INTERIM ORDINANCE NO. 2020-05-03

An ordinance relating to land use and zoning regulations under Chapters 35.63 and 36.70A RCW for medical marijuana and marijuana related facilities in Clark County Code (Title 40).

WHEREAS, the voters of Washington approved Initiative Measure No. 692 (1-692) on November 3, 1998 (codified as Chapter 69.51A RCW) which allowed the use of cannabis(marijuana) for medical purposes and created an affirmative defense for qualifying patients with a terminal or debilitating illness to the charge of possession of cannabis; and

WHEREAS, regardless of state law, marijuana remains a federally controlled substance, and its possession, distribution and use is illegal under the Controlled Substances Act, 21 U. S.C§812(c); and

WHEREAS, the Growth Management Act, Chapter 36.70A RCW, requires Clark County to regulate land use and development within the County's jurisdiction; and

WHEREAS, the 2011 Washington Legislature passed ESSB 5073, amending 1-692, which in part, allows the establishment of collective gardens for the production, process, transport and delivery of medical marijuana; and

WHEREAS, the then Board of County Commissioners (Board) adopted a moratorium on the acceptance of any land use applications for medical marijuana collective gardens with Res. 2011-07-04, 2011-08-07, and 2012-07-01; and

WHEREAS, the Board adopted Ord. 2013-07-08 that established zoning for medical marijuana collective gardens and also established a ban on such facilities until such time that marijuana is no longer listed as a federally-controlled substance in accordance with 21 U.S. C. §812(c); and

WHEREAS, on November 6, 2012, the voters of Washington approved Initiative Measure No. 502 (I-502) (codified in Chapter 69.50 RCW), which legalized the production, processing, and retail sales of recreational marijuana, and provided a framework under which marijuana producers, processors, and retailers can become licensed by the Washington State Liquor Cannabis Board (LCB); and

WHEREAS, the LCB issued marijuana license applications for marijuana production, processing, and retail facilities; and

WHEREAS, the Clark County Council (Council) adopted a moratorium on the acceptance of any land use applications for I-502 facilities with Res. 2013-08-04, 2013-10-06, and 2014-02-17; and

WHEREAS, on January 16, 2014, the Washington Attorney General issued an opinion that I-502 does not preempt local governments from adopting moratoria or complete bans on the establishment or operation of recreational marijuana facilities that I-502 otherwise authorizes; and

WHEREAS, Council adopted Ord. 2014-05-07, which established zoning for I-502 facilities and also established a ban on such facilities until such time that marijuana is no longer listed as a federally-controlled substance in accordance with 21 U.S.C. §812(c); and

WHEREAS, the 2015 Washington Legislature enacted the Cannabis Patient Protection Act on April 24, 2015 (ESSB 5052), revising state law concerning medical and recreational marijuana in Chapters 69.50 and 69.51A RCW; and

WHEREAS, the LCB, through its rulemaking process to establish corresponding administrative procedures and standards, has increased the number of retail marijuana stores and established a new class of use, the marijuana cooperative; and

WHEREAS, Council, at its duly noticed public hearing on February 18, 2020, took public testimony and considered all comments presented to the Council, and the recommendations of the Planning Commission and staff regarding twelve biannual code changes;

WHEREAS, Council, at its duly noticed public meeting on March 10, 2020, adopted Ordinance 2020-03-01 pertaining to twelve biannual code changes; and

WHEREAS, Ordinance 2020-03-01 contained a scrivener's error making modifications to the version of CCC 40.260.115 adopted in Ordinance 2017-07-04 rather than the more recent Ordinance 2019-07-01; and

WHEREAS, Clark County initially adopted Interim Ordinance 2020-03-11 in a public meeting held March 18, 2020, and within 60 days, pursuant to RCW 35.63.200 and 36.70A.390, and the adopted Interim Ordinance will expire unless it is considered following a public hearing with public testimony, and findings supporting the ordinance are adopted; and

WHEREAS, the Council finds that Interim Ordinance 2020-03-11 should be extended for six (6) months.

