**Ferndale City Council**  
**REQUEST FOR COUNCIL ACTION**  
**Department Prepared By: CITY CLERK’S OFFICE**

**AGENDA BILL #16-02-004**

**TITLE:**

<table>
<thead>
<tr>
<th>Ordinance</th>
<th>Resolution</th>
<th>Motion</th>
<th>Info Only</th>
<th>Discussion</th>
</tr>
</thead>
</table>

**Date Council Action Requested:** February 1, 2016  
**Prepared by:** Susan Duncan, City Clerk  
**Reviewed By:**  
**Date:** 01/27/2016

**SUBJECT:**  
Recreational Marijuana Regulations (Public Hearing)

**Committee:** P&LU PW&U F&A  
Mayor X  
City Administrator X  
City Clerk’s Office X  
Community Development Dept X  
Public Works Department  
City Attorney’s Office X  
Finance Director  
Police Department  
Board/Commission X  
Hearings Examiner

**ACTION REQUESTED:**  
VOTE NEEDED TO PASS:

**SUMMARY:** Please see staff report.

**DISCUSSION/ANALYSIS/ISSUES:** Planning & Land Use Committee members forwarded this item to the full Council for a public hearing with no recommendation.

**RECOMMENDATIONS:** Approval of AB #16-02-004

**ATTACHMENTS:**  
Staff Report  
Ordinance

DATE: February 1, 2016

FROM: Jori Burnett,

PRESENTATION BY: Jori Burnett

ATTACHMENTS

1. Ordinance (Zoning Text and Maps)
2. Notice of Public Hearing
3. SEPA Determination of Non-Significance

RECOMMENDATIONS: Rename and approve amendments to Chapter 18.67 of the Ferndale Municipal Code (Marijuana), allowing:

1. The co-mingling of recreational and medicinal marijuana,
2. Expanding the number of retail stores from one to two
3. Consolidating the zones in which retail stores may be permitted (retail marijuana stores would only be allowed within the General Business zone).
4. The existing moratorium on marijuana retail stores is scheduled as a separate agenda item.

BACKGROUND: The City of Ferndale established recreational marijuana regulations in 2013 in reliance on State regulations established by Initiative 502 (I-502), which was approved by Washington State voters in 2012.

Ferndale’s regulations focus on recreational marijuana and preserve the I-502 limitations requiring a minimum 1,000 foot distance from protected land uses (child care, parks, schools, etc.). The regulations were also written at a time when the City understood that no more than one retailer could be allowed in Ferndale.

As a result of 2015 changes at the state level, jurisdictions now have the ability to modify their regulations to allow medical marijuana sales in conjunction with recreational marijuana. The Liquor and Cannabis Board (LCB) is expected to allow for a new round of applications on or before the new rules go into effect in July 2016. In December 2015, the LCB determined that one additional retail store could be placed in Ferndale.
Earlier in December, the City Council adopted an emergency moratorium on new retail marijuana businesses in Ferndale. This moratorium was intended to provide the City with sufficient time to develop permanent rules prior to receiving applications from new businesses.

Based on legal decisions and communications with the LCB, it is now clear that local jurisdictions have the authority to be more restrictive than state law on these matters – a fact that was uncertain when marijuana regulations were first established.

In recognition of these facts, the Ferndale Planning Commission recommended 3-2 that the City Council approve the proposed modifications. Although Staff cannot speak for individual Planning Commissioners, we feel it is important to raise the issues that were discussed.

**Co-mingling medicinal and recreational marijuana:** The Planning Commission did not have significant reservations associated with allowing the co-mingling of recreational and medical marijuana businesses or the reduction in the zones in which the retail stores are allowed. The Planning Commission discussed a number of other topics – hours of operation, limiting a new store to “medicinal only,” reducing buffers from parks and certain other sensitive land uses – but collectively agreed that these additional changes to the proposed code were unnecessary.

**Number of stores:** There was not substantial debate in increasing the number of potential retail stores from one to two. The fact that the LCB expanded the potential allocation by only one store reduced the concerns of both the majority of Planning Commission and Staff. As proposed, the new regulations would allow and then cap the total number of retailers at two. The current regulations are silent as to overall number.

