

0047.900000

JZL/

9/17/13

ORDINANCE NO. 839

AN ORDINANCE OF THE CITY OF CARNATION, WASHINGTON, ADOPTING ZONING AND LAND USE REGULATIONS GOVERNING MARIJUANA-RELATED USES; ADOPTING A NEW CHAPTER 15.110 CMC MARIJUANA-RELATED USES; PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS IN ALL ZONING DISTRICTS OF THE CITY; PERMITTING THE PRODUCTION, PROCESSING AND/OR RETAILING OF MARIJUANA AS REGULATED PURSUANT TO WASHINGTON STATE INITIATIVE NO. 502 IN THE HORTICULTURAL COMMERCIAL (HC) ZONING DISTRICT, AND ONLY AT FACILITIES THAT HAVE OBTAINED A VALID LICENSE ISSUED BY THE WASHINGTON STATE LIQUOR CONTROL BOARD; AMENDING CHAPTER 15.40 CMC PERMISSIBLE USES BY UPDATING THE TABLE OF PERMISSIBLE USES TO INCLUDE APPROPRIATE REFERENCES TO MARIJUANA-RELATED USES; AMENDING CHAPTER 15.44 CMC SUPPLEMENTARY USE PROVISIONS TO PROHIBIT MARIJUANA-RELATED USES AS HOME OCCUPATIONS; ENTERING LEGISLATIVE FINDINGS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in accordance with Initiative 502, the Washington State Liquor Control Board (WLCB) has developed a state licensing and regulatory framework for recreational marijuana producers, processors and retailers, and is expected to begin issuing state licenses for such businesses; and

WHEREAS, in recognition of Initiative 502, the Carnation City Council desires to establish local zoning regulations concerning marijuana-related land uses in order to ensure that only state-licensed marijuana businesses may locate within the City's jurisdiction, and only within designated zoning districts; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF CARNATION, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council hereby adopts the above recitals, the content of Agenda Bill No. 13-40, and the content of Exhibit A, attached hereto and incorporated herein by his reference as if set forth in full, as findings in support of the regulations set forth in this ordinance, together with the following:

A. The City is authorized by State law, including but not limited Article XI, Section 11 of the Washington Constitution, Chapter 35A.11 RCW, Chapter 36.70A RCW and Chapter 35A.63 RCW, to enact local police power, zoning and land use regulations.

B. The Planning Board conducted a public hearing on the substance of this ordinance on September 24, 2013, and recommended adoption by the City Council. The City Council held a public hearing on this ordinance on December 3, 2013.

C. The regulations set forth in this ordinance have been processed and considered by the City in material compliance with all applicable procedural requirements, including but not limited to requirements related to public notice and comment.

D. All relevant requirements of SEPA have been satisfied with respect to this ordinance.

E. The City Council has carefully considered, and the regulations set forth in this ordinance satisfy, the review criteria codified at CMC 15.100.030(E).

F. The regulations set forth in this ordinance will advance the public health, safety and welfare.

Section 2. Amendment of Title 15 CMC. Title 15 of the Carnation Municipal Code is hereby amended by the addition of a new Chapter 15.110 Marijuana-Related Uses to

provide in its entirety as set forth in Exhibit B, attached hereto and incorporated herein by this reference as if set forth in full.

Section 3. Amendment of Table of Permissible Uses—Chapter 15.40 CMC.

Table I. The Table of Permissible Uses referenced in Section 15.40.010 of the Carnation Municipal Code and codified as Table I of Chapter 15.40 CMC is hereby amended to provide in its entirety as set forth in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full.

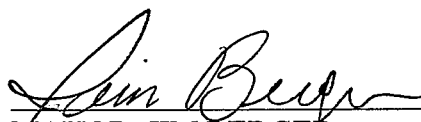
Section 4. Amendment of CMC 15.44.120. Section 15.44.120 of the Carnation Municipal Code is hereby amended to provide in its entirety as set forth in Exhibit D, attached hereto and incorporated herein by this reference as if set forth in full.