WHEREAS, the Council finds that the inclusion of Substance Use Disorder (SUD) Treatment Facility location standards in CCC 40.260.115 has caused unanticipated impacts and significantly limited the number of potential marijuana facility locations.

WHEREAS, the Council finds that CCC 40.260.115 should be amended, on an interim basis, to remove SUD Treatment Facilities and Program from 40.260.115.

WHEREAS, the Council finds and concludes that this interim ordinance would further the public health, safety and welfare and is necessary for the immediate support of the County government and its existing public institutions; now therefore,

BE IT HEREBY ORDERED, RESOLVED, AND DECREED BY THE CLARK COUNTY COUNCIL, CLARK COUNTY, STATE OF WASHINGTON, AS FOLLOWS:

Section 1. Findings. RCW35.63.200 and RCW 36.70A.390 and Clark County Code 40.510.040.H, authorize adoption of interim zoning measures with certain limitations. In compliance with the requirements of these statutes, the Clark County Council adopts as findings the pronouncements contained in the above recital provisions.

Section 2. Amendatory. Sec. 2 of Ord. 2014-05-07 and codified as CCC 40.260.115, Sec. 10 of Ord. 2020-03-01, and most recently amended by Ord. 2020-03-11 are each hereby amended as follows:

~~40.260.115 Marijuana Facilities~~

~~A. Purpose.~~

~~The purpose of this section is to implement Chapter 69.50 RCW, the Washington Uniform Controlled Substances Act, and Chapter 314-55 WAC, which address the producing, processing, and retailing of marijuana. This section addresses the facilities for such uses by establishing criteria to adequately separate such facilities from schools, community centers, parks, licensed daycare facilities, and other such facilities, and to establish minimum performance standards to address public health and safety impacts from such facilities.~~

~~*(Amended: Ord. 2017-07-04)*~~

~~B. Applicability.~~

~~1. This section shall apply to all unincorporated areas of the county.~~

~~2. The location restrictions and special standards in this section apply to any facility that:~~

~~a. Is a producer of marijuana as defined in WAC 314-55-075;~~

~~b. Is a processor of marijuana as defined in WAC 314-55-077; or~~

~~c. Is a retailer of marijuana as defined in WAC 314-55-079.~~

~~3. This section does not pertain in any respect to medical marijuana collective gardens.~~

~~4. Recreational marijuana-related permits will not be approved until such time that marijuana is no longer listed as a federally controlled substance in accordance with 21 U.S.C 812(c).~~

~~*(Amended: Ord. 2017-07-04)*~~

~~C. Definitions. For purposes of this section, the following definitions shall apply:~~

~~Marijuana processor~~	~~"Marijuana processor" means a facility licensed by the Washington Liquor Control Board to transform marijuana into usable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products at wholesale to marijuana retailers. Processors are classified as follows: • Processor I: a facility limited to drying, curing, trimming, and packaging; and • Processor II: a facility that extracts concentrates, infuses products, or involves mechanical and/or chemical processing in addition to drying, curing, trimming, and packaging.~~
~~Marijuana producer~~	~~"Marijuana producer" means a facility licensed by the Washington Liquor Control Board for the growing and sale at wholesale of marijuana to marijuana processors and other marijuana producers.~~
~~Marijuana retailer~~	~~"Marijuana retailer" means a facility licensed by the Washington Liquor Control Board for the sale to consumers of usable marijuana and marijuana-infused products.~~

~~*(Amended: Ord. 2017-07-04)*~~

~~D. Location Standards.~~

~~1. Subject to Section 40.260.115(D)(1)(d), marijuana facilities as defined in Section 40.260.115(C) may be sited as follows:~~

~~a. Marijuana production facilities may be allowed on legal parcels of at least ten (10) acres in size zoned AG-20 and FR-40, and on legal conforming parcels zoned IL, IH, and IR.~~

~~b. Marijuana processing facilities may be allowed on legal parcels as follows:~~

