

Next Ord: 1779-13
Next Res: 888-13

VISION STATEMENT

SEDRO-WOLLEY IS A FRIENDLY CITY THAT IS CHARACTERIZED BY CITY GOVERNMENT AND CITIZENS WORKING TOGETHER TO ACHIEVE A PROSPEROUS, VIBRANT AND SAFE COMMUNITY

MISSION STATEMENT

TO PROVIDE SERVICES AND OPPORTUNITIES WHICH CREATE A COMMUNITY WHERE PEOPLE CHOOSE TO LIVE, WORK AND PLAY

CITY COUNCIL WORKSESSION

AGENDA

October 2, 2013

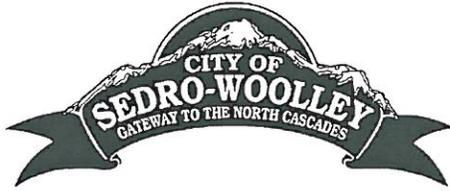
7:00 PM

Sedro-Woolley Municipal Building

Public Safety Training Room

325 Metcalf Street

- A. Public Comment
- B. Police Department Report
- C. Marijuana Zoning Issues
- D. Status of 2013 Estimated Revenues and 2014 Preliminary Estimated Revenues and Expenditures



CITY OF SEDRO-WOOLLEY
Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-9922
Fax (360) 855-9923

Eron Berg
City Supervisor & Attorney

**CITY COUNCIL
WORKSESSION**

OCT 02 2013

AGENDA ITEM C

MEMO TO: City Council
FROM: Eron Berg
RE: Marijuana
FOR MEETING ON: October 2, 2013

ISSUE: Does the Council desire any changes in zoning code in advance of the Washington State Liquor Control Board's implementation of I-502?

BACKGROUND: I-502 was passed on November 6, 2012. Under I-502, marijuana is legal for recreational use in Washington State for certain individuals and with some conditions (must be over 21 and use the drug out of public view, for example). The initiative charged the WSLCB with developing and promulgating rules for implementation. Attached to this memo is a timeline from the WSLCB for implementation, a fact sheet, frequently asked questions regarding I-502, and the WSLCB's draft rules.

The city has been preempted in a number of areas, but continues to have the power to zone for marijuana uses. As examples, I have attached ordinances from Burien, Tukwila, Millwood, Pasco and Richland. These cities have taken different approaches including enacting moratoria to temporarily prohibit the marijuana uses pending more information and study (Pasco, Millwood, and Burien), outright prohibiting the uses (Richland) and zoning for the uses (Tukwila).

What is your vision for marijuana production, processing and retail sales in Sedro-Woolley? Under the proposed allocation, we will have one retail storefront. Also, to correct earlier inaccurate information I provided to you: the retail sales of marijuana will be subject to sales tax in addition to the excise tax, which means the city would derive revenue from sales tax at a total rate of 0.95%. So, of the 25% tax on producers, the 25% tax on processors, the 25% tax on sales and the 8.3% sales tax, Sedro-Woolley will receive 0.95% of the retail sales price.

RECOMMENDATION: Provide staff with direction, please.



Washington State Liquor Control Board

I-502 Implementation Timeline

The below timeline reflects the Washington State Liquor Control Board's official timeline for implementation of Initiative 502. The Board and staff are working from this timeline going forward..

By law, the WSLCB must have the rules written by December 1, 2013. The agency is on track to meet this deadline. If and/or when timeframes change we will communicate those changes via the [WSLCB Listserv](#) and our agency [Twitter](#).

Date (2013)	Milestone
September 4	File Supplemental CR 102 with revised proposed rules
October 9	Public hearing on proposed rules
October 16	Board adopts proposed rules (CR 103)
November 16	Rules become effective
November 18	WSLCB begins accepting applications for all license types
December 1	Rules are complete (as mandated by law). Begin issuing Producer, Processor and Retail licenses to qualified applicants.

For more information on the implementation of I502 and to join our listserv to receive email updates, please visit our website at www.liq.wa.gov.

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Initiative 502's impact on the Washington State Liquor Control Board

Summary

Initiative 502 would license and regulate marijuana production, distribution, and possession for persons over 21; remove state-law criminal and civil penalties for activities that it authorizes. Tax marijuana sales and earmark marijuana-related revenues. The new tightly regulated and licensed system would be similar to those used to control alcohol.

Licenses and Fees

Creates an application process that mirrors the liquor license application process

Creates three new marijuana licenses: producer, processor, and retailer. The fee for each license is a \$250 application fee and \$1000 annual renewal fee.

- Marijuana Producer: produces marijuana for sale at wholesale to marijuana processors and allows for production, possession, delivery, distribution.
- Marijuana Processor: processes, packages, and labels marijuana/marijuana infused product for sale at wholesale to marijuana retailers and allows for processing, packaging, possession, delivery, distribution.
- Marijuana Retailer: allows for sale of useable marijuana/marijuana infused products at retail outlets regulated by the WSLCB.

The initiative allows the WSLCB to charge fees for anything done to implement/enforce the act. For example, fees could be charged on sampling, testing, and labeling that would be the cost of doing business as a licensee

Marijuana Taxes

The initiative creates three new excise taxes to be collected by the WSLCB:

- Excise tax equal to 25% of the selling price on each sale between licensed producer and licensed processor. Paid by the producer.
- Excise tax equal to 25% of the selling price on each sale of usable marijuana/marijuana infused product from a licensed processor to a licensed retailer. Paid by the processor.
- Excise tax equal to 25% of the selling price on each licensed retail sale of usable marijuana/marijuana infused product. Paid by the retailer. **This tax is in addition to any/all applicable general, state, and local sales and use taxes, and is part of the total retail price.**
- All funds from marijuana excise taxes are deposited in the Dedicated Marijuana Fund. Disbursements from the Dedicated Marijuana Fund shall be on authorization of the WSLCB or a duly authorized representative.

Initiative 502 allows for the WSLCB to enact rules that establish procedures and criteria for:

- The equipment, management and inspection of production, processing, and retail outlets.
- Books and records maintained by licensed premises.
- Methods of producing, processing and packaging of marijuana/marijuana infused products, to include conditions of sanitation.

- Standards of ingredients, quality, and identity of marijuana/marijuana infused products produced, processed and sold by licensees.
- Security requirements for retail outlets and premises where marijuana is produced and processed.

Retail Outlets

Specific number of retail outlets and licenses will be determined by the WSLCB in consultation with the Office of Financial Management taking into account population, security and safety issues, and discouraging illegal markets. The initiative also caps retail licenses by county.

- Retail outlets may not employ anyone under the age of 21, nor allow anyone under the age of 21 to enter the premises.
- Retail outlets are only authorized to sell marijuana/marijuana products or paraphernalia.
- Retailers are allowed one sign identifying the outlet's business or trade name, not to exceed 1600 square inches.
- They are not allowed to display marijuana or marijuana related products in a manner that is visible to the general public.

Possession

If enacted, individuals twenty-one years of age or older are legally authorized to possess and use marijuana-related paraphernalia and any combination of:

- One ounce of useable marijuana;
- 16 ounces of marijuana infused product in solid form; or
- 72 ounces of marijuana infused product in liquid form.

Individuals will still be subject to criminal prosecution for:

- Possession in amounts greater than what is listed above.
- Possession of any quantity or kind of marijuana/marijuana infused product by a person under 21 years of age.

Price

The Office of Financial Management places a **price estimate of \$12 per gram**. Medicinal marijuana dispensary prices on average range between \$10 and \$15 per gram with some premium products exceeding \$15 per gram.

Based on average retail mark-up practices, estimated producer price is \$3 per gram and estimated processor price is \$6 per gram.

Timeline

- November 6, 2012: Public vote on Initiative 502.
- December 6, 2012: Initiative 502 goes into effect (30 days after general election).
- December 1, 2013: Deadline for the WSLCB to establish the procedures and criteria necessary to implement the initiative.

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Washington State Liquor Control Board

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FAQs on I-502

Frequently Asked Questions about Implementing Initiative 502

Subtopics (links)

- [Licenses](#)
- [Retail Stores](#)
- [Public Safety/Criminal](#)
- [Federal Government](#)
- [WSLCB Hiring](#)
- [Financial](#)
- [Medical Marijuana](#)

Licenses

Q: When can I buy marijuana legally?

A: The initiative allows the Washington State Liquor Control Board (WSLCB) until December 1, 2013 to write the rules, or implementation details, of the new system. Because the WSLCB is building the system from seed to sale, it will likely take the full year to complete the rules.

Q: What is a license? How do I get it? When can I get it

A: I-502 creates three separate tiers: marijuana producer, marijuana processor, and marijuana retailer. Specific license requirements are detailed in the proposed rules which are available [here](#) ^[1]. The WSLCB will begin accepting I-502 license applications on November 18, 2013. The best way to keep up to date on the process is to register for [email notifications](#) ^[2] on the WSLCB website www.liq.wa.gov ^[3].

Q: How much does a license cost?

A: I-502 establishes a license application fee at \$250 and a \$1,000 renewal fee for each of the three licenses; marijuana producer, marijuana processor and marijuana retailer.

Q: Can I hold all three license types?

A: Having all three licenses is not permitted under I-502. A licensee may hold both a producer and a processor license simultaneously. The initiative does not allow a producer to also be a retailer or a processor to also be a retailer.

Q: How many retail licenses will be issued?

A: The number of retail locations will be determined using a formula that distributes the number of locations proportionate to the most populous cities within each county. Locations not assigned to a specific city will be at large. Once the number of locations per city and at-large have been identified, the specific locations will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county.

Q: How many producer and processor licenses will be issued?

A: No limit. The LCB will open a 30 day window in November where anyone can apply, and qualified applicants will receive licenses.

Q: With a limited amount of retail licenses how will you determine who will receive them?

A: WSLCB staff are developing the guidelines for the retail license lottery in the event that there are more retail license applicants than available licenses. As more information becomes available we will notify stakeholders via the I-502 Listserv.

Q: Can a current farm just convert its crop to marijuana?

A: Converting a crop to marijuana would require a producer license and the farm would have to meet all of the guidelines set forth in the rules pertaining to outdoor growing.

Q: Can I grow my own marijuana now? Can I sell my homegrown marijuana?

A: Home grown marijuana for recreational use, as well as sale, is illegal. Recreational use marijuana must be purchased from a state-licensed retailer.

Retail Stores

Q: Are there restrictions on where I can set up a store?

A: You cannot set up a store within 1000 feet of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or game arcade that allows minors to enter. Local authorities will also be notified and have an opportunity to object.

Q: Will the retail outlets be run by the state?

A: Stores will be licensed and regulated by the WSLCB but will be private-sector businesses.

Q: Can I incorporate marijuana sales into my existing business?

A: No. The initiative is clear that retail outlets may only sell marijuana, marijuana infused products and marijuana paraphernalia.

Q: Can customers smoke in a retail store?

A: No. On-premise consumption is not allowed under Initiative 502.

Q: Are there any restrictions on advertising?

A: Retailers are limited to one 1,600 square inch sign bearing their business/trade name. They cannot put products on display to the general public such as through window fronts. No licensee can advertise marijuana/infused product in any form or through any medium whatsoever within 1,000 ft. of school grounds, playgrounds, child care, public parks, libraries, or game arcades that allows minors to enter. Also, you can't advertise on public transit vehicles/shelters or on any publicly owned or operated property.

Q: Will non-Washington residents be able to purchase marijuana?

A: Yes, but the marijuana products are to be consumed in Washington.

Public Safety/Criminal

Note: The WSLCB is a licensing and regulatory agency and does not handle criminal prosecutions

Q: What will the WSLCB do to ensure public safety, especially preventing access by minors?

A: Public safety is central to the WSLCB mission. As expected by the voters, the rules we create will include minimums for security, preventing minors' access to marijuana and other provisions. Educating retailers and preventing minors access to alcohol is an important part of our enforcement work today. Something similar for marijuana sales is likely.

Q: What is the DUI provision?

A: The initiative sets a per se DUI limit of "delta-9" THC levels at greater than or equal to 5 nanograms per milliliter of blood (5 ng/mL). State and local law enforcement agencies are tasked with enforcing the DUI limit.

Q: Since it's legal to possess marijuana Dec. 6, 2013, but there will not be licensed retailers from which to purchase it until 2014 can I still be arrested for possession?

A: I-502 decriminalizes marijuana possession and use in Washington State for those age 21 and older and who possess any combination of: one ounce of marijuana, 16 ounces of marijuana in solid form or 72 ounces in liquid form. The Seattle Police Department wrote an [FAQ document](#) ^[4] that addresses how its officers will be handling marijuana possession

going forward. Each jurisdiction may be handling it differently so it's important to check with local law enforcement on how to proceed.

Q: Can I still be drug tested now that marijuana is legal

A: I-502 does not address the topic of drug testing but it is our understanding that employers may still conduct drug testing at their discretion. Since marijuana is illegal under federal law institutions that receive federal funds will still be subject to mandated testing. Organizations such as the NFL and NBA have issued statements that marijuana consumption is a violation of their conduct policy and they intend to continue testing for it.

Q: The initiative says I cannot consume marijuana in public. What is the definition of "in public?"

A: Initiative 502 states that it is unlawful to open/consume a package of marijuana or marijuana infused product in view of the general public.

Q: Can marijuana purchased legally in Washington be transported to other states?

A: No. Marijuana and marijuana products are to be consumed in Washington State.

Federal Government

Q: What is the federal government going to do?

A: On August 29, 2013 Attorney General Eric Holder called both Governors Jay Inslee and John Hickenlooper (Colorado) to outline the federal government's guidance on legalized marijuana. That guidance was also outlined in a memo which focuses on eight points of federal emphasis such as youth access and public safety which the LCB's proposed rules address. I-502's regulatory system, and the rules written by the Board appears to meet those eight points. The memo does not change federal law. Governor Inslee's office is maintaining an open dialogue with the federal government and the WSLCB is moving forward to carry out the expectations of the agency under the new law.

Q: Since marijuana is legal in Washington can the federal government still prosecute me?

A: Yes. I-502 does not preempt federal law. Presently Washington State residents involved in marijuana production /retailing could still be subject to prosecution if the federal government chooses to do so.

Q: Can the federal government confiscate my assets?

A: Yes. Confiscation of assets is one of the enforcement tactics available to federal authorities.

Q: What about industrial hemp? Does this create a new market for hemp products?

A: No. I-502 is focused on legalizing the recreational use of marijuana. I-502 modifies the definition of “marijuana” to include only cannabis greater than 0.3 percent THC concentration. Cannabis under this limit – industrial hemp – is not treated as recreational “marijuana.”

WSLCB Hiring

Q: Will you be hiring after the passage of Initiative 502?

A: Yes. The task of regulating an entirely new system is a big one and the agency will have to expand to meet those challenges. We are estimating about 35 hires, mostly in licensing and enforcement.

Q: How can I apply for a job with WSLCB?

A: All job openings will be posted in the [careers section](#) ^[5] of our website. The actual application process is done through [Careers.wa.gov](#) ^[6]. Visit their website and fill out your profile in advance so you are ready when opportunities become available.

Q: Does the WSLCB drug test new employees?

A: The WSLB does not drug test administrative staff at the time of hiring. However, we do test potential enforcement staff for drugs, including marijuana. The WSLCB is a drug-free workplace. All employees are expected to not be impaired at work. Should a reasonable suspicion arise that an employee is impaired, that person may be tested.

Q: I’m an expert in the field of marijuana how can I be involved in the process?

A: Our rule-making system is a public process so we will be engaging citizens along the way. Like hiring, the best way to keep up to date on the process is to register for [email notifications](#) ^[2]. We will be sending out timelines and requests for public comment using email.

Financial

Q: What is retail marijuana going to cost?

A: OFM’s fiscal impact statement places a price estimate of a \$3 per gram producer price, a \$6 per gram processor price and a pre-tax \$12 per gram average retail purchase price.

Q: How much tax revenue will I-502 generate?

A: Estimates range anywhere between \$0 and \$2 billion dollars during the first five years. Without knowing what the market will look like or what the federal reaction will be, it is not presently possible to accurately gauge the total amount of revenue produced.

Q: How is it going to be taxed?

A: The initiative applies a 25% excise tax on each level of the system: producer to a processor, processor to a retailer, and retailer to the customer. In addition, B&O taxes on the production and local retail sales taxes apply.

Q: I-502 tax rates are too high, can you lower them?

A: The tax structure for I-502 is prescriptive in the initiative and has become law with its passing. WSLCB officials do not have the authority to change the taxes that were voted for by the public. A change to the tax structure would have to come from the legislature. During the first two years a change to the initiative would require a two thirds majority.

Medical Marijuana

Note: I-502 does not address medical marijuana. The state does not currently license or regulate medical marijuana outlets. I-502 does not change how or where they operate.

Q: Can medical marijuana patients continue to cooperatively grow?

A: I-502 is silent on medical marijuana.

Q: Is it true that the WSLCB is just going to license current medical marijuana outlets to retail marijuana?

A: No. Retail licenses will be issued to qualified applicants who meet the licensing criteria. A medical marijuana outlet that wants to convert to a recreational outlet will have to go through the same application process as any other potential applicant. If they were to obtain a retail license they would only be allowed to sell marijuana purchased from the recreational system, they would not be allowed to comingle medical and recreational marijuana.

Q: Where can I learn more about medical marijuana?

A: The Washington State Department of Health has information about medical marijuana on its website [here](#) [7].

Q: Will the Washington State Liquor Control Board be changing its name?

A: Presently there are no plans to change the agency's name. Any change would have to come from the state Legislature and that is a low priority at the moment.

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Source URL: http://www.liq.wa.gov/marijuana/faqs_i-502

Links:

- [1] <https://lcb.box.com/proposed-rules-9-4-13>
- [2] <http://www.liq.wa.gov/node/5591>
- [3] <http://www.liq.wa.gov>
- [4] <http://spdblotter.seattle.gov/2012/11/09/marijwhatnow-a-guide-to-legal-marijuana-use-in-seattle/>
- [5] <http://www.liq.wa.gov/node/23>
- [6] <http://Careers.wa.gov>
- [7] [http://www.doh.wa.gov/SearchResults.aspx?tag=Medical%20Marijuana%20\(Cannabis\)](http://www.doh.wa.gov/SearchResults.aspx?tag=Medical%20Marijuana%20(Cannabis))

Chapter 314-55 WAC
MARIJUANA LICENSES, APPLICATION PROCESS, REQUIREMENTS, AND REPORTING

NEW SECTION

WAC 314-55-005 What is the purpose of this chapter? The purpose of this chapter is to outline the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana licensee.

