



PLANNING COMMISSION

AGENDA

November 26, 2013

ROLL CALL: FAKKEMA_____ WASINGER_____

 JENSEN_____ PETERSON_____

 FIKSE_____ FREEMAN_____

 SCHLECHT_____

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1. **Approval of Minutes – September 24, 2013**
2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.

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3. **MARIJUANA RELATED USES – CODE AMENDMENT PROJECT – Public Hearing**
Staff will introduce the first draft code the Planning Commission in response to State law changes pertaining to marijuana related uses. Planning Commission will open the public hearing and continue the public hearing to the December 10, 2013 business meeting.

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4. **TRANSPORTATION IMPROVEMENT PLAN (TIP) AMENDMENT – Public Hearing**
An amendment is proposed to the TIP to include improvements to the waterfront trail. The Waterfront Trail in Oak Harbor is listed in several of the City’s plans, such as the Transportation Plan, Parks, Recreation and Open Space Plan, for improvements. Listing the waterfront trail in the TIP allows the City to apply, qualify, and compete for grant money.

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5. **2013 COMPREHENSIVE PLAN AMENDMENTS – Public Hearing**
The Planning Commission will consider amending the Comprehensive Plan to include the Shoreline Master Program. The Shoreline Master Program was part of the 2013 Comprehensive Plan docket. The 2013 Comprehensive Plan docket also included work on the 2016 Comprehensive Plan update, Land Use change to 1000 SE City Beach Street and a continuing study on scenic views, all of which will be continued into the 2014 Comprehensive Plan docket.

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6. **2014 COMPREHENSIVE PLAN AMENDMENTS – Public Meeting**
The 2014 Comprehensive Plan Amendments will include the continuing work on the 2016 Comprehensive Plan update. The Planning Commission reviewed the scope of the updates and a public participation plan in 2013. The scope of the 2016 update includes several items that will need to be considered in 2014 and 2015. Land use changes and ongoing studies from 2013 will also be continued into 2014. The deadline for private application for land use changes is December 2, 2013. Any applications received will be considered during the 2014 Comprehensive Plan preliminary docket review process.

MINUTES

October 22, 2013

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
October 22, 2013**

ROLL CALL: **Present:** Keith Fakkema, Kristi Jensen, Bruce Freeman, Sandi Peterson, Greg Wasinger and Ana Schlecht
Absent: David Fikse
Staff Present: Development Services Director, Steve Powers; Senior Planner, Cac Kamak

Chairman Fakkema called the meeting to order at 7:30 p.m.

MINUTES: MS. PETERSON MOVED, MS. JENSEN SECONDED, MOTION CARRIED TO APPROVE THE SEPTEMBER 24, 2013 MINUTES AS PRESENTED.

PUBLIC COMMENT:

Billie Cook (651SE Bayshore Drive) thanked the Planning Commissioners for their service and complemented them on their professionalism, kindness, and attentiveness.

MARIJUANA RELATED USES – CODE AMENDMENT PROJECT – Public Meeting

Mr. Powers displayed a Power Point presentation (Attachment 1) and briefed the Planning Commission on the need to revise the Municipal Code in response to State law changes pertaining to marijuana related uses as well a preliminary research on this topic. Mr. Powers spoke about background issues, moratorium regulations, City Council action to date, preliminary information, schedule and community involvement opportunities.

Planning Commissioners had the following questions:

- Is the Liquor Control Board in charge of both medical marijuana and recreational marijuana? Mr. Powers explained that they are only in charge of recreational marijuana.
- How is the 1,000 foot buffer measured? Mr. Powers explained that is a straight line from property line to property line. If a property is bisected by the buffer, that property is also precluded from medical and recreational marijuana licensing.
- Does production licensing have to be non-residential? Mr. Powers said that is up to the City as a community to decide.
- How many licenses are allocated for Oak Harbor? Mr. Powers said there is a total allocation of four retail licenses for Island County, one of which is for the City of Oak Harbor.
- Does the Municipal Code prohibit any sort of agricultural activity in the City? Mr. Powers believed that there are restrictions on certain types of food processing plants but not for just agricultural uses themselves. Mr. Powers thought the Code was silent in that area.
- Is there an allocation for production and processing? Mr. Powers said from his reading, the State had not established a jurisdiction limit on production and processing but do have an overall limit on production and there are levels of production. Most communities are addressing all three types of licenses in preparation for what the State may decide.
- How does the City prohibit selling marijuana? Mr. Powers said he wasn't sure but there has been a court challenge to one of the communities that have prohibited it and he was not sure whether there was a decision yet.