**Distance from religious institutions:** Planning Commissioners observed that State requirements for 1,000 foot buffers did not include separations from religious institutions. It was noted that the primary goal of the established buffers was to separate land uses in which minors may be present from marijuana businesses – and that religious institutions often have significant numbers of children in attendance – either at church or often at Sunday School or daily daycare. Commissioner’s suggested that the omission of religious institutions from the protected buffers might tend to expose minors to these businesses. Further, it has been noted that a religious institution without a Sunday School or daycare may still have the same number of children present – but with no protective buffer.

Staff did not recommend attaching a buffer from religious institutions, for two primary reasons. First, the majority of traditional brick-and-mortar “churches” in Ferndale are already within existing buffer areas, making an additional buffer from the church itself somewhat redundant.\(^1\)

Second, the term “religious institution” or “church” is often difficult to define - from a land use perspective. While in this instance the goal would be to protect

\(^1\) In fact, only the Church of Christ, within the 6300 block of Portal Way, would cause buffers to change.
churches from the impacts of specific businesses, many of the laws and court decisions on this subject were intended to protect religious freedom. The Religious Land Use and Institutionalized Persons Act of 2000 allows churches and other religious institutions a way to avoid burdensome zoning law on their property use. The act also broadened the definition to include “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”

Staff does not believe it is likely that individuals or organizations will seek to establish a “religious institution” in order to block a marijuana business. We also do not believe that adding a buffer from religious institutions will make it easier to regulate marijuana businesses, nor do we believe it would have significant practical impact in terms of where these businesses could be located.

**Reduction in Zoning:** The Planning Commission sought to reduce the number of zones in which marijuana businesses (specifically retail) could be located – narrowing the zoning to the General Business zone. There was little debate on this direction, and it is clear that jurisdictions have this ability. The existing retail marijuana store in Ferndale is within the General Business zone, and would not become a non-conforming use as a result of these changes.

**ANALYSIS:** Since the passage of I-502, City staff has worked with a number of I-502 businesses. As in any industry, we have experienced a range of applicants, from those that were totally unprepared to those who approached their business as a science. We have discussed issues with applicants who were hesitant to divulge any information, and with those who invited staff to observe every step of their operation.

In other words, I-502 businesses and the people that run them are not so different from any other business, with the exception of the fact that they are so heavily regulated – and that the business and user community is fairly well connected in a common effort to improve the regulation of this project.

**FISCAL IMPACT:** The City may experience a theoretical fiscal impact if it limits the number of retail businesses to one, as it is the retail businesses that generate sales tax to local jurisdictions.

**LEGAL REVIEW:** Several jurisdictions have sought to preserve moratoriums or outright ban recreational marijuana businesses, and court rulings, though still somewhat murky, have generally supported these actions. As part of its new regulations, the State has attempted to increase the sales tax distributed back to local jurisdictions that allow recreational marijuana, thus creating a carrot for compliance (and apparently acknowledging the ability for jurisdictions to prevent these businesses).

**ALTERNATIVES:** The LCB allocation released in December 2015 clarified a number of issues – and reduced the number of alternatives that could be considered. Other than simply taking no action (preserving the existing
regulations), Staff believes the Planning Commission has two primary alternatives beyond the proposed changes:

1. Repeal all existing marijuana regulations and prohibit such uses. By repealing existing regulations when there are now several existing marijuana businesses (growprocessors and retailers), those existing businesses would likely be damaged. Thus while the City could technically move in this direction, it does not appear to be a viable option.

2. Modify the proposal to limit retail businesses to the one existing business, create buffers from religious institutions, reduce buffers from other land uses. Staff does not believe that there is a need to make additional modifications at this time.

**CONCLUSIONS:**

Staff feels that the issues are clear and are not particularly nuanced. Moreover, there are existing or potential businesses in Ferndale that will likely depend on the City’s final decision before making decisions to move forward with business plans. It appears that Staff, the Planning Commission, and City Council all wish to provide certainty on this issue fairly rapidly.
ORDINANCE NO.

