

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
December 10, 2013**

ROLL CALL: Present: Keith Fakkema, Sandi Peterson, Greg Wasinger, Kristi Jensen and Ana Schlecht
Absent: Bruce Freeman and David Fikse
Staff Present: Development Services Director, Steve Powers; Senior Planner, Cac Kamak

Chairman Fakkema called the meeting to order at 7:32 p.m.

PUBLIC COMMENT:

None present for comment.

MINUTES: MS. PETERSON MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE NOVEMBER 26, 2013 MINUTES AS PRESENTED.

MARIJUANA RELATED USES – CODE AMENDMENT PROJECT – Public Hearing

Mr. Powers displayed a Power Point presentation (Attachment 1) and provided the Planning Commission an updated version of the draft code (Attachment 2). Mr. Powers reviewed the progress to date and reported that the draft code was revised to add definitions from the Washington Administrative Code (WAC) and some definitions were revised to match the WAC definitions. Staff also revised how the distances from marijuana facilities are measured per the Liquor Control Board and some of the language was clarified. Mr. Powers also reviewed the community involvement methods, the schedule and stated that the goal is to complete this project before March 3, 2014 if possible. Mr. Powers asked the Commission to open the public hearing, accept public testimony, provide feedback and continue the public hearing to January 28, 2014.

Mr. Fakkema opened the public hearing. No one was present for comment.

ACTION: MS. SCHLECHT MOVED, MS. JENSEN SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING ON THE MARIJUANA RELATED USES CODE TO THE JANUARY 28, 2014 MEETING. MOTION CARRIED.

Planning Commissioners had the following questions/comments:

- Page 81, item f, needs clarification as to the kind of odor are we referring to. Staff will look to the WAC for guidance and if guidance can't be found there staff will draw some language from the Oak Harbor Municipal Code that talks about noxious/nuisance odors.
- Page 5 of the draft code item number 14, are we eliminating all the examples of moving them to another area of the code? Mr. Powers indicated that sentence is verbatim from state law except for the examples. Staff feels it is best to stick with what the state definition is and not to limit ourselves to examples.
- Does the Washington state superintendent of public instruction recognize private schools? Mr. Powers said the law doesn't address the distinction between public and private schools. Staff will verify whether or not private schools are also recognized by the state superintendent of public instruction.

2014 COMPREHENSIVE PLAN AMENDMENTS – Public Meeting

Mr. Kamak reported that there were no applications for land use changes this year. The 2014 docket includes Capital Improvement Plan updates, continued work on the 2016 Comprehensive Plan updates, 1000 SE City Beach Street zoning change and the scenic view study. The docket will be advertised in January and the Planning Commission will be asked to forward a recommendation the City Council at the January 28th meeting.

ADJOURN: 7:56 p.m.

Minutes submitted by: Katherine Gifford

Marijuana Related Uses - Code Amendment Project

Planning Commission
December 10, 2013

Purpose



- Present revised draft ordinance
- Open public hearing
 - Accept testimony
- Continue hearing

Background



- October PC meeting
 - Info on medical and recreational marijuana laws presented
 - Moratoria ordinances
 - Preliminary map with 1,000 foot buffers from sensitive land uses
- November PC meeting
 - Revised map
 - Zoning code review
 - Initial draft

Revised Draft



- Definitions revised to match WAC
 - Example – child care center
- Added definitions from WAC
 - Example – elementary school
- Revised how distances measured per LCB
- Clarified language in places

Additional Items 
<ul style="list-style-type: none">• No changes to map• Principal, accessory and conditional uses provided to PC for C-4, PIP and I zoning districts

Schedule 
<ul style="list-style-type: none">• 12/10/13 <u>Planning Commission</u> – PC continues the public hearing• 1/22/14 <u>City Council</u> – Brief CC on PC work• 1/28/14 <u>Planning Commission</u> – Closes public hearing and makes recommendation to CC• 2/4/14 <u>City Council</u> – CC considers draft ordinance• 2/18/14 <u>City Council</u> – CC considers draft ordinance (if necessary)

