

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 22-15

**AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON,
AMENDING CHAPTER 19.12 BMC, DEFINITIONS, ADDING CHAPTER
19.35 BMC TO ALLOW FOR MARIJUANA FACILITIES; PROVIDING
FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the state legalized recreational and medical marijuana use in the State of Washington under Chapters 69.50 RCW and 69.51a RCW, and Chapter 314 WAC; and

WHEREAS, the City of Buckley recognized the legal retail use as similar to alcohol and the processing and production uses as similar to agriculture, as defined in its code; and

WHEREAS, the City of Buckley determined extra limitations needed to be added for these uses and passed moratoria for medical marijuana use; and

WHEREAS, the City of Buckley determined minimum distances needed to be between retail marijuana shops and passed an interim ordinance requiring a distance of 5,000 feet between retail marijuana shops; and

WHEREAS, the City of Buckley determined that allowing production and processing in the City's residential zones the same as agriculture was not in keeping with the City's residential character; and

WHEREAS, the City of Buckley passed a moratorium on production and processing; and

WHEREAS, the City of Buckley Planning Commission conducted several study sessions on the subject and developed a draft ordinance; and

WHEREAS, the request for expedited review for the 60-day notice was received August 10, 2015, by the Washington State Department of Commerce under Material Identification Number 21507 informing it of the proposed change in development regulations; and

WHEREAS, the Department of Commerce granted expedited review by e-mail on August 24, 2015; and

WHEREAS, the Planning Commission conducted a public hearing on this proposal on August 31, 2015; and

WHEREAS, environmental review was conducted and determined to have no probable environmental impacts on September 23, 2015, with a comment period ending October 7, 2015;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amending Chapter 19.12 BMC, Definitions, and adding the following words:

BMC 19.12.xxx Definitions.

Agriculture.

“Agriculture” means commercial cultivation of land for agricultural products, vineyards, gardening, and fruit growing, and includes industrial cannabis (hemp).

Agricultural production.

“Agricultural production” means the manufacturing, planting, cultivating, growing, or harvesting a plant or animal, provided that slaughtering, butchering, and rendering is not considered agricultural production. Marijuana producing is not considered agricultural production.

Medical marijuana cooperatives.

“Medical marijuana cooperatives” means the private medical marijuana gardens authorized by Section 26 of 2SSB 5052 for qualifying patients to grow plants in a home to use for medical conditions.

Marijuana.

“Marijuana” means a substance as defined in RCW 69.50.101(t), and excludes hemp.

Marijuana, industrial, or hemp.

Marijuana, industrial, or hemp means those Cannabis sativa plant types intended for agricultural and industrial purposes. Although marijuana is also derived from the Cannabis sativa plant, industrial hemp is readily distinguishable from marijuana with respect to:

- (1) the types and percentages of organic compounds it contains;
- (2) its agricultural, industrial, and pharmaceutical uses; and
- (3) its observable physical characteristics.

For legal purposes, the key factors in distinguishing the two plants are the amounts of delta-9 tetrahydrocannabinol (THC) and cannabinoids each contains, with the THC level being the most important measure. Tetrahydrocannabinol is a psychoactive, organic compound that in sufficient concentrations will cause intoxication in humans.

Industrial hemp has very low levels of THC and, thus, does not have psychoactive effects or cause intoxication. Throughout most of the world, the legal definition of industrial hemp includes the requirement that the plant contain no more than 0.3 percent THC. Marijuana, by contrast, has much higher concentrations of THC, ranging anywhere from 5 to 25 percent.

Marijuana manufacture.

“Marijuana manufacture” is as defined in RCW 69.50.101(s).

Marijuana processor.

“Marijuana processor” is as defined in RCW 69.50.101(v).

Marijuana producer.

“Marijuana producer” is as defined in RCW 69.50.101(w)

Marijuana production.

“Marijuana production” means manufacturing, planting, cultivating, growing or harvesting marijuana and does not include marijuana produced in marijuana cooperative as authorized by 2SSB5052 and also does not include “marijuana, industrial, or hemp.”

Marijuana retailer.

“Marijuana retailer” is as defined in RCW 69.50.101(y).

Medical marijuana.

“Medical marijuana” or “medical cannabis” means the medical use of marijuana as defined in RCW 69.51A.010(3).

Qualifying patient.

“Qualifying patient” is as defined in RCW 69.51A.010(4).

Section 2. A new chapter 19.35 is hereby added to the Buckley Municipal Code for the use and sale of marijuana to read as follows:

BMC 19.35.010 Purpose.

- A. To ensure the marijuana industry in the community maintains the character and small-town feel.
- B. To clearly state City regulations in such a way that supports incoming and existing businesses, as well as residential neighborhoods.
- C. To allow industrial, recreational, and medicinal growing, processing, and retail sales in the City in conformance with state laws.

BMC 19.35.020 Applicability.

- A. All marijuana facilities are subject to this chapter.

BMC 19.35.030 Review process.

- A. Business licenses are required of all new businesses as specified in BMC 6.04.
- B. Under Chapter 19.33 BMC, new construction or reconstruction may require a site plan review.
- C. Building permits will be needed to upgrade existing facilities to meet state standards.
- D. Construction that is not exempt under the State Environmental Policy Act will require an environmental determination by the city’s SEPA Official.

BMC 19.35.040 General requirements.