NEW SECTION

WAC 314-55-010 Definitions. Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "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 twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(6) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

(7) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

(8) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(9) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(12) "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

(13) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, and insecticides.

(14) "Perimeter" means a property line that encloses an area.

(15) "Plant canopy" means the square footage dedicated to live plant production, such as maintain mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

(16) "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.

(17) "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.

(18) "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.

(19) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

(20) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

(21) "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 twelve and recognized by the Washington state superintendent of public instruction.

(22) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

NEW SECTION

WAC 314-55-015 General information about marijuana licenses. (1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana-infused products using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

NEW SECTION

WAC 314-55-020 Marijuana license qualifications and application process. Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The

application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(3) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

(4) The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(5) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

(6) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

(7) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement. Managers or agents who manage a licensee's place of business must also meet the three month residency requirement.

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation include growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

(10) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

NEW SECTION

WAC 314-55-035 What persons or entities have to qualify for a marijuana license? A marijuana license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

True party of interest	Persons to be qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> • All general partners and their spouses. • All limited partners and spouses.
Limited liability company	<ul style="list-style-type: none"> • All members and their spouses. • All managers and their spouses.
Privately held corporation	<ul style="list-style-type: none"> • All corporate officers (or persons with equivalent title) and their spouses. • All stockholders and their spouses.
Publicly held corporation	<p>All corporate officers (or persons with equivalent title) and their spouses.</p> <p>All stockholders and their spouses.</p>
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person (inclusive of financiers) that are expecting a percentage of the profits in exchange for a monetary loan or expertise.	<p>Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year.</p> <p>Any entity or person who exercises control over the licensed business in exchange for money or expertise.</p> <p>For the purposes of this chapter:</p> <ul style="list-style-type: none"> • "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. • "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the

lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(3) **Financiers** - The board will conduct a financial investigation as well as a criminal background of financiers.

(4) **Persons who exercise control of business** - The board will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.

NEW SECTION

WAC 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board will administratively close the application.

(3) The board may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment. This exception to the criminal history point assignment will expire on July 1, 2014:

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the board within fourteen days.

NEW SECTION

WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license? The board will conduct an investigation of all applicants' marijuana law or rule administrative violation history. The board will not normally issue a marijuana license to a person, or to an entity with a true party of interest, who has the following violation history; or to any person who has demonstrated a pattern of disregard for laws or rules.

Violation Type (see WAC 314-55-515)	Period of Consideration
<ul style="list-style-type: none"> • Three or more public safety violations; 	<ul style="list-style-type: none"> • Violations issued within three years of the date the application is received by the board's licensing and regulation division.
<ul style="list-style-type: none"> • Four or more regulatory violations; or 	
<ul style="list-style-type: none"> • One to four, or more license violations. 	<ul style="list-style-type: none"> • Violations issued within the last three years the true party(ies) of interest were licensed.

NEW SECTION

WAC 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license. Following is a list of reasons the board may deny, suspend, or cancel a marijuana-

na license application or license. Per RCW 66.50.331, the board has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

(1) Failure to meet qualifications or requirements for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.

(2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds of the entities listed below:

(a) Elementary or secondary school;

(b) Playground;

(c) Recreation center or facility;

(d) Child care center;

(e) Public park;

(f) Public transit center;

(g) Library; or

(h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

(12) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

(13) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

(14) The operating plan does not demonstrate, to the satisfaction of the board, the applicant is qualified for a license.

(15) Failure to operate in accordance with the board approved operating plan.

(16) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

NEW SECTION

WAC 314-55-070 Process if the board denies a marijuana license application. If the board denies a marijuana license application, the applicants may:

(1) Request an administrative hearing per chapter 34.05 RCW, the Administrative Procedure Act.

(2) Reapply for the license no sooner than one year from the date on the final order of denial.

NEW SECTION

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is limited to two million square feet. Applicants must designate on their operating plan the size category of the production premises and the

amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 - Less than two thousand square feet;
- (b) Tier 2 - Two thousand square feet to ten thousand square feet; and
- (c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

NEW SECTION

WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?

(1) A marijuana processor license allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.

(2) A marijuana processor is allowed to blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(4) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(5) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are re-

ceived and processed, and at subsequent times when the board deems necessary.

(6) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(7) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

NEW SECTION

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) Internet sales and delivery of product is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

NEW SECTION

WAC 314-55-081 Who can apply for a marijuana retailer license?

(1) Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the liquor control board will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. Once the number of locations per city and at large have been identified, the eligible applicants will be selected by lottery in the event the number of applications exceeds

the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party.

(2) The number of marijuana retail licenses determined by the board can be found on the liquor control board web site at www.liq.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses with no multiple location licensee allowed more than thirty-three percent of the allowed licenses in any county or city.

(4) The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana retailer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

NEW SECTION

WAC 314-55-082 Insurance requirements. Marijuana licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the marijuana licensees. Marijuana licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(1) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. The limits of liability insurance shall not be less than one million dollars.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section shall be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The board shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

NEW SECTION

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a complete video surveillance with minimum camera resolution of 640x470 pixel and must be internet protocol (IP) compatible and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.

(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.

(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured on-site in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.

(f) All marijuana or marijuana-infused products that are intended to be removed or transported from marijuana producer to marijuana pro-

cessor and/or marijuana processor to marijuana retailer shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

(g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts and marijuana-infused products must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana-infused product is to be destroyed;

(d) When usable marijuana or marijuana-infused products are transported;

(e) Any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed or a lot or batch of marijuana or marijuana-infused product may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before a lot of marijuana is transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before useable marijuana, or marijuana-infused products are transported from a processor to a retailer.

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happen when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract and marijuana-infused products;

(k) All point of sale records;

ORDINANCE NO. 10-13

AN ORDINANCE OF THE CITY OF RICHLAND amending Section 23.08.070 of the Richland Municipal Code by prohibiting any land use within the city limits of Richland which is in violation of any local, state or federal law.

WHEREAS, the City of Richland, along with the majority of other Washington cities, are seeking to find the appropriate way to deal with medical cannabis collective gardens; and

WHEREAS, the federal drug laws include marijuana as a Class I drug, possession and use of which is a felony; and

WHEREAS, the Washington legislature passed ESSSB 5073 in 2011, allowing local jurisdictions to modify, amend or condition their local regulations in a manner which would allow qualified users of medical cannabis to assist each other in the production of medical cannabis for their personal use; and

WHEREAS, the Richland City Council, following required public notice and public hearings on the matter, implemented a moratorium on the permitting and locating of collective gardens, anticipating a resolution of the legality conflict issue between the state and federal laws to be resolved, and

WHEREAS, no such resolution at the state or federal level has occurred, the City is passing this ordinance to prohibit any land use within the city of Richland which is determined by the Planning Manager to be in violation of a local, state or federal law or regulation.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Richland:

SECTION 1.01 Richland Municipal Code Section 23.08.070, as enacted by Ordinance No. 28-05, is hereby amended to read as follows:

23.08.070 Zoning affects every structure and use.

No building or structure shall be erected and no existing structure or building shall be moved, altered, added to, or enlarged, nor shall any land, building, or structure or premises be used, designed or intended to be used for any purpose or in any manner other than a use permitted by this title, or amendments thereto, as permitted in the use district in which such land, building, structure, or premises is located. No land use shall be permitted or authorized which is determined by the Planning Manager to be in violation of any local, state, or federal law, regulation code or ordinance. [Ord. 28-05 § 1.02].

SECTION 1.02 This ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.

PASSED by the City Council of the City of Richland, at a regular meeting on the 21st day of May, 2013.

JOHN FOX
Mayor

ATTEST:

APPROVED AS TO FORM:

MARCIA HOPKINS
City Clerk

THOMAS O. LAMPSON
City Attorney

Date Published: May 26, 2013

RESOLUTION NO. 3507

A RESOLUTION OF THE CITY OF PASCO, WASHINGTON, DECLARING A MORATORIUM PROHIBITING PRODUCING, PROCESSING AND RETAIL SALES OF RECREATIONAL MARIJUANA AND SETTING A PUBLIC HEARING THEREON.

WHEREAS, Initiative 502 was passed by the voters of the State of Washington in November 2012 providing a framework which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, under Initiative 502, the Washington State Liquor Control Board (Board) is tasked with the responsibility to adopt regulations governing the licensing and operation of marijuana producers, processors, and retailers, and the Board is currently working on the regulations and is projecting that the regulations will be issued later this year; and

WHEREAS, collective gardens and marijuana production, processing, and retailing uses must be addressed in the City's zoning code, but the impacts of these uses are still largely unknown and the regulations that the City will need to address them are uncertain pending the Board's adoption of its licensing regulations and procedures; and

WHEREAS, possession and use of marijuana for any purpose, including medical use, remains illegal under Federal Law. Marijuana is listed as a Schedule I drug under the Federal Controlled Substance Act. Despite efforts by the Governor and the State Attorney General to get some clarity from the U.S. Attorney General, it is still unclear, how the federal government would respond to the state and local governments who issue permits in compliance with state law; and

WHEREAS, there are several lawsuits pending, which would eventually impact regulations related to marijuana production, distribution, sales and use; and

WHEREAS, it is anticipated that producing, processing, and retail sales of recreational marijuana may require an increased risk to health and safety, require increased police and code enforcement activities, and affect the use and enjoyment of surrounding properties without appropriate regulations; and

WHEREAS, unless the City acts immediately to address production, processing and retail sales of marijuana, and other marijuana-related uses, such uses may be able to locate in the city without regulation and thereby have adverse impacts on the city and its citizens; and

WHEREAS, the City intends to develop appropriate zoning and land use regulations to accommodate the production, processing, and retail sales of recreational marijuana to the extent such activities do not conflict with Federal Law; and

WHEREAS, Washington law authorizes the City to adopt a moratorium with a public hearing which must be held within sixty (60) days of the date of the adoption of a moratorium; and

WHEREAS, the City Council has determined that it is in the best interest of the City that a moratorium be established to provide the City an opportunity to study appropriate regulations for

production, processing and retail sales of recreational marijuana and to develop a work plan for the implementation of such regulations that comply with Federal Law; **NOW, THEREFORE,**

THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON, DO RESOLVE AS FOLLOWS:

Section 1. Moratorium Established. A moratorium is imposed prohibiting the production, processing, and/or retail sale of recreational marijuana within all zoning districts within the City of Pasco; and a moratorium is imposed on the filing with the City, or the Courts of Competent Jurisdiction, any applications for licenses, permits, or other approvals for the processing, production, and/or retail sale of marijuana.

Section 2. Term of Moratorium. The moratorium imposed by this Resolution shall become effective on the date hereof, and shall continue in effect for an initial period of six (6) months, unless repealed, extended, or modified by the City Council after a public hearing and the entry of appropriate findings of fact as required by RCW 35A.63.220, provided, however, that the moratorium shall automatically expire upon the effective date of zoning regulations adopted by the City Council to address the processing, production, and/or retail sales of recreational marijuana within the City of Pasco.

Section 3. Public Hearing. A public hearing shall be scheduled for 7:00 p.m., or as soon thereafter as the matter may be heard, on the 7th day of October, 2013, at the City Council Chambers of the Pasco City Hall, where it will hear evidence and consider the comments and testimony of those wishing to speak at such public hearing regarding the moratorium.

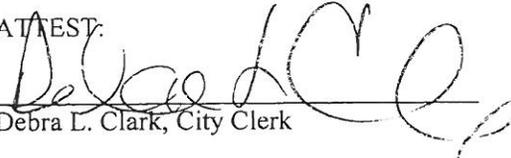
Section 4. Preliminary Findings. Following the public hearing, the City Council shall adopt Findings of Fact justifying its actions before the public hearing, and determine whether a work plan is necessary to address the issues involving the processing, production, and/or retail sales of recreational marijuana within the City and if appropriate, extending the moratorium to complete the work plan and implementation of appropriate regulations.

Section 5. Effective Date. This Resolution shall be in full force and effect upon its passage and signature below.

3 **PASSED** by the City Council of the City of Pasco, Washington, as its regular meeting dated this day of September, 2013.



Matt Watkins, Mayor

ATTEST:


Debra L. Clark, City Clerk

APPROVED AS TO FORM:


Leland B. Kerr, City Attorney

AN ORDINANCE OF THE CITY OF MILLWOOD, SPOKANE COUNTY, WASHINGTON, ADOPTING A MORATORIUM ON THE SITING, ESTABLISHMENT, LOCATION, PERMITTING, LICENSING, OPERATION OR MAINTENANCE OF ANY STRUCTURES OR USES RELATING TO THE CULTIVATION OF MARIJUANA, PRODUCTION OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS, PROCESSING OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS, RETAIL OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS OR ANY OTHER ACTIVITIES PURPORTEDLY AUTHORIZED OR ACTUALLY AUTHORIZED UNDER STATE OF WASHINGTON INITIATIVE NO. 502 OR ANY OTHER LAWS OF THE STATE OF WASHINGTON (SPECIFICALLY EXCLUDING MEDICAL MARIJUANA OR MEDICAL CANNABIS) AND THE SUBMISSION OF ANY BUSINESS LICENSE OR LICENSE APPLICATIONS FOR SUCH USES; DEFINING TERMINOLOGY; SETTING SIX (6) MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM, UNLESS OTHERWISE EXTENDED; SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR OTHER MATTERS RELATED THERETO

WHEREAS, the City of Millwood (the "City"), Spokane Washington, is a non-charter code city, by virtue of the Constitution and the laws of the State of Washington;

WHEREAS, pursuant to chapter 35A.11 RCW, the City Council (the "Council") may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the City; and

WHEREAS, the Washington voters approved State of Washington Initiative 502 ("I-502") in 2012, which "authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana" (2013 c 3 § 1 (Initiative Measure No. 502, approved November 6, 2012, codified in chapter 69.50 RCW)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (RCW 69.50.325(1)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana processors to "process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (RCW 69.50.325(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana retailers to "sell usable marijuana and marijuana-infused products at retail outlets" (RCW 69.50.325(3)); and

WHEREAS, under I-502, before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the City, and the City has the right to file written objections to such license, although the Board has the final decision regarding whether to issue a license (RCW 69.50.331(7)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State

Liquor Control Board's issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (RCW 69.50.331(8)); and

WHEREAS, on July 3, 2013, the Washington State Liquor Control Board filed official draft rules to implement the provisions of I-502, and communicated its intent to adopt such rules on or around August 14, 2013, communicated its intent to begin accepting applications for all license types on or around September 14, 2013, after such rules have become effective, and begin issuing all license types on or around December 1, 2013; and

WHEREAS, on August 13, 2013 after five (5) public hearings in the State of Washington to solicit input on the official draft rules to implement the provisions of I-502, the Washington State Liquor Control Board communicated its intent to revise such official rules, re-file such official rules on September 4, 2013, hold at least one (1) public hearing on October 9, 2013, adopt such official rules on October 16, 2013, and begin accepting applications for all license types on November 18, 2013 after such rules have become effective, and begin issuing all license types after December 18, 2013; and

WHEREAS, I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (RCW 69.50.345(2)); and

WHEREAS, I-502 decriminalizes, for purposes of state law only, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, the cultivation, possession or distribution of cannabis marijuana and marijuana products has been and continues to be a violation of federal law through the Controlled Substances Act ("CSA"); and

WHEREAS, as indicated in Ordinance No. 429 of the City, the Council is aware that in January 2012, the U.S. Department of Justice Drug Enforcement Administration advised a jurisdiction in Washington, in connection with that jurisdiction's attempt to implement E2SSB 5073, that "anyone 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 provide in the CSA," including the elected officials and employees of that jurisdiction; and

WHEREAS, the uses described in I-502 have never been allowed in the State of Washington or City; and

WHEREAS, at this point in time, the City does not have any regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license; and

WHEREAS, RCW 36.70A.390 and RCW 35.63.200 authorize the Council to adopt an immediate moratorium for a period no longer than six (6) months, unless extended, without holding a public hearing on the proposal, provided that a public hearing is held within at least sixty (60) days of its adoption; and

WHEREAS, moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this emergency

moratorium is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA) and future permanent zoning regulations will be reviewed in accordance with SEPA Rules; and

WHEREAS, the Council has determined it needs additional time to conduct appropriate research to analyze the effects of I-502 and the rules and regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502; and

WHEREAS, a moratorium will preserve the status quo that is necessary to allow the City a reasonable opportunity to study the extent and validity of the changes in the law, to analyze the impacts and potential liability under the CSA to City officials and employees who implement and administer a City regulatory system consistent with I-502 and the rules and regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, and to determine an appropriate regulatory framework, if any, for the uses and activities that purport to be authorized or are actually authorized under I-502; and

WHEREAS, the Council concludes that the City is authorized to establish a moratorium and that the City must adopt a moratorium concerning the uses and activities that purport to be authorized or are actually authorized under I-502, any rules or regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, or any other laws or regulations of the state of Washington to protect the health, safety and welfare of the citizens of Millwood; and

WHEREAS, the Council desires to impose an immediate six (6) month moratorium on the siting, establishment, location, permitting, operation, licensing or maintenance of facilities, businesses or other activities involving the cultivation, production, processing, sale or use of marijuana or marijuana-infused product, or any other use or activity purportedly authorized or actually authorized under I-502, any rules or regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, or any other laws or regulations of the state of Washington; and

WHEREAS, the Council adopts the foregoing as its findings of facts justifying the adoption of this Ordinance; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MILLWOOD, SPOKANE COUNTY, WASHINGTON, AS FOLLOWS:

Section 1. Findings of Fact. The recitals and findings set forth above are hereby adopted as findings of the Council in support of the moratorium imposed by this Ordinance pursuant to in support of its action as required by RCW 36.70A.390 and RCW 35.63.200. The Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 6 below.

Section 2. Moratorium Imposed. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a moratorium is hereby enacted within the City regarding the siting, establishment, location, permitting, operation, licensing or maintenance of facilities, businesses or other activities or uses involving the cultivation, production, processing, sale or use of marijuana or marijuana-infused products, or any Marijuana Use (as defined herein) purportedly authorized or actually authorized under I-502, any rules or regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, or any other laws or regulations of the state of Washington. No building permit, occupancy permit, development permit, business license or approval shall be issued for any of the purposes or activities identified in this Section 2 shall be granted or accepted while this moratorium is in effect. Any land uses permits, business licenses or other permits or approvals for any of the purposes or activities identified in this Section 2 that are issued as result of error, misunderstanding or by vague or deceptive means during the moratorium are null and void

and without legal force and effect.

