DRAFT ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON RELATING TO LAND USE PLANNING AND ZONING; ADOPTING FINDINGS OF FACT, ZONING, BUSINESS LICENSE, AND NUISANCE REGULATIONS RELATED TO THE CULTIVATION OF MEDICAL CANNABIS (MARIJUANA) FOR PERSONAL USE, COLLECTIVE GARDENS, DISPENSARIES, AND THE PRODUCTION, PROCESSING, AND RETAILING OF STATE LICENSED RECREATIONAL MARIJUANA USES; DESCRIBING THE LAND USE IMPACTS TRIGGERING SUCH RESTRICTIONS; IDENTIFYING THE PERMITTED ZONE FOR COLLECTIVE GARDENS, DISPENSARIES, AND STATE LICENSED RECREATIONAL MARIJUANA USES (INCLUDING PRODUCERS, PROCESSORS, AND RETAILERS); ESTABLISHING SEPARATION AND DISTANCE REQUIREMENTS WITHIN THE PERMITTED ZONE; ESTABLISHING PROCEDURES FOR ENFORCEMENT OF VIOLATIONS INCLUDING ABATEMENT OF MARIJUANA NUISANCES; ACHIEVED BY AMENDING MOUNT VERNON MUNICIPAL CODE CHAPTERS 5.04 (BUSINESS LICENSES), 8.08 (NUISANCES), 17.06 (DEFINITIONS), 17.12 (RESIDENTIAL AGRICULTURAL DISTRICT) 17.30 (PUBLIC DISTRICT), 17.56 (COMMERCIAL-LIMITED INDUSTRIAL DISTRICT, 17.96 (HOME OCCUPATION PERMITS); AND REPEALING THE MORATORIUM ON COLLECTIVE GARDENS AND DISPENSARIES.

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug (specifically categorized as a "Hallucinogenic Substance", based on the federal government's categorization of marijuana as having a "high potential for abuse; …no currently accepted medical use in treatment in the United States; …and a lack of accepted safety for use of the drug or other substance under medical supervision" Controlled Substance Act (CSA) 21USC13.812 (2007); and

WHEREAS, in 1998 the voters of Washington State approved Initiative 692, codified as Chapter 69.51A RCW, authorizing the medical use of marijuana by patients with terminal or debilitating illnesses and creating a limited defense to state (not federal) marijuana charges for qualifying patients and designated providers of medical marijuana; but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes" (RCW 69.51A.020); and

WHEREAS, the Washington State Department of Health opines that it is "not legal to buy or sell" medical marijuana and further opines that "the law [chapter 69.51A RCW] does not allow dispensaries," leaving enforcement to local officials; and

WHEREAS, in 2011, the Washington State Legislature adopted Chapter 181, Laws of 2011 (E2SSB 5073), purporting to authorize medical marijuana dispensaries and collective gardens; which provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, if they possess no more than 15 cannabis plants, no more than 24 ounces of usable cannabis (other qualifications apply); and

WHEREAS, on April 29, 2011, former governor Christine Gregoire vetoed all of the provisions of Chapter 181 (E2SSB 5073) relevant to medical marijuana dispensaries that would have provided the legal basis for legalizing and licensing medical cannabis dispensaries, processing facilities and production facilities, thereby making these activities illegal but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually and in collective gardens; and

WHEREAS, in former governor Gregoire's veto message on E2SSB 5073 she stated, in part, "In 1998, Washington voters made the compassionate choice to remove the fear of state criminal prosecution for patients who use medical marijuana for debilitating or terminal conditions. The voters also provided patients' physicians and caregivers with defenses to state law prosecutions. I fully support the purpose of Initiative 692, and in 2007, I signed legislation that expanded the ability of a patient to receive assistance from a designated provider in the medical use of marijuana, and added conditions and diseases for which medical marijuana could be used. Today, I have signed sections of Engrossed Second Substitute Senate Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. Qualifying patients or their designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions. Qualifying patients or their designated providers are also protected from certain state civil law consequences. However, the sections in Part VI, Part VII, and Part VIII of Engrossed Second Substitute Senate Bill 5073 would direct employees of the state departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis. These sections would open public employees to federal prosecution, and the United States Attorneys have made it clear that state law would not provide these individuals safe harbor from federal prosecution. No state employee should be required to violate federal criminal law in order to fulfill duties under state law. For these reasons, I have vetoed Sections 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806 and 807 of Engrossed Second Substitute Senate Bill 5073"; and,

WHEREAS, prior to issuing her partial veto, the Governor received a letter signed by Washington's two U.S. Attorneys, Michael Ormsby and Jennifer Durkan, and in their letter they wrote that marijuana is a Schedule I controlled substance under federal law and, as such, "growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities" and these U.S. Attorneys also concluded, "state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA"; and

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WHEREAS, a similar letter dated January 17, 2012, was received by the Clark County Board of Commissioners seeking guidance from the U.S. Department of Justice stating in summary that principles expressed in the letter to the Governor similarly apply with equal force to local employees and elected officials; and

WHEREAS, the Clark County Commissioners asked the federal government whether enforcement efforts would extend to their activities implementing the State's laws on medical marijuana. The response to this inquiry stated, in part, that, "[A]nyone who knowingly carries out the marijuana activities contemplated by Washington state law, as well as anyone who facilitates such activities, or conspires to commit such violations, is subject to criminal prosecution as provided in the CSA. That same conclusion would apply with equal force to the proposed activities of the Board of . . . County Commissioners and . . . County employees". This same letter also warns that such persons may also be subject to money laundering statutes, and that the CSA provides for forfeiture of real property and other tangible property used to facilitate the commission of such crimes, as well as the forfeiture of all money derived from, or traceable to, such activity[1]; and

WHEREAS, former Governor Chris Gregoire filed a petition with the U.S. Drug Enforcement Administration asking the agency to reclassify marijuana as a Schedule 2 drug, which will allow its use for treatment through prescriptions by doctors and filled by pharmacists, to which Governor Lincoln Chafee of Rhode Island also signed; and

WHEREAS, as a result of the recent passage of E2SSB 5073 and partial veto by the Governor, the state has failed to clarify exactly what, under state law, shall be permitted in regards to the establishment of collective gardens and what local governments role is; for example, certain sections that were not vetoed make reference to other sections that were vetoed; and

WHEREAS, in the former Governor's partial veto letter dated April 29, 2011, she stated that cooperative medical marijuana organizations should be exempted from state criminal penalties "conditioned on compliance with local government location and health and safety specifications" (page 3), creating a need to balance the interests of federal law, Washington medical marijuana patients and the health, safety and welfare of the community, (*id.*); and

WHEREAS, RCW 69.51A.085 permits qualifying patients "to create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use," provided no more than ten qualifying patients participate, a collective garden does not contain more than 15 plants per patient up to a total of 45 plants per garden, and the garden does not contain more than 24 ounces of useable cannabis per patient and up to a total of 72 ounces of useable cannabis; and

WHEREAS, under RCW 69.51A.060(1), it is a class 3 civil infraction to display medical cannabis in a manner or place which is open to view of the general public, which would include growing plants; and

[1] Letter from Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Division Control, U.S. Department of Justice, Drug Enforcement Administration, dated January 17, 2012, addressed to Board of Clark County Commissioners.