AN ORDINANCE OF THE FERNDALE CITY COUNCIL AMENDING AND RENAMING CHAPTER 18.67 OF THE FERNDALE MUNICIPAL CODE (REGULATIONS FOR THE SITING OF RECREATIONAL MARIJUANA USES)

WHEREAS, in 2013 the City of Ferndale established regulations for the siting of recreational marijuana uses in reliance of Washington State Initiative 502 (I-502); and

WHEREAS, in 2015 the Washington State Legislature adopted new laws that combine recreational and medicinal marijuana licensing; and

WHEREAS, the Liquor and Cannabis Board (LCB) has determined that up to one additional retail marijuana store may be located in Ferndale; and

WHEREAS, the City’s existing regulations do not anticipate recent changes in State law, nor do they reflect the ability of local jurisdictions to place more restrictive regulations on these land uses; and

WHEREAS, the Ferndale Planning Commission, City Council and Staff have discussed the positives and negatives associated with an increase in the number of retail stores in Ferndale, the co-mingling of recreational and medicinal marijuana, the zones appropriate for such uses, and many other related subjects; and

WHEREAS, the real or perceived negative impacts resulting from a potential new retail store in Ferndale will be mitigated most effectively by reducing the zones in which such use may be permitted; and

WHEREAS, the Ferndale Planning Commission recommended approval of the proposed changes on January 13, 2016 following an Open Record Public Hearing; and

WHEREAS, a SEPA Determination of Non-Significance (DNS) was issued January 7, 2016 following a two-week comment period; and

WHEREAS, the Ferndale City Council held an Open Record Public Hearing on February 1, 2016.

WHEREAS, the City of Ferndale has commenced review of existing regulations; and
Chapter 18.67
REGULATIONS FOR THE SITING OF RECREATIONAL AND MEDICINAL MARIJUANA USES

Sections:
18.67.010 Findings and purpose.
18.67.020 Definitions.
18.67.030 License required – Effective date.
18.67.040 Relationship to recreational marijuana laws and other laws.
18.67.050 Designation of licensing authority.
18.67.060 Requirements of application for license – Payment of application fee.
18.67.070 Inspection fee.
18.67.080 Denial of application.
18.67.090 Recreational marijuana uses allowed in identified zones.
18.67.100 Location criteria.
18.67.110 Change of location.
18.67.120 Outdoor signage and advertising.
18.67.130 Security requirements.
18.67.140 Report of disturbances and unlawful activity.
18.67.150 Visibility of activities – Control of emissions.
18.67.160 Sales tax.
18.67.170 Inspection of licensed premises.
18.67.180 Nonrenewal, suspension or revocation of license.
18.67.190 No city liability – Indemnification.
18.67.200 Other laws remain applicable.

18.67.010 Findings and purpose.
A. The Council adopts all of the “whereas” sections of the ordinance codified in this chapter as findings to support this chapter.

B. The purpose of this chapter is to establish where recreational and/or medicinal marijuana producers, processors and retail outlets may locate in the City, and to describe the restrictions upon such uses, including the business license and land use application process, qualifications and requirements, and the terms of such permits and licenses, as well as rules for renewals, violations and penalties.
C. No part of this chapter is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 et seq., the Uniform Controlled Substances Act (Chapter 69.50 RCW), nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by Chapter 69.51A RCW or Chapter 69.50 RCW. Nothing in this chapter shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this chapter be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass. (Ord. 1809 § 1, 2013)

18.67.020 Definitions.
For purposes of this chapter, the following definitions apply:

A. “Child care center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than 24 hours licensed by the Washington State Department of Early Learning, under Chapter 170-295 WAC.

B. “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

C. “Deliver” or “delivery” means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

D. “Elementary school” means a school for early education that provides the first four to eight years of basic education and is recognized by the Washington State Superintendent of Public Instruction.

E. “Game arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under 21 years of age are not restricted.

F. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure
must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as two-inch by four-inch or thicker studs overlain with three-eighths-inch or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

G. “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

H. “Marijuana” means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than three-tenths percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this chapter, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

I. “Marijuana Business” means an individual, corporation, business trust, estate, trust, partnership, association, or joint venture licensed by Washington State and the City of Ferndale, that is a marijuana processor, a marijuana producer, or a marijuana retailer of either medicinal or recreational marijuana, or both.