Community Involvement 
<ul style="list-style-type: none">• Planning Commission meetings and hearings• City Council hearings• Provide written comments on SEPA checklist/decision• Provide written comments to staff• Call or talk to staff• Contact us!<ul style="list-style-type: none">– (360) 279-4511– spowers@oakharbor.org• Meeting notices<ul style="list-style-type: none">– http://www.oakharbor.org

Recommended Action 
<ul style="list-style-type: none">• Open public hearing• Accept testimony• Provide feedback to staff• Continue public hearing to January 28, 2014<ul style="list-style-type: none">– <i>Suggested motion: I move the Planning Commission continue the public hearing on the marijuana related uses code to the January 28, 2014 meeting.</i>

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF OAK HARBOR

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

WHEREAS, under I-502, the Washington State Liquor Control Board (LCB) was tasked with the responsibility to adopt the rules governing the licensing and operations of marijuana producers, processors, and retailers, and the rules went 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 from sensitive uses required by I-502 and included in the adopted licensing rules are principally about protecting children, which the City Council and the citizens of Oak Harbor 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;

WHEREAS, the Oak Harbor City Council finds that establishment of marijuana related uses without appropriate regulations could lead to negative secondary impacts to the community, including but not necessarily limited to:

1. Conversion of residential uses into cannabis cultivation and processing facilities removing valuable housing stock from the community.
2. Degraded neighborhood aesthetics due to shuttered-up homes, offensive odors, increased nighttime traffic, and parking.
3. Environmental damages from chemicals being discharged into surrounding and off-site soils, and into storm and sanitary sewer systems.
4. Risk of fire hazard due to overloaded service connections used to operate grow lights and fans.
5. Illegal structural modifications.
6. Criminal issues such as burglary, theft and property damage.

WHEREAS, an undue concentration of licensed marijuana facilities in the City of Oak Harbor could be detrimental to the quality of life of Oak Harbor residents and the economic well-being of the city; and

WHEREAS, in order to address secondary impacts of such businesses, the Oak Harbor 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 Oak Harbor 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 eCity of Oak Harbor procedures and regulations; and

WHEREAS, a Determination of Non Significance was issued on _____

WHEREAS, the City of Oak Harbor Planning Commission held a public hearing on November 26, 2013, ~~and~~ December 10, 2013 and January 28, 2014 to consider this ordinance and forwarded a recommendation to the City Council; and

WHEREAS, the City of Oak City Council held a public hearing on _____, 2014 to consider this ordinance; and

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

NOW, THEREFORE, the City Council of the City of Oak Harbor do ordain as follows:

Section One. There is hereby added a new Chapter 19.22 to the Oak Harbor Municipal Code which shall have the following title and sections:

**Chapter 19.22
MARIJUANA RELATED USES**

Sections:

19.22.010 Purpose and Intent

19.22.020 Definitions

19.22.030 Locations Allowed

19.22.040 Development Standards

19.22.050 Non-conforming Use

Section Two.

There is hereby added new Section 19.22.010 entitled “Purpose and Intent” to the Oak Harbor Municipal Code to read as follows:

The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Oak Harbor is an authorization to circumvent federal law or provide permission to any person or entity to violate federal law. Only state-licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the City of Oak Harbor and then only pursuant to a license issued by the State of Washington and only when in full compliance with the local regulations contained in herein. ~~The purposes of these provisions regulations are~~ is solely intended to acknowledge the enactment by Washington voters of Initiative 502 and state licensing procedure and to permit, ~~to,~~

but only to the extent required by state law, marijuana producers, marijuana processors, and marijuana retailers to operate in designated zones of the City. These provisions are intended to mitigate potential secondary impacts of marijuana related uses on nearby properties and the community and to promote the public health, safety and welfare through the application of appropriate locational criteria, zoning and development standards.

Section Three.