~~(1) Processor I facilities, on legal conforming parcels zoned IL, IH, IR, and BP;~~

~~(2) Processor I facilities, on parcels of at least ten (10) acres in size zoned AG-20 and FR-40, but only as accessory to licensed production facilities; and~~

~~(3) Processor II facilities, on parcels zoned IH, IL, IR, and BP.~~

~~c. Marijuana retailing facilities may be allowed on legal conforming parcels zoned GC, CC, and CR-2.~~

~~d. No facilities are allowed within one thousand (1,000) feet of the perimeter of the grounds of the following entities. 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 below:~~

~~(1) Elementary or secondary school;~~

~~(2) Public playground;~~

~~(3) Recreation center or facility, including the Clark County Events Center;~~

~~(4) Child care center;~~

~~(5) Public park;~~

~~(6) Public transit center;~~

~~(7) Library;~~

~~(8) Any game arcade where admission is not restricted to persons aged twenty-one (21) or older; or~~

~~(9) Churches and religious facilities.~~

~~2. Where allowed, production and processing facilities may co-locate on the same parcel, if they otherwise meet the requirements of Chapter 314-55 WAC and this section.~~

~~*(Amended: Ord. 2016-06-12; Ord. 2017-07-04)*~~

~~E. Development Standards.~~

~~1. The requirements of Chapter 314-55 WAC are considered minimum standards for the purposes of this section.~~

~~2. Any facilities as described in Section 40.260.115(B)(2) shall be located entirely within an enclosed and secure structure with an engineered foundation, and shall be constructed in compliance with Titles 14 (Buildings and Structures), 15 (Fire Prevention), and 24 (Public Health).~~

~~3. There shall be no on-site display or sale of paraphernalia used for the consumption of cannabis.~~

~~4. Cannabis plants shall not be visible from the public right-of-way or any public place.~~

~~5. Signs.~~

~~a. In accordance with RCW 69.50.357(3) 69.50.369(2), licensed marijuana retailers shall not display any signage in a window, on a door, or on the outside of the premises of a retail outlet that is visible to the general public from a public right-of-way, other than a single sign no larger than twelve (12) square feet one thousand six hundred square inches identifying the retail outlet by the licensee's business or trade name.~~

~~b. No signs for production and processing facilities are allowed.~~

~~6. Hours of operation for retailing facilities shall be between 8:00 a.m. and 8:00 p.m.~~

~~7. Measures shall be implemented to prevent adverse health and safety effects to nearby residents from odors, noise, noxious gases, light, smoke and security.~~

~~a. Odors. Facilities shall not create odors or smoke that is objectionable to residents or employees of adjacent properties.~~

~~b. Lighting. All lights used for security shall be shielded or positioned to prevent glare impacts to nearby properties.~~

~~c. Noise. Maximum noise levels of WAC 173-60-040 shall not be exceeded.~~

~~d. Security. Security measures shall include, at a minimum, the requirements of WAC 314-55-083 and Title 14.~~

~~e. Waste Disposal. Waste materials generated from any facility must be disposed of in accordance with the plan filed as part of the license application.~~

****

40.260.115 Marijuana Facilities

A. Purpose.

The purpose of this section is to implement Chapter 69.50 RCW, the Washington Uniform Controlled Substances Act, and Chapter 314-55 WAC, which address the producing, processing, and retailing of marijuana. This section addresses the facilities for such uses by establishing criteria to adequately separate such facilities from schools, community centers, parks, licensed daycare facilities, and other such facilities, and to establish minimum performance standards to address public health and safety impacts from such facilities.

(Amended: Ord. 2017-07-04; Ord. 2019-07-01)

B. Applicability.

1. This section shall apply to all unincorporated areas of the county.

2. The location restrictions and special standards in this section apply to any facility that:

a. Is a producer of marijuana as defined in WAC 314-55-075;

b. Is a processor of marijuana as defined in WAC 314-55-077; or

c. Is a retailer of marijuana as defined in WAC 314-55-079.