- A. All marijuana facilities shall be licensed by the state and must continually satisfy all of the requirements under regulations and rules promulgated by the state liquor control board. The state license shall be provided to the City prior to opening and placed in the appropriate address file.
- B. Security shall be as specified in the state code.
- C. Fees shall be charged for each action or permit in accordance with City resolution.
- D. Hazardous materials that may be produced on site shall not enter the City's ecosystem, drainage system, or utility. All hazardous materials shall be disposed of in accordance with state regulations.
- E. Parking areas shall be supplied as required in Chapter 19.28 BMC and the uses' classification shall be as follows:
 - 1. Retail sales shall be considered "retail stores in general."
 - 2. Processing and producing shall provide one parking stall plus one parking stall for each 1,000 square feet of processing and/or production area.
- F. Landscaping shall be as required in Chapter 19.29 BMC.
- G. Signs shall be in accordance with Chapter 19.30 BMC and presented to the City for sign approval and may include design review.
- H. Marijuana producers, processors and retail sales shall incorporate odor control technology and provisions to ensure that emissions do not exceed regulations.
- I. 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 a sanitary sewer or stormwater sewer system or be released into the atmosphere outside of the structure where the operation is located.
- J. Odor control equipment shall be as approved by the Puget Sound Clean Air Agency.

BMC 19.35.050 Medical marijuana cooperatives.

- A. Medical marijuana cooperatives must comply with all state law requirements.
- B. No business license is required.
- C. Medical marijuana cooperatives shall not exceed the number of members allowed by the state and each member shall be a qualifying patient as defined by state statute.
- D. Medical marijuana cooperatives shall be enclosed in a permanent structure designed to comply with the building codes and state requirements for medical marijuana cooperatives.
- E. No production, processing, advertising, or delivery may be visible to the public.
- F. The City police department shall have the authority to inspect the site for compliance with all applicable permits at any time during the medical marijuana cooperative's regular business hours.

- G. The facilities shall be addressed, but no sign or indication of the medical marijuana cooperative shall be visible from the lot on which the facility rests.
- H. Individual production for qualifying patients shall follow the limitations under state statute.

BMC 19.35.060 Recreational retail.

- A. Retail facilities shall have a separation distance of 3,000 feet, measured from the perimeter of the individual state-licensed marijuana retail store.

BMC 19.35.070 Marijuana producing.

- A. Industrial hemp producing and processing shall be considered an agricultural crop and be exempt from the City's marijuana regulations.
- B. Outdoor marijuana production is not allowed.
- C. Production in a residential zone shall have the following performance standards:
 - 1. A barrier buffer (BMC 19.29.060(2)) and may use a secondary agricultural crop outside the facility;
 - 2. A minimum lot size of 2.5 acres; and
 - 3. Structural setbacks of 50 feet from each property line.
 - 4. Processing may be co-located with producing facilities.

BMC 19.35.080 Marijuana processing.

- A. Extraction of oils from the marijuana plant is to be done by non-volatile methods, such as closed loop systems or carbon dioxide.
- B. Processing in a residential zone shall have the following performance standards:
 - 1. A barrier buffer (BMC 19.29.060(2)) and may use a secondary agricultural crop outside the facility;
 - 2. A minimum lot size of 2.5 acres; and
 - 3. Structural setbacks of 50 feet from each property line.
 - 4. Producing may be co-located with processing facilities.

BMC 19.35.090 Violations and enforcement.

- A. It is the responsibility of the operator and/or the proprietor of any permitted use to provide such reasonable evidence and technical data as the enforcing officer may require to demonstrate that the use or activity is or will be in compliance with this code.
- B. Failure of the enforcing officer to require such information shall not be construed as relieving the operator and/or the proprietor from compliance with this code.

C. Inspectors shall be admitted at all reasonable times to the extent authorized by state law.

19.20.130 Permitted uses for all zones.

Permitted, Conditional, Accessory and Prohibited Uses in Zoning Districts

Table legend: P = Permitted outright; C = Subject to a conditional use permit; A = Subject to accessory use requirements; X = Prohibited; N/A = Not applicable												
DISTRICT:	LI	GC	CC	HC	P	NMU	HDR	R-6,000	R-8,000	R-20,000	S ²	
<i>...Marijuana uses</i>												
<i>Medical marijuana cooperatives</i>	X	X	X	X	X	P	P	P	P	P	X	
<i>Marijuana producing</i>	P	P	X	X	X	X	X	X	X	C	X	
<i>Marijuana processing</i>	P	P	X	X	X	X	X	X	X	C	X	
<i>Marijuana retailer</i>	P	P	P	P	X	C	X	X	X	X	X	
AGRICULTURAL USES												
Agricultural support goods and services	P	P	P	X	P	P	X	X	X	X	X	
<i>Agriculture, not including marijuana</i> Commercial cultivation of land for agricultural products, vineyards, gardening, fruit growing	P	X	X	X	P	C	X	X	P	P	X	
Commercial produce stand (selling of agricultural products)	P	P	P	P	P	P	X	X	X	C	X	
<i>Agricultural production, not including marijuana</i> Intensive agricultural production	P	X	X	X	P	C	X	X	P	P	X	
Keeping of livestock, poultry, rabbits, or bees	P	C	C	X	P	C	X	C	P	P	X	
Selling of agricultural products raised or grown on-premises	P	P	P	P	P	P	P	P	P	P	X	
Stables and riding academies	P	X	X	X	P	X	X	C	C	P	X	

Section 3. The moratorium extended by Buckley Ordinance No. 16-15 adopted June 23, 2015, shall expire upon the effective date of this ordinance. However, collective gardens authorized by RCW 69.51A.085 shall continue to be prohibited in the City of Buckley for as long as collective gardens are authorized by Chapter 69.51A RCW.

Section 4. Copy to the Department of Commerce. Pursuant to RCW 36.70A.106, the City Administrator is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 6. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this 13th day of October, 2015.



Mayor Pat Johnson

Attest:



Joanne Starr, City Clerk

APPROVED AS TO FORM:



Phil Olbrechts, City Attorney

PUBLISHED: October 21, 2015

EFFECTIVE: October 26, 2015