

ORDINANCE NO. 1773

AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON, AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 19.22, MARIJUANA RELATED USES, TO INCORPORATE REGULATIONS FOR MEDICAL MARIJUANA PRODUCERS, PROCESSORS, RETAILERS, AND COOPERATIVES, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, the Oak Harbor City Council agreed that the establishment of marijuana related uses without appropriate regulations could lead to negative secondary impacts to the community; and,

WHEREAS, the Oak Harbor City Council adopted Ordinance No. 1685 in February 2014, amending Oak Harbor Municipal Code (OHMC) Title 19, Zoning, by adding Chapter 19.22, Marijuana Related Uses; and,

WHEREAS, the purpose and intent of OHMC Chapter 19.22 is to acknowledge I-502 and establish regulations and siting requirements for licensed recreational marijuana producers, processors, and retailers while maintaining the public health, safety, and welfare; and,

WHEREAS, legislation was introduced in the Washington State's 2014 Legislative session which would have merged the unregulated medical marijuana industry into the state-licensed recreational market; and,

WHEREAS, the Legislature failed to act on the bills, leaving the laws regarding medical marijuana regulations unchanged; and,

WHEREAS, in light of the potential for new legislation related to medical marijuana and in accordance with RCW 36.70A.390, Ordinance Nos. 1666, 1686, and 1692 adopted September, 2013; February, 2014; and September 2014, respectively, imposed a total of eighteen months of moratorium on the establishment of medical marijuana dispensaries and collective gardens because of the potential impact on the city's public health, safety, and welfare; and,

WHEREAS, the Washington State Legislature passed Second Substitute Senate Bill 5052 in April 2015, also known as the Cannabis Patient Protection Act (CPPA), which establishes guidance for a state regulatory framework for the medical marijuana industry paralleling the recreational framework; and,

WHEREAS, the CPPA creates a medical marijuana authorization database for qualifying patients; provides potential endorsement to a licensed recreational marijuana retailer to carry

products identified by the Washington Department of Health (DOH) as beneficial to medical marijuana patients; repeals the authorization for collective gardens, effective July 1, 2016; and, authorizes the establishment of four-member cooperatives also effective July 1, 2016; and,

WHEREAS, discussion at the June 23, 2015 City of Oak Harbor Planning Commission meeting involved concerns about preparing local medical marijuana regulations while the state may refine and clarify uncertain sections of the CPPA possibly requiring supplemental local code amendments; and,

WHEREAS, the Planning Commission also reasoned that additional time would be valuable to solicit public comment and perception to this issue as well as provide an opportunity to monitor other communities; and,

WHEREAS, the Planning Commission continued their discussion on July 28, 2015 of local medical marijuana regulations and unanimously recommended to the City Council approval of Ordinance 1740, extending the duration of the moratorium extended under Ordinance 1692 an additional twelve months to September 1, 2016 along with a revised work plan; and,

WHEREAS, the Oak Harbor City Council adopted Ordinance No. 1740 on September 1, 2015; and,

WHEREAS, on May 10, 2016 the Planning Commission was briefed on the implementation status of the CPPA including the prohibition on collective gardens; creation of cooperatives; identification of sensitive area buffers; authorization database; medical marijuana certification; and, specialty clinic recommendation; and,

WHEREAS, under the CPPA, the Liquor and Cannabis Board (LCB), increased the number of licensed marijuana retailers to ensure the needs of medical marijuana qualifying patients were met; and,

WHEREAS, the statewide license increase resulted in one additional license for a total of two retail licenses available within the City of Oak Harbor; and,

WHEREAS, both licenses have been issued for the City, and under the authority of the CPPA and DOH requirements, both license recipients have been successfully certified as medical marijuana retailers; and,

WHEREAS, as the statewide medical marijuana regulatory framework has been patterned after the recreational framework a similar strategy was engaged for the creation of regulations and siting requirements for medical marijuana retailers in the city; and,

WHEREAS, Chapter 19.22, Marijuana Related Uses, was used as a point of departure for the regulation of the medical marijuana industry in the city; and,