Section 3. Definition of Marijuana Use. As used in this Ordinance, the term "Marijuana Use" is defined as any store, agency, organization, dispensary, cooperative, network consultation, operation, company, corporation, or other business entity, group or person, no matter how described or defined, including any associated premises and equipment that has for its purpose or which is used to grow, cultivate, select, measure, process, package, label, deliver, dispense, produce, retail, sell, distribute, or otherwise transfer for consideration or remuneration, or otherwise, marijuana, marijuana-infused products, or marijuana in any form as purportedly authorized or actually authorized under I-502, chapter 69.50 RCW, any rules or regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, chapter 69.50 RCW, or any other applicable law of the State of Washington; provided, however, "Marijuana Use" shall not include any activity involving medical marijuana or medical cannabis purportedly authorized or actually authorized pursuant to chapter 69.51A RCW.

Section 4. No Nonconforming Uses. No use that purports to be or actually is a Marijuana Use that existed or was otherwise engaged in prior to this Ordinance shall be deemed to have been a legally established use under the provisions of the Millwood Municipal Code, and such use shall not be entitled to claim legal nonconforming status.

Section 5. Duration of Moratorium. This moratorium shall be in effect for six (6) months, beginning on August 13, 2013 and ending on February 13, 2014, unless an ordinance is adopted amending the Millwood Municipal Code and rescinding the moratorium before June 30, 2014, or unless the moratorium is otherwise extended in accordance with applicable law.

Section 6. Public Hearing Required. As required by RCW 36.70A.390 and RCW 35.63.200, the Council will hold a public hearing on September 10, 2013, at 7:00 p.m. or as soon as the business of the Council shall permit and which date is within sixty (60) days of passage of this Ordinance to take public testimony and to consider adopting further findings.

Section 7. Work Plan. During the moratorium period, City staff will study the issues concerning Marijuana Uses in the City. City staff will prepare appropriate revisions to the City's codes and regulations and conduct the public review process as required for amendments to the Millwood Municipal Code.

During the moratorium, the City Clerk/Planner is authorized to address issues related to determining the legality of Marijuana Uses as defined herein, including but not limited to review of the conflicts between State of Washington and federal law regarding the legality of Marijuana Uses. In the event such uses are ultimately determined to be legal, the work program should also develop appropriate land use regulations.

Section 8. Declaration of Emergency. The Council hereby finds and declares that there is a potential that personal or entities seeking to engage in Marijuana Uses in the City could file applications with the Washington State Liquor Control Board and City or otherwise seek approval under the purported authority or actual authority of I-502, and claim vesting, and/or the presence of Marijuana Uses in the City could have negative secondary effects if not first addressed by adequate and appropriate regulations, and/or the adoption and implementation of any rules or regulations by the City could subject City officials and employees to liability under the CSA, and therefore an emergency exists which necessitates that this Ordinance become effective immediately in order to preserve the public health, safety and welfare.

Section 9. Effective Date. This Ordinance shall take effect and be in full force

and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

Section 10. Repeal. All ordinances, resolutions, laws, and regulations, or parts thereof in conflict with this Ordinance are, to the extent of said conflict, hereby repealed.

Section 11. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful 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.

PASSED AND APPROVED on this 13 day of August, 2013.



Daniel N. Mork, Mayor

ATTEST:



Thomas G. Richardson, City Clerk

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 586

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, ESTABLISHING A SIX-MONTH INTERIM ZONING ORDINANCE ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MARIJUANA PRODUCERS, PROCESSORS, AND RETAILERS AS REGULATED PURSUANT TO WASHINGTON STATE INITIATIVE 502; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Burien has the authority to adopt interim zoning regulations pursuant to RCW 35A.63.220; and

WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, Initiative 502 directs the Washington State Liquor Control Board (LCB) to develop rules and regulations to:

1. Determine the number of producers, processors and retailers of marijuana by county;
2. Develop licensing and other regulatory measures;
3. Issue licenses to producers, processors, and retailers at locations which comply with the Initiative's distancing requirements prohibiting such uses within one thousand feet of schools and other designated public facilities; and
4. Establish a process for the City to comment prior to the issuance of such licenses.

WHEREAS, the LCB recently issued initial draft rules, and was expected to adopt final rules in mid-August 2013 to begin issuance of marijuana producer, processor and retail licenses to qualified applicants in December, 2013; and

WHEREAS, after receiving public input regarding the proposed rules, the LCB postponed adoption of final rules to allow more time to clarify certain aspects of the I-502 implementation including, but not limited to, limits or caps on the amount of marijuana that will be grown and the number of retail stores to be licensed; and

WHEREAS, now the final rules are not scheduled to take effect until November of 2013; and

WHEREAS, Initiative 502 prohibits marijuana-related uses within 1,000 feet of the perimeter of certain uses and buildings, such as child care centers, public parks and recreation

centers or facilities, but does not address whether LCB-licensed marijuana businesses must comply with land use and zoning restrictions of local jurisdictions; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's police power and is specifically authorized by RCW 35A.63.100; and

WHEREAS, Section 69.51A.140 RCW, enacted as part of Washington's medical cannabis act, delegates authority to cities and towns to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes related to marijuana production, processing and dispensing as exercises of the City's police powers and not necessarily limited to medical marijuana-related uses; and

WHEREAS, the Burien Municipal Code does not currently have specific provisions addressing licensing, producing, processing or retailing of recreational marijuana; and

WHEREAS, marijuana production, processing, and retailing uses must be addressed in the City's zoning code, but the land use and secondary impacts of these uses are still largely unknown and the regulations that the City will need to address them are uncertain pending the LCB's adoption of its licensing regulations and procedures; and

WHEREAS, unless the City acts immediately to address marijuana-related uses, such uses may be able to locate in the City without regulation and thereby have adverse impacts on the City and its citizens; and

WHEREAS, although the Washington state electorate as a whole voted to approve I-502, the City has not heard from the citizens of Burien regarding their opinions on the implementation of recreational marijuana-related land uses; and

WHEREAS, the City deems it in the public interest to impose interim zoning regulations for a period of six months in order to investigate this issue further and obtain regulatory clarity and guidance from the LCB's rules and Burien's citizens;

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

Section 1. Findings of Fact. The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35A.63.220. The Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 2. Interim Regulations Established. The City hereby establishes the following interim zoning regulations for the location and establishment of marijuana producers, processors, and retailers that are licensed by the State of Washington under Initiative No. 502 and the regulations promulgated pursuant thereto:

- A. The terms “marijuana”, “marijuana-infused products”, “marijuana producer”, “marijuana processor”, and “marijuana retailer” shall have the meaning set forth in RCW 69.50.101.
- B. State licensed marijuana producers and marijuana processors may locate in the City of Burien pursuant to the following restrictions:
1. Marijuana producers and marijuana processors must comply with all requirements of state law and the Washington State Liquor Control Board’s regulations.
 2. Marijuana producers and processors may locate only in the I-Industrial and AI-Airport Industrial zones following a Type 1 Administrative Review.
 3. Marijuana producers and processors shall not locate on a site or in a building in which non-conforming production or processing uses have been established in any zone other than the I-Industrial and AI-Airport Industrial zones.
 4. Marijuana producers and processors shall not operate as an accessory to a primary use or as a home occupation.
 5. Marijuana producers and processors may locate in the same building, and all production and processing activities shall occur within an enclosed structure.
 6. Marijuana producers and processors shall not locate within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.
- C. State licensed marijuana retailers may locate in the City of Burien pursuant to the following restrictions:
1. Marijuana retailers must comply with all requirements of state law and the Washington State Liquor Control Board’s regulations.
 2. Marijuana retailers may locate only in the CN-Neighborhood Commercial, CI-Intersection Commercial, CR-Regional Commercial, CC-Community Commercial, DC-Downtown Commercial, SPA-1 Old Burien and SPA-3 Gateway zones following a Type 1 Administrative Review.

3. Marijuana retailers shall not locate in the RS-Residential Single-Family, RM-Multi-Family, PR-Professional Residential, O-Office and SPA-2 Ruth Dykeman Children's Center zones.
 4. Marijuana retailers shall not locate in a building in which non-conforming retail uses have been established in any residential or office zone.
 5. Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation.
 6. Marijuana retailers shall not locate within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.
- D. The Type 1 Review process for marijuana producers, marijuana processors and marijuana retailers shall include a determination and finding as to whether or not the proposed use is compatible with adjoining uses. The facility shall be designed, located, constructed and buffered to blend in with its surroundings and mitigate significant adverse impacts on adjoining properties and the community. Special attention shall be given to minimizing odor, noise, light, glare and traffic impacts.
- E. Marijuana producers, marijuana processors and marijuana retailers are required to acquire all necessary business licenses and are required to comply with municipal tax regulations and all other applicable City ordinances.

Section 3. Public Hearing Required. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, within sixty days of the passage of this Ordinance the City Council will hold a public hearing on these interim zoning regulations.

Section 4. Duration. The interim zoning regulations established herein shall be in effect until six-months from the effective date noted below, unless extended by the City Council, pursuant to State law.

Section 5. Definitions. As used in this ordinance, the following terms have the meanings set forth below:

1. "Marijuana" or "Cannabis" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 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. 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 plant, any other compound, manufacture, salt, derivative, mixture,

or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

2. "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.
3. "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.
4. "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.
5. "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 useable marijuana.
6. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.
7. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

Section 6. No Non-conforming Uses. No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Burien Municipal Code and that use shall not be entitled to claim legal non-conforming status.

Section 7. Work Program. The Director of Community Development and/or his/her designee is hereby authorized and directed to address issues related to determining the legality of marijuana production facilities, processing facilities, and retailing facilities, including but not limited to review of the pending dispute between state and federal law enforcement authorities regarding the legality of recreational marijuana under any circumstances and notwithstanding the enactment by the legislature of Initiative 502. The work program should also develop appropriate permanent land use regulations pursuant to the new state law and state licensing requirements for review and recommendation for inclusion in the zoning regulations or other provisions of the Burien Municipal Code. Such regulations shall permit the location of marijuana producers, marijuana processors, and marijuana retailers in the city to the extent, but only to the extent, authorized by state law and then only when in compliance with state licensing requirements and City regulations. Further, appropriate nuisance declaration and abatement provisions should be developed to address any violations of any new State or City regulations or licensing requirements. Such regulations shall be presenting to the Burien Planning Commission and Burien City Council for consideration and action in due course. The Finance Director and/or

his/her designee is hereby authorized to develop business licensing or other regulations that may be necessary and appropriate pursuant to the newly amended law for review and recommendation for inclusion in the Burien Municipal Code.

Section 8. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.13.190. Without immediate interim zoning regulations on the establishment on such uses, development or use of a property may occur or attempt to become vested that is incompatible with I-502, the rules to be adopted by the Liquor Control Board and the laws adopted by the City of Burien. Therefore, the interim zoning regulations must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights to use or develop a property in a lawful way.

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein.

Section 10. Conflict with other BMC Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Burien Municipal Code, this Ordinance shall control.

Section 11. 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.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 19TH DAY OF AUGUST 2013, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 19TH DAY OF AUGUST 2013.

CITY OF BURIEN
/s/ Brian Bennett, Mayor

ATTEST/AUTHENTICATED:
/s/ Monica Lusk, City Clerk

Approved as to form:
/s/ Ann Marie Soto, Acting City Attorney

Filed with the City Clerk: August 19, 2013
Passed by the City Council: August 19, 2013
Ordinance No. 586
Date of Publication: August 22, 2013



City of Tukwila

Washington

Ordinance No. 2407

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING VARIOUS ORDINANCES RELATING TO LAND USE AND ZONING AS CODIFIED AT TUKWILA MUNICIPAL CODE SECTION 18.40.020 AND ESTABLISHING A NEW SECTION 18.50.210; ADOPTING ZONING RESTRICTIONS ON THE PRODUCTION, PROCESSING, AND RETAILING OF RECREATIONAL MARIJUANA USES; DESCRIBING THE LAND USE IMPACTS TRIGGERING SUCH RESTRICTIONS; IDENTIFYING THE PERMITTED ZONE FOR RECREATIONAL MARIJUANA USES AS THE TUKWILA VALLEY SOUTH AND HEAVY INDUSTRIAL ZONES; ESTABLISHING SEPARATION AND DISTANCE REQUIREMENTS WITHIN THE PERMITTED ZONES; ESTABLISHING PROCEDURES FOR ENFORCEMENT OF VIOLATIONS INCLUDING ABATEMENT OF MARIJUANA NUISANCES; REPEALING ORDINANCE NO. 2405, WHICH ESTABLISHED THE MORATORIUM ON RECREATIONAL MARIJUANA USES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, Initiative 502 directs the Washington State Liquor Control Board (WSLCB) to develop rules and regulations to:

1. Determine the number of producers, processors and retailers of marijuana by county;
2. Develop licensing and other regulatory measures;

3. Issue licenses to producers, processors, and retailers at locations which comply with the Initiative's distancing requirements prohibiting such uses within 1,000 feet of schools and other designated public facilities; and
4. Establish a process for the City to comment prior to the issuance of such licenses; and

WHEREAS, the WSLCB is expected to adopt new regulations on recreational marijuana on October 16, 2013, and to begin issuance of marijuana producer, processor and retail licenses to qualified applicants in December 2013; and

WHEREAS, Section 69.51A.140 RCW 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 powers; and

WHEREAS, the City Council wishes to clarify that the manufacture, production, processing, retailing, possession, transportation, delivery, dispensing, application, or administration of marijuana must comply with all applicable City laws, and that compliance with City laws does not constitute an exemption from compliance with applicable state and federal regulations; and

WHEREAS, the City of Tukwila believes that the health, safety, and welfare of the community is best served by excluding from certain zones any production, processing, selling or delivery of marijuana; and

WHEREAS, the City of Tukwila adopted Ordinance No. 2405 imposing a moratorium on recreational marijuana uses while zoning for said uses is established; and

WHEREAS, Ordinance No. 2405 requires formal action by the City Council to terminate the moratorium; and

WHEREAS, the City Council has studied the land use and other secondary impacts of recreational marijuana use, and has now drafted a zoning ordinance to address these impacts; and

WHEREAS, the State Environmental Policy Act (SEPA) Responsible Official issued a threshold decision for this draft ordinance on July 30, 2013, which was not appealed; and

WHEREAS, on July 25, 2013, the Planning Commission held a public hearing on the draft zoning ordinance; and

WHEREAS, the Planning Commission recommended approval of the draft zoning ordinance to the City Council; and

WHEREAS, on August 26, 2013, the City Council held a hearing on the draft zoning ordinance, after proper notice, during its regular meeting; and

WHEREAS, the City Council after due consideration believes that certain amendments to the City's zoning code are necessary; and

WHEREAS, the City Council decided to adopt a zoning ordinance and to formally repeal the moratorium on recreational marijuana uses (Ordinance No. 2405);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Formal Repeal of Moratorium. Ordinance No. 2405, a moratorium on the establishment of marijuana producers, processors, and retailers asserted to be authorized under Initiative No. 502, is hereby repealed.

Section 2. TMC Section Adopted. A new section is hereby added to Tukwila Municipal Code (TMC) Chapter 18.06, "Definitions," as follows:

Marijuana

"Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 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. 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 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.

Section 3. TMC Section Adopted. A new section is hereby added to TMC Chapter 18.06, "Definitions," as follows:

Marijuana Processor

"Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

Section 4. TMC Section Adopted. A new section is hereby added to TMC Chapter 18.06, "Definitions," as follows:

Marijuana Producer

"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.

Section 5. TMC Section Adopted. A new section is hereby added to TMC Chapter 18.06, "Definitions," as follows:

Marijuana Retailer

"Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

Section 6. TMC Section Adopted. A new section is hereby added to TMC Chapter 18.06, "Definitions," as follows:

Marijuana-infused Products

"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 useable marijuana.

Section 7. TMC Section Adopted. A new section is hereby added to TMC Chapter 18.06, "Definitions," as follows:

Useable Marijuana

"Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

Section 8. TMC Section 18.34.020 Amended. Ordinance Nos. 2368 §35, 2287 §25, 2251 §47, 2021 §7, 1986 §12, 1974 §8, 1971 §15, 1814 §2, 1774 §2, and 1758 §1 (part), as codified at TMC Section 18.34.020, (Heavy Industrial) "Permitted Uses," are hereby amended to read as follows:

18.34.020 Permitted Uses

The following uses are permitted outright within the Heavy Industrial District, subject to compliance with all other applicable requirements of the Tukwila Municipal Code:

1. Adult entertainment establishments are permitted, subject to the following location restrictions:

a. No adult entertainment establishment shall be allowed within the following distances from the following specified uses, areas or zones, whether such uses, areas or zones are located within or outside the City limits:

(1) In or within 1,000 feet of any LDR, MDR, HDR, MUO, O, NCC, RC, RCM or TUC zone districts or any other residentially-zoned property;

(2) In or within one-half mile of:

(a) Public or private school with curricula equivalent to elementary, junior or senior high schools, or any facility owned or operated by such schools; and

(b) Care centers, preschools, nursery schools or other child care facilities;

(3) In or within 1,000 feet of:

(a) public park, trail or public recreational facility; or

(b) church, temple, synagogue or chapel, or

(c) public library.

b. The distances specified in TMC Section 18.34.020.1.a. shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or land use district boundary line from which the proposed land use is to be separated.

c. No adult entertainment establishment shall be allowed to locate within 1,000 feet of an existing adult entertainment establishment. The distance specified in this section shall be measured by following a straight line between the nearest points of public entry into each establishment.

2. Automobile, recreational vehicles or travel trailer sales rooms and travel trailer or used car sales lots. No dismantling of cars or travel trailers or sale of used parts allowed.