There was discussion about the timing of the State issuance of licenses, the effect of the moratorium and the City's schedule.

Mr. Powers provided additional information (Attachment 2) and stated that staff will present a draft code at the next meeting based upon research and what other communities are doing in recognition of our existing zoning code structure.

2016 COMPREHENSIVE PLAN UPDATE – Public Meeting

Mr. Kamak updated the Planning Commission on the continuing work and effort with the 2016 Comprehensive Plan update. Mr. Kamak reviewed the check list that was provided by the Department of Commerce for cities to use to determine if the city plans and regulations meet the requirements of the Growth Management Act (GMA). Mr. Kamak also summarized the possible amendments and shared a draft public participation plan for the 2016 update.

Mr. Fakkema asked if anyone wished to make public comment.

Ann Brett (Island County resident) spoke about the flooding she has experienced on her property since three or four housing developments were built near her property. She asked that the City think about the land owner that is going to be impacted.

Angie Homola (Island County resident) thanked the Planning Commission for their work. Ms. Homola spoke about the importance of jurisdictions sharing the same methodology when making decisions about whether cities should enlarge their boundaries. She also spoke about the City's court challenge of the County's decision regarding annexation before the Growth Management Hearings Board and Superior Court.

ADJOURN: 8:30 p.m.

Minutes submitted by: Katherine Gifford

Marijuana Related Uses - Code Amendment Project

Planning Commission
October 22, 2013

Presentation Overview

- Background
- Issues
- Moratorium regulations
- City Council action to date
- Preliminary information
- Schedule
- Community involvement opportunities

Background

- Medical marijuana
 - RCW 69.51A amended in 2011.
 - Qualifying patients may create and participate in collective gardens for medical marijuana purposes.
 - RCW 69.51A.140: Cities may regulate collective gardens through zoning, business licenses, health and safety regulations, etc.
 - Oak Harbor's zoning and licensing regulations do not adequately address this topic (business license only at this time).

Background (cont.)

- I-502
 - Approved by voters on November 6, 2012.
 - Legalized (?) the production, sale and use of marijuana products purchased from State licensed stores for adults age twenty-one and over.
 - Washington State Liquor Control Board tasked with developing rules that will govern production, processing and retailing.
 - Rules adopted October 16, 2013; become final November 16, 2013.
 - Accept license applications from November 18-December 18, 2013.
 - Licenses issued in March/April 2014?

ATTACHMENT 1

Background (cont.)

- I-502 (cont.)
 - Establishes certain limitations on the Liquor Control Board's issuance of licenses.
 - No licenses for premises within 1,000 feet of any
 - elementary school or secondary school,
 - playground,
 - recreation facility,
 - child care center,
 - public park,
 - public transit center or library, or
 - arcade.
 - The State's licensing regulations however will not address local zoning and other land use related issues.
 - Oak Harbor's zoning and licensing regulations do not adequately address I-502 (business license only at this time).

Background (cont.)

- Medical and I-502 Marijuana
 - Oak Harbor's zoning and licensing regulations do not adequately address either topic at this time
 - (business license only).
 - New regulatory territory.
 - Time needed to identify land use impacts **before** adoption of regulations or issuance of any business license.
 - Staff recommended the City Council impose a moratorium to preserve the status quo as necessary:
 - Provides opportunity to consider State's final rules, and
 - Allows City time to study, draft, hold public hearings and adopt land use and/or licensing regulations.

Moratoria

- Cities allowed to adopt under RCW 36.70A.390.
- Public hearing not required so long as one is conducted within 60 days.
- Findings of fact justifying the moratorium must be adopted by the City Council.
- May be effective for up to six months
 - Up to one year with adoption of a work plan.
- May be renewed for one or more six-month periods
 - Requires a new public hearing and additional findings of fact.

