertilizers, chemicals, gases or hazardous materials shall be allowed to enter neither a sanitary sewer or stormwater sewer system nor be released into the atmosphere outside of the structure where the facility is located.
- g. No odors shall be allowed to migrate beyond the interior portion of the structure where a marijuana facility is located.
- h. A City of Mukilteo business license pursuant to Chapter 5.04 MMC and a state license pursuant to Chapter 314-55 WAC shall be obtained prior to the start of operations of the facility.
- i. All facilities shall comply with Chapter 19.27 RCW, State Building Code Act and Chapter 15, Mukilteo Municipal Code, Buildings and Construction. Appropriate permits shall be obtained for all changes of use, tenant improvements, mechanical system improvements, electrical upgrades and similar work.

Section 9. Findings, Conclusions, and Analysis. In support of the amendments approved in this ordinance, the Mukilteo City Council adopts the Findings of Fact & Conclusions attached hereto as Exhibit "B" and incorporated herein by reference and the analysis contained in the Staff Report on the amendments.

Section 10. Severability. If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

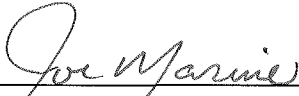
Section 11. Authority to make necessary corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 12. Conflict. In the event that there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 13. Effective Date. The ordinance shall take effect and be in full force five (5) days after publication of the attached Summary which is hereby approved.

PASSED by the City Council and APPROVED by the Mayor this 21st day of October, 2013.

CITY OF MUKILTEO



Mayor Joe Marine

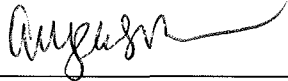
ATTEST/AUTHENTICATED:



Christina J. Boughman, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney



Angela S. Belbeck

FILED WITH THE CITY CLERK: **10-21-13**
PASSED BY THE CITY COUNCIL: **10-21-13**
PUBLISHED: **10-25-13**
EFFECTIVE DATE: **10-30-13**
ORDINANCE NO: **1342**

SUMMARY OF ORDINANCE 1342

of the City of Mukilteo, Washington

On October 21, 2013, the City Council of the City of Mukilteo, Washington, approved Ordinance No. 1342, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO LAND USE, ZONING AND LICENSING; ALLOWING STATE-LICENSED MARIJUANA PRODUCTION AND PROCESSING FACILITIES IN THE LIGHT INDUSTRIAL (LI) ZONE AND STATE-LICENSED RETAIL FACILITIES IN THE COMMUNITY BUSINESS SOUTH (CB[S]) ZONE; AMENDING CHAPTER 5.04 MMC – BUSINESS LICENSES; REPEALING CHAPTER 5.70 MMC – MEDICAL CANNABIS COLLECTIVE GARDENS SAFETY LICENSE; AMENDING SECTION 17.08.020 MMC – DEFINITIONS; AMENDING SECTIONS 17.16.040A AND 17.16.040B MMC – PERMITTED, CONDITIONAL, TEMPORARY AND INTERIM USES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their meeting of October 21, 2013.

CITY CLERK, CHRISTINA J. BOUGHMAN

Exhibit A

USE	RESIDENTIAL										COMMERCIAL						INDUSTRIAL					PUBLIC	
	RD12.5	RD12.5(S)	RD9.6	RD9.6(S)	RD8.4	RD7.5	RD7.2	WFB	MRD	MR	CB(S)	PCB(S)	DB	CB	PCB	WMU ¹	BP	IP	PI	LI	HI	PSP ²	OS ⁴⁰
Commercial Uses ⁴⁴																							
Marijuana retail facility ⁶⁶											P												
Industrial Use ⁴⁴																							
Marijuana processing facility ⁶⁶																					P		
Marijuana production facility ⁶⁶																					P		
Other																							
Medical cannabis collective gardens ⁶⁰																					P		

Exhibit B

Mukilteo City Council Findings of Fact & Conclusions

Based on the review of the draft Marijuana Facilities Code Amendment Ordinance, the Mukilteo City Council makes the following Findings of Fact:

1. The City's Comprehensive Plan sets the policies for development in the City. The following policies direct staff to prepare ordinances to regulate development so it will be consistent with the Comprehensive Plan:
 - LU1: Develop as a community which provides housing, job opportunities, and shopping places which are compatible with and complementary to the residential character of the neighborhoods and the quality of life of the City.
 - LU9: Property rights of landowners shall be respected by protecting these rights from arbitrary and discriminatory actions by the City.
 - LU31: Provide compatible transitions between areas of different land use intensity and to soften new development.
2. Pursuant to RCW 36.70A.106(1) on Aug. 8, 2013 a notice of intent to adopt development regulation amendments was sent to the Washington State Department of Commerce.
3. Pursuant to chapters 17.13 and 17.72 of the Mukilteo Municipal Code (MMC), on August 15, 2013, a copy of the draft ordinance was circulated for review in accordance with the City's normal review and permitting procedures.
4. Pursuant to the State Environmental Policy Act, the City of Mukilteo was designated as the lead agency for review of the proposed amendment. A Determination of Non-Significance was issued under WAC 197-11-600(4)(a) on August 15, 2013. The appeal period ended August 29, 2013. No appeals were submitted so the determination stands.
5. Initiative 502 was approved by Washington state voters in 2012 legalizing, taxing and regulating the use, possession, production, processing and distribution of recreational marijuana in the state. The initiative requires all licensed marijuana facilities to be separated by at least 1,000 feet from specified facilities used by children such as schools, playgrounds, recreation centers, child care centers, public parks, libraries and game arcades where admission is not restricted to those 21 years of age or older. The initiative also prohibits licensed marijuana producers and processors from having a direct or indirect financial interest in a licensed marijuana retailer.
6. The Washington State Liquor Control Board has been tasked with developing a regulatory and enforcement system to implement Initiative 502 including establishing a licensing system for recreational marijuana facilities.
7. On Aug. 29, 2013 the U.S. Department of Justice distributed a memo to U.S. Attorneys providing guidance that would allow states to implement their recreational marijuana ballot measures provided a strong and effective regulatory and enforcement system is enacted to protect public safety, public health and other law enforcement interests.
8. Because state licensed marijuana facilities are a new type of land use, the potential negative impacts their operations may generate are not fully understood. However, given that Initiative

502 included a 1,000-foot separation from child-oriented facilities, there already was a presumption children would be negatively impacted by the operations of marijuana facilities if they were allowed to near those facilities.

9. The proposed rules for marijuana facilities would limit to one (1) the number of retail marijuana licenses that could be issued to locations within City of Mukilteo boundaries but do not impose a limit on the number of production and processing licenses that could be issued within Mukilteo.
10. The Permitted Use Matrix in MMC 16.16.040A includes a land use line for “Medical cannabis collective gardens” but does not include land use lines for marijuana retail, processing or production facilities.
11. The CB(S) and LI zoning districts are essentially the only zoning districts in the city that are not adjacent to zoning districts that allow residential uses. The CB(S) and LI zoning districts are adjacent to each other primarily along rear property lines.
12. City staff conducted a Geographic Information Systems (GIS) analysis on the impact the 1,000-foot separation requirement would have on the number of parcels eligible to have a state-licensed recreational marijuana facility given the existing schools, playgrounds, recreation centers, child care centers, public parks, public transit centers, libraries and game arcades located in or near the City of Mukilteo. A number of parcels in the CB(S) and LI zoning districts would be eligible to have a recreational marijuana facility.
13. The Mukilteo City Council and City of Mukilteo Planning Commission held a worksession on April 8, 2013 to discuss the issues related to recreational marijuana facilities and provided direction to city staff on drafting an ordinance that would regulate those facilities through the city’s zoning authority.
14. On September 19, 2013 the Planning Commission held a public hearing, which was noticed pursuant to the requirements of chapters 17.13 and 17.72 MMC, to consider the draft Marijuana Facilities Code Amendment Ordinance and voted to recommend City Council approval of the ordinance.
15. On October 21, 2013 the Mukilteo City Council held a public hearing, which was noticed pursuant to the requirements of chapters 17.13 and 17.72 MMC, to consider the draft Marijuana Facilities Code Amendment Ordinance.

Based on the foregoing Findings of Fact, the Mukilteo City Council hereby makes the following Conclusions:

1. The draft ordinance as presented is consistent with the goals and policies of the City’s Comprehensive Plan and protects the public health, safety and welfare.
2. Allowing retail marijuana facilities only in the CB(S) zone and production and processing marijuana facilities only in the LI zone will minimize their potential negative impacts on residential areas and children living there, yet provide enough parcels eligible to have a state-licensed marijuana facility.
3. An undue concentration of marijuana facilities in Mukilteo could negatively impact residents’ quality of life and the financial health of the city. Imposing a separation requirement between marijuana retail and production/processing facilities and limiting no more than one such facility on a single parcel will reduce the potential for an undue concentration of marijuana facilities in the city.

4. After taking public comment, considering the Planning Commission's recommendation and staff comments and analysis at the October 21, 2013 public hearing, the Mukilteo City Council approved the Marijuana Facilities Code Amendment Ordinance.