3. Automotive services:

a. gas, outside pumps allowed

b. washing

c. body and engine repair shops (enclosed within a building)

4. Beauty or barber shops.

5. Bicycle repair shops.

6. Billiard or pool rooms.

7. Brew pubs.

8. Bus stations.

9. Cabinet shops or carpenter shops employing less than five people.

10. Commercial laundries.

11. Commercial parking subject to TMC Chapter 18.56, Off-Street Parking and Loading Regulations.

12. Computer software development and similar uses.

13. Contractor storage yards.

14. Convention facilities.

15. Daycare centers.

16. Extended-stay hotel/motel.

17. Financial:

a. banking

b. mortgage

c. other services

18. Fix-it, radio or television repair shops/rental shops.

19. Fraternal organizations.
20. Frozen food lockers for individual or family use.
21. Greenhouses or nurseries (commercial).
22. Heavy equipment repair and salvage.
23. Hotels.
24. Industries involved with etching, film processing, lithography, printing, and publishing.
25. Internet data/telecommunication centers.
26. Laundries:
 - a. self-serve
 - b. dry-cleaning
 - c. tailor, dyeing
27. Libraries, museums or art galleries (public).
28. Manufacturing and industrial uses that have little potential for creating off-site noise, smoke, dust, vibration or other external environmental impacts or pollution, including but not limited to, manufacturing, processing, repairing, packaging and/or assembly of:
 - a. Previously prepared metals, including, but not limited to, stamping, dyeing, shearing or punching of metal, engraving, galvanizing and hand-forging;
 - b. Food, including, but not limited to, baked goods, beverages (including fermenting and distilling), candy, canned or preserved foods, dairy products and byproducts, frozen foods, instant foods and meats (provided that no slaughtering is permitted);
 - c. Pharmaceuticals and related products, such as cosmetics and drugs;
 - d. Previously prepared materials including, but not limited to, bags, brooms, brushes, canvas, clay, clothing, fur, furniture, glass, ink, paint, paper, plastics, rubber, tile and wood;
 - e. Electronic, mechanical or precision instruments such as medical and dental equipment, photographic goods, measurement and control devices, and recording equipment.
29. Manufacturing and industrial uses that have moderate to substantial potential for creating off-site noise, smoke, dust, vibration and other external environmental impacts including but not limited to, manufacturing, processing, assembling, packaging and/or repairing of:
 - a. Chemicals, light metals, plastics, solvents, soaps, wood, coal, glass, enamels, textiles, fabrics, plaster, agricultural products or animal products (no rendering or slaughtering);
 - b. Electrical or mechanical equipment, vehicles and machines, including, but not limited to, heavy and light machinery, tools, airplanes, boats or other transportation vehicles and equipment;
 - c. Previously manufactured metals, such as iron and steel fabrication; steel production by electric arc melting, argon oxygen refining, and consumable electrode melting; and similar heavy industrial uses.
30. Marijuana processor
31. Marijuana producer
32. Marijuana retailer

33. Medical and dental laboratories.
34. Mortician and funeral homes.
35. Motels.
36. Offices, including:
 - a. outpatient medical clinic
 - b. dental
 - c. government - excluding fire and police stations
 - d. professional
 - e. administrative
 - f. business, such as travel, real estate
 - g. commercial
37. Parks, trails, picnic areas and playgrounds (public), but not including amusement parks, golf courses or commercial recreation.
38. Pawnbrokers.
39. Planned shopping center (mall).
40. Plumbing shops (no tin work or outside storage).
41. Railroad tracks (including lead, spur, loading or storage).
42. Recreation facilities (commercial - indoor), athletic or health clubs.
43. Religious facility with an assembly area less than 750 square feet.
44. Rental of vehicles not requiring a commercial driver's license (including automobiles, sport utility vehicles, mini-vans, recreational vehicles, cargo vans and certain trucks).
45. Rental of commercial trucks and fleet rentals requiring a commercial driver's license.
46. Restaurants, including:
 - a. drive-through
 - b. sit down
 - c. cocktail lounges in conjunction with a restaurant.
47. Retail sales of health and beauty aids, prescription drugs, food, hardware, notions, crafts and craft supplies, housewares, consumer electronics, photo equipment, and film processing, books, magazines, stationery, clothing, shoes, flowers, plants, pets, jewelry, gifts, recreation equipment and sporting goods, and similar items.
48. Retail sales of furniture, appliances, automobile parts and accessories, liquor, lumber/building materials, lawn and garden supplies, farm supplies.
49. Rock crushing, asphalt or concrete batching or mixing, stone cutting, brick manufacture, marble work, and the assembly of products from the above materials.
50. Sales and rental of heavy machinery and equipment subject to landscaping requirements of the Landscape, Recreation, Recycling/Solid Waste Space Requirements chapter of this title.
51. Salvage and wrecking operations.
52. Schools and studios for education or self-improvement.
53. Self-storage facilities.
54. Storage (outdoor) of materials is permitted up to a height of 20 feet with a front yard setback of 25 feet, and to a height of 50 feet with a front yard setback of 100 feet; security required.

55. Storage (outdoor) of materials allowed to be manufactured or handled within facilities conforming to uses under this chapter; and screened pursuant to the Landscape, Recreation, Recycling/Solid Waste Space Requirements chapter of this title.

56. Taverns, nightclubs.

57. Telephone exchanges.

58. Theaters, excluding adult entertainment establishments, as defined by this code.

59. Tow truck operations, subject to all additional State and local regulations.

60. Truck terminals.

61. Warehouse storage and/or wholesale distribution facilities.

62. Other uses not specifically listed in this title, which the Director determines to be:

a. similar in nature to and compatible with other uses permitted outright within this district; and

b. consistent with the stated purpose of this district; and

c. consistent with the policies of the Tukwila Comprehensive Plan.

Section 9. TMC Section 18.40.020 Amended. Ordinance Nos. 2368 §41, 2287 §30, 2251 §54, 2235 §8, 2097 §17, 2021 §10, 1986 §15, 1974 §11, 1971 §17, 1830 §25, 1814 §2, 1774 §5, and 1758 §1 (part), as codified at TMC Section 18.40.020, (Tukwila Valley South) "Permitted Uses," are hereby amended to read as follows:

18.40.020 Permitted Uses

The following uses are permitted outright within the Tukwila Valley South District, subject to compliance with all other applicable requirements of the Tukwila Municipal Code:

1. Adult entertainment establishments are permitted, subject to the following location restrictions:

a. No adult entertainment establishment shall be allowed within the following distances from the following specified uses, areas or zones, whether such uses, areas or zones are located within or outside the City limits:

(1) In or within 1,000 feet of any LDR, MDR, HDR, MUO, O, NCC, RC, RCM or TUC zone districts or any other residentially zoned property;

(2) In or within 1/2 mile of:

(a) Public or private school with curricula equivalent to elementary, junior or senior high schools, or any facility owned or operated by such schools; and

(b) Care centers, preschools, nursery schools or other child care facilities;

(3) In or within 1,000 feet of:

(a) public park, trail or public recreational facility; or

(b) church, temple, synagogue or chapel, or

(c) public library.

b. The distances specified in TMC Section 18.40.020.1.a. shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or land use district boundary line from which the proposed land use is to be separated.

c. No adult entertainment establishment shall be allowed to locate within 1,000 feet of an existing adult entertainment establishment. The distance specified in this section shall be measured by following a straight line between the nearest points of public entry into each establishment.

2. Animal veterinary, including associated temporary indoor boarding; access to an arterial required.

3. Automobile, recreational vehicles or travel trailer sales rooms and travel trailer or used car sales lots. No dismantling of cars or travel trailers or sale of used parts allowed.

4. Automotive services:

a. gas, outside pumps allowed

b. washing

c. body and engine repair shops (enclosed within a building)

5. Beauty or barber shops.

6. Bicycle repair shops.

7. Billiard or pool rooms.

8. Brew pubs.

9. Bus stations.

10. Cabinet shops or carpenter shops employing less than five people.

11. Commercial laundries.

12. Commercial parking, subject to TMC Chapter 18.56, Off-Street Parking and Loading Regulations.

13. Computer software development and similar uses.

14. Contractor's storage yards.

15. Convalescent and nursing homes for not more than 12 patients.

16. Convention facilities.

17. Daycare centers.

18. Dwelling - one detached single-family unit per existing lot (includes factory built or modular home that meets UBC).

19. Extended-stay hotel/motel.

20. Farming and farm-related activities.

21. Financial:

a. banking

b. mortgage

c. other services

22. Fix-it, radio or television repair shops/rental shops.

23. Fraternal organizations.

24. Frozen food lockers for individual or family use.

25. Greenhouses or nurseries (commercial).

26. Heavy equipment repair and salvage.

27. Hotels.

28. Industries involved with etching, film processing, lithography, printing and publishing.
29. Internet data/telecommunication centers.
30. Laundries:
 - a. self-serve
 - b. dry-cleaning
 - c. tailor, dyeing
31. Libraries, museums or art galleries (public).
32. Manufacturing and industrial uses that have little potential for creating off-site noise, smoke, dust, vibration or other external environmental impacts of pollution, including but not limited to, manufacturing, processing, assembling, packaging and/or repairing of:
 - a. Food, including, but not limited to, baked goods, beverages (including fermenting and distilling), candy, canned or preserved foods, dairy products and byproducts, frozen foods, instant foods and meats (provided that no slaughtering is permitted);
 - b. Pharmaceuticals and related products, such as cosmetics and drugs;
 - c. Previously prepared materials including, but not limited to, bags, brooms, brushes, canvas, clay, clothing, fur, furniture, glass, ink, paint, paper, plastics, rubber, tile and wood;
 - d. Electronic, mechanical or precision instruments such as medical and dental equipment, photographic goods, measurement and control devices and recording equipment.
33. Marijuana processor
34. Marijuana producer
35. Marijuana retailer
36. Medical and dental laboratories.
37. Mortician and funeral homes.
38. Motels.
39. Offices, including:
 - a. outpatient medical clinic
 - b. dental
 - c. government - excluding fire and police stations
 - d. professional
 - e. administrative
 - f. business, such as travel, real estate
 - g. commercial
40. Pawnbrokers.
41. Planned shopping center (mall).
42. Plumbing shops (no tin work or outside storage).
43. Parks, trails, picnic areas and playgrounds (public), but not including amusement parks, golf courses or commercial recreation.
44. Railroad tracks (including lead, spur, loading or storage).
45. Recreation facilities (commercial - indoor), athletic or health clubs.
46. Recreation facilities (commercial - indoor), including bowling alleys, skating rinks, shooting ranges.

- 47. Religious facility with an assembly area of less than 750 square feet.
- 48. Rental of vehicles not requiring a commercial driver's license (including automobiles, sport utility vehicles, mini-vans, recreational vehicles, cargo vans and certain trucks).
- 49. Rental of commercial trucks and fleet rentals requiring a commercial driver's license.
- 50. Research and development facilities.
- 51. Restaurants, including:
 - a. drive-through;
 - b. sit down;
 - c. cocktail lounges in conjunction with a restaurant.
- 52. Retail sales of health and beauty aids, prescription drugs, food, hardware, notions, crafts and craft supplies, housewares, consumer electronics, photo equipment and film processing, books, magazines, stationery, clothing, shoes, flowers, plants, pets, jewelry, gifts, recreation equipment and sporting goods, and similar items.
- 53. Retail sales of furniture, appliances, automobile parts and accessories, liquor, lumber/building materials, lawn and garden supplies, farm supplies.
- 54. Sales and rental of heavy machinery and equipment subject to landscaping requirements of the Landscape, Recreation, Recycling/Solid Waste Space Requirements chapter of this title.
- 55. Salvage and wrecking operations that are entirely enclosed within a building.
- 56. Schools and studios for education or self-improvement.
- 57. Self-storage facilities.
- 58. Storage (outdoor) of materials allowed to be manufactured or handled within facilities conforming to uses under this chapter; and screened pursuant to the Landscape, Recreation, Recycling/Solid Waste Space Requirements chapter of this title.
- 59. Studios - art, photography, music, voice and dance.
- 60. Taverns, nightclubs.
- 61. Telephone exchanges.
- 62. Theaters, excluding adult entertainment establishments, as defined by this code.
- 63. Tow truck operations, subject to all additional State and local regulations.
- 64. Truck terminals.
- 65. Warehouse storage and/or wholesale distribution facilities.
- 66. Other uses not specifically listed in this title, which the Director determines to be:
 - a. similar in nature to and compatible with other uses permitted outright within this district;
 - b. consistent with the stated purpose of this district; and
 - c. consistent with the policies of the Tukwila Comprehensive Plan.

Section 10. TMC Section 18.50.210 Adopted. TMC Section 18.50.210, "Marijuana Related Uses," is hereby established to read as follows:

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 Tukwila 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 Tukwila 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, but only to the extent required by state law, marijuana producers, processors, and retailers to operate in designated zones of the City.

B. The production, processing, selling, or delivery of marijuana, marijuana-infused products, or useable marijuana may not be conducted in association with any business establishment, dwelling unit, or home occupation located in any of the following areas:

- Low Density Residential
- Medium Density Residential
- High Density Residential
- Mixed Use Office
- Office
- Residential Commercial Center
- Neighborhood Commercial Center
- Regional Commercial
- Regional Commercial Mixed Use
- Tukwila Urban Center
- Commercial/Light Industrial
- Light Industrial
- Manufacturing Industrial Center/Light
- Manufacturing Industrial Center/Heavy

C. Any violation of this section is declared to be a public nuisance per se, and, in addition to any other remedy provided by law or equity, may be abated by the City Attorney under the applicable provisions of this code or state law.

Section 11. No Non-conforming Uses. No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer, as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Tukwila Municipal Code and that use shall not be entitled to claim legal non-conforming status.

Section 12. Adoption of Findings of Fact. The City Council adopts as its preliminary findings the recitals set forth above. The City Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 13. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 14. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 15. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 3rd day of September, 2013.

ATTEST/AUTHENTICATED:



Christy O'Flaherty, MMC, City Clerk



Jim Haggerton, Mayor

APPROVED AS TO FORM BY:



Shelley M. Kerslake, City Attorney

Filed with the City Clerk: 8-28-13
Passed by the City Council: 9-3-13
Published: 9-9-13
Effective Date: 9-14-13
Ordinance Number: 2407

City of Tukwila Public Notice of Ordinance Adoption for Ordinances 2407.

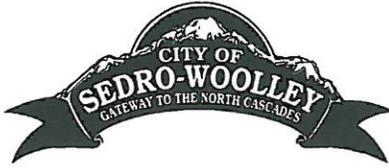
On September 3, 2013 the City Council of the City of Tukwila, Washington, adopted the following ordinance, the main points of which are summarized by title as follows:

Ordinance 2407: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING VARIOUS ORDINANCES RELATING TO LAND USE AND ZONING AS CODIFIED AT TUKWILA MUNICIPAL CODE SECTION 18.40.020 AND ESTABLISHING A NEW SECTION 18.50.210; ADOPTING ZONING RESTRICTIONS ON THE PRODUCTION, PROCESSING, AND RETAILING OF RECREATIONAL MARIJUANA USES; DESCRIBING THE LAND USE IMPACTS TRIGGERING SUCH RESTRICTIONS; IDENTIFYING THE PERMITTED ZONE FOR RECREATIONAL MARIJUANA USES AS THE TUKWILA VALLEY SOUTH AND HEAVY INDUSTRIAL ZONES; ESTABLISHING SEPARATION AND DISTANCE REQUIREMENTS WITHIN THE PERMITTED ZONES; ESTABLISHING PROCEDURES FOR ENFORCEMENT OF VIOLATIONS INCLUDING ABATEMENT OF MARIJUANA NUISANCES; REPEALING ORDINANCE NO. 2405, WHICH ESTABLISHED THE MORATORIUM ON RECREATIONAL MARIJUANA USES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be provided upon request.

Christy O'Flaherty, MMC, City Clerk

Published Seattle Times: September 9, 2013



Building and Planning Departments
Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733

MEMO:

To: City Council
Mayor Anderson

From: John Coleman, AICP 
Planning Director

Date: October 2, 2013

Subject: Possible Zoning Rules for Recreational Marijuana Retailers, Producers and Processors

**CITY COUNCIL
WORKSESSION**

OCT 02 2013

AGENDA ITEM C

ISSUE

Does Council want staff and the Planning Commission to work on proposed changes to zoning rules to address allowed locations of retail stores, producers and processors of recreational marijuana?

PROJECT DESCRIPTION / HISTORY

In 2012 the Washington State voters passed Initiative 502 which required the state to create rules to regulate the growing, production, retailing and possession of recreational marijuana. Since the passage of I-502, the Washington State Liquor Control Board (LCB) has been working on creating these rules. Last month the US Department of Justice decided not to intervene in Washington State's recreational marijuana system. Three weeks ago the LCB published proposed rules, which have subsequently been revised. The state will hold a hearing on revised proposed rules on October 9, 2013. The final rules will become effective on November 16, 2013. The LCB will begin accepting applications for licenses on November 18, 2013 and will begin issuing licenses on December 1, 2013. Attached is the September 4, 2013 press release from the LCB about the draft rules and a research document discussing the legal issues surrounding marijuana regulation (authored by Carol Morris of Morris Law, P.C.).

The state's proposed rules allow for one retail store in Sedro-Woolley. The LCB rules do not limit the number of producers or processors. Does the Council want to consider rule changes to regulate where retail, production and processing facilities may be located in the City of Sedro-Woolley?

ATTACHMENTS

Attachment 1 – Updated Washington State Liquor Control Board press release
Attachment 2 – Medical and Recreational Marijuana Uses – by Morris Law P.C.

REQUESTED ACTION

Determine if the Planning Department should work on proposed changes to zoning rules to address allowed locations of retail stores, producers and processors of recreational marijuana.

Attachment 1

Updated Washington State Liquor Control Board Press Release



Washington State Liquor Control Board

Frequently Asked Questions about the I-502 Proposed Rules

Topic: Initiative 502

Updated: September 4, 2013

*Note: New questions and answers are indicated with an asterisk **

Licensing

When can I get my license?

We will begin accepting applications for all three license types (producer, processor and retailer) for 30 days on November 18, 2013 and expect to begin issuing licenses, at the earliest, in December/January 2013. Due to the anticipated turnout and rush to obtain a license it is possible that the process may take longer than the projected 90 days. The best way to stay up to date on the implementation process and when the applications become available is to register for [email notifications](#) on the WSLCB website.

Why are you only accepting applications for 30 days?

Opening up the licensing window for 30 days affords anyone who is qualified to apply for a license the opportunity to do so. Whether you are a small grower or larger company you will be given the same opportunity to get a license. Closing the window after 30 days allows the Board the opportunity to assess the market and see what changes, if any, are needed regarding the number of licenses. The Board may also reopen the window at its discretion.

*** When can I get an application?**

Application documents will be available, both online and in hard copy, sometime after the Board accepts the proposed rules, which is scheduled for October 16.

*** What do I have to do to start my application?**

To start the application process, and qualify within the 30 day licensing window, you will need to have a location and file your application with Business Licensing Services.

How many producer and processor licenses will be issued?

Presently the WSLCB does not intend to limit the amount of producer or processor licenses it will issue. The LCB will open a 30 day window in November where anyone can apply, and qualified applicants will receive licenses.