City Council

- Staff briefed City Council at their workshop on 8/28/13
- Council adopted two ordinances on 9/3/13 imposing a six-month moratorium on marijuana-related activities
 - These ordinances direct staff and the Planning Commission to work on regulations
- Council conducted the required public hearings on both ordinances on 10/1/13 and kept the moratoriums in place
- Council requested staff return as quickly as possible with draft regulations

ATTACHMENT 1

Additional Information



- I-502 FAQs and news bulletins from AWC
- US Dept. of Justice memo
- Washington State Liquor Control Board (LCB) I-502 FAQs
- MRSC I-502 ordinance comparison table
- MRSC article on medical marijuana reform
- LCB draft recommendations on merging medical marijuana and I-502 laws
- MRSC Medical marijuana ordinances table
- Ordinances from Milton, Mukilteo (draft) and Tukwila
- Map of sensitive land uses and their 1,000 foot buffers

Schedule



- 10/22/13 Planning Commission – Share Oak Harbor map (with 1000' buffers around sensitive uses) and additional information; get preliminary feedback
- 11/26/13 Planning Commission – Introduce draft code to PC (draft based on feedback from above meeting) and open public hearing
- 12/10/13 Planning Commission – PC closes the public hearing and makes recommendation to CC
- 1/22/14 City Council – Brief CC on PC work and recommendation
- 2/4/14 City Council – CC considers draft ordinance
- 2/18/14 City Council – CC considers draft ordinance (if necessary)

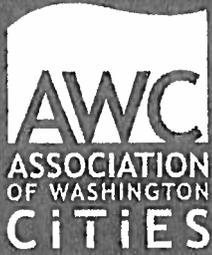
Community Involvement



- Planning Commission meetings and hearings
- City Council hearings
- Provide written comments on SEPA checklist/decision
- Provide written comments to staff
- Call or talk to staff
- Contact us!
 - (360) 279-4511
 - spowers@oakharbor.org
- Meeting notices
 - <http://www.oakharbor.org>

**Marijuana Related Uses -
Code Amendment Project:**

Additional Information



I-502 - Recreational Marijuana Implementation

The following is a collection of material and frequently asked questions regarding implementation of I-502. AWC encourages cities to revisit policies and procedures with their legal counsel to ensure compliance.

What are the options for municipalities for implementation of marijuana related business?

1. **Do nothing option:** A legally defensible option. Cities should examine the location of schools, parks, arcades, etc. to determine potential locations for marijuana-related business. Some communities may not have a legal location for these businesses. Cities should re-examine home occupation regulations for possible effects on future business operations. There is a difference between allowing and not prohibiting. By having no specific language in city code, the city neither allows nor expressly prohibits operations.
2. **Moratoria:** Pros include balancing public interest, allowing legislature to reconcile with medical marijuana business, and allowing time to see what happens with court rulings and Federal preemption. Cities would not face federal enforcement. Moratoria have liability concerns and could violate constitutional rights of property owners. This could target the city for pro-marijuana litigation, but communities that ban it altogether may be a greater priority.
3. **Permanent ban:** Using zoning or ordinance to prohibit any business that violates federal law from operating within city limits. With this option there is no federal liability but as previously stated, the city may become the primary target for litigation by the marijuana industry. Could be costly dependent on the case.
4. **Interim regulations:** This has the same statutory process as a moratorium but addresses the immediate response with rule creation. Potential cons include federal drug law violations and due process liability if you subsequently ban an authorized business. Obligates city to enter a process to create permanent regulations.

5. **Permanent regulations:** Taking action developing ordinances, zoning codes, nuisance abatements, either establishing where marijuana related business may or may not operate. This option has many of the same pros and cons as interim regulations.

Sources: Phil Olbrechts, Olbrechts & Associates, P.L.L.C., Brennon Staley Senior Planner City of Seattle

What does the Liquor Control Board say?

The LCB released final draft rules September 4, 2013. The rules included the allocation and number of retail outlets on a per county basis. Licenses for growers, processors and retailers will likely not be issued until March or April, 2014. LCB anticipates the first retail sale to take place sometime between April and May.

Can cities adopt hours of operation that are stricter than LCB rule? Current rule restricts sale from 8:00am-12:00am. LCB is working on clarifying this. AWC will update when we receive the information.

Can cities require proof from applicant on the 1,000 feet buffer from specified locations outlined in the initiative? The LCB plans to physically verify compliance with this requirement. It is also possible for cities to require applicants to verify the business location as part of the city's local regulations. It is important to remember that licensing requirements that single out a specific business may be facing litigation.

When do cities get notified when an applicant wants to locate in their city? The LCB wants to mirror the process for liquor licenses. After receiving the application, LCB will notify the local authority as soon as possible which will begin the 20 day window for submitting comments or objections. Cities may request an extension be granted by the LCB.