WHEREAS, RCW 69.51A.140 authorizes cities to regulate and enforce zoning provisions on collective gardens, including the location and operation of collective gardens; 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 cannabis or cannabis products within their jurisdiction and that nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction; and

WHEREAS, Pursuant to RCW 69.51A.130, no civil or criminal liability may be imposed by any court on cities, towns, or counties or other municipalities and their officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

WHEREAS, Initiative Measure No. 502, approved by the voters of Washington State on November 6, 2012, calls for the establishment of a regulatory system licensing producers, processors and retailers of recreational marijuana for adults 21 years of age and older, legalizes the possession and private recreational use of marijuana and requires the Washington State Liquor Control Board to adopt procedures and criteria by December 1, 2013 for issuing licenses to produce, process and sell marijuana; and

WHEREAS, with Initiative 502's decriminalization of the use and possession of marijuana, with certain limits, for persons over 21 years of age has major changes in social/legal policy impacts numerous areas of concern for local governments in the state; and

WHEREAS, Initiative 502 declared the use or display of marijuana in public to be a civil infraction; and

WHEREAS, cannabis remains a controlled substance under the federal Controlled Substances Act, 21 U.S.C. Ch. 13; and

WHEREAS, On August 29, 2013, the Deputy Attorney General of the United States, James M. Cole, issued a memorandum to all United States Attorneys providing guidance regarding marijuana enforcement, reasserting Congress' determination that marijuana is a dangerous drug the illegal distribution and sale of which provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels, and reaffirming the Department of Justice's commitment to enforcing the Controlled Substances Act consistent with those determinations; and

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WHEREAS, by that letter the Deputy Attorney General has described the enforcement priorities of the federal government to be: Preventing the distribution of marijuana to minors; Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; Preventing the diversion of marijuana from states where it is legal under state law in some form to other states; Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; Preventing violence and the use of firearms in the cultivation and distribution of marijuana; Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and Preventing marijuana possession or use on federal property; and

WHEREAS, the Deputy Attorney General of the United States has stated that the "federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of its own narcotics laws and that the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property"; and

WHEREAS, the Deputy Attorney General of the United States has stated that "jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of marijuana, conduct in compliance with those regulations is less likely to threaten…federal priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access by minors, and replacing and illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms."; and

WHEREAS, the Deputy Attorney General of the United States has stated that examples of regulations that would serve the "Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when and individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly, or indirectly, and purposefully or otherwise, to minors."; and

WHEREAS, the City currently does not have specific zoning regulations pertaining to medical cannabis collective gardens, dispensaries, and state-licensed producers, processors and retailers of recreational marijuana; and

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WHEREAS, in conformity with the responsibilities of the City of Mount Vernon to meet the public health, safety and welfare requirements and to provide zoning and land use regulations pursuant to State law, and the City's authority to regulate land use activity within its corporate limits, the City intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations that will exclude from certain zones from any production processing, selling or delivery of marijuana; and

WHEREAS, the City Council finds that it is necessary to adopt this ordinance to avoid unanticipated negative impacts on the community and the public health, safety and welfare associated with medical marijuana collective gardens, dispensaries, and state-licensed marijuana producers, processors and retailers; and

WHEREAS, the City Council has studied the land use and other secondary impacts of collective gardens, dispensaries, and state-licensed marijuana producers, processors and retailers and has now prepared this ordinance to address these impacts; and

WHEREAS, cities and towns have clear authority in Article 11 of the Washington State Constitution to enact zoning laws and development regulations through their general police powers; and

WHEREAS, the requisite notice of adoption of the proposed amendments has been duly transmitted in compliance with RCW 36.70A.106 (1); and

WHEREAS, a SEPA Threshold Determination of Non-significance, non-project action, was issued on November 18, 2013 and published on November 21, 2013 and [no comments were received or appeals filed – or list comment received]; and,

WHEREAS, the Planning Commission and City Council held a joint meeting on December 3, 2013 to discuss the City regulation of medical and recreational marijuana uses within the City and to take comments from the public on these uses. A meeting notice was published on November 18, 2013; and

WHEREAS, the requisite Planning Commission hearings held on January 7, 2014 and January 21, 2014; and the City Council hearings held on February 12, 2014 and February 26, 2014 were preceded with appropriate notice published on _____ and _____; and,

WHEREAS, the requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met; and

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WHEREAS, The City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum has discussed this Memorandum, including the "warning signals' identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2); and,

WHEREAS, the proposed amendments are found to be in compliance with the State Growth Management Act;

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

SECTION ONE. The City Council does hereby adopt the above listed recitals as set forth fully herein.

SECTION TWO. The City Council also adopts the further findings as outlined below in 'Section Three'.

SECTION THREE. FURTHER FINDINGS.

1. As of November 2013, in addition to the State of Washington, nineteen states and the District of Columbia have now adopted laws allowing the medical use of marijuana[2]; in addition, the State of Colorado has adopted laws allowing recreational marijuana[3]. The issue whether State laws allowing the medical or recreational use of marijuana are preempted by or conflict with the Controlled Substance Act has not yet been addressed in a reported decision in Washington[4].

[2] Alaska, Arizona, California, Colorado, Connecticut, DC, Delaware, Hawaii, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, & Vermont. Source: 20 Legal Medical Marijuana States and DC, Laws, Fees, and Possession Limits. (last updated September 16, 2013). ProCon.org. Retrieved November 18, 2013, from http://www.procon.org.
[3] Colorado Const. art. XVIII, § 16.
[4] In *Cannabis Action Coalition v. City of Kent*, King County Superior Court Cause No. 12-2-19726-1 KNT, the City prevailed on summary judgment in a challenge to its ban on medical marijuana activities. This case is currently on appeal. *John and Jane Does 1-13 v. Seattle*, King County Superior Court Cause No. 11-2-42621-1SEA, was dismissed on a technicality and either was refiled or will shortly be refiled. In this case, the plaintiffs alleged, among other things, that Washington's medical marijuana laws, specifically the section providing authority for cities to regulate on the basis of zoning, business licensing and taxing, do not provide a basis for Seattle to regulate marijuana, since it was part of an "overall regulatory scheme which was vetoed by the Governor leaving Sec. 1102 an orphan." Complaint for Declaratory Relief, ln. 15-16, p.8.