*** Can I have more than one license?**

Any entity and/or principles within an entity are limited to no more than three marijuana licenses. Retail marijuana license holders are limited to no more than three retail licenses with no more than 33% of the allowed licenses in any county or city.

*** Why did you limit the number of licenses per licensee?**

Limiting the number of licenses any one entity can hold reduces the possibility that any one entity can singlehandedly control the market.

*** How many retail licenses will be issued?**

334 retail licenses will be issued. The number of retail locations was determined using a formula that distributes the number of locations proportionate to the most populous cities within each county.

Locations not assigned to a specific city are at large. The specific locations will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county.

How will the lottery work?

WSLCB staff are developing the guidelines for the retail license lottery. As more information becomes available we will notify stakeholders via the [I-502 Listserv](#).

If the local authority objects to my proposed location after filing my application can I move my location without refiling?

Applicants will be able to change the location of a potential license if the local authority objects, as long as the application is still in the processing stage, without filing a new application.

Will a criminal record impact my ability to get a license?

The WSLCB will employ a disqualifying criminal history point system similar to liquor. An exception would be allowed for two misdemeanor convictions of possession within three years. A felony conviction will prohibit you from obtaining a marijuana license if the conviction was in the last 10 years.

How do I prove three months residency?

There are many ways to prove residency. Some examples include:

- Get a Washington State driver's license or ID card, which has an issue date on it
- Present three months worth of utility bills, pay stubs, etc.
- Register to vote

You can find out more about state residency requirements at [Access Washington](#).

How do I show I'm current on my taxes?

Prospective licensees will be required to sign an attestation that they are current on their taxes. Failure to do so or misrepresentation of the status of your taxes is grounds to deny the application.

Can I get my \$250 application fee back?

Marijuana application fees are non-refundable.

Is it true that the WSLCB is just going to license current medical marijuana outlets to retail marijuana?

No. Retail licenses will be issued to qualified applicants who meet the licensing criteria. A medical marijuana outlet that wants to convert to a recreational outlet will have to go through the same application process as any other potential applicant. If they were to obtain a retail license they would only be allowed to sell marijuana purchased from the recreational system, they would not be allowed to comingle medical and recreational marijuana.

Can local jurisdictions prevent me from opening a location?

The LCB has no authority to dictate zoning requirements to local governments. Municipalities could conceivably zone marijuana/related businesses out of their geographical area, check with your local authority to understand their requirements.

Since there are a limited number of retail licenses available can I apply for a retail license and a processor and/or producer license at the same time to ensure that I'm not left out and then withdraw the processor and/or producer license application in the event that I get the retail license?

No. Applicants must decide ahead of time which license type they are pursuing. If an applicant applies for a retail license in addition to one of the other two license types all of the applications will be rejected.

Can I be a processor and a producer?

Yes. Licensees may hold a both a producer and processor license together.

Is there a producer/processor license?

No. Applicants must apply for, and obtain, both licenses separately and must pay the application and renewal fees on both licenses.

Do I have to pay the 25% tax on sales between producer and processor if I hold both licenses?

No. If you hold a producer/processor license you avoid the 25% tax that would be applied to a producer to processor sale.

Do I have to provide proof from my landlord that they are aware of how their property is being used?

No. The provision requiring an applicant to provide a signed affidavit showing their landlord is aware of the marijuana related business using their property has been removed.

There is a bus stop in front of my location; will that disqualify me from getting a license?

The rules define "public transit center" as 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.

*** Does a walking trail qualify as a park?**

No. The Board has specifically addressed that a walking trail, such as a converted former rail line, does not qualify as a park.

Can I have multiple locations?

Yes. However each location must be licensed separately and the licensee must meet the previously mentioned requirements on license types.

*** How will the WSLCB measure distance from a restricted area to a potential marijuana location?**

Distance will be measured ~~along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds 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 age 21 and older.

Important Note Regarding the 1,000 foot Measurement: The LCB will file an emergency rule on October 16, 2013, that will revise the current language regarding the 1,000' buffer. The language in the emergency rule will state: "The distance 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 age 21 and older."

*** Why did the Board change the exclusion zone measuring method from "most common legal pathway" to "straight line?"**

The Board, after receiving guidance from the federal government, changed the measuring method to ensure that WLSLB rules match federal enforcement guidelines.

If I'm providing financial backing do I have to be a resident?

Yes. Financiers will be required have three months Washington state residency and to pass the same criminal background checks as a licensee.

Testing

How can I get my laboratory certified to test marijuana?

The LCB will contract (via the request for proposals process) with a firm who will be responsible for accrediting labs.

How will I get my products tested?

The LCB will furnish a list, via our website, of accredited labs for producers to contract with for testing services.

Traceability/Product

What is the traceability system?

A robust and comprehensive traceability software system will that will trace product from start to sale. Licensees will have to use tracking software that is compatible with LCB's traceability system and allows the LCB to monitor and track any plant at any time.

When do my plants need to be entered into the traceability system?

Prior to reaching eight inches in height or width each plant must be tagged and tracked individually

How do I obtain startup inventory?

Within fifteen days of starting production operations a producer must have all non-flowering marijuana plants physically on the licensed premises and recorded into the traceability system. No flowering marijuana plants may be brought into the facility during this fifteen day timeframe. After the 15 days pass, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

Growing

Where can I grow?

- **Indoors/Greenhouse**
Fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.
- **Outdoor**
Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

Can a current farm just convert its crop to marijuana?

Converting a crop to marijuana would require a producer license and the farm would have to meet all of the guidelines set forth in the rules pertaining to outdoor growing.

Can I grow in my personal residence?

No. The rules state that “the Board will not approve a license for any location where law enforcement access, without notice or cause, is limited. This includes personal residences.” Private residences are afforded a degree of privacy under the 4th amendment of the U.S. Constitution that is incompatible with the regulatory requirements of I-502.

*** How much marijuana can I keep on my licensed premise?**

- Producer: Outdoor/Greenhouse – One and ¼ of a year’s harvest, Indoor – six months harvest
- Processor: six months useable marijuana and total production
- Retailer: four months of average inventory

*** As a producer how long do I have to hold my product before transporting it to a processor?**

There is a mandatory 24 hour quarantine period. Previously this period was 72 hours.

How can I get my marijuana certified as organic?

Marijuana may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

Processing

Why can’t I advertize marijuana's medical benefits?

The WSLCB is regulating the recreational marijuana market and does not evaluate the medical claims of a recreational product. Prospective licensees who want to produce/market marijuana for medical purposes should research Washington’s medical marijuana laws.

How will you prevent children from accidentally ingesting marijuana products?

Marijuana infused products must be packaged in child resistant packaging in accordance with Title 16 CFR 1700 of the Poison Prevention Packaging Act.

*** Can I sell marijuana blends?**

Yes, provided the marijuana lots that are being blended have been tested and that the labeling requirements for each lot used in the blend are met.

What happened to the “Produced in Washington” icon?

During the public comment period the WSLCB heard a variety of comments on the icon and ultimately decided to remove it from the rules. The intent of the icon was to provide parents, teachers, etc with a visual aid that helped them readily identify a product as marijuana. Many of the comments were positive and appreciated the WSLCB’s work on this issue, while others were concerned that the icon may be seen as promotional. The Board does reserve the ability to require an icon be included on packaging in the future for public safety purposes if they deem it necessary.

*** If my marijuana fails quality testing can I turn it into an extract?**

Yes. With the Board’s approval, marijuana that fails testing can be converted into an extract and sold provided that the resulting extract passes quality/safety testing.

Why does the Board want to ban concentrates?

The Board's analysis believes that the definition of usable marijuana or infused product in I-502 does not cover concentrates. While the Board was willing to allow concentrates they are not inclined to break the law to do so.

Does hash qualify as usable marijuana?

No. Under the definitions of I-502 hash does not qualify as usable marijuana.

Can I infuse concentrates with an inert oil, or similar substance, and sell it?

Yes. This would qualify as a marijuana infused product.

What is the minimum level of added marijuana for a product to be considered a marijuana infused product?

The Board has not set minimum thresholds for what constitutes an "infused" product.

*** What is the serving size for infused extracts for inhalation? What is the transaction limit?**

The serving size for infused extracts for inhalation is a unit, which may not exceed one gram. Customers may purchase up to seven grams of marijuana infused extract for inhalation.

Retail

*** Why can't I sell over the internet? Or have a delivery service?**

The initiative states that all retail sales must take place in a licensed retail establishment. Neither internet nor delivery sales qualify as retail establishments.

Can a medical marijuana outlet and a retail outlet share the same space?

No. The two operations would have to be separate. Retail outlets are only allowed to sell marijuana that comes from a licensed processor and licensed processors are not allowed to sell to unlicensed entities, such as a medical marijuana outlet.

Are there any restrictions on retail hours of operation?

Retail marijuana operations may take place between the hours of 8:00AM and 12:00AM.

Why can't I hold the marijuana before purchase?

I-502 is very clear that there can be no open containers of marijuana, or consumption of marijuana at licensed locations. The WSLCB cannot write rules that contradict the law.

Why can't I smell the marijuana before purchase?

Retail licensees are allowed to provide a sample jar with a plastic or metal mesh screen to allow customers the ability to smell the product before purchasing. Opened marijuana products are not allowed inside a licensed retail outlet.

*** Can I produce/sell THC infused alcohol (i.e. THC infused vodka)?**

No. The initiative is clear that retail outlets may only sell marijuana, marijuana infused products and marijuana paraphernalia. To sell alcohol in Washington you would need a liquor license which would violate the above provisions.

Miscellaneous

Will the WSLCB be setting prices?

No. The WSLCB will not set prices but licensees are not allowed to sell marijuana products below their acquisition cost.

*** As a licensee can I test my product for quality?**

Licensees are allowed to test for quality under the specific requirements set forth in WAC 314-55-083(6). Those requirements limit the amount of product that can be tested, how often testing can take place, and the reporting requirements by license and product type.

Can I provide samples?

Producers are allowed to provide samples to a processor and processors are allowed to provide samples to a retailer. Retailers are not allowed to supply samples to the public.

Attachment 2

**MEDICAL AND RECREATIONAL MARIJUANA USES -- LOCAL
REGULATION – Morris Law P.C.**

(Updated 9/15/13)

MEDICAL AND RECREATIONAL MARIJUANA USES -- LOCAL REGULATION

by

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Carol Morris, owns Morris Law, P.C, which focuses on the representation of municipalities in land use litigation. Carol is also a panel attorney for the Association of Washington Cities Risk Management Services Agency (RMSA), hired by the insurance pool since 1994 to represent cities in land use litigation. She answers the AWC-RMSA sponsored land use hotline, which is a free service to cities in the insurance pool. From 1989 to the present, Carol has been a city attorney for seven cities as well as assistant city attorney, or special legal counsel in primarily land use matters, for over 35 other cities and counties.

MEDICAL AND RECREATIONAL MARIJUANA USES LOCAL REGULATION

By
Carol A. Morris

I. Background.

A. Federal Law. The Controlled Substances Act (CSA), makes it unlawful to manufacture, distribute, dispense or possess any controlled substance except in the manner authorized by the CSA.¹ All controlled substances are categorized into five schedules, based on the drugs' accepted medical uses, potential for abuse and their psychological/physical effects on the body.² Each schedule corresponds with controls on the manufacture, distribution, registration, labeling, packaging, production quotas, drug security and recordkeeping, as well as use of the listed substances.³

Marijuana is classified as a Schedule I drug.⁴ Drugs with a high potential for abuse, lack of any accepted medical use and absence of any accepted safety for use in medically supervised treatment, are labeled Schedule I.⁵ The inclusion of marijuana on Schedule I reflects the federal government's determination that "marijuana has no currently accepted medical use at all."⁶ While there have been repeated efforts to reclassify marijuana, it remains a Schedule 1 drug.⁷ By classifying it as a Schedule I drug, the manufacture, distribution or possession of marijuana became a criminal offense (with one exception for research studies).⁸ It is also illegal under the CSA to open, use, lease or maintain any place for the purpose of manufacturing, distributing or using any controlled substance.⁹

B. Washington State Law.

1. *Washington's Uniform Controlled Substances Act (USCA)* makes it unlawful to manufacture, deliver or possess with intent to manufacture or deliver, a controlled substance.¹⁰ Marijuana is listed as a Schedule I drug.¹¹

¹ 21 U.S.C. Section 841(a)(1).

² 21 U.S.C. Section 811, 812.

³ 21 U.S.C. Section 821-830; CFR Section 1301 *et seq.*

⁴ 21 U.S.C. Section 812(c).

⁵ 21 U.S.C. Section 812(b)(1).

⁶ *United States v. Oakland Cannabis Buyers' Co-op*, 532 U.S. 483, n. 5, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001). July 11, 2012).

⁷ *See, Alliance for Cannabis Therapeutics v. DEA*, 15 F.3d 1131, 1133 (D.C. Cir. 1994).

⁸ 21 U.S.C. Section 823(f); 841(a)(1), 844(a).

⁹ 21 U.S.C. Section 856(a)(1).

¹⁰ RCW 69.50.401.

¹¹ RCW 69.50.204(c)(22).

2. *Medical Marijuana Initiative.* In November of 1998, the voters of the State of Washington approved Initiative 692 (codified as chapter 69.51A RCW). The intent of Initiative 692 was that “qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law,” 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.”¹²

3. *Legislature’s Adoption of chapter 69.51A RCW, Medical Cannabis.* In 2011, the Washington State Legislature passed ESSSB 5073, which amended chapter 69.51A RCW. In this bill, qualifying patients or their designated care providers are presumed to be in compliance with the medical use of marijuana, and not subject to criminal or civil sanctions, penalties, and/or consequences, if they possess no more than 15 cannabis plants, no more than 24 ounces of usable cannabis, and as long as they meet certain other qualifications.¹³

This bill directed employees of the Washington State Departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis. In addition, the bill required that the Department of Health develop a secure registration system for licensed producers, processors and dispensers. These provisions, however, were vetoed by the Governor, together with many others relating to dispensaries and all of the definitions in the bill.¹⁴

The bill’s provisions relating to individual cultivation of medical cannabis and cultivation in collective gardens were not vetoed. An individual qualifying patient may cultivate up to 15 cannabis plants in his/her own residence (or possess up to 24 ounces of usable cannabis).¹⁵ There are other limits for qualifying patients who are also designated providers.¹⁶ Up to ten qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use.¹⁷ A collective garden may not contain more than 15 plants per patient up to a total of 45 plants per garden, and the garden may not contain more than 24 ounces of usable cannabis per patient, up to a total of 72 ounces of usable cannabis.¹⁸

Under the bill, cities, towns and counties may adopt and enforce requirements for zoning, business licensing, health and safety and business taxes relating to the “production, processing, or dispensing of cannabis or cannabis products within their jurisdiction.”¹⁹ Additional protection from state prosecution exists in the bill: “no civil or criminal liability may be imposed by any court on cities, towns, and counties or their municipalities and their officers and employees for

¹² RCW 69.51A.005, 69.51A.020.

¹³ RCW 69.51A.040.

¹⁴ See, letter from Christine Gregoire, Governor, April 29, 2011, re: ESSSB 5073. Definitions have since been added to RCW 69.51A.010.

¹⁵ RCW 69.51A.040(1).

¹⁶ See, RCW 69.51A.040(1)(b).

¹⁷ RCW 69.51A.085.

¹⁸ *Id.*

¹⁹ RCW 69.51A.140.

actions taken in good faith under chapter 69.51A RCW, within the scope of their assigned duties.”²⁰

The Governor’s veto caused confusion in the interpretation of chapter 69.51A RCW. There is a general assumption that medical marijuana dispensaries could be prohibited by local jurisdictions, given the veto on definitions and elimination of corresponding provisions relating to the State Department of Health’s regulation of dispensaries. Although the provisions relating to collective gardens and individual cultivation/possession were not vetoed, the definitions of “qualified patient” and “designated provider” were, causing more confusion.²¹ The bill’s definitions of these terms provided an affirmative defense to charges of state law cannabis violations to qualified patients and designated providers who were on a State registry that was never established (because it was included in another vetoed section of the bill).²²

4. *Initiative 502.* In 2012, the Washington voters passed I-502, which directs the Washington State Liquor Control Board (LCB) to regulate marijuana by licensing and taxing producers, processors and retailers.²³ The regulatory scheme requires the LCB to adopt rules before December of 2013²⁴ to address the methods for producing, processing and packaging of the marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements, method of transport of marijuana throughout the state, etc. A tax is also levied on marijuana-related activities, and a dedicated fund consisting of marijuana excise taxes, license fees, penalties and other income received by the state LCB from marijuana-related activities is created. The THC concentration for various offenses is established, and possession of limited amounts of marijuana by persons 21 years of age or older is decriminalized.

5. *Liquor Control Board’s Rules.*

(i) State Environmental Policy Act (SEPA) Checklist. On July 1, 2013, the LCB issued a SEPA Checklist for its proposed rulemaking. The Checklist references a draft white paper prepared by the LCB’s consultant, as the “only environmental information that

²⁰ RCW 69.51A.130. Of interest on the issue of municipal liability is *Qualified Patients Association, et al. v. City of Anaheim*, 187 Cal. App. 4th 734, 760, 115 Cal.Rptr. 3d 89 (2010):

[A] city’s compliance with state law in the exercise of its regulatory, licensing, zoning or other power with respect to the operation of medical marijuana dispensaries that meet state law requirements would not violate conflicting federal law. . . . The fact that some individuals or collectives or cooperatives might choose to act in the absence of state criminal law in a way that violates federal law does not implicate the city in any such violation. As we observed in *Garden Grove* [*City of Garden Grove v. Superior Court*, 157 Cal. App.4th 355, 368, 68 Cal. Rptr. 3d 656, 663 (2007)], governmental entities do not incur aider and abettor or direct liability by complying with their obligations under the state medical marijuana laws.

²¹ Definitions have since been added, including those for “designated provider” and “qualifying patient.” RCW 69.51A.010.

²² RCW 69.51A.043.

²³ I-502 has been codified in chapter 69.50 RCW (primarily in RCW 69.50.101, .325 through .369).

²⁴ The Liquor Control Board has developed their draft rules, which are now available for public comment.

