

First Reading: 4/5/16

Second Reading: 12/6/16

CORRECTED COPY

ORDINANCE NO. 956

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, CREATING A NEW SECTION 5.12.050 "MARIJUANA BUSINESSES"; AMENDING SECTION 20.33.030 "CONDITIONAL USES" IN C-1 COMMERCIAL FOR RETAIL MARIJUANA; AND AMENDING SECTION 20.36.030 "CONDITIONAL USES" IN IL-INDUSTRIAL, LIGHT DISTRICT FOR MANUFACTURING AND PRODUCTION OF MARIJUANA; AND CREATING A NEW SECTION 20.60.290 "MARIJUANA CONTROL REGULATIONS"

WHEREAS, the Washington Voters approved Initiative 502 (I-502) in 2012, which "authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older"; and

WHEREAS, I-502 allows the Washington State Liquor and Cannabis Board to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (I-502, Sec 4(1)); and

WHEREAS, I-502 allows the Washington State Liquor and Cannabis Board to license marijuana processors to "process, package and label useable marijuana and marijuana infused products for sale at wholesale to marijuana retailers" (I-502, Sec 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor and Cannabis Board to license marijuana retailers to "sell useable marijuana and marijuana-infused products in retail outlets" (I-502, Sec 4(3)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor and Cannabis Board's issuance of such licenses for any premises that are 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, admission to which is not restricted to persons aged twenty-one years or older (I-502, Sec. 8); and

WHEREAS, on July 3, 2013 the Washington State Liquor and Cannabis Board filed final proposed rules (Chapter 314-55 Washington Administrative Code) with the Code Reviser (CR 102) for applying for, obtaining, and maintaining licenses for the production, processing, and retailing of marijuana; and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, RCW 69.51A.140 authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana or marijuana products within their jurisdiction; and

WHEREAS, on January 28, 2015, the Planning Commission conducted a public meeting to discuss the proposed amendments; and

WHEREAS, on February 25, 2015, after publication of legal notice in a newspaper of general circulation and posting the required notices, the Planning Commission conducted a public hearing on the proposed code amendment; and

WHEREAS, on March 25, 2015, after publication of legal notice in a newspaper of general circulation and posting the required notices, the Planning Commission conducted an additional public hearing on the proposed code amendment; and

WHEREAS, on that same evening and after deliberating and considering the recommendations of staff and carefully reviewing all information in the public record, the Planning Commission voted to recommend approval of the proposed code amendment; and

WHEREAS, in accordance with the provisions and procedures of the Benton City Municipal Code, the City Council has received the recommendation of the Benton City Planning Commission, who has scheduled and held a hearing on such recommendation, and having received all evidence and testimony therein, adopts the following findings; and

WHEREAS, based upon the experiences both within the State of Washington and elsewhere that a concentration of such uses may have a deleterious impact upon the quality of life and the surrounding areas, and to insure their compatibility with other uses within the surrounding areas, that minimum distances be imposed to separate marijuana businesses from each other and such other uses as neighborhoods, daycare centers, religious facilities, public parks, schools, and other uses identified in WAC 314-55-050; and

WHEREAS, the City Council finds and determines that such enactment is in the best interests of residents of the City of Benton City and will promote the general health, safety and welfare. NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, ordain as follows:

Section 1. That a new Section 5.12.050 entitled "Marijuana Businesses" of the Benton City Municipal Code shall be and hereby is created and shall read as follows:

5.12.050 Marijuana Businesses. Marijuana businesses shall include marijuana retailers, marijuana producers, and marijuana processors as defined by RCW 69.50.101, and dispensaries, collective gardens, cooperatives, or other enterprises which produce, process, or sell marijuana or marijuana-infused products. Marijuana businesses must have a state license pursuant to either Chapter 69.50 RCW or Chapter 69.51A RCW, as well as a conditional use permit before being issued a business license to operate a marijuana business in the City of Benton City. Any marijuana business that does not have a state license or conditional use permit is prohibited and designated as a nuisance subject to abatement.

Section 2. That Section 20.33.030 entitled "Conditional Uses" within the C-1 Commercial of the Benton City Municipal Code shall be and hereby is amended and shall read as follows:

20.33.030 Conditional Uses. The following uses are permitted subject to approval of a conditional use permit.

- A. Automobile service stations, drive-in eating and drinking establishments, and similar auto-oriented uses.
- B. Adult Entertainment Uses subject to compliance with the provisions and standards set forth in Section 20.60.260 of this Code.
- C. Congregate care center, residential care facilities and senior center.
- D. Any similar or compatible use not specifically permitted in this district.
- E. Mini storage and storage facilities.
- F. Outdoor theaters.
- G. Wireless communication facilities.
- H. Marijuana retailer or marijuana retailer with medical marijuana endorsement subject to compliance with the provisions and standards set forth in Section 20.60.290 of this Code. (Ord. 765, September 2003; Ord. 716, October 2000.)