3. This section does not pertain in any respect to medical marijuana cooperatives as defined in WAC 314-55-410.

(Amended: Ord. 2017-07-04; Ord. 2019-07-01)

C. Definitions. For purposes of this section, the following definitions shall apply:

Marijuana	"Marijuana" means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than three-tenths (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: (1) 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; or (2) Industrial hemp as defined in RCW 15.120.010. (Source: RCW 69.50.101(2)(x))
Marijuana processor	"Marijuana processor" means a facility licensed by the Washington State Liquor and Cannabis Board to transform marijuana into usable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products at wholesale to marijuana retailers. Processors are classified as follows: • Processor I: a facility limited to drying, curing, trimming, and packaging; and • Processor II: a facility that extracts concentrates, infuses products, or involves mechanical and/or chemical processing in addition to drying, curing, trimming, and packaging.
Marijuana producer	"Marijuana producer" means a facility licensed by the Washington State Liquor and Cannabis Board for the growing and sale at wholesale of marijuana to marijuana processors and other marijuana producers.
Marijuana retailer	"Marijuana retailer" means a facility licensed by the Washington State Liquor and Cannabis Board for the sale to consumers of usable marijuana and marijuana-infused products.
Medical marijuana cooperative	"Medical marijuana cooperative" means a group of qualifying patients or designated providers who may form a cooperative and share responsibility for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of members of the cooperative.
~~Substance use disorder treatment program~~	~~"Substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program licensed or certified by the Department as meeting standards adopted pursuant to RCW 71.24.025.~~

(Amended: Ord. 2017-07-04; Ord. 2019-07-01)

D. Location Standards.

1. Subject to Section 40.260.115(D)(1)(d), marijuana facilities as defined in Section 40.260.115(C) may be sited as follows:

a. Marijuana production facilities may be allowed on legal parcels of at least five (5) acres in size zoned AG-20 and FR-40, and on legal conforming parcels zoned IL and IH.

b. Marijuana processing facilities may be allowed on legal parcels as follows:

(1) Processor I facilities, on legal conforming parcels zoned IL, IH, and BP;

(2) Processor I facilities, on parcels of at least five (5) acres in size zoned AG-20 and FR-40, but only as accessory to licensed production facilities; and

(3) Processor II facilities, on parcels zoned IH, IL, and BP.

c. Marijuana retailing facilities may be allowed on legal conforming parcels zoned GC and CC.

d. No production or processing facilities are allowed within one thousand (1,000) feet of the perimeter of the grounds of the following entities. 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 below pursuant to WAC 314-55-050:

(1) Elementary or secondary school;

(2) Public playground;

(3) Recreation center or facility, including the Clark County Events Center;

(4) Child care center;

(5) Public park;

(6) Public transit center;

(7) Library;

(8) Any game arcade where admission is not restricted to persons aged twenty-one (21) or older;

(9) Churches and religious facilities; or

~~(10) Substance use disorder treatment facilities.~~

e. Except as limited by WAC 314-55-050(11)(a), no retail facilities are allowed within five hundred (500) feet of the perimeter of the grounds of the following entities. 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 below pursuant to WAC 314-55-050:

(1) Recreation center or facility, including the Clark County Events Center;

(2) Child care center;

(3) Public park;

(4) Public transit center;

(5) Library;

(6) Any game arcade where admission is not restricted to persons aged twenty-one (21) or older;

(7) Churches and religious facilities; or

~~(8) Substance use disorder treatment facilities.~~

2. Where allowed, production and processing facilities may co-locate on the same parcel, if they otherwise meet the requirements of Chapter 314-55 WAC and this section.

(Amended: Ord. 2016-06-12; Ord. 2017-07-04; Ord. 2019-07-01)

E. Development Standards.

1. The requirements of Chapter 314-55 WAC are considered minimum standards for the purposes of this section.

2. Any facilities as described in Section 40.260.115(B)(2) shall be located entirely within an enclosed and secure structure with an engineered foundation, and shall be constructed in compliance with Titles 14 (Buildings and Structures), 15 (Fire Prevention), and 24 (Public Health).

3. Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the marijuana business is located.

4. Cannabis plants shall not be visible from the public right-of-way or any public place.

5. Signs.

a. In accordance with RCW 69.50.369, licensed marijuana retailers shall not display any signage in a window, on a door, or on the outside of the premises of a retail outlet that is visible to the general public from a public right-of-way, other than two (2) signs no larger than ~~twelve (12) square feet~~ one thousand six hundred square inches each identifying the retail outlet by the licensee's business or trade name.

b. No signs for production and processing facilities are allowed.

c. Signs shall be subject to applicable sections in Chapter 40.310 and Appendix F, Section 8.4.

6. Hours of operation for retailing facilities shall be between 8:00 a.m. and 11:00 p.m.

7. Measures shall be implemented to prevent adverse health and safety effects to nearby residents from odors, noise, noxious gases, light, smoke and security.

a. Odors. Facilities shall not create odors or smoke that is objectionable to residents or employees of adjacent properties.

b. Lighting. All lights used for security shall be shielded or positioned to prevent glare impacts to nearby properties.

c. Noise. Maximum noise levels of WAC 173-60-040 shall not be exceeded.

d. Security. Security measures shall include, at a minimum, the requirements of WAC 314-55-083 and Title 14.

e. Waste Disposal. Waste materials generated from any facility must be disposed of in accordance with the plan filed as part of the license application.

(Amended: Ord. 2019-07-01)

F. Approval Process.

Applications for production, processing, and retailing facilities shall be considered using a Type II process pursuant to Section 40.510.020.

(Amended: Ord. 2019-07-01)

G. Enforcement.

Violations of this chapter shall be subject to enforcement action as contained in Title 32, Enforcement.

(Amended: Ord. 2014-05-07; Ord. 2019-07-01)

Section 3. Severability. If any section, sentence, clause, or phrase of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction or the Growth Management Hearings Board, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 4. Effective Date. This extension of Interim Ordinance 2020-03-11 will take effect immediately upon adoption by the affirmative votes of at least 4 (four) members of the County Council, or 10 (ten) days after if adopted by the affirmative votes of only 3 (three) Councilors, and will expire upon adoption of a new ordinance following further consideration of this matter by the County Council, or six (6) months from adoption of this ordinance, whichever is earlier.

Section 5. Instructions to the Clerk.
The Clerk of the County Council shall:

1. Record a copy of this ordinance with the Clark County Auditor.
2. Transmit a copy of this ordinance to the Washington State Department of Commerce within ten days of its adoption pursuant to RCW 36.70A.106.
3. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290, and Clark County Code 1.02.140, and transmit a copy to Community Planning.
4. Transmit a copy of the adopted ordinance to the Community Development Department Director and Permit Manager.
5. This ordinance is temporary in nature and is not to be codified.

Section 6. Roll Call Vote. The following persons voted in favor of the above ordinance [amendments]:
Temple Lentz, Julie Olson, & John Blom.

Gary Medvigy and Eileen Quiring voted against.

ADOPTED this 5th of May 2020.
CLARK COUNTY COUNCIL

Attest:

_____
Clerk to the Council

Approved as to Form Only:
Anthony F. Golik
Prosecuting Attorney

By: Taylor Hallvik
Digitally signed by Taylor Hallvik
DN: cn=Taylor Hallvik, o=Clark County Prosecuting Attorney's Office, ou=Civil Division, email=taylor.hallvik@clark.wa.gov, c=US
Date: 2020.05.08 07:43:00-07'00'

Taylor Hallvik
Deputy Prosecuting Attorney

FOR CLARK COUNTY, WASHINGTON

By: _____
Eileen Quiring, Chair

By: _____
Temple Lentz, Councilor

By: _____
Julie Olson, Councilor

By: _____
John Blom, Councilor

By: _____
Gary Medvigy, Councilor