. . . has been prepared, or will be prepared, directly related to this proposal.”²⁵ In this white paper, the authors admit its limitations: “This memo reviews the main environmental effects of cannabis cultivation (we do not analyze processing or distribution).”²⁶

Although the LCB is responsible for determining the number and general location of retail outlets in the State, it chose not to address the environmental impacts of marijuana retail uses, because the proposed Rules “do not directly affect land or shoreline use.”²⁷ Water availability issues are peripherally addressed (“hemp cultivation will probably occur west of the Cascades because of water availability”).²⁸ Even after acknowledging that (what will likely be) the State’s largest cash crop must be transported from the western side of the Cascades to all other areas in the State, the LCB concludes that the proposed Rules will “not have a probable adverse impact on transportation or utility service.”²⁹ The authors of the white paper also note that indoor marijuana cultivation will require high energy use,³⁰ which the LCB proposes to mitigate by simply allowing outdoor cultivation.

In sum, the SEPA Checklist presents little helpful information to local governments seeking environmental information for use in the adoption of local ordinances regulating recreational marijuana uses, or in preparation of their “written objections” to the LCB’s proposed issuance of a license. The LCB’s determination of the number and location of retail sites appears to have involved no environmental analysis (the decision was based on population and estimated consumption). Unless it plans to perform SEPA on the individual license applications submitted to the LC for approval, environmental review has effectively been deferred until the land use permitting stage.³¹

(ii) On September 4, 2013, the LCB issued their Revised Proposed Rules for the implementation of I-502.³² The Board also issued a list of retail store locations, with the number of retail outlets that would be allowed in each county and city in Washington. In these Proposed Rules, the LCB:

²⁵ The final version of this white paper is dated June 28, 2013, and was available when the SEPA Checklist was prepared. There is no explanation for LCB’s use of the draft white paper instead of the final version when it issued a DNS.

²⁶ *Environmental Risks and Opportunities in Cannabis Cultivation*, draft white paper, by Michael O’Hare, BOTEK Analysis, US Berkley, Daniel L. Sanchez, UC Berkley & Peter Alstone, p. 3.

²⁷ SEPA Checklist, No. 5, p. 5.

²⁸ *Environmental Risks*, p. 16.

²⁹ *Id.*, No. 6, p. 6.

³⁰ *Id.*, quoting from *Energy Up in Smoke, the Carbon Footprint of Indoor Cannabis Production*, by Evan Mills, Ph.D, April 5, 2011, p. 1.

³¹ SEPA requires completion of “[a]ppropriate consideration of environmental information . . . before an agency commits to a particular course of action.” WAC 197-11-055(2)(c). If information on significant adverse environmental impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, the LCB is required to obtain the information and include it in the LCB’s environmental documents. WAC 197-11-080(1). The LCB may proceed in the absence of vital information only as described in the SEPA Rules, and the LCB must “generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent that this information is available.” WAC 197-11-080(3).

³² Chapter 314-55 WAC.

- Establishes definitions, including those for the definitions of all of the sensitive uses which trigger the 1,000 foot distance limitations (between the recreational marijuana use and child care centers, schools, etc.). WAC 314-55-010.
- Describes the qualifications for recreational marijuana licensees (requiring criminal history background checks, among other things, and identifying the type of past criminal activity that would prohibit license issuance). WAC 314-55-020, 035, 040.
- Prohibits issuance of a license for a recreational marijuana use within 1,000 feet of the defined sensitive uses and describes the method for measurement of the distance. WAC 314-55-050(10). The LCB plans to change this rule governing the method of measurement. This is discussed on page 7.
- Describes the procedure to obtain a recreational marijuana license, which involves payment of fees, LCB review, and notification to local government, possible hearing, etc. WAC 314-55-075.
- Limits the maximum amount of space for marijuana production to two million square feet. WAC 314-55-075(6).
- Describes the manner in which marijuana production may take place (within a fully enclosed, secure indoor facility or greenhouse with four walls or outdoors fully enclosed by a physical barrier with an 8 foot high fence). WAC 314-55-075.
- Limits the average inventory that may be on the licensed premises at any time. WAC 314-55-077, 314-55-079.
- Limits the number of marijuana retailers within counties and cities within the counties based on estimated consumption and population data. WAC 314-55-081.
- Describes the insurance requirements for recreational marijuana licensees. WAC 314-55-082.
- Describes the security requirements within the licensed premises, requiring employees to wear identification badges and requiring alarm and surveillance systems on the premises. WAC 314-55-083.
- Requires that the licensees track marijuana from seed to sale. WAC 314-55-083(4).
- Establishes the manner in which free samples of marijuana may be provided. WAC 314-55-083(6).
- Prohibits the use of soil amendments, fertilizers and other crop production aids, other than those identified in WAC 314-55-084.

- Identifies the transportation requirements for recreational marijuana. WAC 314-55-085.
- Identifies sign requirements and limitations. WAC 314-55-086.
- Identifies recordkeeping requirements, including the amount and concentration of pesticides, soil amendments and other applications used on the product. WAC 314-55-087.
- Identifies the tax record keeping requirements. WAC 314-55-089.
- Identifies mechanisms for enforcement of violations, including failure to pay taxes. WAC 314-55-092.
- Specifies marijuana infused product serving size, maximum number of servings and limitations on transactions. WAC 314-55-095.
- Identifies marijuana waste disposal restrictions. WAC 314-55.097.
- Describes the process for quality assurance testing, extraction and the requirements for packaging and labeling. WAC 314-55-099, 314-55-102, 314-55-104, 314-55-105.
- Describes the manner in which the licensee may advertise his or her business. WAC 314-55-155.
- Describes the violations that would subject a licensee to the enforcement process, suspension, revocation and penalties. WAC 314-55-505, 506, 507, 508, 510, 515.

Schedule for LCB Action. The LCB intends to change the method for measuring the 1,000 foot separation requirement between recreational marijuana businesses and identified “sensitive uses,” including schools and playgrounds (proposed WAC 314-55-050(10)). In the proposed rule, the LCB planned to measure the distance by the path of most common travel. Federal law, however, doubles the criminal penalty for producing or distributing controlled substances within 1,000 feet of a school, playground or public housing. On September 13, 2013, the U.S. Department of Justice told the LCB that it would continue to enforce federal law this 1,000 foot rule as measured by a straight line. The same day, the LCB’s representative announced that the LCB would change its proposed rule to be consistent with federal law.³³

There will be a hearing on the Revised Proposed Rules on October 9, 2013. The Rules will become effective on November 16, 2013. The LCB will begin accepting applications for licenses on November 18, 2013 and will begin issuing licenses on December 1, 2013.

Banking. One issue that has not been addressed under the Proposed Rules is the fact that under current law, processing money from marijuana sales puts federally insured banks at risk of drug

³³ *State to change rules on where marijuana outlets can locate*, by Gene Johnson, Associated Press, published September 13, 2013.

racketeering charges.³⁴ In 2011, American Express announced it would no longer handle marijuana-related transactions because of fear of federal prosecution.³⁵ Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., acknowledged recently that as a result of the banking constraints, marijuana businesses are operating on a cash-only basis. He admitted that this contributes to the public safety problem, because a cash-only business will attract guns and violence. Deputy Attorney General Cole told Congress on September 10, 2013 that “the absence of banking services for marijuana businesses is one that ‘we need to deal with’ and that ‘we’re working on it.’”³⁶

II. Preemption.

A. Federal Law. No state can authorize violations of federal law. The CSA supersedes state regulation of marijuana, even when it is used for medicinal purposes.³⁷

1. *Ogden Memo*. In 2009, the U.S. Department of Justice (“DOJ”) provided clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana,” that certain marijuana users and providers would be a lower priority for prosecution than others.³⁸ (The “Ogden Memo” states that prosecution of “individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of federal resources...”)³⁹

2. *June 2010 DOJ Memo*. Another Justice Department memo was sent to U.S. attorneys in June of 2010, clarifying that dispensaries and licensed growers could be prosecuted for violating federal drug and money laundering laws.⁴⁰ A spokesman for the U.S. Attorney in Los Angeles said the crackdown is aimed at stores that “are selling marijuana at a profit, which is also a violation of California law.”⁴¹ The California director of the Drug Policy Alliance complained that the Obama administration had “betrayed the promise it originally made to leave patients and their caregivers alone.”⁴²

³⁴ In Colorado, “a state chartered bank or credit union may loan money to any person licensed pursuant to [the medical marijuana state laws] for the operation of a licensed business.” C.R.S.A. Section 12-43.3-401.

³⁵ *Feds Seek to Legalize Marijuana Industry Banking*, Kristen Wyatt and Colleen Slevin, Denver, Associated Press, September 10, 2013.

³⁶ *Id.*, taken from the NPR (National Public Radio) website, dated September 10, 2013.

³⁷ *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 2198, 162 L.Ed.2d 1 (2005). In *Raich I*, the US Supreme Court held that the “CSA’s categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes pursuant to California law [does not] exceed Congress’ authority under the Commerce Clause.” 545 US. at 9, 15; *see also*, *Raich v. Gonzales* (*‘Raich II’*), 500 F.3d 850 (9th Cir. 2007).

³⁸ *See*, David W. Ogden, Dep. Atty. Gen., U.S. Dept. of Just., *Investigations and Prosecutions in states Authorizing the Medical Use of Marijuana* (“Ogden Memo”) (October 19, 2009) (available at www.justice.gov/opa/documents/medical-marijuana.pdf).

³⁹ *Id.*

⁴⁰ *See*, *USA Today*, article dated 10/10/11, “Feds Target Medical Marijuana Dispensaries in California.”

⁴¹ *Id.*

⁴² *Id.* This quote was attributed to Stephen Gutwillip, California Director of the Drug Policy Alliance.

3. *DOJ's letter to Clark County Commissioners.* Here in Washington, the Clark County Commissioners asked the federal government whether such enforcement efforts would extend to their activities implementing the State's laws on medical marijuana. The response:

[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.⁴³

In the same letter, the County Commissioners were warned 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.⁴⁴

4. *Federal Response to I-502.* On August 29, 2013, the U.S. DOJ issued another memo to all U.S. Attorneys. In this memo, the DOJ advised that as long as states adopting laws governing marijuana have "sufficiently robust" regulatory and enforcement systems (on paper and in practice) to address the federal government's identified enforcement priorities, then "enforcement of state laws by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."⁴⁵ Here are the enforcement priorities that are particularly important to the federal government:

- 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.⁴⁶

⁴³ 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.

⁴⁴ *Id.*

⁴⁵ Memorandum dated August 29, 2013 from the U.S. Department of Justice, Office of the Attorney General, James M. Cole to All United States Attorneys, "Guidance Regarding Marijuana Enforcement."

⁴⁶ *Id.*, p. 1-2.

The DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government *may seek to challenge the regulatory system itself* in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on these harms.”⁴⁷

B. Marijuana Laws in States Other than Washington.

1. *Generally.* At least seventeen states have now adopted laws allowing the medical use of marijuana and six states have similar legislation pending.⁴⁸ Colorado and Washington are the only states that have adopted laws legalizing recreational marijuana.

2. *California.* Some California courts have held that state medical marijuana laws are not in conflict with the CSA because they do not legalize medical marijuana.⁴⁹ These decisions recognize that while the CSA preempts state laws that positively conflict, the California medical marijuana law “simply decriminalizes for the purposes of state law certain conduct related to medical marijuana.”⁵⁰ Recently, the California Supreme Court decided to supersede and accept review of decisions rendered in four significant medical marijuana cases, including a case in which a local ordinance was invalidated as preempted under the CSA.⁵¹

The confusion caused by the California courts’ action on these cases (and the delay in the issuance of the decisions) prompted the City of Los Angeles to adopt an unusual ordinance. It prohibits medical marijuana businesses, but grants a limited immunity from the enforcement of the prohibition, until the California Supreme Court “rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.”⁵² The immunity is granted to certain medical marijuana businesses, including those that were legally operating in the City under the previous regulations relating to medical

⁴⁷ *Id.*, p. 2, emphasis added.

⁴⁸ Alaska, Arizona, California, DC, Delaware, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Washington, <http://medicalmarijuana.procon.org>. According to this website, the states vary in the amount of usable cannabis possession limits (from 1 oz. (Alaska) to 24 oz. (Washington and Oregon)) as well as the number of plants (from 6 plants to 24 plants (Oregon)).

⁴⁹ California’s Compassionate Use Act “does not conflict with federal law because on its face it does not purport to make legal any conduct prohibited by federal law; it merely exempts certain conduct by certain persons from the California drug laws.” *Qualified Patients Assn. v. City of Anaheim*, 187 Cal.App.4th 734, 760, 115 Cal.Rptr.3d 89 (2010).

⁵⁰ *County of San Diego v. San Diego NORML*, 165 Cal. App. 4th 798, 81 Cal.Rptr.3d 461 (2008).

⁵¹ See, *Medical Marijuana Cases Have Courts Exhibiting Multiple Personalities, Flurry of Conflicting Rulings on Medical Marijuana Sets Up Landmark California Review*, posted March 13, 2012 by Peter Hecht of McClatchy Newspapers. In one of these cases, the court ambiguously held that only those ordinances that distinguished between “not making an activity unlawful and making the activity lawful” would be upheld. *Pack v. Superior Court*, 199 Cal.App.4th 1070, 132 Cal.Rptr.3d 633 (10-4-11); *opinion superseded and review granted*, 268 P.3d 1063 (1-18-12); *dismissed as moot* 146 Cal.Rptr.3d 271, 283 P.3d 1159 (8-22-12). After review was granted in *Pack*, the City repealed the ordinance and replaced it with another which imposed a complete and immediate ban on collectives in the City.

⁵² Section 45.19.6, Ordinance 182,580 (effective 6/20/13) of the Los Angeles Municipal Code.

marijuana businesses.⁵³ All other medical marijuana businesses not operating in a manner consistent with the restrictions in the ordinance are required to cease operations.⁵⁴

The California Supreme Court has held that the California medical marijuana law did not preempt the City of Riverside, California's ban on medical marijuana dispensaries.⁵⁵ In this decision, the court held that nothing in California law "expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders."⁵⁶ (While this may also be true for the Washington medical marijuana laws, there are certain aspects of I-502 or recreational marijuana, that are not contemplated by the court's decision in this case, such as Washington State licensing.)

3. *Colorado.* Washington legislators would do well to consider the manner in which the Colorado laws regarding medical marijuana recognize home rule. In Colorado, the laws legalizing medical marijuana uses allow for a "local option," meaning that they operate statewide unless:

a municipality, county, city or city and county, by either a majority of the registered electors of the municipality, county, city or city and county, voting at a regular election or a special election . . . or a majority of the members of the governing board for the municipality, county, city or city and county vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers' licenses.⁵⁷

In addition, there is significant licensing coordination between the state and local jurisdictions for medical marijuana businesses. Colorado's state law describes the type of medical marijuana licenses that may be issued by both the state and a local licensing authority.⁵⁸ The law does not allow a local licensing authority to issue a medical marijuana license unless the city or county has adopted an ordinance with specific standards for license issuance, including those identified in the code, such as distance restrictions, size of the licensed premises, etc.⁵⁹ A medical marijuana business that may be licensed under these laws cannot begin operations until a license has been obtained by both the local licensing authority and the state licensing authority. "If the state licensing authority issues the applicant a state license and the local licensing authority subsequently denies the applicant a license, the state licensing authority shall consider the local licensing authority a denial as a basis for the revocation of the state-issued license."⁶⁰

Colorado's state auditors recently determined that even with Colorado's more comprehensive medical marijuana regulatory system, the "the state is not providing enough

⁵³ *Id.*, Section 45.19.6.3.

⁵⁴ *Id.*, Section 45.19.6.7.

⁵⁵ *City of Riverside v. Inland Empire Patients Health and Wellness Center* 56 Cal.4th 729 (2013) (2013 WL 1859214).

⁵⁶ *Id.*

⁵⁷ C.R.S.A Section 12-43.3-106.

⁵⁸ C.R.S.A. Section 12-43.3-401, 12-43-3-301.

⁵⁹ C.R.S.A. Section 12-43.3-301(2)(a).

⁶⁰ C.R.S.A. Section 12-43.3-310(2).

oversight of the medical marijuana industry.”⁶¹ The state auditors found that only a dozen Colorado doctors issued half of the medical marijuana patient recommendations in the state.⁶² The audit revealed that in 2009 there were only 6,000 medical marijuana patients in the Colorado, but this number increased to 108,000 in March of 2013. Some doctors also appear to have recommended excessive amounts of marijuana to some patients – one patient received a recommendation for 501 marijuana plants, while another received a recommendation for 75 ounces.⁶³

4. *Michigan.* In Michigan, the City of Wyoming sought to ban medical marijuana uses by adopting a zoning ordinance which provided that “uses not expressly permitted under this article are prohibited in all districts. Uses that are contrary to federal law, state law or local ordinance are prohibited.”⁶⁴ The City argued that this ordinance was valid even if it was preempted by state law allowing medical marijuana, because the federal CSA preempted the state law. In a decision that has been accepted for review by the Michigan Supreme Court, the City’s ban was invalidated because it conflicted both with the state law and the CSA.

III. Local Response to Marijuana Laws.

A. Moratoria and Interim Zoning, Generally.⁶⁵ A moratorium is an emergency measure adopted without public notice or public hearings, designed to preserve the status quo while the city or town officials consider new regulations to respond to new or changing circumstances not addressed in current laws. During the period of the moratorium, no applications for building permits or other development permits for medical marijuana dispensaries may be submitted.

Cities and towns may adopt interim zoning in response to an emergency situation to regulate use of land pending amendments to the zoning code.⁶⁶ Interim zoning is:

[A] process whereby a governmental body in response to an emergency situation temporarily establishes an ordinance to classify or regulate uses of land pending . . . revision of the existing zoning code . . .⁶⁷

⁶¹ This conclusion was included in “*Colorado Medical Marijuana Audit: 12 Docs Issued Half of the Medical Pot Patients Recommendations in State*,” The Huffington Post, Denver, by Matt Ferner, posted 7/16/13.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Ter Beek v. City of Wyoming*, 823 N.W.2d 864 (2012), *appeal granted*, 828 N.W.2d 381 (2013).

⁶⁵ For a complete explanation of moratoria and interim zoning, complete with sample ordinances, contact Carol Morris at carol_a_morris@msn.com for a copy of the Article “Moratoria Handbook for Municipalities,” commissioned by the Association of Washington Cities Risk Management Services Agency.

⁶⁶ Interim zoning is adopted under the same authority and procedures as moratoria. GMA cities: RCW 36.70A.390; code cities: RCW 35A.63.220; other cities and towns: RCW 35.63.200.

⁶⁷ *Smith v. Skagit County*, 75 Wn.2d 715, 723, 453 P.2d 832 (1969), *holding modified by State v. Post*, 118 Wn.2d 596, 837 P.2d 599 (1992).