2. The White House's Office of National Drug Control Policy states that, "there are very real consequences associated with marijuana use. In 2010, marijuana was involved in more than 461,000 emergency department visits nationwide. Further, in 2011, approximately 872,000 Americans 12 or older reported receiving treatment for marijuana use, more than any other illicit drug. Despite some viewpoints that marijuana is harmless, these figures present a sobering picture of this drug's very real and serious harms. And there have been recent increases in use among youth. Current (past month) marijuana use among 10th and 12th graders is the highest it has been in eight years. This trend is cause for significant concern among young people, their families, and communities".[5]

3. The U.S. Department of Justice, Drug Enforcement Administration, publication titled, Drugs of Abuse, 2011 Edition, states (in part) the following with regard to marijuana, "The short-term effects of marijuana include: problems with memory and learning, distorted perception, difficulty in thinking and problem-solving, and loss of coordination. The effect of marijuana on perception and coordination are responsible for serious impairments in learning, associative processes, and psychomotor behavior (driving abilities). Long term, regular use can lead to physical dependence and withdrawal following discontinuation, as well as psychic addiction or dependence" (68-69).

4. The potential of 45 marijuana plants and 72 ounces of marketable marijuana (under the definition of collective garden), of up to a four month supply of an average inventory (under the definition of a retailer), of up to one and one-quarter of a year's harvest for outdoor grows, and up to six (6) months annual harvest for indoor grows (under the definition of a producer), and of having up to six months of an average usable marijuana supply (under the definition of a processor) by current state law stored in a single location within the City, in a neighborhood, near schools, or by public parks, and the like, poses increased risks of crime and associated impacts of access to such a significant quantity of a federally prohibited Schedule I drug and that there is further a potential under state law that persons could attempt to create multiple collective gardens on single parcels of property which may include large scale indoor hydroponic grow operations in warehouses or similar facilities.

5. Cannabis, whether grown for medicinal purposes or diverted to the black market, may be sold for thousands of dollars per pound.

6. The City Council finds that secondary negative impacts of associated criminal activity with marijuana dispensaries, cultivation (including collective gardens and other producers), processing, and sales exist and include, but are not limited to: a) theft and armed robbery of the marijuana products grown, b) illegal sales of the marijuana product grown, c) illegal open use of marijuana products at grow sites and unwilling exposure to secondary smoke by the public, and d) inability for police to readily distinguish what may be a legal collective garden for legitimate medical marijuana use by qualified patients from an illegal grow operation for sale and distribution.

[5] Marijuana.Office of National Drug Control Policy. Retrieved September 17, 2013 from http://www.whitehouse.gov/ondcp/marijuana.

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7. The City Council finds that there are secondary negative impacts of possible public health and safety risks from collective gardens, dispensaries, retail sales, and the production and processing of marijuana which include, but are not limited to: a) fire hazards from grow lights and drying equipment; b) waste products, fertilizers and grow chemicals infiltrating ground water and/or sewer systems causing clean water issues; c) improper disposal of agricultural waste after harvest; d) adulteration of neighboring lands and crops if seeds drift; e) increased traffic trips and activity during unusual hours.

8. The City Council finds there are secondary negative impacts to economic development, public safety and community appearance or aesthetics in the event of the unregulated establishment of collective gardens, retail outlets, and the production and processing of marijuana in certain areas such as: a) commercial business districts, b) residential neighborhoods, and c) near churches, schools, parks and other places frequented by children.

9. The strong smell of cannabis may create an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery and armed robbery. Where cannabis plants have been grown outdoors in other states, local authorities have received a significant number of formal complaints of odor that may be detectable far beyond property boundaries.[6]

10. Cannabis that is grown indoors may require excessive use of electricity which may overload standard electrical systems, creating an unreasonable risk of fire.

11. Federal law prevents drug-related businesses from opening bank accounts. The result of which is that marijuana business transactions are cash only. This increases the likelihood that marijuana related businesses will be targets of armed robbery. King County Sheriff John Urquhart recently testified before the Senate Judiciary Committee that he fears the state's 334 new pot stores will be inviting targets for armed robbers because the shops will be forced to do business in cash only.[7]

12. A report completed for the City of Seattle noted that, "experience with medical marijuana dispensaries indicates that businesses containing usable marijuana or marijuana-infused products may have greater security issues compared with the other businesses. Additionally, many residents have expressed concern that marijuana-related businesses can negatively impact neighborhood character due to messaging on signs and the potential for robberies" (3)[8].

[6] Mendocino County, California, Municipal Code § 9.31.020 Findings (2012).
[7] Hotakainen, R. (2013, September 10). Congress asked to provide fix for cash-only pot stores. The Bellingham Herald. Retrieved from http://www.bellinghamherald.com on September 17, 2013.
[8] Staley, B. and Herzfeld, R. (2013). City of Seattle Proposed Marijuana Zoning Restrictions Central Staff Report.

13. On August 15, 2013 the Mount Vernon Police Department responded to a call in the 400 Block of Stanford Drive – a residentially zoned area. Upon arrival they found an explosion had occurred in a residential apartment unit and flames were coming from inside this unit. Investigators believe that the apartment occupants were attempting to extract oil from a marijuana plant by mixing parts of the plant with butane gas. This explosion resulted in at least three (3) people being treated at a local hospital for burns, five (5) residential units had to be closed during the ensuing investigation, and extensive repairs were necessary to the unit where the explosion occurred.

14. The City finds that residentially zoned uses should be protected from marijuana related uses (whether medical or recreational in nature) similar to the way in which the State requires separation from recreational marijuana uses and schools, playground, recreational centers, child care centers, parks, transit centers, libraries, and arcades. This desire to protect residentially zoned uses is justified by local law enforcement experience and documented incidences around the Country. Following are summaries of incidences documented by the Drug Enforcement Agency (DEA) in their January 2011 publication titled, The DEA Position on Marijuana:

    a. The owners of a Satellite Beach house in Brevard County, Florida were told the renters would take care of the lawn and clean the pool themselves. What they didn't know is that they would be using the water from the swimming pool as part of the irrigation system for a hydroponic indoor marijuana grow in three of the four bedrooms of their home. "They even dug into the foundation of the house to put pipes and wires in," according to Kathleen Burgess, one of the owners, who estimated the property damage at $60,000. The Brevard County Sheriff's Office found 24 marijuana plants inside with a possible yield of 200 pounds of cannabis" (15).

    b. According to a Los Angeles press report, homeowners in Fair Oaks, California called the local cannabis club a "free for all." Conflicts among customers, sometimes 300 per day, had to be resolved by security guards. It was apparent that not all of the customers were legitimate patients. Even Dr. Charles Moser, a local physician who voted for Prop 215, said that he "… saw people coming up on bikes and skateboards, with backpacks, healthy-looking young men" (15).

    c. In addition to problems with the cannabis clubs themselves, California residents are also complaining about marijuana grows that supply the clubs. In Willits, California, residents and officials pointed out numerous problems, including the side-effects of resin from a cannabis growing operation that affected residents' health. Additionally, residents complained about the influx of homeless people looking for work at marijuana harvest time. "Since this medical marijuana thing our town has gone to hell," said Jolene Carrillo. "Every year we have all these creepy people. They sleep behind the Safeway and Rays and go to the bathroom there. They go to Our Daily Bread and eat the food poor people need" (15).