Section 5. Copy to Commerce. Pursuant to RCW 36.70A.106, the Planning Director is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

Section 6. 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 7. 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 Carnation City Council this 3rd day of December, 2013.


MAYOR, JIM BERGER

ATTEST/AUTHENTICATED:


CITY CLERK, MARY MADOLE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
J. ZACHARY LELL

FILED WITH THE CITY CLERK: 09/26/2013
PASSED BY THE CITY COUNCIL: 12/03/2013
PUBLISHED: 12/11/2013
EFFECTIVE DATE: 12/16/2013
ORDINANCE NO. 839

Exhibit A

The Carnation City Council hereby enters the following legislative findings in support of the regulations established by this ordinance:

1. Recent amendments to Chapter 69.51A RCW, relating to the medical use of cannabis, have expanded the scope of certain activities involving the use of cannabis for medical purposes that are permitted under state law.
2. RCW 69.51A.085 allows “qualifying patients” to create and participate in “collective gardens” for the purpose of producing, processing, transporting, and delivering cannabis for medical use, subject to certain conditions.
3. RCW 69.51A.140 delegates authority to cities and towns to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes as exercises of the City’s police power.
4. The Carnation City Council understands that approved medical uses of cannabis may provide relief to patients suffering from debilitating or terminal conditions, but potential secondary impacts from the establishment of facilities for the growth, production, and processing of medical cannabis are not appropriate for any zoning designation within the City.
5. The City Council further understands that while the medical benefits of cannabis have been recognized by the state legislature, cannabis, also known as marijuana, remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession and use of cannabis is still a violation of federal law. The City Council wishes to exercise the authority granted pursuant to state law in order to clarify that the establishment of a collective garden will be deemed to be a violation of city zoning ordinances, but the City Council expressly disclaims any intent to exercise authority over collective gardens in a manner that would directly conflict with the CSA.

6. In accordance with Initiative 502, the State Liquor Control Board has developed rules and regulations governing the licensing, commenting process, location and permissible number of marijuana producers, processer and retailers. The substantive provisions of this ordinance are intended to be consistent with, and to appropriately supplement, such rules and regulations.

7. While the production, processing, and retailing of marijuana remains in violation of the federal CSA, the City Council wishes to acknowledge the will of Washington voters and the authority exercised by the state of Washington and the State Liquor Control Board to license such facilities, leaving appropriate issues relating to the legality, licensing, siting and permitting of such facilities to be determined by the federal and state governments in the exercise of their lawful authority, as finally determined by a court of appropriate jurisdiction.

Exhibit B

**Chapter 15.110
MARIJUANA RELATED USES**

- 15.110.010 Collective gardens.**
- 15.110.020 Medical cannabis collective gardens.**
- 15.110.030 Recreational cannabis**
- 15.110.040 Marijuana related uses.**

15.110.010 Collective gardens.

“Collective garden” means the growing, production, processing, transportation, and delivery of cannabis, by qualifying patients for medical use, as set forth in Chapter 69.51A RCW, and subject to the following conditions:

A. A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

B. A collective garden may contain no more than twenty-four ounces of usable cannabis per patient up to a total of seventy-two ounces of usable cannabis;

C. A copy of each qualifying patient’s valid documentation, including a copy of the patient’s proof of identity, must be available at all times on the premises of the collective garden;

D. No usable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden;

E. A collective garden may contain separate areas for growing, processing, and delivering to its qualified patients, provided that these separate areas must be physically part of the same premises, and located on the same parcel or lot. A location utilized solely for the purpose of distributing cannabis shall not be considered a collective garden; and

F. No more than one collective garden may be established on a single tax parcel.

15.110.020 Medical cannabis collective gardens.

“Collective gardens” as defined in CMC 15.110.010 are prohibited in the following zoning districts:

- A. All residential zones, including without limitation the R2.5, R3, R4, R6, R12, R24 and RMHP zoning districts;
- B. All commercial zones, including without limitation the CBD, MU, HC, AGI and SC zoning districts;
- C. All light industrial/manufacturing zones, including without limitation the LI/M zoning district;
- D. All public zones, including without limitation the PU zoning district;
- E. All parks and recreation zones, including without limitation the P/R zoning district; and
- F. Any new zoning district established after June 18, 2013.