There is hereby added new Section 19.22.020 entitled “Definitions” to the Oak Harbor Municipal Code to read as follows:

- (1) “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.~~
- ~~(2) “Elementary school” means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.~~
- ~~(23) “Game arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.~~
- ~~(34) “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.~~
- (45) “Marijuana” or ~~“Cannabis”~~ “marihuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seeds of the plant which is incapable of germination.
- ~~(56) “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 OHMC 19.08 -Definitions and as authorized under OHMC 19.34.~~
- ~~(67) “Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.~~

- (78) “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 OHMC 19.08 – Definitions and as authorized under OHMC 19.34.
- (89) “Marijuana processor” means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products at wholesale to marijuana retailers.
- (910) “Marijuana producer” means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
- (4011) “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 OHMC 19.08 - Definitions and as authorized under OHMC 19.34.
- (4112) “Marijuana retailer” means a person licensed by the state liquor control board to sell usable marijuana and marijuana-infused products in a retail outlet.
- (4213) “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 OHMC 19.08 – Definitions and as authorized under OHMC 19.34.
- (4314) “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.
- (15) “Public park” means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.
- (16) “Public transit center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

- (~~14~~17) “Recreation center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by 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 John Vanderzicht Memorial Pool and Oak Harbor Boys & Girls Club.~~
- (~~15~~18) “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of usable marijuana and marijuana-infused products.
- (19) “Secondary school” means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.
- (~~16~~20) “Useable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

Section Four.

There is hereby added new Section 19.22.030 entitled “Locations Allowed” to the Oak Harbor Municipal Code to read as follows:

- (1) State licensed marijuana producers and marijuana processors may locate in the city pursuant to the following restrictions:
- (a) Marijuana producers and marijuana processors must comply with all requirements of state law and the Washington State Liquor Control Board’s regulations.
 - (b) Marijuana producers and marijuana processors may locate only in the Planned Industrial Park or Industrial district(s).
 - (c) Marijuana producers and marijuana processors shall not locate on a site or in a building in which non-conforming production or processing uses have been established in any zone other than the Planned Industrial Park or Industrial district(s).
 - (d) Marijuana producers and marijuana processors shall not operate as an accessory to a primary use or as a home occupation.
 - (e) Marijuana producers and marijuana processors shall not locate within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade where admission to which is not restricted to persons aged twenty-one years or older. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed above.
- (2) State licensed marijuana retailers may locate in the city pursuant to the following restrictions:

- (a) Marijuana retailers must comply with all requirements of state law and the Washington State Liquor control Board's regulations.
- (b) Marijuana retailers may locate only in the C-4 and Industrial district(s).
- (c) Marijuana retailers shall not locate in a building in which non-conforming retail uses have been established in any residential or office zone.
- (e) Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation.
- (f) Marijuana retailers shall not locate within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade where admission to which is not restricted to persons aged twenty-one years or older. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed above.

Section Five.

There is hereby added new Section 19.22.040 entitled "Development Standards" to the Oak Harbor Municipal Code to read as follows:

- (1) Marijuana retail, processing and production facilities. In addition to the standards of the underlying zoning district and all other applicable Municipal Code regulations, 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 OHMC Section 19.22.020 shall control. ~~In the event of conflict, the provisions of OHMC 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 and/or 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~~ Within a permanent, fully enclosed structure designed to comply with the city building code and constructed under a building and/or a 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 or vehicle.
 - (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 as the shortest straight line distance from property line of the proposed building/business location to

~~the property line of the entities listed below 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 as the shortest straight line distance from property line of the marijuana retail facility to the property line of the marijuana production or processing facility 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) Marijuana retail uses shall not include drive-throughs, exterior, or off-site sales.
 - (g) 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.
 - (h) No odors shall be allowed to migrate beyond the interior portion of the structure where a marijuana facility is located.
 - (i) A City of Oak Harbor business license pursuant to Chapter 5.03 OHMC and a state license pursuant to Chapter 314-55 WAC shall be obtained prior to the start of operations of the facility.
 - (j) All facilities shall comply with Chapter 19.27 RCW, State Building Code Act and Title 17 B Buildings. Appropriate permits shall be obtained for all changes of use, tenant improvements, mechanical system improvements, electrical upgrades and similar work.

Section Five.

There is hereby added new Section 19.22.040 entitled “Non-conforming Uses” to the Oak Harbor Municipal Code to read as follows:

- (1) No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer as those terms are defined in this ordinance, 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 Oak Harbor Municipal Code and that us shall not be entitled to claim legal non-conforming status.

Section Six. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Seven. Effective Date. This Ordinance shall be in full force and effect five days after publishing.

PASSED by the City Council this _____ day of _____ 2014.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

Valerie J. Loffler, City Clerk

Grant K. Weed, Interim City Attorney

Published: _____