IJ. “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.

JK. “Marijuana, usable” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

KL. “Outdoors” means any location that is not “indoors” within a fully enclosed and secure structure as defined herein.

LM. “Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.
“Playground” means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

“Process” means to handle or process cannabis in preparation for recreational use.

“Processor, marijuana” means a person licensed by the State Liquor Control and Cannabis 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 as wholesale to marijuana retailers, either for recreational or medicinal use, or both.

“Producer, marijuana” means a person licensed by the State Liquor Control and Cannabis Board to produce and sell either recreational or medicinal marijuana, or both marijuana at wholesale to marijuana processors and other marijuana producers.

“Produce” or “production” means to manufacture, plant, grow or harvest cannabis or marijuana either for recreational or medicinal purposes, or both.

“Public park” means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government or metropolitan park district. Public park does not include trails.

“Public place” includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, trails or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.
“Public transit center” means a facility located outside of the public right-of-way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

“Recreation center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under 21 years of age, owned and/or managed by a charitable nonprofit organization, city, county, state or federal government.

“Residential” means land designated Low Density Residential, Medium Density Residential, or High Density Residential by the City of Ferndale Comprehensive Plan.

“Residential unit,” or “dwelling unit,” shall be as defined by FMC 18.08.040 (Definitions).

“Residentially zoned district” means the zoning applied to the Residential land use designation in the City of Ferndale Comprehensive Plan.

“Retailer, marijuana” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet for either recreational or medicinal purposes, or both. No more than two marijuana retailers are allowed within the City of Ferndale. Such retailers must be located within the General Business Zone and may not have hours of operation extending past twelve am.

“Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of usable marijuana and marijuana-infused products for either recreational or medicinal purposes, or both.

“Secondary school” means a high and/or middle school: a school for students who have completed their primary education, usually attended by children in grades seven to 12 and recognized by the Washington State Superintendent of Public Instruction.

“Usable cannabis or usable marijuana” means dried flowers of the cannabis plant. The term “usable cannabis or usable marijuana” does not include marijuana-infused products or cannabis products. (Ord. 1809 § 1, 2013)
18.67.030 License required – Effective date.
A. It shall be unlawful for any person or entity to operate any recreational marijuana producer, processor or retail outlet without first having obtained a local license under this chapter and Chapter 5.04 FMC, and a state license under Chapter 314-55 WAC, for each facility to be operated in connection with such business. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this section.

B. No person shall be deemed to have any entitlement or vested right to licensing under this chapter by virtue of having received any prior license or permit from the City, including, by way of example, any zoning permit, medical marijuana license, wholesale food manufacturer’s license, or any other license. No person shall be deemed to have any entitlement or vested right to licensing under this chapter by virtue of operating within the City without valid local licenses. In order to lawfully engage in the business of producing, processing or selling recreational or medicinal marijuana in the City, a person must qualify for and obtain a license in accordance with this chapter and Chapter 314-55 WAC.

C. This chapter is not intended to regulate the possession, cultivation or use of medical marijuana by anyone who may qualify as a qualified patient or designated care provider under Chapter 69.51A RCW. (Ord. 1809 § 1, 2013)

18.67.040 Relationship to recreational marijuana laws and other laws.
Except as otherwise specifically provided herein, this chapter incorporates the requirements and procedures set forth in I-502, as codified in Chapter 69.50 RCW and Chapter 314-55 WAC, as well as Chapter 246-70 WAC. In the event of any conflict between the provisions of this chapter and the provisions of Chapter 69.50 RCW, Chapter 314-55 WAC, or Chapter 314-55 WAC, the more restrictive provision shall control. (Ord. 1809 § 1, 2013)

18.67.050 Designation of licensing authority.
In accordance with FMC 5.04.040, the City of Ferndale Treasurer is designated as the local Licensing Authority:

A. To grant or deny licenses under this chapter, to grant or deny transfers of ownership or location of the license and impose penalties against licensees in the manner provided by law.