Association of Washington Cities

Legislative Advocacy

PUBLISHED ON TUESDAY, SEPTEMBER 03, 2013

Marijuana implementation: Next steps for cities and word from the federal government

When it comes to implementing the marijuana licensing system cities have options, and some have already taken action. Cities across Washington are looking at either adopting zoning code or ordinances that outline exactly where these businesses may or may not operate. They are also using moratoria and allowing more time to see the final rules adopted by the Liquor Control Board, for the legislature to reconcile medical marijuana businesses with recreational, for rulings from court cases, and for any action to be taken with Federal preemption.

AWC recently held an interactive webinar that can be viewed along with the presenters' material on our website. This webinar focused on cities options and the pros and cons of each path. Additionally participants heard from zoning and land use attorneys and professionals who described potential liability and litigation risks as well as permit and licensing options. AWC produced an FAQ sheet found [here](#), and MRSC wrote an article summarizing the information provided. The basic theme is all of these options have pros and cons - it is up to each city to determine its policy goal and take the appropriate steps to achieve that policy goal.

What do the Feds say? After a great deal of waiting and watching, the federal government announced that it will not try to block Washington or Colorado's recreational marijuana laws. A Department of Justice (DOJ) memo released August 29, provided guidance regarding marijuana enforcement. The federal government still sees marijuana as a dangerous drug whose distribution and sale is still illegal and a serious crime. The memo outlines the focus for DOJ is to prevent distribution to minors, revenue from ending up in the hands of criminal enterprises or cartels, interstate commerce, and growing on public lands. In other words, these priorities are the guide for US attorneys and DOJ law enforcement to focus their efforts. With regard to Colorado and Washington passing legalization laws, DOJ says it expects states and local governments to establish a strong and effective regulatory and enforcement system that will limit any threat those laws could pose to public safety or public health. It calls for state and local government to have robust controls and procedures documented and follow through with enforcement. The LCB responded to the memo in a press release found [here](#).

What lies ahead? The LCB will formally adopt rules on September 4, followed by a 30-day window to accept applications beginning November 18. Cities should expect to begin receiving notification about license applications in their jurisdiction shortly thereafter. The LCB reports that we are likely to see the first licenses officially issued by mid-March or early April of 2014.

And how about all the revenue? The initiative outlined a specific taxing scheme. Now marijuana is taxed at 25% at production and sale. The money all goes to the State and is divided into numerous funds for education, prevention, studies, administration by LCB, health care and general fund. However, while we all expect an increased need for enforcement and public safety at the local level, there is no additional funding currently being provided to cities. The only revenue cities will see from the industry is local B&O and sales taxes.

AWC plans to work with the legislature and the LCB to advocate that cities receive funds to address the public safety and enforcement needs.



The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain 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;

Memorandum for All United States Attorneys
Subject: Guidance Regarding Marijuana Enforcement

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- 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.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

Memorandum for All United States Attorneys
Subject: Guidance Regarding Marijuana Enforcement

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must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

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

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

Memorandum for All United States Attorneys
Subject: Guidance Regarding Marijuana Enforcement

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As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation



FAQ on the Marijuana Initiative, I-502

The following are a collection of questions that have been raised as cities evaluate how best to respond to the approval of I-502. Cities should revisit their policies and procedures with their legal counsel to ensure that their actions are in compliance with the new law.

Law enforcement impacts

Law enforcement agencies should revisit their policies and procedures with their legal advisors to ensure that their actions are in compliance with the new law.

Who can have marijuana, and how much?

According to the initiative, on December 6, adults over the age of 21 are allowed to carry any combination of the following: up to 1 ounce of usable marijuana, 16 ounces of marijuana-infused product in solid form, 72 ounces of marijuana-infused product in liquid form.

What are the consequences of possession over an ounce? For a person 21 years and older, possession in the range above one ounce to 40 grams (about 1.5 ounces) results in a misdemeanor. Possession of more than 40 grams is a Class C Felony.

Where can you legally buy marijuana? The Washington State Liquor Control Board has until December 1, 2013, to establish guidelines and regulations for the sale and distribution of marijuana. Until then, it is illegal to purchase marijuana from an unlicensed provider. It is also illegal to grow or sell marijuana. Collective gardens used by medical marijuana patients are not affected by the language of this initiative.