WHEREAS, under the CPPA, cooperatives may be established whereby qualifying patient members are allowed to produce and process medical marijuana for use only by the cooperative members; and,

WHEREAS, these cooperatives must be located in the domicile of one of the members; and,

WHEREAS, the Washington State Attorney General issued an advisory opinion in January 2014, that states municipalities can prohibit state-licensed marijuana businesses and registered cooperatives within a city’s boundaries or impose zoning and other land use regulations pertaining to such businesses and cooperatives; and,

WHEREAS, additional restrictions on cooperatives seem unnecessary and subjective and not centered on a sound rationale; and

WHEREAS, a State Environmental Policy Act (SEPA) Determination of Non-Significance was issued on June 10, 2016 in conformance with OHMC Chapter 20.04; and,

WHEREAS, procedural requirements have been met by providing a 60-day notice of intent to adopt development regulations with the Washington State Department of Commerce; and,

WHEREAS, the City of Oak Harbor Planning Commission held a public hearing on June 28, 2016 to consider this Ordinance and forwarded a recommendation of approval to the City Council; and,

WHEREAS, the City of Oak Harbor City Council held a public hearing on August 3, 2016 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;

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

Section One. OHMC Chapter 19.22, entitled “Marijuana Related Uses”, added by Ord. No. 1685, is hereby amended to read as follows:

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 Nonconforming uses.

19.22.010 Purpose and intent.

The production, processing and retailing of marijuana are and remain 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, and registered cooperatives 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 herein. These regulations are solely intended to acknowledge the enactment by Washington voters of Initiative 502 (recreational marijuana) and the State Legislature of Second Substitute Senate Bill 5052 (medical marijuana) and associated state licensing procedures and to permit, but only to the extent required by state law, marijuana producers, marijuana processors, ~~and~~ marijuana retailers, and registered marijuana cooperatives 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. (Ord. 1685 § 2, 2014).

19.22.020 Definitions.

(1) “Child care center” means an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours (Agency defined as in RCW 43.215.010).

(2) “Cooperative” means a group of no more than four registered, qualifying patients or designated providers where producing and processing of medical marijuana or marijuana-infused products are permitted. Cooperatives are only permitted within the domicile of one of the participants.

(3) “Domicile” means a person’s true, fixed, and permanent home and place of habitation for other than educational purposes. It is the place where he or she intends to remain, and to which he or she expects to return when he or she leaves without intending to establish a new domicile elsewhere (RCW 250-18-015(2)).

(24) “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.

(35) “Game arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under 21 years of age are not restricted.

(46) “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(57) “Marijuana” ~~or “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 therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which are incapable of germination.

(8) “Marijuana concentrates” means products consisting wholly or in part of the resin extracted from any part of the plant cannabis and having a THC concentration greater than sixty percent.

~~(69)~~ “Marijuana facility” means a state-licensed recreational or medical marijuana production, processing, or retail facility. Marijuana facilities shall not be a home occupation as defined in Chapter 19.08 OHMC, Definitions, and as authorized under Chapter 19.34 OHMC.

~~(710)~~ “Marijuana-infused products” means products that contain marijuana or marijuana extracts, ~~and~~ are intended for human use, and have a THC concentration greater than 0.3 percent and no greater than sixty percent. The term “marijuana-infused products” does not include usable marijuana or marijuana concentrates.

~~(811)~~ “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 Chapter 19.08 OHMC, Definitions, and as authorized under Chapter 19.34 OHMC.

~~(912)~~ “Marijuana processor” means a person licensed by the State Liquor ~~Control~~ and Cannabis Board to process marijuana into, marijuana concentrates, usable marijuana, and marijuana-infused products, package and label marijuana concentrates, usable marijuana and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, usable marijuana and marijuana-infused products at wholesale to marijuana retailers.

~~(1013)~~ “Marijuana producer” means a person licensed by the State Liquor ~~Control~~ and Cannabis Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

~~(1114)~~ “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 Chapter 19.08 OHMC, Definitions, and as authorized under Chapter 19.34 OHMC.

~~(1215)~~ “Marijuana retailer” means a person licensed by the State Liquor ~~Control~~ and Cannabis Board to sell marijuana concentrates, usable marijuana, and marijuana-infused products in a retail outlet.