The author of this Article does not recommend adoption and repeated renewal of moratoria or interim zoning regulations as a substitute for bans on marijuana uses.⁶⁸ The question whether municipalities should adopt development regulations allowing the medical marijuana or recreational uses is addressed below.

B. Medical Marijuana Moratoria and Adoption of Development Regulations. Based on the DOJ's August 29, 2013 memo, local governments should consider the following courses of action:

1. Local governments with no regulations addressing medical marijuana.⁶⁹ First, the local government needs to ask whether it believes that the existing state law on the subject of medical marijuana addresses the federal government's enforcement priorities (identified on page 9 of this Article). Even if it could be argued that chapter 69.51A RCW and the type of local development regulations adopted by most municipalities for collective gardens meet this standard, few municipalities have the resources to provide vigorous enforcement of these laws.

According to the August 29, 2013 DOJ Memo, "[i]f state efforts are not sufficiently robust to protect against the harms set forth above, *the federal government may seek to challenge the regulatory system itself* in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms."⁷⁰ Rather than face an action from the federal government challenging the municipality's ordinance (or enforcement of that ordinance) governing medical marijuana, consideration should be given to the adoption of a temporary ban prohibiting all medical marijuana uses (see below), to be in effect until the State of Washington revises chapter 69.51A RCW (on medical marijuana) to provide for the same type of regulatory system governing recreational marijuana.

This type of a ban on medical marijuana uses can be adopted under the procedures for interim zoning controls if there is an emergency – but the interim zoning control must be repealed at some point and a "permanent" ban adopted.⁷¹ If there is no emergency, the ban could be adopted under the usual procedures for adoption of a development regulation.⁷²

2. Local governments that have adopted regulations addressing medical marijuana.⁷³ For the reasons set forth above, local governments with regulations addressing medical marijuana uses should consider adoption of an ordinance that:

⁶⁸ See, *Byers v. Board of Clallam County Comm'rs*, 84 Wn.2d 796, 901, 529 P.2d 823 (1974) and *Biggers v. Bainbridge Island*, 162 Wn.2d 683, 169 P.3d 14 (2007). If moratoria and interim zoning are adopted and renewed without following the correct procedures for adoption, even though there is no emergency necessitating adoption, there is a risk that the ordinance could be invalidated.

⁶⁹ Model ordinances have been drafted for the cities and towns in the AWC-RMSA insurance pool and are available on the AWC-RMSA website.

⁷⁰ DOJ's August 29, 2013 Memo, p. 3.

⁷¹ For GMA cities and towns, RCW 36.70A.390. For code non-GMA cities, RCW 35A.63.220. For non-code, non-GMA cities and towns, RCW 35.63.200.

⁷² See, *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641, 904 P.2d 317 (1995) for a discussion of what needs to be in the declaration of emergency to withstand a legal challenge.

⁷³ Model ordinances have been drafted for the cities and towns in the AWC-RMSA insurance pool and are available on the AWC-RMSA website.

- Prohibits new medical marijuana collective gardens and any medical marijuana dispensaries (and any marijuana businesses that do not have a license from the Liquor Control Board of the State of Washington);
- Grants limited immunity as provided in chapter 69.51A RCW and against this prohibition to those medical marijuana collective gardens that were legally in existence at the time the ordinance was adopted, as long as they do not violate the existing regulations applicable to collective gardens;
- Identifies the time limitation for the effectiveness of the ordinance (“until such time as the State of Washington revises chapter 69.51A RCW consistent with the DOJ’s priorities as set forth in the August 29, 2013 Memo”);
- Clearly states that no immunity, vested right or legal nonconforming use is created between the date of the adoption of this ordinance and any new ordinance on the same subject;⁷⁴
- Provide that the ordinance shall expire permanently on the effective date of the local government’s adoption of a new ordinance on the subject of medical marijuana uses; and
- Requires that any medical marijuana uses that are not in conformance with the ordinance must immediately cease operations.

In other words, if your jurisdiction hasn’t adopted regulations allowing medical marijuana uses, consider the temporary ban described on page 13 and the paragraph above. If your jurisdiction has adopted regulations allowing medical marijuana uses, consider an ordinance described in the paragraph above, which will ban new medical marijuana uses but allow certain ones to continue temporarily. If your jurisdiction has adopted regulations allowing medical marijuana uses but wants to immediately terminate them, review pages 18-19 of this Article to see a brief discussion of the issues that you must consider with an ordinance of this type.

C. Recreational Marijuana. Production, processing, possession, delivery, distribution and sale of the maximum amounts of marijuana established by law, are not criminal or civil offenses under Washington law, *as long as they are performed by a person with a valid license (or his/her employee)*.⁷⁵ The LCB has issued its Proposed Rules and a timeline which will allow the LCB to begin accepting applications on November 18, 2013 and to begin issuing licenses on December 1, 2013. This means that prospective licensees may be searching for property prior to this time, and if a municipality hasn’t adopted development regulations to address recreational marijuana, the licensees will have no locational guidance on siting the proposed use. If a municipality has a moratorium in place to address recreational marijuana uses, the new regulations need to be adopted and the moratorium lifted as soon as possible to avoid challenges.

During the period of the moratoria, municipalities should be plotting out the application of the 1,000 foot rule (separation between recreational marijuana uses and sensitive uses defined in the draft Rules)⁷⁶ “on the ground,” to determine where recreational marijuana uses cannot

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⁷⁵ RCW 69.50.366, .363, .360.

⁷⁶ Keep in mind that the LCB will be revising Proposed Rule WAC 314-55-050(10), so that the method for measurement is consistent with federal law – the 1,000 feet will be measured in a straight line.

locate. Then, the municipality should be considering the possible secondary land use impacts associated with such uses to perform SEPA on comprehensive plan amendments and development regulations. For example, a large-scale growing operation will likely consume large amounts of water and other environmental impacts. The Proposed Rules issued on September 4, 2013 by the LCB address some environmental concerns, such as pesticide use.

Some local governments may choose to permit recreational marijuana uses in those zones best adapted to the secondary land use impacts. For example, retail uses would be allowed in commercial zones, while processing and production would be allowed in industrial or the most intense commercial zones.

If the municipality intends to raise the appropriateness of the location of the proposed recreational marijuana use to the LCB as “written objections” against the use, the municipality must have zoning in place when the LCB begins issuing licenses. Apparently, the LCB will determine whether the proposed use is within 1,000 feet of the defined sensitive uses and if so, will not issue the license.⁷⁷

IV. Official/Officer/Employee Liability.

Some city/town officials are worried that by adopting regulations that allow marijuana uses under certain limited circumstances, the city/town officials and staff will be subject to federal prosecution under the CSA.⁷⁸ There is immunity for their actions relating to medical marijuana under state law. (RCW 69.51A.130(2): “No civil or criminal liability may be imposed by any court on cities, towns and counties or other municipalities and their officers and employees for actions taken in good faith under [chapter 69.51A RCW] and within the scope of their assigned duties.”) The August 29, 2013 DOJ Memo (discussed on page 9 of this Article) provides some information on the subject of liability under federal law.

V. Frequently Asked Questions about Washington’s laws.

A. Medical Marijuana.

1. Does Washington’s medical marijuana law conflict with the CSA? No Washington appellate court has made a decision on this issue.

⁷⁷ Proposed Rule WAC 314-55-050(10).

⁷⁸ See, *County of San Diego v. San Diego NORML*, 165 Cal.App.4th 798, 81 Cal.Rptr.3d 461 (2008). This is a lawsuit brought by several California counties against the State and others, asking the court for a declaration that the counties were not required to comply with the California medical marijuana laws. The court held that “because major portions of the [state’s medical marijuana law] neither impose obligations on nor inflict direct injury to Counties, we reject the Counties’ effort to obtain an advisory opinion declaring the *entirety of the* [state’s medical marijuana law] invalid under preemption principles.” *Id.* 165 Cal. App.4th at 818. Specific portions of the state’s medical marijuana laws, such as the requirements that counties process applications, maintain records and issue identification cards to those persons entitled to obtain medical marijuana. *Id.*, at 825. “Because the CSA law does not compel the states to impose criminal penalties for marijuana possession, the requirement that counties issue cards identifying those against whom California has opted not to impose criminal penalties does not positively conflict with the CSA.” *Id.*, at 826.

2. *Can Washington cities, towns and counties adopt bans on medical marijuana uses?*⁷⁹ The City of Kent adopted a ban on medical marijuana uses, which was challenged and upheld at the superior court level. There has been no decision yet from the Court of Appeals in this case. Any municipality considering a ban on medical marijuana uses should keep in mind that even if Kent's ban on medical marijuana uses is upheld, it will not affect recreational marijuana uses. I-502 allows the Liquor Control Board to license recreational marijuana producers, processors and retailers in cities, towns and counties throughout Washington.

On the subject of a medical marijuana ban, municipalities need to seriously consider the DOJ's August 29, 2013 Memorandum, because the state law on medical marijuana does not address the enforcement priorities that were identified as "particularly important to the federal government." Most of the provisions in the original bill that would correspond with the federal government's priorities were vetoed by the Governor. The contrast between the type of regulations that the State Liquor Control Board is proposing to adopt on recreational marijuana and chapter 69.51A on medical marijuana clearly demonstrates the need for substantial legislative amendments in order to satisfy the priorities of the federal government.

Some local governments adopted ordinances regulating collective gardens in order to ensure that they would not be sited in inappropriate locations and to avoid lawsuits from medical marijuana advocates. The federal government's threat of prosecution⁸⁰ against local governments and/or the fear that federal funding would be lost, also caused many other local governments to either do nothing, or adopt (and renew) moratoria on medical marijuana uses.

At this time, the question is whether the DOJ will seek to challenge the state law or local ordinances on the subject of medical marijuana because they are not "sufficiently robust" (either on paper or in practice) to protect against the harms identified in the priorities. Until the Washington State Legislature addresses the deficiencies in the law, local governments may wish to adopt ordinances similar to the type adopted by the City of Los Angeles (maintaining the status quo without a moratorium, until California's highest courts interpret the medical marijuana laws).⁸¹ (This is described further on page 13-14 of this Article.)

⁷⁹ On the issue of banning medical marijuana uses, consider *Staffin v. County of Shasta*, 2013 WL 1896812 (E.D. Cal. 2013), in which the plaintiffs alleged that the county began a harassment program in furtherance of a de facto policy to ban all types of medical marijuana uses, and later adopted a moratorium on such uses. The plaintiffs opened a collective/dispensary, and the county brought an enforcement action to close it. In a subsequent damage action, the plaintiffs alleged a number of both federal and state law claims (but the court declined to rule on the latter). As to the plaintiffs' claim that the county violated the Contract Clause by using red tape to drive the plaintiffs out of business, the court first identified the contracts at issue as relating to the distribution or cultivation of medical marijuana. Because marijuana is contraband under federal law, the court ruled that "under federal law for the purpose of Contract Clause analysis, no valid agreement exists." The plaintiffs' due process claim that 33 pounds of marijuana had been seized and never returned was dismissed because the court held that "no person can have a legally protected interest in contraband per se," and "marijuana is contraband per se under federal law." Again, keep in mind that the state claims were not addressed in this case.

⁸⁰ See, Section II(A)(3) of this Article, p. 8.

⁸¹ As mentioned earlier, the City of Los Angeles adopted an ordinance prohibiting medical marijuana businesses, granting limited immunity from the enforcement of its prohibition to certain medical marijuana businesses that were legally operating as of a certain date, "until such time as the California Supreme Court

3. *Are Washington cities preempted from adopting zoning or business licensing requirements on medical marijuana (individual cultivation or collective gardens)?*⁸²
Not if they are carefully drafted. Here is the authority delegated by the State to local jurisdictions in RCW 69.51A.140:

Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements and business taxes. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns 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. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.⁸³

Under Const. art. 11, sec. 11, cities and towns have the right to enact ordinances prohibiting the same acts prohibited by state law so long as the state enactment was not intended to be exclusive and the city ordinance does not conflict with the general law of the state.⁸⁴ As explained by the Washington Supreme Court (in a case in which the plaintiff alleged that a drug loitering law was preempted by RCW 69.50.603 of the Uniform Controlled Substances Act (UCSA)):

An ordinance must yield to a statute on the same subject on either of two grounds: if the statute preempts the field, leaving no room for concurrent jurisdiction, or if a conflict exists between the two that cannot be harmonized. . . .

Preemption occurs when the Legislature states its intention expressly, or by necessary implication, to preempt the field. . . . [Where there is no expressly stated intention to preempt the field]:

[T]he court may look to the purposes of the statute and to the facts and circumstances upon which the statute was intended to operate. If, however, the Legislature ‘affirmatively expresses its intent, either to occupy the field or to accord concurrent jurisdiction, there is no room for doubt.’⁸⁵

rules regarding what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with that judicial guidance.” Section 45.19.6 of the Los Angeles Municipal Code.

⁸² This Article presumes that medical marijuana dispensaries are prohibited under ESSSB 5073 because all of the regulations central to the operation of such dispensaries, were vetoed by the Governor.

⁸³ There is no definition of “licensed dispensers” in chapter 69.51A RCW, the Governor vetoed many provisions in ESSSB 5073 relating to dispensers, including the definitions.

⁸⁴ *Tacoma v. Luvene*, 118 Wn.2d 826, 833, 827 P.2d 1374 (1992). See also, *Preemptive Effect of Uniform Controlled Substances Act on Local Ordinances*, 33 A.L.R.6th 293.

⁸⁵ *Id.*, 118 Wn.2d at 833.

Challenges may be made to medical marijuana local ordinances based on preemption under RCW 69.50.608 of the USCA.⁸⁶ The Washington Supreme Court has held that RCW 69.50.608 “expressly preempts the field of setting penalties for violations of the [USCA].”⁸⁷ However, the Court interpreted RCW 69.50.608 to “expressly contemplate the existence of ‘ordinances relating to controlled substances that are consistent with the USCA,’ and to ‘grant concurrent jurisdiction to local governments.’”⁸⁸ A direct and irreconcilable conflict with a statute violates Const. art. 11, sec. 11. “In determining whether an ordinance is in conflict with the general laws, the test is whether the ordinance permits or licenses that which the statute forbids and vice versa.”⁸⁹

As an example of a conflict between state law and local ordinance, consider whether cities and towns may ban collective gardens as nuisances, which are allowed under RCW 69.51A.085. Another state law provides that “nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.”⁹⁰

The conflict must be direct and irreconcilable with the statute, and the ordinance must yield to the statute if the two cannot be harmonized.⁹¹ “If the ordinance and statute can be harmonized, then the statute should not be construed as restricting the city or town’s power to enact measures relating to controlled substances.”⁹²

4. *Can a municipality adopt an ordinance allowing medical marijuana uses, and then later, adopt a ban?* Yes, as long as the municipality acknowledges the constitutional restrictions that would accompany such a ban. Under this factual scenario, any existing medical marijuana uses would likely argue that they had attained legal nonconforming status prior adoption of the ban.⁹³

According to the Washington courts, “[i]t is clear that local governments have the authority to preserve, regulate and even, within constitutional limitations, terminate

⁸⁶ See, *John and Jane Does 1-13 v. Seattle*, King County Cause No. 11-2-42621-1SEA.

⁸⁷ *Id.*, 118 Wn.2d at 834. See also, *State v. Fisher*, 132 Wash. App. 26, 31, 130 P.3d 382 (2006) (county code prohibiting possession of drug paraphernalia neither conflicted with nor was preempted by the Uniform Controlled Substances Act).

⁸⁸ *Id.*

⁸⁹ *Bellingham v. Schampera*, 57 Wn.2d 106, 111, 356 P.2d 292, 92 A.L.R.2d (1960).

⁹⁰ RCW 7.48.160. When considering any of the cases involving nuisance and bans on medical marijuana dispensaries in California, keep in mind the differences between the Washington medical marijuana law and California’s. Another obvious problem with the California cases is that many are inconsistent, on appeal and awaiting final decisions. See, *City of Lake Forest v. Evergreen Holistic Collective*, 203 Cal.App.4th 1413 (2012) review granted and opinion superseded 275 P.3d 1266 (5-16-12); *County of Los Angeles v. Hill*, 121 Cal.Rptr.3d 722, 192 Cal.App.4th 861 (2011).

⁹¹ *Brown v. Yakima*, 116 Wn.2d 556, 560, 807 P.2d 353 (1991).

⁹² *Tacoma v. Luvane*, 118 Wn.2d 826, 835.

⁹³ An factual scenario that likely has occurred in many cities, towns and counties in Washington is presented in *City of Corona v. Naulls*, 166 Cal.App.4th 418, 83 Cal.Rptr.3d 1 (2008), in which a medical marijuana dispensary owner applied and received a business license from the city without disclosing that the business was a medical marijuana dispensary. The city later adopted a moratorium on medical marijuana uses, and the business operator claimed that he was “grandfathered” in as a legal nonconforming use because he had been legally operating prior to the moratorium. The court held that because medical marijuana dispensaries were not identified in the municipal code as a permitted use, the business was operating as an illegal use, constituting a nuisance per se.

nonconforming uses.”⁹⁴ While it “would be unconstitutional to subject nonconforming uses to immediate termination,” it is a “valid exercise of police power to terminate nonconforming uses that have been abandoned or by providing a reasonable amortization period.”⁹⁵ “As a general matter, an amortization period is insufficient only if it puts a business in an impossible position due to a shortage of relocation sites.”⁹⁶

Although there is no Washington case on this subject, the California courts have addressed a similar issue – whether a city violated the constitutional rights of a legally operating medical marijuana collective and dispensary, by adopting an ordinance changing the permissible locations for operating dispensaries, and requiring compliance within four years.⁹⁷ Even though the lawsuit for damages against the city was moot (the feds closed the business down), the court went on to decide that the operator had acquired a vested right in the dispensary.⁹⁸ The plaintiff was able to show that his due process rights were violated under the facts of this case, because there were no other available sites for him to relocate.

Another solution was mentioned on page 13-14 of this Article. If a local government has allowed medical marijuana uses, but realizes that the local government’s ordinance (or its enforcement in practice) does not meet the federal government’s priorities, as expressed in the DOJ’s August 29, 2013 memo, it may consider an alternative. This ordinance would contemplate the governing body’s consideration of a revision when the Washington State Legislature adopts amendments to the medical marijuana laws to address the federal government’s enforcement priorities.

