

ORDINANCE NO. 1904

AN ORDINANCE OF THE CITY OF DAYTON, WASHINGTON, AMENDING ORDINANCE NO. 1895, SECTION 6-9.020 OF THE DAYTON MUNICIPAL CODE TO PROVIDE THAT IT SHALL BE A PUBLIC NUISANCE TO GROW MARIJUANA PLANTS OR TO PROCESS MARIJUANA OR MARIJUANA-INFUSED PRODUCTS IN A MANNER SUCH THAT MARIJUANA CAN BE SEEN OR SMELLED FROM A PUBLIC PLACE OR THE PRIVATE PROPERTY OF A HOUSING UNIT

WHEREAS, the City of Dayton has authority pursuant to Article XI, Section 11 of the Washington State Constitution to take such actions as are necessary to protect and preserve the general health, safety and welfare of the residence of the City of Dayton; and

WHEREAS, the Washington State Legislature has in RCW 69.51A.260(2) prohibited growing or storing marijuana plants and the production or processing of marijuana or marijuana-infused products if any portion of such activity can be readily seen or smelled from a public place or the private property of a housing unit; and

WHEREAS, the Washington State Legislature has in RCW 69.51A.260(3) provided that cities such as the City of Dayton may create and enforce civil penalties, including abatement procedures, for the growing or processing of marijuana and for keeping marijuana plants in such a manner that marijuana can be readily seen or smelled from a public place or the private property of a housing unit; and

WHEREAS, the City Council of the City of Dayton finds that amending the Dayton Municipal Code to provide that it shall be a public nuisance to grow marijuana plants or to process marijuana or marijuana-infused products in a manner such that the marijuana can be readily seen or smelled from a public place or the private property of a housing unit is in the best interest of the residence of the City of Dayton and will promote the general health, safety and welfare.

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

SECTION 1. Dayton Municipal Code Section 6-9.020, Definitions, is hereby amended to read as follows:

6-9.020 - Definitions.

As used in this chapter, unless a different meaning is plainly required:

- A. Act. "Act" means doing or performing something.
- B. Applicable official. "Applicable official" means the mayor or department manager or any designated alternate empowered by ordinance or by the mayor to enforce the City of Dayton ordinances or regulations.
- C. Civil violation. "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter.
- D. Development. "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level and all acts authorized by a City of Dayton regulation.
- E. Public nuisance. A "public nuisance" consists of any of the following conditions, events or acts:
 - 1. A violation of a City of Dayton Ordinance;
 - 2. Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission, which annoys, injures, or endangers the comfort, repose, health or safety of others, is unreasonably offensive to the senses, or which obstructs or interferes with the free use of property so as to interfere with or disrupt the free use of that property by any lawful owner or occupant;
 - 3. The existence, without limitation, of any of the following conditions:
 - i. Debris. Filthy, littered, trash-covered, or overgrown premises or abutting street and alley rights-of-way, for which a property owner is responsible, including, but not limited to:
 - a. Animal parts or wastes which are improperly handled, contained, or removed from the premises, including bones, meats, hides, skins, or any part of any dead animal, fish, or fowl.
 - b. 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 or length. Where erosion control issues or indigenous species are present, an exception or modification may be made to these requirements. Where a single parcel is undeveloped and over one acre in area, elimination of the fire hazard presented by vegetation may be accomplished by removing the vegetation from the area within 20 feet of abutting, improved properties.

- c. Inappropriate disposal or accumulation of vegetation waste, including, but not limited to, grass clippings, cut brush, cut trees, and/or cut weeds.
- d. Weeds, foliage, grass, shrubs, or other vegetation that constitutes a fire hazard, or encroaches on sidewalks, alleys or neighboring properties, is damaging public improvements, or subjects neighboring residential properties to weed growth.
- e. Any noxious or toxic weed or any tree which is in danger of falling and creates a substantial risk of damage or injury.
- f. Any poisonous material or thing so as to allow access to it by any animal or person.
- g. Storing outside a completely enclosed building items that constitute a threat to the public health, safety or welfare, including but not limited to the following: old or scrap rope, rags, batteries, paper, trash, rubber debris, tires, waste, used lumber or salvaged wood, machinery or appliances or parts of such machinery or appliances, vehicular component parts, iron, steel, old or scrap household goods or hardware, medications, medical supplies, or medical devices, cut brush or wood including dead or decaying plant material except as contained in a compost pile or orderly stacked firewood if cut in lengths of four feet or less.
- ii. Dangerous structures. Any dangerous, decaying, unkempt, falling or damaged dwelling, fence, or other structure;
- iii. Potential vermin habitat or fire hazard. Any accumulation of material including, but not limited

to, animal matter, ashes, bottles, boxes, broken stone, building materials which are not properly stored or neatly piled, cans, cement, crates, empty barrels, dead animals or animal waste, glass, litter, mattresses or bedding, old appliances or equipment or any parts thereof, furniture, iron or other scrap metal, packing cases, packing material, plaster, plastic, rags, rope, cordage, rubber, or paper wire, yard waste or debris or other objects which endanger property or public safety, or constitute a fire hazard or vermin habitat; provided, that nothing herein shall prevent the temporary retention of waste in approved, covered receptacles; which is screened from view;