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d. In the city of Arcata, California, LaVina Collenberg discovered that the nice young gentleman who rented her home on the outskirts of town was using it to grow marijuana after a neighbor called to tell her the house was on fire. In the charred remains she found grow lights, 3-foot high marijuana plants, seeds germinating in the spa, air vents cut through the roof, and water from the growing operation soaking the carpeting and sub-flooring. Fire Protection District Chief John McFarland says "that most local structural fires involve marijuana cultivation." "Law enforcement officials estimate that 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord" (15 and 16).

e. A couple in Altadena, California bought their first home, what seemed to be a buyers dream, with fresh paint, carpet and fixtures. After they moved in their dream house became a nightmare. The smell of fresh paint was overtaken by the smell of stachybotrys mold growing throughout the house, forcing them to move and spend over $42,000 in repairs. Months later an electrical fire put them out again. The mold, bad wiring, and gas leaks all stemmed from the undisclosed past of the house as a marijuana grow (16).

f. "The owner of six Los Angeles-area medical marijuana dispensaries was arrested by federal agents … after an investigation sparked by a traffic accident in which a motorist high on one of the dispensaries' products plowed into a parked SUV, killing the driver and paralyzing a California Highway Patrol Officer." The driver had a large amount of marijuana and marijuana edibles in his pickup truck, purchased from the Holistic Caregivers facility in Compton. The owner, Virgil Grant, had an expired business license to operate an herbal retail store. In another of his dispensaries an employee was observed selling $5,700 worth of marijuana out the back door. Mr. Grant, who had previous convictions on drugs and weapons related-offenses, has been "charged with drug conspiracy, money laundering, and operating a drug-involved premise within 1,000 feet of a school" (17).

15. Due to the high monetary value placed upon marijuana, the City has experienced home invasion robberies, thefts, and assaults related to marijuana cultivation and sales. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana has occurred.

16. Marijuana that is grown indoors can lead to mold, mildew and moisture damage to the building in which it is grown. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may have health consequences for the individual who consumes the marijuana. Marijuana that is improperly stored may develop mold and likewise be a potential health risk to the individual who consumes it.

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17. Initiative Measure No. 502 provided that a specific number of retail outlets and licenses would be determined by the WSLCB in consultation with the Office of Financial Management. In September of 2013 the number of retail outlets for jurisdictions around the State was released, and the City of Mount Vernon is limited to three (3) retail outlets.

18. Initiative Measure No. 502 requires that recreational marijuana retail outlets not employ anyone under the age of 21, nor allow anyone under the age of 21 to enter the premises. This age restriction supports the City's view that marijuana related uses (medical or recreational) should be separated from areas where higher concentrations of those persons under 21 might be present. In addition to the areas that the WSLCB requires a 1,000 foot separation from (schools, parks, daycares and the like) the City wishes to keep a separation from residential zoning districts and commercial/retail areas that families with children would frequent such as grocery stores, hardware stores, and restaurants.

19. Due to the founded concerns of the City regarding their desire to protect residentially zoned areas from marijuana related uses, the City is adopting development regulations that limit the placement of these uses to certain commercial and limited industrial areas. Further these marijuana related uses are prohibited as a home occupation and are not considered as an accessory use in residential zones.

20. The City of Mount Vernon's Comprehensive Plan is hereby adopted by reference and shall be incorporated by this reference into the City's findings for this Ordinance as the policy document containing, among other things, the Goals, Objectives and Policies that form the foundation for land use decisions in the City.

21. Under current law collective gardens do not have separation requirements from sensitive uses such as schools, playgrounds, child care centers, parks, and the like similar to what RCW 69.50 and WAC 314-55 requires for recreational marijuana uses. Due to the similar nature of collective gardens to recreational marijuana uses allowed under Initiative 502 the City will adopt regulations to require similar separations between collective gardens and sensitive uses.

22. The City actively plans for future uses to serve the City through its adopted Comprehensive Plan and its Comprehensive Plan update processes. The City works hand-in-hand with entities like its School District to plan for future anticipated uses such as new primary or secondary schools. The City also plans years ahead of time to locate and develop public parks. To protect the public investment of funds spent by the school district or other public entities like the City, and to protect the school aged children who will be someday enrolled in new school locations, as well as families with children who will frequent future City parks, the City is adopting development regulations that will require a 1,000 foot separation from future school and park sites.

23. Once a collective garden or recreational marijuana use is lawfully licensed through the State and has obtained necessary City permits, the City will not revoke or object to the renewal of a license through the State should a sensitive use, like a school, child care center or park choose to locate within 1,000 feet of the established marijuana related use.

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24. The permitting and inspecting of structures used for collective gardens, dispensaries, retailers, producers or processors of marijuana for building and fire code compliance is important for health and safety reasons.

25. The ability of qualified patients to cultivate cannabis in collective gardens for medical purposes and State Licensed production, processing and retailing of recreational marijuana does not confer upon anyone the right to create or maintain a public nuisance.

26. The City of Mount Vernon has adopted local regulations establishing standards and procedures for business licenses, and such regulations are codified within Chapter 5.04 of the Mount Vernon Municipal Code. This Chapter of the code is being amended to clarify that a City business license will not be issued for any activity that is prohibited under State or Federal law.

SECTION FOUR. PLANNING COMMISSION RECOMMENDATION ADOPTED. The City Council adopts the Planning Commission's findings of fact and conclusions of law, attached, in their entirety.

SECTION FIVE.
That Section 5.04.010 is hereby amended to read as follows:

5.04.010 City power to license.
The provisions of this chapter shall be deemed an exercise of the power of the city to license business activities that are lawful under Federal, State, and Local laws and regulations for revenue.

SECTION SIX.
That Section 5.04.030 is hereby amended to read as follows:

5.04.030 Imposition and collection required.
On or after the effective date of the ordinance codified herein, there is levied upon and shall be collected from and paid as hereinafter provided, by every person, on account and for the privilege of engaging in business activities within the city that are lawful under Federal, State and local laws and regulations, an annual license fee for each calendar year, or any portion thereof, in a sum equal to the amounts set forth for the various business activities as classified in the schedules codified in MVMC 5.04.040 through 5.04.070; provided, however, that persons engaging in any such businesses for the first time, after July 1st of any year, shall pay only 50 percent of the annual fee for the remainder of the license year.

SECTION SEVEN.
That Section 8.08.040, is hereby amended to read as follows:

8.08.040 Nuisances specifically defined.

The following specific acts, omissions, places, conditions, and things are hereby declared to be nuisances:

The erecting, maintaining, using, placing, depositing, causing, allowing, leaving, or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any street, avenue, alley, park, parkway, or other public or private place in the city, of any one or more of the following places, conditions, things, or acts to the prejudice, danger, or annoyance of others:

A. Excavations or naturally occurring holes, including, but not limited to, sinkholes, privies, vaults, cesspools, sumps, pits, wells, or any other similar conditions, which are not secure and which constitute a concealed danger or other attractive nuisance.