What constitutes an infraction for marijuana? Law enforcement officers have probable cause to cite for the infraction based upon seeing someone with the product or smelling it, and the person is within public view. This person would be charged with a Class 3 civil infraction under RCW 7.80. Though the fine is not directly specified in the initiative, some have predicted the citation will likely result in a \$103 fine.

Can law enforcement seize marijuana and paraphernalia? Unless they can articulate some other behavior that suggests a criminally illegal behavior or activity, further searches of the person are not lawful. Different agencies' policy will dictate seizure of any marijuana or paraphernalia. At this time, it is unclear whether the marijuana and paraphernalia will be seized or not.

If a law enforcement officer witnesses a person smoking what appears to be marijuana, can they then search that person? The officer who witnesses the infraction can contact the person and issue the citation. Officers can initiate a search only if there is suspicion or indication that the person receiving the citation may be armed, or if that person gives the presiding officer indication they have criminal possession on their person.

Must law enforcement officers have warrants for blood tests? If officers believes someone is driving under the influence and impaired, they will conduct a field sobriety test. If officers establish probable cause, they will ask for permission to draw blood, or they can obtain a warrant from a judge. In the case of a collision, blood draws are mandatory. The provisions and policies of a blood draw are not a new practice and were not changed by the initiative.

How does law enforcement obtain blood? Officers must follow their agency's policy. Many take the person to the nearest hospital facility for the blood draw.

Personnel & policy

Can employers continue to test for marijuana? Similar to alcohol, employers may require testing, discipline for policy violations, and regulate use or impact in the workplace. Employers should make sure that their personnel policies are up to date and include legalized marijuana, and consult with their city or agency legal representative.

Is there a difference between the 5ng (nanogram) threshold and the 15ml (milliliter) threshold that urine tests from Department of Licensing (DOL) use? Yes. 5ng is the limit set forth by the initiative as the per se level of impairment for someone under the influence of marijuana. This is measured by a blood test designed to detect "active metabolites." Studies indicate that active metabolite levels fall to approximately 2ng within 4-6 hours of use. Commercial Driver License (CDL) holders are regulated by DOL, which follows federal regulations and uses the 15ml threshold. This level is measured by a urine test.

What about off-duty marijuana consumption?

Washington public employers have a strong legal basis to discipline or discharge employees who test positive for marijuana if this action is consistent with the respective contracts, policies and past disciplinary action. However, further legislation and litigation will likely determine whether discharge for off-duty marijuana use violates public policy.

Land use & zoning

Can jurisdictions implement policies to limit producers, processors and retailers licenses and locations? Growing marijuana (unless it is a collective garden) remains illegal until the Liquor Control Board (LCB) establishes a process for licensing and regulation. The LCB will also regulate permissions for marijuana cultivation, processing, distribution, and retail facilities. The LCB is taking public comments until Feb. 10 about the rules and restrictions needed for a marijuana-grower license.

The initiative specifies that only state-licensed production, processing and sale of marijuana are permitted. The initiative intended that the licensing process be similar to that for alcohol. Cities will have the ability to object to the LCB regarding a proposed license. Presumably, local land use and zoning regulations will apply to the siting of growing, processing and retail outlets. The initiative specifies that such facilities must be at least 1,000 feet from elementary and secondary schools, playgrounds, recreation centers, day cares, parks, transit centers, libraries and arcades.

Medical marijuana collective gardens and not affected by this initiative.

Taxes & revenue

Will cities get any revenue from the sale of marijuana? The initiative does not provide for any direct funding to cities. Cities will receive their share of local sales tax revenues and any locally imposed B&O taxes. The Washington State Office of Financial Management (OFM) estimates that locals could receive as much as \$120 million in these taxes over five years. However, there has been some concern that OFM overestimated how much marijuana will actually be consumed from these state-licensed stores. Cities will not see any revenue from marijuana sales until at least December 2013.