B. Recreational Marijuana.

1. *Does Washington’s I-502 allowing recreational marijuana uses conflict with the CSA?* No Washington court has made a decision on this issue. Because the adoption of recreational marijuana initiatives in Washington and Colorado in 2012 were the first, there are no decisions to analyze from other states.

2. *Can Washington cities, towns and counties adopt bans on recreational marijuana uses?* The LCB will soon be issuing licenses for recreational uses in Washington towns, cities and counties under criteria that do not even require consideration of a

⁹⁴ *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wash.2d 1, 8, 959 P.2d 1024 (1998) (as quoted in *Cradduck v. Yakima County*, 166 Wash. App. 435, 448, 271 P.3d 289 (2012)).

⁹⁵ *Rhod-A-Zalea*, 136 Wash.2d at 8, *Cradduck*, 166 Wash. App. at 448. Reasonable amortization provisions have been upheld in a number of cases. See, *World Wide Video of Washington, Inc. v. City of Spokane*, 125 Wash. App. 289, 308, 103 P.3d 1265 (2005); *Northend Cinema, Inc. v. Seattle*, 90 Wash.2d 709, 585 P.2d 1153 (1978). In *Seattle v. Martin*, 54 Wash.2d 541, 544, 342 P.2d 602 (1959), the court adopted a balancing test to determine the reasonableness of the termination period: “whether the harm or hardship to the user outweighs the benefit to the public to be gained from termination of the use.” Applying this test to the termination of the ability of theaters in certain zones to show adult films, the court upheld Seattle’s 90 day amortization period in *Northend Cinema*.

⁹⁶ *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186,1200 (2004).

⁹⁷ *Santa Barbara Patients’ Collective Health Cooperative v. City of Santa Barbara*, 911 F.Supp.2d 884 (C.D. CA 2012).

⁹⁸ Keep in mind that there is a different vested rights doctrine in California, and that this operator obtained a vested rights through issuance of a permit to build the dispensary and by incurring substantial costs in good faith reliance of that permit. *Santa Barbara*, 911 F. Supp.2d at 893.

municipality's local zoning regulations. Under I-502, the LCB may issue a license even if the municipality files written objections to the license. So this question is really whether a municipality will prevail in an action to enforce its ordinance banning a recreational marijuana use, once the operator obtains a license from the LCB.

Again, as a partial recap of the rules applicable to resolve a preemption issue, “a state statute preempts an ordinance on the same subject if the statute occupies the field, leaving no room for concurrent jurisdiction, or if a conflict exists such that the statute and the ordinance may not be harmonized.”⁹⁹ “An ordinance is constitutionally invalid if it directly and irreconcilably conflicts with the statute.”¹⁰⁰ If the two may be harmonized, however, no conflict may be found.¹⁰¹ The issue here is whether I-502's regulations allowing the LCB to issue licenses to recreational marijuana uses would be inconsistent with a municipality's ban on the same uses.

Municipalities considering such bans should consider a case involving an ordinance involving a ban on motorized personal watercraft on marine waters.¹⁰² The argument was made that the ban was preempted because state law required registration of watercraft as a precondition to use (or permission to engage in an activity), as well as raise tax revenues. However, the court upheld the ban on motorized personal watercraft, finding that:

[T]he Legislature must *expressly* indicate an intent to preempt a particular field. In this case, the registration statute does not contain language preempting the regulation of this activity to the State. *See* RCW 46.08.020. We ‘will not interpret a statute to deprive a municipality of the power to legislate on particular subjects unless that clearly is the legislative intent.’¹⁰³

In addition to the preemption analysis, the ordinance banning motorized personal watercraft had to pass muster under the county's “police power” authority, or article XI, section 11 of the state constitution: “A law is a reasonable regulation if it promotes public safety, health or welfare and bears a reasonable and substantial relation to accomplishing the purpose proposed.”¹⁰⁴ So, the ordinance had to promote the health, safety, peace, education or welfare of the people.¹⁰⁵ Next, the requirements of the ordinance had to bear some reasonable relationship to accomplishing the purpose underlying the statute. Once an ordinance is found to serve a “legitimate public purpose,” the courts will examine whether it uses means that are reasonably necessary to achieve that purpose.¹⁰⁶ Finally, the court determined whether the ordinance violates substantive due process, or whether it is “unduly oppressive.”¹⁰⁷

⁹⁹ *Lawson v. City of Pasco*, 168 Wash.2d 675, 679, 230 P.3d 1038 (2010).

¹⁰⁰ *Brown v. Yakima*, 116 Wash.2d 556, 561, 807 P.2d 353 (1991).

¹⁰¹ *Lawson*, 168 Wash.2d at 682.

¹⁰² *Weden II v. San Juan County*, 135 Wash.2d 678, 958 P.2d 273 (1998).

¹⁰³ *Weden II*, 135 Wash.2d at 695 (emphasis in original).

¹⁰⁴ *Id.*, 135 Wash.2d at 700, citing *City of Seattle v. Montana*, 129 Wash.2d 583, 591, 919 P.2d 1218 (1996).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*, at 701.

¹⁰⁷ *Id.* at 706.

If the LCB issues a license to a recreational marijuana producer, processor or retailer, can the town, city or county adopt an ordinance banning such uses or deny a state licensee a city or town business license? Obviously, it will depend on the reason for the denial, but some municipalities may argue that a denial is possible because marijuana is prohibited under federal law.¹⁰⁸ The state licensee, however, will probably argue that the State occupies the field with regard to licensing of recreational marijuana uses, and that a ban prohibits what I-502 allows.

3. Can a town, city or county adopt zoning regulations¹⁰⁹ that further supplement the 1,000 foot distance/separation requirements in I-502, to prohibit recreational marijuana uses in certain zones?¹¹⁰ The first step in determining whether or not recreational marijuana uses can site in a particular municipality is to identify all of the “sensitive uses” that trigger the 1,000 separation requirement in I-502 to determine where these recreational marijuana uses can legally locate.¹¹¹ Then, the municipality should determine whether further regulation is required. The method in the LCB’s proposed rules for measurement of the 1,000 foot rule is unusual, so local governments should consider whether further input should be given to the LCB on this point.¹¹²

4. Should the city, town or county wait until the LCB finishes its rule making, before adopting any comp plan policies/ordinances to address recreational marijuana uses?¹¹³ SEPA must be followed in the adoption of new development regulations, unless the action is categorically exempt.¹¹⁴ Very little information is available on the environmental impacts of the recreational marijuana uses at this time. The SEPA Checklist completed by the LCB on its Proposed Rules provides little information and is based on a draft version of a “white paper” written by the LCB’s consultant that does not consider processing or retailing uses at all.

It appears that once the LCB finishes rule making, it will begin issuing licenses for the recreational marijuana uses. Prospective licensees will be searching for property before they submit their license applications to the LCB. If a municipality waits too long to adopt

¹⁰⁸ Review RCW 35A.82.020 applicable to code cities. It allows the code city to issue business licenses for “all occupations, trades and professions and any other lawful activity: PROVIDED that no license or permit to engage in any such activity or place shall be granted to any who shall not first comply with the general laws of the state.” Also, “no license or excise shall be required where the same shall have been preempted by the state . . .”

¹⁰⁹ Under RCW 69.51A.140, cities and towns can adopt and enforce zoning regulations relating to the production, producing or dispensing of cannabis.

¹¹⁰ Apparently, this 1,000 foot distance/separation requirement proved to be too onerous. HB 2000 proposed to reduce it to 500 feet and to establish the procedures for measurement. This bill did not pass.

¹¹¹ The LCB proposes to measure this distance as follows: “The distance shall be measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds of the entities listed [in WAC 314-55-050(10)(a) through (h)]. Proposed Rule WAC 314-55-050(10).

¹¹² Proposed Rule WAC 314-55-050(10). “The distance shall be measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds of the entities listed [in WAC 314-55-050(10)(a) through h].”

¹¹³ This is another reason municipalities should submit comments to the LCB demanding that they follow SEPA in rulemaking and the issuance of recreational marijuana licensing. In addition, the LCB should adopt rules requiring that the applicant for a license submit a SEPA checklist, which should be immediately transmitted to the municipality, to use in the preparation of “written objections” to individual licenses.

¹¹⁴ WAC 197-11-800(19).

regulations, it may not have any in place to guide these prospective licensees. If there are no regulations in place at the time the LCB provides notice to the municipality that it has received an application, the City may not be able to rely upon such regulations as part of its “written objections” to any license.¹¹⁵ Most importantly, if the city has a moratorium in place at the time the LCB issues licenses, a licensee may challenge the moratorium.

5. How can the local government obtain environmental information on recreational uses, if the LCB plans to defer any environmental review until the local permitting stage? Local governments could provide comment to the LCB on the proposed rules to require that licensees complete SEPA checklists as part of the license application. In the alternative, when a local government is notified by the LCB that a recreational marijuana license application has been received, the local government could ask the LCB to require the applicant to complete a SEPA Checklist, so that the environmental impacts can be evaluated before the “written objections” are filed.

6. What should we include in our municipal regulations for marijuana?

Medical Marijuana -- See above. The author of this Article recommends that local jurisdictions carefully consider any ordinances that they have adopted or plan to adopt on the subject of medical marijuana in light of the August 29, 2013 DOJ Memo. Some local jurisdictions may want to consider the option presented on page 13-14 of this Article.

Recreational Marijuana. Before drafting any land use controls for recreational marijuana, the municipality should review all of the LCB’s Proposed Rules. Many land use impacts are addressed by the Proposed Rules, such as location, whether the production will take place indoors or outdoors, fencing, sign requirements, etc. To the extent possible, the municipality should identify the possible remaining impacts, and determine where the recreational marijuana uses (production, processing and retailing) should locate (agricultural, industrial or commercial areas) based on the secondary land use impacts. The local governments also need to amend their codes to provide for recreational marijuana business licenses.

VII. Public Record Requests. One issue that will arise in cities and counties that adopt a business licensing or permit scheme is whether the information requested for a complete application is subject to disclosure under the Public Records Act (chapter 42.56 RCW) or will be provided to law enforcement personnel. (This article will not address the Public Records Act issues.) If there is no permit or business license scheme for collective gardens, it is less likely that people may ask for public records from the city (permit applications, permit application materials, business license applications, as examples) in order to discover the location of collective garden for purposes of joining, theft, vandalism.¹¹⁶

¹¹⁵ See, Proposed Rule WAC 314-55-160 and RCW 69.50.331.

¹¹⁶ Consult chapter 42.56 RCW for more information about whether such documents are disclosable under the Public Records Act.

VIII. Options for Municipalities: Here are the options for municipalities to discuss with their attorneys.¹¹⁷

A. *Do Nothing.*

1. Medical Marijuana. If the municipality does nothing, then medical marijuana collective gardens and individual cultivation may locate and operate throughout the municipality, in any zone, indoors or outdoors. The municipality probably will be able to ban medical marijuana dispensaries without a prohibitory ordinance, based on the lack of authorization under state law. If the municipality does not wish to take any affirmative action (by way of the adoption of any new regulations), it still may have an argument that a particular use is prohibited under the zoning code, based on general language which prohibits anything not specifically allowed.¹¹⁸ However, if a municipality is interested in prohibiting medical marijuana uses, allowing a “default” to such language in the zoning code is by no means foolproof.

2. Recreational Marijuana. At this point in time, the LCB has not issued any licenses for recreational marijuana, so no recreational marijuana business can legally operate. Once the LCB issues the final rules and begins accepting license applications, it will notify the municipality that it has received an application for a license to conduct a recreational marijuana use in the municipality. The municipality may decide to file or not to file any written objections to the use. This would mean that the LCB will issue the license for the recreational marijuana use.

Some municipalities interpret their development regulations to allow the recreational uses without need for additional authorization in the zoning code. For example, if a land use permit for a retailing operation is submitted, the municipality may require that it be located in a commercial zone allowing similar retail uses. No additional zoning regulations are required, even if the use is not specifically identified as permitted in a specific zone, because the municipality may use the interpretation process to determine whether the impacts of an unidentified use are allowed in any zone. However, this procedure will not work if the zoning code has language which provides that any use not identified as a permitted use is prohibited. Depending on the municipality’s business licensing ordinance, the use may or may not have to get a business license to operate locally.

B. *Adopt a moratorium.*

1. Medical Marijuana. Some municipalities may decide to adopt moratoria on medical marijuana uses based on the uncertainty in the law (lack of definitions, the fact that marijuana is prohibited under federal law, the municipality’s decision to wait for new legislation, or to await the court decision on a medical marijuana ban in Kent case). This option is not recommended if the municipality is not planning to take any action, but is merely using the moratorium to ban medical marijuana uses without adopting a prohibitory ordinance. In addition, those municipalities repeatedly renewing moratoria should carefully discuss this course

¹¹⁷ Model ordinances for cities and towns in the AWC-RMSA insurance pool will be posted on the AWC-RMSA website.

¹¹⁸ See, *City of Monterey v. Carrnshimba*, 215 Cal.App.4th 1068, 156 Cal.Rptr.3d 1 (2013).

of action with their attorneys.¹¹⁹ State law (including SEPA) must be followed when adopting and continuing such moratoria.¹²⁰

2. Recreational Marijuana. Because recreational marijuana producers, processors and retailers cannot legally operate until they receive a license from the LCB, no moratorium is necessary. However, some municipalities may decide to adopt moratoria on these recreational marijuana uses now to provide notice and to begin the process of drafting development regulations for such uses. However, if the municipality doesn't lift the moratorium and adopt development regulations before the LCB accepts license applications or issues licenses, prospective applicants will have no information on local zoning when making decisions on property purchase/rental.

During the moratorium, the municipality should be reviewing the zoning ordinance map to determine where the recreational marijuana uses can locate, and to decide whether additional zoning regulations for such uses are needed. Municipalities wishing to adopt or continue a moratorium after this point in time should carefully discuss this course of action with their attorneys. There is a high probability that if a municipality has a moratorium in place when the LCB begins issuing recreational marijuana licenses, and the municipality has no plans to terminate the moratorium, it could be challenged. State law (including SEPA) must be followed when adopting and continuing such moratoria.

C. *Adopt interim zoning.*

1. Medical Marijuana. Given the August 29, 2013 Memo from the DOJ, the municipality should consider the adoption of an ordinance prohibiting any new medical marijuana uses from locating and that allows existing legal medical marijuana uses to continue until the State of Washington revises chapter 69.51A RCW. *See*, page 13 of this Article for more information. This should not be adopted as an interim zoning ordinance unless there is an emergency.

2. Recreational Marijuana. If a municipality will not be able to adopt their development regulations before the LCB begins accepting licenses or issuing them, the municipality should consider the adoption of interim zoning regulations that will provide basic guidance to prospective licensees. This is an option for municipalities that know where in the municipality that recreational marijuana uses will be allowed, but the process for adoption for a "permanent" zoning ordinance would extend beyond December 1, 2013.

D. *Adopt "Permanent" Zoning.*

1. Medical Marijuana. Municipalities should consider the type of ordinance that they could adopt for medical marijuana uses based on the federal government's enforcement priorities in the August 29, 2013 Memo. If the municipality doesn't believe that it could adopt a regulatory system that would be "sufficiently robust" to address these priorities on paper and in

¹¹⁹ *See, Biggers v. Bainbridge Island*, 162 Wn.2d 683, 169 P.3d 14 (2007).

¹²⁰ RCW 35.63.200 (cities and towns governed by Title 35 RCW); RCW 35A.63.220 (code cities governed by Title 35A RCW); and RCW 36.70A.390 (cities, towns and counties planning under GMA).

practice, “permanent” zoning with development regulations authorizing the use may not be appropriate at this time. Consider the alternative described on page 13-14 of this Article. The municipality must follow all of the procedures for adoption of a “permanent” zoning ordinance, including SEPA.

2. Recreational Marijuana. Municipalities may decide to adopt “permanent” zoning regulations allowing recreational marijuana production, processing or retailing, or use existing development standards. All applicable laws must be followed, including SEPA.

E. *Impose a Ban.*

1. Medical Marijuana. Based on the August 29, 2013 DOJ Memorandum, municipalities should consider the alternative described on page 13-14 of this Article. If an ordinance banning medical marijuana is adopted, all the procedures for the adoption of a “permanent” zoning ordinance must be followed, including SEPA.

2. Recreational Marijuana. Municipalities wishing to ban recreation marijuana uses need to discuss this course of action with their attorneys. This type of a ban will likely be challenged.

F. *Adopt Business Licensing Regulations.*

1. Recreational Marijuana. Municipalities need to review their business licensing ordinances to determine whether they can require that a state license for a recreational marijuana producer, processor or retailer obtain a local business license.

2. Both Recreational and Medical. Even if a municipality hasn’t adopted any regulations specific to marijuana uses, it may be that there are existing marijuana uses, and they have obtained a business license by identifying their business as involving something other than the cultivation, production, processing, delivery or sale of marijuana (recreational or medical).

3. Medical Marijuana. Municipalities wishing to adopt business licensing regulations relating to medical marijuana should consider the August 29, 2013 Memo from the DOJ and discuss this course of action with their attorneys. In addition, the City of Seattle will likely have information on this subject, because it is or was involved in litigation with plaintiffs alleging that in order to apply for a business license for a marijuana use, the plaintiffs were required to admit to the operation of a medical marijuana collective garden. According to the plaintiffs, filling out a license application necessarily includes an admission by the plaintiffs that they participate in a crime under Federal law (the possession and distribution of medical marijuana).¹²¹ The plaintiffs argued that providing such information “constitutes an admission of guilt that may be used against that individual in a subsequent criminal prosecution,” violating their right against self-incrimination.¹²²

¹²¹ *John and Jane Does 1-13 v. Seattle*, King County Superior Court Cause No. 11-2-42621-1 SEA, line 14-18, p. 6. Although this lawsuit was dismissed on a technicality, the plaintiffs are pursuing their claims in a second lawsuit.

¹²² The plaintiffs cite to *Grosso v. United States*, 88 S.Ct. 709, 390 U.S. 62 (1968).

F. *Adopt a Tax on Marijuana Uses.*

1. Medical Marijuana. Qualified Patients and Designated Providers who cultivate medical marijuana for their individual use or in collective gardens cannot legally sell the medical marijuana. If medical marijuana dispensaries are prohibited, then there are no sales of medical marijuana to tax.

2. Recreational Marijuana. Municipalities seeking to impose additional taxes (other than business license taxes) on recreational marijuana producers, processors and retailers should discuss this issue with their attorneys to determine whether there is a preemption issue.

Conclusion. This memo is not intended to be, nor should it be construed as, legal advice. If you have any questions on this subject, contact your municipality's attorney.