B. The discharge of sewage, human excrement, or other wastes in any location or manner, except through systems approved for the conveyance of such to approved public or private disposal systems which are constructed and maintained in accordance with the provisions of the plumbing code, as adopted and amended by Chapter 15.04 MVMC, and all other adopted laws pertaining to such systems.

C. Filthy, littered, trash-covered, or overgrown premises or abutting street and alley rights-of-way for which a property owner is responsible, as defined in MVMC 8.08.020, to include, but not be limited to:

1. Accumulated human or animal wastes which are improperly handled, contained, or removed from the premises, including bones, meats, hides, skins, or any part of the animal, fish, or fowl.
2. Overgrown, uncultivated, or unkempt vegetation of any type, including, but not limited to, shrubs, brush, trees, weeds, blackberries, and grasses over one foot in height. Where erosion control issues or indigenous species are present or if the area is classified as a critical area or buffer, an exception or modification may be made to these requirements.
3. Inappropriate disposal or accumulation of vegetation waste, including, but not limited to, grass clippings, cut brush, cut trees, and/or cut weeds.
4. An accumulation of garbage, litter, debris, rubble, hazardous waste, or blight, which includes, but is not limited to, improperly stored bottles, cans, paper, glass, plastic, cardboard, auto parts, tires, scrap metal, scrap wood, discarded or broken appliances, furniture, equipment, bicycles or parts thereof, barrels, boxes, crates, pallets, mattresses, clothing, household goods, construction materials, lumber, metal, improperly piled or stored firewood, or anything in which flies may breed or multiply, which provides harborage for rats or other vermin, or which may be a fire hazard.
5. All places used or maintained as dumps, junk yards, or automobile or machinery disassembly yards or buildings, not licensed and/or located in an improper use zone, or which are operating outside of specific conditions set forth for the operation of such businesses.
6. Inoperable, abandoned, disassembled, or dilapidated appliances, machinery, or vehicles. These provisions shall not apply to vehicle storage areas as defined in Chapter 10.24 MVMC.*

D. The existence of any fences or other structures which are in a falling, decayed, dilapidated, or unsafe condition.

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E. Any unsightly, abandoned, or deteriorated building or structure; or any building or structure constructed with inappropriate materials, or improperly fastened together or anchored against the forces of nature.

F. Any building or structure where construction was commenced and the building or structure was left unfinished for more than one year.

G. Burning or disposal of refuse, sawdust, or other material in such a manner as to cause or permit ashes, sawdust, soot, or cinders to be cast upon the streets or alleys of the city, or to cause or permit the smoke, ashes, soot, or gases arising from such burning to become annoying or to injure or endanger the health, comfort, or repose of said persons.

H. The erection or continuance of use of any building, room, or other place in the city for exercise of any trade, employment, or manufacture which, by emitting noxious exhausts, particulate matter, offensive odors, or other related annoyances, is discomforting, offensive, or detrimental to the health of individuals or of the public.

I. The conduct of a business which, by reason of the participation, encouragement, cooperation, or sufferance of the operator or his or her agent, becomes a place of, haven for, or is commonly the location of, breaches of the peace, lewd behavior, prostitution, or the illegal use or sale of drugs.

J. The smell of marijuana when detectable from a public place, including, but not limited to: sidewalks, roads, parking lots; or from a property owned or leased by another person or entity shall constitute a nuisance under this Chapter.

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SECTION EIGHT.
That Section 17.06.005 is hereby amended to read as follows:

17.06.005 Definitions generally.
A. Except where specifically defined in this chapter, all words used in this title shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular. The word "shall" is always mandatory, and the word "may" denotes a use of discretion in making a decision. The words "used" or "occupied" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied." Variances from these definitions shall not be granted.

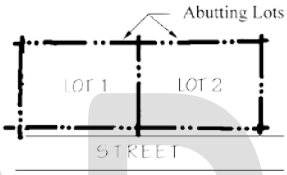
B. The definitions found within Chapters 14.05 and 16.04 MVMC are hereby adopted by reference in their entirety as they are currently written or amended in the future.

C. The definitions found in RCW 69.50 and WAC 314-55 relating to Marijuana licenses, application processes, requirements and reporting with regard to recreational marijuana are hereby adopted by reference in their entirety as they are currently written or as they may be amended in the future and shall apply in lieu of confliction definitions within the City's municipal code.

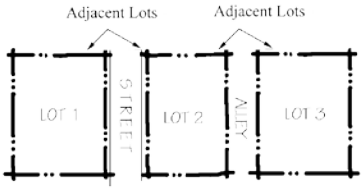
D. The definitions found in RCW 69.51A and WAC 246-75 relating to medical marijuana are hereby adopted by reference in their entirety as they are currently written or as they may be amended in the future and shall apply in lieu of conflicting definitions within the City's municipal code.

SECTION NINE.
That section 17.06.010 is hereby amended to read as follows:

17.06.010 A definitions.
Abutting" means to have boundaries that touch. When two parcels have a street or alley that runs between the two parcels, the two parcels are not abutting.



"Accessory building" means a subordinate building, the use of which is incidental to the use of the main building on the same lot where the building shall not exceed the height of and 50 percent of the existing gross floor area of the principal or main building, except where the principal or main building is less than 1,800 square feet in size, an accessory building of up to 900 square feet in size may be permitted.
"Accessory use" means a use incidental and subordinate in area, extent and purpose to the principal use and located on the same lot or in the same building as the principal or main use served on the same lot. This does not preclude the subject property from being subdivided through a binding site plan process at the time of development, or following the development of the proposed primary and accessory uses. Construction or initiation of an accessory use shall be concurrent with the primary permitted use or following the development and/or the commencement of the primary permitted use.
"Adjacent" means lots located across a public street, railroad, or right-of-way.



"Adult bookstore" means a retail establishment in which:
A. Twenty-five percent or more of the "stock-in-trade" consists of books, magazines, posters, pictures, periodicals or other printed material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," as defined in the Mount Vernon Municipal Code;
B. "Stock-in-trade" for the purpose of this section shall mean the greater of:
   1. The retail dollar value of all books, magazines, posters, pictures, periodicals, or other printed material readily available for purchase, rental, viewing or use by patrons of

the establishment excluding material located in any storeroom or other portion of the premises not regularly open to patrons; or

2. The total volume of shelf space and display area;

C. Any person is excluded by virtue of age from all or part of the premises generally held open to the public where books, magazines, posters, pictures, periodicals, or other predominant emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined in the Mount Vernon Municipal Code, are displayed or sold.

"Adult cabaret" means a commercial establishment which presents go-go dancers, strippers, or similar entertainers and which excludes any person by virtue of age from all or any portion of the premises; and which includes the display of "specified anatomical areas" or "specified sexual activities" as currently defined within this chapter, or as these definitions may be amended in the future.

"Adult drive-in theater" means a drive-in theater where at least 25 percent of the use is used for presenting motion picture films, video cassettes, cable television, or any other like visual media, distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined in the Mount Vernon Municipal Code.