In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance per se, and may be abated by the city attorney under applicable provisions of this code and/or state law, including without limitation the provisions of Chapter 8.26 CMC.

15.110.030 State-licensed facilities—definitions.

A. Unless the context clearly indicates otherwise, all terms used in Sections 15.110.030, et. seq. shall have the meanings established pursuant to RCW 69.50.101. In the event of an irreconcilable conflict between any definition set forth in this chapter and any definition set forth in RCW 69.50.101, the statutory definition shall control to the extent of such conflict.

B. “Marijuana” means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than zero point three percent (0.3%) on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plants, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is incapable of germination.

C. "Marijuana processor" means a person licensed by the State Liquor Control Board to process 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.

D. "Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

E. "Marijuana infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana infused products" does not include usable marijuana.

F. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana infused products in a retail outlet.

G. "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana infused products.

15.110.040 Marijuana related uses.

A. The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Carnation is an authorization to circumvent federal law or provide permission to any person or entity to violate federal law. Only state-licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the City of Carnation and then only pursuant to a license issued by the State of Washington. The purposes of these provisions is solely to acknowledge the enactment by Washington voters of Initiative 502 and a state licensing procedure and to permit to, but only to, the extent required by state law marijuana producers, marijuana processors, and marijuana retailers to operate in designated zones of the City.

B. Marijuana producers may be located only in the Horticultural Commercial (HC) zone of the City. Such facilities and uses may be located only at designated sites licensed by the state of Washington and fully conforming to state law.

C. Marijuana processors may locate in the Horticultural Commercial (HC) zone of the City, but only at designated sites

licensed by the state of Washington and fully conforming to state law.

D. Marijuana retailers may locate only in the Horticultural Commercial (HC) zone at designated sites licensed by the state of Washington and fully conforming to state law.

E. In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance per se, and may be abated by the City Attorney under the applicable provisions of this code or state law, including but not limited to the provisions of CMC Chapter 8.26.

Exhibit C

NAIC	NON-RESIDENTIAL USES	R2.5	R3R4 R6	RMHP	R12	R24	CBD	HC	SC	MU	AGI	LI/M	PU	PR
...														
92216	Fire Protection												P	
	<u>cannabis and/or marijuana-related uses as defined by Chapter 15.110 CMC</u>													
	<u>Marijuana Producers, state licensed</u>							P31						
	<u>Marijuana Processors, state licensed</u>							P31						
	<u>Marijuana Retailers, state licensed</u>							P31						
	<u>Medical marijuana or cannabis collective gardens</u>													

Nonresidential Uses Notes:

- 1 No permanent foundations allowed.
- 2 Minimum lot size one acre.
- 3 Separate entrances on two different streets, e.g., on corner lots.
- 4 Not allowed on parcels that front on Tolt Avenue.
- 5 Cottage type of housing only; maximum of 2 stories.
- 6 Microbrewery that is part of a food and drink establishment.
- 7 Blown and/or art glass as part of a gallery, or retail or educational establishment.