~~(1316)~~ “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 21

years of age and older. A marijuana retail facility shall not be a home occupation as defined in Chapter 19.08 OHMC, Definitions, and as authorized under Chapter 19.34 OHMC.

~~(417)~~ “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.

~~(418)~~ “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.

~~(419)~~ “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.

~~(420)~~ “Recreation center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under 21 years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

~~(421)~~ “Retail outlet” means a location licensed by the State Liquor ~~Control~~ and Cannabis Board for the retail sale of marijuana concentrates, usable marijuana, and marijuana-infused products.

~~(422)~~ “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 12 and recognized by the Washington State Superintendent of Public Instruction.

~~(2023)~~ “Usable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products or marijuana concentrates. (Ord. 1685 § 3, 2014).

19.22.030 Locations allowed.

(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~~ and Cannabis 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 nonconforming 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 1,000 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 venue featuring primarily video games, simulators, and/or other amusement devices where persons under 21 years of age are not restricted. 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 ~~and Cannabis 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 nonconforming retail uses have been established in any residential or office zone.

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

(e) Marijuana retailers shall not locate within 1,000 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 venue featuring primarily video games, simulators, and/or other amusement devices where persons under 21 years of age are not restricted. 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. (Ord. 1685 § 4, 2014).

(3) State-registered marijuana cooperatives may locate in the city pursuant to the following restrictions:

(a) Marijuana cooperatives must comply with all requirements of state law and the Washington State Liquor and Cannabis Board's regulations.

(b) Marijuana cooperatives shall be located in the domicile of one of the qualifying participants.

(c) Marijuana cooperatives shall not locate within 1,000 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 venue featuring primarily video games, simulators, and/or other amusement devices where persons under 21 years of age are not restricted. 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.

(d) Marijuana cooperatives shall not locate within one mile of a marijuana retailer. 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 above.

19.22.040 Development standards.

(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 through 69.50.102, WAC 314-55-010 and OHMC 19.22.020 shall control.

(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) 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 nonrigid 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 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:

(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 venue featuring primarily video games, simulators, and/or other amusement devices where persons under 21 years of age are not restricted.

(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 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.

(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 either a sanitary sewer or a storm water sewer system nor be released into the atmosphere outside of the structure where the facility is located.

(h) No odors resulting from the use of those substances noted in subsection (1)(g) of this section or from the activities conducted within the structure 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 OHMC Title 17, Buildings. Appropriate permits shall be obtained for all changes of use, tenant improvements, mechanical system improvements, electrical upgrades and similar work. (Ord. 1685 § 5, 2014).

(2) Marijuana Cooperatives. In addition to the standards of the underlying zoning district and all other applicable municipal code regulations, all state-registered marijuana cooperatives shall meet the following development standards:

(a) Only one cooperative may be located per property tax parcel.

(b) A copy of each qualifying participant's recognition card must be kept at the location at all times.

(c) No cooperative shall be allowed as a home occupation and qualifying participants may not sell, donate, or otherwise provide marijuana, marijuana concentrates, usable marijuana, or marijuana-infused products to a person who is not participating in the cooperative.

(d) Production, processing or storage of plants in a cooperative may not occur if any portion of such activity can be readily seen by normal unaided vision or readily smelled from a public place or the private property of another housing unit.

(e) Cooperatives are not permitted within an accessory use when the accessory use is detached from the domicile.

19.22.050 Nonconforming uses.

No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer, as those terms are defined in this chapter, that was engaged in that activity prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the Oak Harbor Municipal Code and that use shall not be entitled to claim legal nonconforming status. (Ord. 1685 § 5, 2014).

Section Two. 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 Three. Effective Date. This Ordinance shall be in full force and effect five (5) days after publishing.

PASSED by the City Council this _____ day of _____, 2016.

CITY OF OAK HARBOR

ROBERT SEVERNS, MAYOR

Attest:

Approved as to form:

By _____
Anna Thompson, City Clerk

By _____
Nikki Esparza, City Attorney

Date of Publication: _____

Effective Date: _____