"Adult entertainment" means any enterprise from which minors are excluded and which sells, rents or displays sexually explicit matter, including, but not limited to, adult bookstores, adult magazine stores, stores selling sexually oriented adult games or devices, adult motion picture theaters, adult mini-motion picture theaters, adult peep shows, establishments where nude or topless dancing or other displays regularly occur or other similar business.

Adult Entertainment Establishment. The following businesses or facilities are defined or referred to as "adult entertainment establishments":

A. Adult book stores;
B. Adult cabarets;
C. Adult drive-in theaters;
D. Adult entertainment and adult entertainment premises;
E. Adult motion picture theater;
F. Adult retail stores;
G. Adult video stores;
H. Massage parlors and public bath houses;
I. Panorams, previews, picture arcades, and peep shows, as defined in Chapter 5.56 MVMC.

"Adult motion picture theater" means an enclosed building where at least 25 percent of the use is used for presenting, for commercial purposes, motion picture films, video cassettes, cable television, or any other like visual media, distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined in the Mount Vernon Municipal Code for observation by patrons therein.

"Adult retail store" means a retail establishment in which:

A. Twenty-five percent or more of the "stock-in-trade" consists of items, products, or equipment distinguished or characterized by a predominant emphasis or simulation of "specified sexual activities" or "specified anatomical areas" as defined in the Mount Vernon Municipal Code; or

B. Any person is excluded by virtue of age from all or part of the premises generally held open to the public where products or equipment distinguished or characterized by a predominant emphasis or simulation of "specified sexual activities" or "specified anatomical areas" as defined in the Mount Vernon Municipal Code are displayed or sold.

"Adult video store" means a retail establishment in which:

A. Twenty-five percent or more of the "stock-in-trade" consists of prerecorded video tapes, discs, or similar material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined in the Mount Vernon Municipal Code; or

B. Any person is excluded by virtue of age from all or part of the premises generally held open to the public where prerecorded video tapes, discs, or similar material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined in the Mount Vernon Municipal Code are displayed or sold.

"Affordable housing" means units to be sold or rented to families earning less than 80 percent of the Skagit County median income, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development.

"Agricultural use" means:

A. The growing of crops, except marijuana;

B. The sale of products produced on the premises except marijuana; provided, that the lot area is greater than two acres; and provided, that only one sales stand, 450 square feet or less, shall be permitted; and

C. The raising of livestock, except commercial hogs; provided, that the operation conforms to all applicable health laws; and provided, that no more than one hoofed animal (excluding sucklings) shall be permitted for each one-half acre lot area. In no case shall any building housing livestock be located less than 200 feet from any property line.

"Alley" means a public thoroughfare which affords access to abutting property and is usually not intended for general traffic circulation.

"Alteration" means a change or rearrangement of structural parts, or an enlargement by extension of the existing structural parts, of a building, or the moving of a building from one location to another, or any change in addition to or modification of occupancy, business, commercial, industrial or similar uses. The installation or rearrangement of partitions affecting more than one-third of a single floor area shall be considered an alteration.

Area, Building. "Building area" means the total ground coverage of a building or structure which provides shelter, measured from the outside of its external walls or supporting members or from a point four feet in from the outside edge of a cantilevered roof.

Area, Site. "Site area" means the total horizontal area within the property lines, excluding external streets.

"Awning" means a shelter, typically for a pedestrian walkway, that projects from and is supported by the exterior wall of a building. Awnings have noncombustible frames, but may have combustible coverings. Awnings may be fixed, retractable, folding or collapsible. Any structure which extends above any adjacent parapet or roof of a supporting building is not included within the definition of awning.

SECTION TEN.

That section 17.06.030 is hereby amended to read as follows:

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17.48.030 C definitions.

"Card room" means a use governed pursuant to the provisions of Chapter 9.46 RCW, 1973 Gaming Act, and licensed by the Washington State Gambling Commission that is an accessory use to a permitted restaurant or drinking establishment. Card rooms shall not offer slot machine play or other table games such as blackjack, craps, or roulette. A card room is not a casino. Card rooms can be open no later than 2:00 a.m. and they are not allowed to be located adjacent to or abutting the R-1, R-2, R-3 or R-4 zoning districts.

"Caretaker's residence" means a dwelling unit located on the site of a nonresidential use and occupied only by a caretaker or guard employed on the premises, and consisting of only one residence per permitted establishment.

Cellar. For "cellar," see "basement."

"Certificate of occupancy" means a document issued by the building official stating that a newly constructed use may be legally occupied.

"Church" means a building or structure, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and accessory uses associated therewith.

"Clinic" means a building designed and used by two or more doctors for the medical, dental and surgical diagnosis and treatment of patients.

"Community association office" means a building, or portion thereof, used as an office engaged in the overall on-site management including sales and leasing, maintenance, and construction activities of the neighborhood or development in which it is located and approved as an integral part of the project.

"Community clubhouse" means a building, or portion thereof, used by residents of the neighborhood or development in which it is located for social, recreational, cultural, and educational purposes and approved as an integral part of the project.

"Conditional use" means a use which is allowed in a particular district only if approved by the hearing examiner. The conditional use permit process is described in Chapter 17.108 MVMC.

Conditional Use, Administrative. "Administrative conditional use" means a use that is approved by the development services director.

"Conference centers" means facilities where large gatherings of people converge to meet on a variety of subjects. These facilities are characterized by one large space where exhibits are set up and numerous adjoining meeting rooms. This definition excludes sports arenas, auditoriums, and exhibition halls.

"Coordinated local zoning for hazardous waste" permits off-site treatment and storage facilities of hazardous waste in one jurisdiction to serve the off-site facility needs of other jurisdictions; provided, the coordinated zoning is documented by signed agreements between all affected jurisdictions.

"Court" means an unoccupied open space bounded on three or more sides by buildings or lot lines on which walls are permitted.

"Coverage, lot" or "lot coverage" means the percentage of the area of a lot which is built upon or covered by structures, open or enclosed.

"Crops" means cultivated plants or agricultural produce, such as grain, vegetables, or fruit. Marijuana plants and marijuana products shall not be included within this definition.

SECTION ELEVEN.

That section 17.06.070 is hereby amended to read as follows:

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17.06.070 G definitions

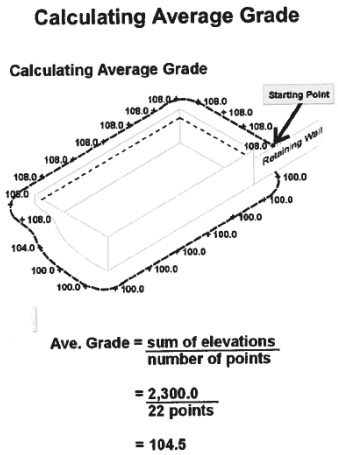
Garage, Parking Commercial or Public. "Commercial or public parking garage" means a building or structure which may be located above or below ground, with stalls accessed via interior aisles, and used for temporary storage of motor vehicles. Structured parking can be a stand-alone use or a part of a building containing other uses. This definition excludes commercial or public surface parking, RV storage, the long-term parking or storage for any motor vehicle, and park and ride facilities.