- iv. Attractive nuisances. Any attractive nuisance which may prove detrimental to children whether in or on a building, on the premises of a building, or upon an unoccupied lot, which is left in any place exposed or accessible to children. This includes unused or abandoned refrigerators, freezers, or other large appliances or equipment or any parts thereof; abandoned motor vehicles; any structurally unsound or unsafe fence or edifice; any unsecured or abandoned excavation, pit, well, cistern, storage tank or shaft; and any lumber, trash, debris or vegetation which may prove a hazard for minors;
- v. Abandoned vehicles—Private property. The keeping in any area on private property which is clearly visible from a public right-of-way, sidewalk, park or other public area any unused and abandoned, or inoperable and unlicensed trailer, house trailer, automobile, boat or other vehicle or major parts thereof. Such vehicles can only be kept if covered and/or out of sight of the public;
- vi. Abandoned vehicles—Public property. The abandonment of any automobile, truck, trailer, house trailer or other motor vehicle of any kind upon the public right-of-way or alleys of the city;
- vii. Health officer. All acts, failure to act, occupations, or use of property, which is determined by the health officer to be a menace to the health of the public;
- viii. Obstructions to the public right-of-way. Use of property abutting a public street or sidewalk or use of a public street or sidewalk which causes any

obstruction to traffic or to open access to the streets or sidewalks; provided, that this subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the city. This section includes the existence of drainage onto or over any sidewalk, street or public right-of-way, and the existence of any debris or plant growth on sidewalks adjacent to any property;

- ix. Illegal dumping. Dumping of any type by any person on public or private property not registered as a legal dump site;
- x. Dumping in waterways. Dumping, depositing, placing or leaving of any garbage, ashes, debris, gravel, earth, rock, stone or other material upon the banks, channels, beds or bars of any navigable water, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any navigable watercourse, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps or brush upon the banks or in the bed or channel of any navigable watercourse;
- xi. Noise. Making, causing, or permitting to be made by means of any speaker or other sound-amplifying device, horn, or other mechanical device, or by outcry, loud speaking, singing, or by any other means of discordant and unnecessary noise of any kind which annoys any significant number of persons lawfully in the immediate area, including but not limited to sounds measured at 45 decibels between the hours of 10:00 p.m. and 7:00 a.m., except for special events when the city council approves a motion allowing the noise limit to be exceeded between 10:00 p.m. and 7:00 a.m., before the event occurs.
- xii. Unpermitted development. Any building or structure where construction was commenced and the building or structure was left unfinished or any building or structure that has been constructed or modified without applicable permits or which is otherwise in violation of city ordinance, thereby causing a danger to the public safety, health, or welfare;
- xiii. Burning. 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;

- xiv. Animal manure or excreta in any quantity which is not securely protected from flies and the elements and which is likely to become putrid, offensive, and injurious to the public health, or which is kept or handled in violation of any city ordinance;
- xv. Abandonment or allowing the abandonment of personal property in any public right-of-way, alley or sidewalk. Personal property left in the public right-of-way of any road, alley, or sidewalk including but not limited to any personal and household items, furniture, appliances, machinery, equipment, building materials or other items shall be deemed abandoned;
- xvi. Excavations or naturally occurring holes, including, but not limited to, privies, vaults, cesspools, sumps, pits, wells, or any other similar conditions, which are not secure and which constitute a concealed danger or other attractive nuisances;
- xvii. 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 and which are constructed and maintained in accordance with the provisions of city's ordinances as now or hereafter amended, and all other adopted laws pertaining to such systems; or
- xviii. Any man-caused pool of standing or stagnant water, except storm drainage systems, which serves as a breeding area for insects.
- xix. The growing or storing of marijuana plants or the production or processing of marijuana or marijuana-infused products where any portion of such activity can be readily seen by normal unaided vision or readily smelled from a public place or the private property of another housing unit.

H. Omission. "Omission" means the failure to act.

I. Person. "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

SECTION 19. SEVERABILITY. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the other remaining parts which shall remain in full force and effect.

SECTION 20. EFFECTIVE DATE. A summary thereof of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

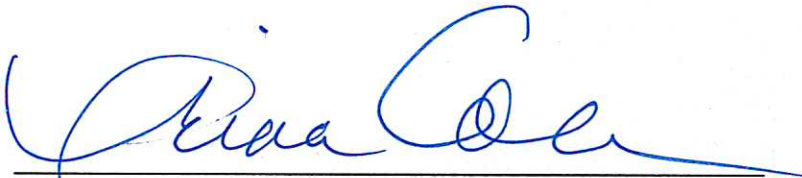
PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF DAYTON, WASHINGTON, AT A REGULAR MEETING THIS 14TH DAY OF NOVEMBER, 2016.

City of Dayton



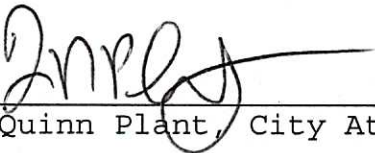
By: Craig George, Mayor

Attested By:



By: Trina Cole, City Clerk-Treasurer

Approved as to form:
Menke Jackson Beyer, LLP



By: Quinn Plant, City Attorney