B. To promulgate rules and regulations regarding the procedures for hearings before the Licensing Authority, and to administer oaths and issue subpoenas to require the presence
of persons and the production of papers, books and records at any hearing which the Authority is authorized to conduct. Any such subpoena shall be served in the same manner as a subpoena issued by the Washington courts.

C. To require any applicant or licensee to furnish any relevant information required by this chapter. (Ord. 1809 § 1, 2013)

18.67.060 Requirements of application for license – Payment of application fee.

A. A person or entity seeking a license pursuant to Washington state law and the provisions of this chapter shall submit an application to the City on forms provided by the City. At the time of the application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for the processing of the application, as well as an inspection fee (as described in FMC 18.67.070). In addition, the applicant shall present a suitable form of identification, such as a driver’s license or passport, or other documentation the Licensing Authority deems acceptable.

B. The applicant shall also provide the following information on a form approved by, or acceptable to, the Licensing Authority, which information shall be required for the applicant, the proposed manager of the recreational marijuana business (production, processing or retail outlet) and all persons having a financial interest in such business that is the subject of the application, or, if the applicant is an entity, having a financial interest in the entity:

1. Name, address and date of birth;

2. An acknowledgement and consent that the City may conduct a background investigation, including a criminal history check, and that the City will be entitled to full and complete disclosure of all financial records of the recreational marijuana business, including records of deposit, withdrawals, balances and loans;

3. If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Washington Secretary of State, as applicable;

4. If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for the recreational marijuana use (production, processing or retail outlet);
5. A copy of any deed reflecting the applicant’s ownership of, or lease reflecting the right of the applicant to process, the proposed licensed premises;

6. Evidence of a valid state license for the recreational marijuana business;

7. A “to scale” diagram of the proposed licensed premises, no larger than 48 by 36 inches, showing, without limitation, property lines, building layout, all entryways and exits to the proposed licensed premises, loading zones and all areas in which recreational marijuana will be stored, grown, manufactured or sold;

8. A comprehensive business operation plan for the recreational and/or medicinal marijuana business which shall contain, at a minimum, the following:
   a. A security plan meeting the requirements of WAC 314-55-083;
   b. A description of all products to be processed, produced, cultivated or sold;
   c. A plan for exterior signage and landscaping that is in compliance with WAC 314-55-086, this chapter and the City’s sign code, including photographs and/or illustrations of the proposed signage and landscaping;
   d. Retail businesses shall include an independent evaluation of traffic generation as per FMC 15.44.100; processing and manufacture business trip generation shall be evaluated based upon Industrial/Agricultural land uses as defined by the Institute of Transportation Engineers unless an independent fee calculation is provided; and
   e. Production and/or processing businesses shall provide an estimate of water and sewer usage, as per FMC 13.08.100 and 13.08.130(C)(4), respectively.

9. Any additional information that the Licensing Authority reasonably determines to be necessary in connection with the investigation and review of the application.

C. All recreational and/or medicinal marijuana businesses shall obtain other required permits or licenses related to the operation of the business, including, without limitation, any development approvals or building permits required by this code, the building code or the zoning code.
D. Upon receipt of a completed application, the Licensing Authority may circulate the application to all affected service areas and departments of the City and the Whatcom County Fire District to determine whether the application is in full compliance with all applicable laws, rules and regulations.

E. The City may, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this chapter or other provisions of this code, the building code or the zoning code. (Ord. 1809 § 1, 2013)

18.67.070 Inspection fee.
In order for the license to issue, and upon renewal thereafter, the licensee shall pay to the City a nonrefundable fee, pursuant to the City’s unified fee code, in an amount determined by the Licensing Authority to cover the costs associated with the individual inspection conducted pursuant to this chapter. (Ord. 1809 § 1, 2013)

18.67.080 Denial of application.
The Licensing Authority may deny any application for a license or license renewal that does not meet the requirements of Washington state law or this chapter. The Licensing Authority may deny any application that contains any false, misleading or incomplete information or any other reason the Licensing Authority believes is a valid justification for denial. (Ord. 1809 § 1, 2013)

18.67.090 Recreational marijuana uses allowed in identified zones.
A. Recreational and/or medicinal marijuana production is a permitted use in the City’s General Business, Light Industrial, and Manufacturing zones, subject to the location criteria described in FMC 18.67.100 and the additional requirements of the Ferndale Municipal Code and the respective zones.