Garage, Private. "Private garage" means a sheltered or enclosed space designed and used for the storage of the motor vehicles or boats of the residents of the premises.

“Gardening” means To lay out, cultivate or tend to a plat of ground where flowers, shrubs, vegetables, or fruits are grown for personal use. This term does not allow growing of marijuana in any form.

"Gas station" means any area of land, including the structures thereon, that is used for the sale of gasoline or other motor fuels, oils, lubricants and auto accessories, and which may or may not include washing, lubricating and other minor servicing, but no painting operation.

"Grade" means an elevation that shall be determined by averaging the finished ground elevations within six feet of points situated every 10 feet along an imaginary line located between the building and the lot line; or where the lot line is more than six feet from the building, between the building and a point six feet from the building, this is also known as "average grade."



"Group home" means a single-family residence for up to eight unrelated individuals who need special care due to sensory, mental or physical disabilities; provided, that this shall not apply to a residence used for the placement of individuals who have been convicted of a crime or juvenile offense or have gone through some form of diversion proceedings either as an adult or a juvenile offender. The purpose of a group home is to provide supervision and support in a family-like setting for persons unable to live independently. A group home shall require a certificate of occupancy issued by the community and economic development director prior to occupancy which certificate shall be issued; provided, that the following standards are met:

A. 1. The group home is at least 1,000 feet from any other group home or shelter care facility; and

2. The group home is licensed by an appropriate agency of the state; and

3. The group home has adequate off-street parking and the appearance conforms with the neighborhood.

B. If the criteria set forth in subsection A of this section cannot be met by a proposed group home, the community and economic development director shall refer the request to the hearing examiner who shall make recommendation to the city council. The city council may approve the proposed group home and direct the community and economic development director to issue a certificate of occupancy therefor if it finds that:

1. The cumulative effect of the proposed group home will not alter the residential character of the neighborhood; and
2. The proposed group home will not create an institutional setting; and
3. The proposed group home will not exceed the capacity of existing community recreation and social service facilities; and
4. The proposed group home and the care provided therein meets or exceeds recognized standards for such facilities as shown by permits from a governmental licensing authority or recognition from a recognized authoritative association with expertise.

SECTION TWELVE.

That section 17.12.020 is hereby amended to read as follows:

17.12.020 Permitted uses.

Permitted primary uses in the R-A districts include:

A. Detached, single-family residential dwelling units. This use is limited to the placement of one such dwelling unit per certified lot and may consist of manufactured homes;

B. The growing of crops;

C. The sale of products produced on the premises; provided, that the lot area is greater than two acres; and provided, that only one sales stand, 300 square feet or less, shall be permitted; and provided that marijuana and marijuana products shall not be permitted;

D. The raising of livestock, except commercial hogs; provided, that the operation conforms to all applicable health laws; and provided, that no more than one hoofed animal (excluding sucklings) shall be permitted for each one-half acre of lot area. In no case shall any building housing livestock be located less than 200 feet from any property line;

E. Municipal parks and playgrounds of less than one-half acre.

SECTION THIRTEEN.

That section 17.56.020 is hereby amended to read as follows:

17.56.020 Permitted uses.

Permitted primary uses in the C-L district include:

A. Commercial Uses.

1. Retail stores;
2. Personal services;
3. Offices, banks, and financial institutions;
4. Hotels, motels and lodging houses;
5. Eating and drinking establishments;
6. Theaters, bowling alleys, skating rinks, and other entertainment uses;
7. Laundry and dry cleaning pickup stations;
8. Commercial or public parking garages and/or commercial or public surface parking;

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9. Park and ride;
10. Outside sales of operable vehicles, boats, and mobile homes or equipment;
11. Drive-in banks and eating establishments;
12. Gasoline service stations, automobile repair garages conducted inside a building and car washes;
13. Day nurseries;
14. Public utility installations, excluding repair and storage facilities;
15. Private vocational and technical schools;
16. Plumbing, electric, and carpenter shops;
17. Printing and newspaper offices;
18. Publishing plants;
19. Pet stores and veterinary clinics;
20. Upholstery and furniture repair shops;
21. Farm implement sales;
22. Other commercial uses which have similar environmental influences and impacts;
23. Contractor's offices.

B. Public and Quasi-Public Uses. Governmental buildings, including fire and police stations, administrative offices, and public recreational facilities and uses.

C. Industrial Uses.
1. Administrative, insurance, and research facilities;
2. Experimental or testing laboratories;
3. Manufacturing of electric or electronic instruments and devices;
4. Manufacturing, assembly or packaging of products from previously prepared materials;
5. Warehouses and distribution and wholesale users;
6. Manufacturing and assembly;
7. Other industrial uses which have similar environmental influences and impacts.

D. Public works facilities.

E. Residential uses that received required permits from Skagit County and/or the city of Mount Vernon existing as of February 15, 2005 (the date of annexation), may expand their existing residential uses without having to obtain an expansion of a nonconforming use permit or a variance. However, all residential building and/or site expansions/improvements shall be limited to the lot of record on which the residential use was originally permitted on, and they shall also comply with the development standards outlined within Chapter 17.15 MVMC and all other applicable sections of the municipal code, such as the critical areas ordinance, stormwater requirements, etc.

F. State-licensed recreational marijuana producers, processors and retailers, along with collective gardens as defined in RCW 69.51A, as it is currently written or may be amended in the future, subject to all of the following restrictions, development, and performance standards:
1. Compliance with the State regulations for medical marijuana collective gardens found in RCW 69.51A and WAC 246-75 or for recreational marijuana producers, processors or retailers found in RCW 69.50 and WAC 314-55 shall be demonstrated.

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2. Medical marijuana collective gardens and recreational marijuana producers, processors or retailers may not be located within one-thousand feet (1,000) of any of the following listed areas or uses. The measurement of this separation shall be taken in a straight line from the closest property line of the marijuana related use to the closest property line of the following listed uses:
   a. Residentially zoned areas including the R-1, R-2, R-3, R-4 , R-O, and residentially zoned districts within the City's Urban Growth Areas (UGAs).
   b. Any other licensed medical cannabis collective garden operator or delivery site;
   c. Any marijuana processor, producer or retailer licensed by the Washington State liquor control board;
   d. Properties owned or under contract by a public entity such as a school district or the City where a future primary or secondary school or park is planned.
3. Medical marijuana collective gardens shall comply with the 1,000 foot separation requirements mandated for recreational marijuana retailers, producers and processors as outlined within WAC 314-55 as it is currently written or as it may be amended in the future.
4. Marijuana plants, products and paraphernalia shall not be grown or on display in any location where the plants, products or paraphernalia are visible from the public right of way or a public place.
5. In no case shall a customer or patient pick up or drop off marijuana or marijuana related products through a drive-through opening in a structure. This regulation is not intended to apply to the transport of marijuana products from a producer to a processor; or a processor to a retail outlet.