- 8 Ornamental metal products as part of a gallery, or retail or educational setting.
- 9 Manufacturing on an artisanal scale as part of a gallery, or retail or educational setting.
- 10 No unenclosed storage on-site.
- 11 No on-site propagation in greenhouses or external storage.
- 12 No on-site propagation in greenhouses.
- 13 Subject to master plan design review.
- 14 Hours of operation subject to restriction.
- 15 4,000 GSF maximum.
- 16 Office operations only.
- 17 All antenna subject to CMC 15.98.
- 18 May not be located on the ground floor along Tolt Avenue.
- 19 May not exceed 2,000 gsf.
- 20 All activities enclosed within structure.
- 21 Located above a permitted retail or food service use.
- 22 In conjunction with retail sales of food.
- 23 Must meet all requirements of CMC 15.98.
- 24 Must meet all requirements of CMC 15.44.100.
- 25 Drive-thru access not allowed from Tolt Avenue.
- 26 Must provide parking per CMC 15.72; no exemption for CBD.
- 27 Must comply with Design Standards for frontage and screening on Tolt Avenue.
- 28 Must meet all requirements of CMC 15.44.130.
- 29 All bins and open piles of soils, mulch, wood chips, bark dust, sand and similar materials shall be effectively contained thorough the use of appropriate confinement and/or treatment facilities such as to prevent any on-site and/or off-site migration of sediment from the pile or bin area.
- 30 Off-site tracking of sediment is prohibited.
- 31 May not be located within 1,000 feet of any elementary or secondary school, playground, recreation center or facility, child care center, public park, library, or any other uses set forth in WAC 314-55-045

Exhibit D

15.44.120 Home occupations.

A. The conduct of business within a dwelling may be permitted in residential, mixed use and commercial zones under the provisions of this section and Chapter 5.12 of the Carnation Municipal Code as long as the home occupation is consistent with the existing character of the surrounding neighborhood. As specified in Chapter 5.12, a home occupation is a commercial activity that requires a city business license. Home occupation business licenses shall be administered in the same manner as other business licenses as provided in Chapter 5.12. Applications for home occupations shall be denied, and a home occupation license may be revoked, if it is found that the application or use fails to comply with the criteria listed in subsection B below.

B. In order for a home occupation to be permitted, the following criteria must be met and maintained:

1. No goods, stock in trade, or other commodities are displayed for sale;
2. There are no on-premises retail sales;
3. No more than one part-time person, not a resident on the premises, is employed in connection with the home occupation;
4. There are no objectionable noise, fumes, odor, dust or electrical interference created by the home occupation;
5. No more than twenty-five percent of the total gross floor area of residential buildings plus other buildings housing the purported home occupation, or more than one thousand square feet of gross floor area (whichever is less), is used for home occupation purposes;
6. No materials, supplies or equipment, except for a primary vehicle, connected with the home occupation is parked or stored outside the home or accessory buildings;
7. No more traffic is generated than is normal for a single-family residence in the neighborhood, generally defined as up to twenty vehicle trips per day associated with the home occupation;
8. The home occupation is conducted entirely within the principal residential building or other accessory building or structure;
9. The home occupation does not require the use of electrical or mechanical equipment which would change the fire rating of the structure.
10. No home occupations involving or related to the growing, producing, processing,

dispensing or sale of cannabis and/or marijuana-related uses as defined by Chapter 15.110 CMC or products containing cannabis and/or marijuana as defined by Chapter 15.110 CMC shall be allowed as a home occupation.

The following is a nonexhaustive list of examples of enterprises that may be home occupations if they meet the criteria described above: (i) the office or studio of an accountant, artist, consultant, lawyer, architect, engineer, contractor, painter, teacher, or similar professional; (ii) workshops, greenhouses, or kilns; (iii) dressmaking or hairdressing studios.

The following is a nonexhaustive list of examples of enterprises that are not appropriate for home occupations and shall not be permitted: outdoor kennels or animal breeding; vehicle repair, rebuilding or servicing; gift or antique shops; veterinary clinic; large appliance repair including stoves, refrigerators, washers and dryers; welding; upholstery; machine and sheet metal shops; assembly or production lines; small engine repair; and uses which include hazardous chemicals as defined in the International Fire Code or the dispensing of medical drugs.