B. Recreational and/or medicinal marijuana processing is a permitted use in the City’s General Business, Light Industrial, and Manufacturing zones, subject to the location criteria described in FMC 18.67.100 and the additional requirements of the Ferndale Municipal Code and the respective zones.

C. Recreational and/or marijuana retail outlets or retail uses are permitted uses in the City’s Regional Retail, Gateway Development, Mixed Use Commercial, General Business, and City Center zones, subject to the location criteria described in FMC 18.67.100 and the additional requirements of the Ferndale Municipal Code and the respective zones. No
more than two retail outlets selling either recreational or medicinal marijuana, or both, shall be permitted within the City of Ferndale. (Ord. 1809 § 1, 2013)

18.67.100 Location criteria.

A. No license shall be issued to a recreational marijuana producer, processor or retail outlet if the proposed licensed business is within 1,000 feet of any of the following land uses that existed at the time a complete application was received by the City of Ferndale:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Child care center;
5. Public park;
6. Public transit center;
7. Library;
8. Any game arcade (where admission is not restricted to persons age 21 or older).

The distances described above shall be measured as the shortest straight line distance from the property line of the licensed premises to the property line of an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library or arcade where admission is not restricted to those 21 and older. This measurement shall be reflected into the City of Ferndale Marijuana I-502 Implementation Maps, which are adopted by reference into this chapter. When a measurement cannot be established based on the Cannabis Marijuana Implementation Maps, the City shall utilize City GIS maps to determine an accurate measurement, using the methodology described above.

B. No license shall be issued to a recreational marijuana producer, processor or retail outlet if the proposed business is located within the boundaries of any City of Ferndale residentially zoned district, or land designated Residential by the Ferndale Comprehensive Plan;
18.67.110 Change of location.
A change in the location of a recreational marijuana business occurs any time a move by the licensee results in any change to the physical location address. A change in the location of such business requires the submission of a new application under FMC 18.67.060. (Ord. 1809 § 1, 2013)

18.67.120 Outdoor signage and advertising.
A. All signage and advertising for a recreational marijuana processor, producer or retail outlet shall comply with the applicable provisions of this code, the sign code, zoning code and WAC 314-55-155 (and all applicable rules and regulations promulgated thereunder).

B. Violations of this section relating to the sign code or zoning code shall result in a fine in accordance with the provisions of Chapter 8.08 FMC. The City may enforce this section pursuant to FMC 8.08.120. For violations of WAC 246-70, 314-55-155 and 314-55-525, the City may report the violation to the State Liquor and Cannabis Board. (Ord. 1809 § 1, 2013)

18.67.130 Security requirements.
Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules and regulations promulgated thereunder). (Ord. 1809 § 1, 2013)

18.67.140 Report of disturbances and unlawful activity.
A. All licensees and any agent, manager or employee thereof shall immediately report to the City Police Department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed premises, including, but not limited to, any unlawful resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

B. Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of 14 inches and a minimum width of 11 inches with each letter to be a minimum of one-half inch in height, which shall read as follows:
WARNING:
The City of Ferndale Police Department must be notified of all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed establishment.

C. It shall not be a defense to a prosecution of a licensee under this section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

D. Failure to comply with the requirements of this section shall be considered by the Licensing Authority in any action relating to the issuance, revocation, suspension or nonrenewal of a license. (Ord. 1809 § 1, 2013)

18.67.150 Visibility of activities – Control of emissions.
A. All activities of the recreational marijuana business, including, but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted out of the public view.