Section 3. That Section 20.36.030 entitled "Conditional Uses" within the IL-Industrial Light District of the Benton City Municipal Code shall be and hereby is amended and shall read as follows:

20.36.030 **Conditional Uses.** The following uses are permitted subject to approval of a conditional use permit:

- A. Grain storage facility.
- B. Port facility.
- C. Petroleum products storage or distribution facility.
- D. Heliport.
- E. Milling, hot-mix asphalt plants and concrete mixing plants.
- F. Mining or extraction of rock, stone, gravel, sand, earth and other minerals.
- G. Any similar and compatible use not specifically permitted in this district.
- H. Marijuana businesses including production or processing subject to the compliance with the provisions and standards set forth in Section 20.60.290 of this Code. (Ord. 861, September 2009; Ord. 765, September 2003.)

Section 4. That a new Section 20.60.290 entitled "Marijuana Control Regulations" of the Benton City Municipal Code shall be and hereby is created and shall read as follows:

20.60.290 **Marijuana Control Regulations.**

- A. Authority. The provisions of Section 20.60.290 are implemented pursuant to Initiative-502 under the authority of RCW 69.51A.140.
- B. Purpose. The purpose of this section is to further clarify the provisions of Initiative-502 and RCW 69.51A.140 as it pertains to the use of land within the City, and to establish where marijuana businesses may locate in the City, and to describe the restrictions upon such uses.
- C. Definitions. The definitions in this section apply throughout this Chapter, and the City also adopts the definitions in WAC 314-55-010 and RCW 69.50.101.
 - 1. "Child Care Center" means an entity that regularly provides child day care 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.

2. "Church" means a building that provides a place for public worship of God, or provides a place for a religious service.
3. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.
4. "Elementary School" means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.
5. "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.
6. "Indoors" means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" by 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
7. "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.
8. "Marijuana" 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. For the purposes of this Ordinance, "cannabis" or "marijuana" 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 seed of the plant which is incapable of germination.
9. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

10. "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.
11. "Process" means to handle or process cannabis in preparation for medical or recreational use.
12. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.
13. "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 or plazas.
14. "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.
15. "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.
16. "Retail, Marijuana" means the activity of selling usable marijuana and marijuana-infused products in a retail outlet.
17. "Retail outlet" means a location licensed by the Washington State Liquor and Cannabis Board for the retail sale of useable marijuana and marijuana-infused products.
18. "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.

19. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term "usable cannabis or usable marijuana" does not include marijuana-infused products or cannabis products.

D. Marijuana Production.

1. The cultivation of marijuana is considered to be production of a product for resale. Production of marijuana is limited to the IL-industrial, light zoning districts wherein manufacturing uses are permitted.
2. All marijuana production shall occur within indoor facilities. Outdoor production as may be permitted by the State is expressly prohibited by this section.

E. Marijuana Processing. The processing of marijuana is considered to be a manufacturing activity. Processing of marijuana and marijuana products is limited to the IL-industrial, light zoning districts wherein manufacturing and industrial processing uses are permitted. All marijuana processing shall occur within indoor facilities. Outdoor processing as may be permitted by the State is expressly prohibited by this Section

F. Retail Marijuana Sales. The sale of marijuana is a retail activity. Sale of marijuana is limited to the C-1 commercial zoning districts wherein retail uses are permitted.

G. Locational Criteria.

1. No marijuana businesses may be located within one thousand (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;
 - f. Public transit center;
 - g. Library; or

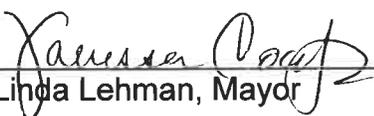
1. Nothing in this code section is intended to be, nor should be considered to be, an allowance for less restricted activity that is permitted by State law and the rules and regulations of the Washington State Liquor and Cannabis Board.
2. Nothing in this code section is intended to be, nor should be considered to be, a limitation on the City from protesting the granting of a permit(s) or the renewal of a permit(s).
3. No part of this Ordinance is intended to or shall be deemed to conflict with 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 Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein.

Section 5. Applicability. This Ordinance shall apply to future development and building permit applications upon the expiration of the moratorium on marijuana businesses presently in place.

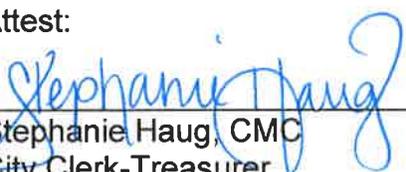
Section 6. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 7. This Ordinance shall be effective five (5) days after passage, approval and publication as required by law.

PASSED by the City Council of the City of Benton City, Washington, and approved as provided by law this 6 day of December, 2016.


Linda Lehman, Mayor

Attest:


Stephanie Haug, CMC
City Clerk-Treasurer

Approved as to Form:


Kerr Law Group
City Attorney