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SECTION FOURTEEN.

That a new section be added to Chapter 17.72, Provisions Applicable to all Districts, to be titled, 17.72.120, Portable Marijuana Related Uses Prohibited, to read as follows:

17.72.120 Portable Marijuana Related Uses Prohibited

MVMC Chapter 17.56, notwithstanding, marijuana activities shall not be allowed at roadside stands, drive-throughs, sidewalk sales, farmers markets, mobile vendors, fairs, and all other similar types of venues.

SECTION FIFTEEN.

That section 17.96.020 is hereby amended to read as follows:

17.96.020 Home occupation.

Residents of a dwelling unit may conduct home occupations as accessory activities provided:

A. The total area devoted to all home occupation(s) shall not exceed 25 percent of the gross floor area of the dwelling or housekeeping unit. Areas within attached private garages and storage buildings shall not be considered part of the dwelling unit for purposes of calculating allowable home occupation area but may be used

for indoor storage of goods associated with the home occupation, as well as for the home occupation itself. See subsection L of this section regarding storage of toxic or flammable materials.

B. All on-site activities of the home occupation(s) shall be conducted indoors; no outside storage is allowed.

C. The following activities may be permitted as home occupations:

1. Dressmaking, seamstresses, tailors;
2. Artists and sculptors;
3. Resident owned and operated beauty and/or barbershops;
4. Tutoring limited to two students at a time;
5. Home crafts, such as model-making, rug weaving, and lapidary work;
6. Office facility of a minister, rabbi or priest;
7. Office facility of a salesman, sales representative or manufacturer's representative;
8. Office facility of a professional;
9. Repair shop for household items;
10. Telephone answering or soliciting;
11. Computer programming and small scale repair;
12. Home cooking and preserving;
13. Music and arts instruction (not more than two students at one time), a Type I home occupation, as defined in MVMC 17.96.030, may allow not more than 10 lessons a day; a Type II home occupation, as defined in MVMC 17.96.030, is necessary when lessons exceed 10 per day;
14. Massage therapist; and
15. Typing/word processing service.

Additional permitted uses may be allowed which meet the intent of this chapter, if not specifically prohibited by subsection D of this section.

D. The following activities shall be prohibited as home occupations:

1. Repair, building or servicing of vehicles;
2. Antique shop;
3. Gift shop;
4. Veterinary clinic or hospital;
5. Painting of vehicles, trailers or boats;
6. Large appliance repair (including stoves, refrigerators, washers and dryers);
7. Upholstering;
8. Cabinet and woodworking shops;
9. Machine and sheet metal shops;
10. Martial arts or dance/aerobics studio;
11. Small engine repair and any use which may include hazardous chemicals;
12. Dispensing of medical drugs or other items which may be potentially hazardous to the surrounding area;
13. Parking and storage of heavy equipment;
14. Storage of building materials for use on other properties;
15. Retail sales;
16. Mortuaries;

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17. Dancing studios, exercise studios;
18. Private clubs;
19. Restaurants; and
20. Family child day care homes providing services for over 12 children.
21. Marijuana sales, production, and collective gardens.

E. There shall be no more than three deliveries per week to the residence by suppliers, except that delivery of mail and small packages by the United States Postal Service or by alternative private delivery services shall not be included as supplier deliveries.

F. Sales shall be limited to mail order and telephone sales, with off-site delivery. No on-site retail sales are permitted.

G. Services to patrons shall be arranged by appointment or provided off-site.

H. Individual transportation vehicles including taxicabs and limousines used by businesses engaging in furnishing individual or small group transportation by motor vehicle shall not park within any required setback areas of the lot or on adjacent streets.

I. The home occupation(s) may use or store a vehicle for pickup of materials used by the home occupation(s) or the distribution of products from the site, provided:
1. No more than one such vehicle shall be allowed;
2. Such vehicle shall not park within any required setback areas of the lot or on adjacent streets; and
3. Such vehicle shall not exceed a nominal model designation of one ton (i.e., Ford F350; Chevy-GMC 3500).

J. The home occupation(s) shall not use electrical or mechanical equipment that results in:
1. A change to the fire rating of the structure(s) used for the home occupation(s);
2. Visual or audible interference in radio or television receivers, or electronic equipment located off-premises; or
3. Fluctuations in line voltage off-premises.

K. There shall be no offensive noise, vibration, smoke, dust, odors, heat, light or glare noticeable at or beyond the property line resulting from the operation.

L. There shall be no storage and/or distribution of toxic or flammable materials, and spray painting or spray finishing operations that involve toxic or flammable materials which, in the judgment of the fire and county health departments, pose a dangerous risk to the residence, its occupants, and/or surrounding properties. Those individuals who are engaged in home occupations shall make available to the fire or county health departments for review the material safety data sheets which pertain to all potentially toxic and/or flammable materials associated with the use.

M. In addition to required parking for the dwelling unit, on-site parking shall be provided as follows:
1. One stall for a nonresident employed by the home occupation(s); and
2. One accessible stall for patrons when services are rendered on-site.

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SECTION SIXTEEN.
That section 17.96.040 is hereby amended to read as follows:

17.96.040 Applicability and exemptions

A. No person shall carry on a home occupation, or permit such use to occur on property which that person owns or is in lawful control of, contrary to the provisions of this chapter.

B. Exemptions. Any person or party wishing to establish an exempt home occupation, excluding garage sales, shall make application through the development services department office. Exemptions from the provisions of this chapter are:

1. Authors, composers and writers;
2. Paperwork and similar activities performed by residents, who may have a primary office elsewhere and with no customers visiting their home;
3. Services or activities that are not performed at the residence, such as newspaper delivery, babysitting, lawn care and gardening, parties for the sale of items such as Tupperware, Mary Kay, etc., and similar services;
4. Garage sales, subject to the requirements of Chapter 5.60 MVMC;
5. For-profit production of produce or other food products grown on the premises, within the R-A, residential agricultural zoning district. This may include temporary or seasonal sale of produce or other food products grown on the premises so long as the produce and food products do not include marijuana;
6. Hobbies that do not result in payment to those engaged in such activity; and
7. Family day care facilities for 12 or fewer children, licensed by the Washington State Department of Social and Health Services.

C. A separate permit is required for each Type I and Type II home occupation conducted on a property.

SECTION SEVENTEEN.
City staff is hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

SECTION EIGHTEEN.
Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

SECTION NINETEEN.
This ordinance shall be in full force and effect five days after its passage, approval, and publication as provided by law.

DRAFT

PASSED AND ADOPTED this _____ day of _____, 2013.

_____
Jill Boudreau, Mayor

SIGNED AND APPROVED this ____ day of ____, 2013.

_____
ALICIA D. HUSCHKA, Finance Director

Approved as to form:

_____
Kevin Rogerson, City Attorney

Published _____

DRAFT