B. No recreational marijuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the recreational marijuana business must be in effect at all times. In the event that any odors, dust, fluids or other substances exit a recreational marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for the immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. (Ord. 1809 § 1, 2013)

18.67.160 Sales tax.
Each recreational marijuana business shall collect and remit City sales tax on all recreational marijuana paraphernalia and other tangible personal property used or sold at the licensed premises. (Ord. 1809 § 1, 2013)
18.67.170 Inspection of licensed premises.
During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Police Department and all other City departments, as designated by the Licensing Authority, for the purpose of investigating and determining compliance with the provisions of this chapter and any other applicable state and local laws and regulations. (Ord. 1809 § 1, 2013)

18.67.180 Nonrenewal, suspension or revocation of license.
A. The Licensing Authority, may, after notice and a hearing (using the procedures set forth in FMC 5.04.060), suspend, revoke or refuse to renew a license for any of the following reasons:

1. The applicant or licensee, or his or her agent, manager or employee, has violated, does not meet or has failed to comply with, any of the terms, requirements, conditions or provisions of this chapter or with any applicable state or local law or regulation; or

2. The applicant or licensee, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the state or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of the issuance of the license.

B. Evidence to support a finding under subsection (A) of this section may include, without limitation, a continuing pattern of disorderly conduct, a continuing pattern of drug-related criminal conduct within the premises of the business or in the immediate area surrounding such business, or an ongoing nuisance condition emanating from or caused by the recreational marijuana business. Criminal conduct shall be limited to the violation of state or City law. (Ord. 1809 § 1, 2013)

18.67.190 No city liability – Indemnification.
A. By accepting a license issued pursuant to this chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.
B. By accepting a license issued pursuant to this chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational marijuana business that is the subject of the license. (Ord. 1809 § 1, 2013)

18.67.200 Other laws remain applicable.
A. To the extent the state or the City adopts in the future any additional or stricter law or regulation governing the production, processing or sale of recreational marijuana, the additional or stricter regulation shall control the establishment or operation of any recreational marijuana business in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

B. If the state prohibits the production, processing, sale or other distribution of marijuana through the premises licensed under this chapter, any license issued hereunder shall be deemed immediately revoked by operation of law.

C. Should a change in federal government policy result in a determination that the ability to license production, processing, sale or other distribution of marijuana through the premises is illegal and will be prosecuted, any license issued hereunder shall be deemed immediately revoked by operation of law. (Ord. 1809 § 1, 2013)
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FERNDALE DO
ORDIAN AS FOLLOWS:

Section 1: Ferndale Municipal Code 18.67 (Regulations for the Siting of Recreational Marijuana Uses) shall be renamed “Regulations for the Siting of Recreational and Medicinal Marijuana Uses.”

Section 2: Ferndale Municipal Code 18.67 (Regulations for the Siting of Recreational and Medicinal Marijuana Uses) shall be amended as shown in Exhibit 1.

Section 3: The City of Ferndale Marijuana Implementation Maps (Process and Manufacture and Retail) as shown in Exhibit 2 shall replace existing I-502 Implementation Maps on the City’s GIS system.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held 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 4. Effective Date. This ordinance shall go into effect five days after publication.

PASSED by the Council of the City of Ferndale, Washington, on this 1st day of February, 2016.

ATTEST:

________________________________________  ______________________________________
Jon Mutchler, MAYOR                                    Susan Duncan, CITY CLERK
DETERMINATION OF NON-SIGNIFICANCE

DESCRIPTION OF PROPOSAL: The City of Ferndale proposes a Zoning Text Amendment to Ferndale Municipal Code 18.67 – Recreational Marijuana in response to Washington State modifications to recreational and medicinal marijuana regulations, to address new distance requirements from protected land uses, number of allowed retail establishments, and the co-mingling of medicinal and recreational marijuana.

PROPONEVENT: City of Ferndale, Contact: Jori Burnett

LOCATION OF PROPOSAL: Citywide

LEAD AGENCY: City of Ferndale
PO Box 936  2095 Main Street
Ferndale, WA  98248

The lead agency has determined that, with appropriate mitigation measures, the proposed project does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available for review by the public upon request.

This DNS is issued under WAC 197-11-350. A 14-day comment period was provided beginning on December 9, 2015 and ending on December 23, 2015. Notice of the intent to issue the DNS was published in the Ferndale Record, posted at Ferndale City Hall and the Ferndale Public Library, and circulated to interested state and local agencies.

Responsible Official: Jori Burnett, Community Development Director

Address: Ferndale Planning and Building Department
P. O. Box 936, 2095 Main Street
Ferndale, WA 98248

Telephone: (360) 384-4006