What about all of the expected new revenue from legal marijuana sales? The initiative created a specific new taxing scheme. The initiative provides for a 25% excise tax at each transaction point (producer to processor, processor to retailer, and retailer to consumer). The taxes will be placed in a dedicated marijuana fund. After quarterly distributions of \$1.25 million for LCB administration and \$180,000 to other specific programs, the taxes will be distributed as follows:

- 50% to the state's Basic Health Plan
- 19.07% to the state general fund
- 15% to the Department of Social & Health Services for behavioral health & recovery
- 10% to the Department of Health for marijuana education & public health
- 5% to Community Health Centers
- 1% to the UW and WSU for research on the short- and long-term effects of marijuana use
- 0.03% to the Building Bridges Programs



Washington State Liquor Control Board

Published on *Washington State Liquor Control Board* (<http://liq.wa.gov>)

[Home](#) > FAQs on I-502

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 combine 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://liq.wa.gov/marijuana/faqs_i-502

Links:

- [1] <https://lcb.box.com/proposed-rules-9-4-13>
- [2] <http://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://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))

**I-502 – Recreational Marijuana
Ordinance Comparison Table**

Jurisdiction	Allow Under Existing Laws	Moratorium	Interim Zoning	Permanent Zoning	Prohibition
Burien			X		
Carbonado		X			
Douglas County				X	
Edgewood			X		
Fife		X			
Kent¹					X
Kirkland	X				
Lacey				X	
Millwood		X			
Milton				X	
Monroe			X		
Mosyrock					X
Mukilteo (Draft)				X	
Normandy Park				X	
Olympia		X			
Pasco		X			
Puyallup		X			
Redmond		X			
Richland					X
Seattle				X	
Spokane			X		
Tukwila				X	

¹. The Kent zoning code prohibits all business activities that are not specifically allowed in designated zones. The Kent city council has not amended their zoning code to allow recreational marijuana businesses, so that lack of amendment acts as a prohibition of marijuana businesses.

MRSC Insight

Medical Marijuana Reform Starts!

Posted on [October 22, 2013](#) by [Jim Doherty](#)



The first volley is now over the net! On October 21st, a work group composed of staff from three state agencies – the Department of Health, the Department of Revenue, and the Liquor Control Board – issued their **draft recommendations for regulating medical marijuana**. If you have reviewed the rules recently adopted for recreational marijuana, you'll see some similarities. The recommendations, when completed, will go to the legislature at the start of 2014.

Here are the main points:

1. Medical marijuana collective gardens and dispensaries (not actually authorized under current law) would be eliminated. Essentially, medical marijuana sales would be folded into the recreational marijuana system. Licensed retail marijuana stores with a state license endorsement could sell medical marijuana to authorized medical marijuana patients. Home-growing would not be permitted for medical marijuana patients.
2. A medical marijuana registry would be set up and maintained by the state. A far more rigorous health care professional process would be established to authorize a medical marijuana patient, and there would be required medical follow-up. Medical marijuana authorizations would expire after one year and would then need to be renewed.
3. Sales to medical marijuana patients would be exempt from the state/local retail sales and use tax. The excise taxes would be the same as for recreational marijuana. In essence, medical marijuana patients would get a break on the taxes.
4. Labeling of medical marijuana would include the levels of THC and cannabinoids. Some strains of marijuana grown specifically for their medical benefits have very little THC in them.

5. If a medical marijuana patient is under the age of 18, the child's parent or guardian would need to consent, and the child could not have more than one dose in their possession.

This is still early in the process. These recommendations are going to get talked about a lot, and vetted by the legislature. There will be lots of objections by the existing medical marijuana growers and sellers – they have built up their businesses (and profits) by squirming between the cracks in the law, running unregulated and untaxed businesses for quite some time. All those who wish to submit comments to the work group preparing these recommendations (medicalmarijuana@liq.wa.gov) must do so before November 9th.

These draft recommendations (or something similarly rigid) are necessary if the legislature wants to fully address the concerns of the Department of Justice, as expressed in the August 29th Cole memo. See [Marijuana – No Federal Roadblocks!](#), *MRSC Insight*, 08/29/2013.

The work group recommendation is that these changes go into effect no sooner than January 1, 2015. The Liquor Control Board would open registration for additional applications for marijuana retailers, and possibly accommodate some of the existing medical marijuana dispensaries that are willing to transition to the regulated market. All marijuana businesses, recreational or medical, would need to meet the existing 1,000-foot buffer zone requirements.

Once medical marijuana collective gardens, dispensaries, and home grow operations are prohibited by state law, anyone growing marijuana or engaging in any marijuana marketing/retailing without a state-issued license would be violating the law and subject to prosecution.

For further information on recreational and medical marijuana go to MRSC's [Recreational Marijuana: A Local Government Guide](#).



Washington State Liquor Control Board

DRAFT Recommendations of the Medical Marijuana Work Group

Budget Proviso Language: 3ESSB 5034 Sec. 141(2):

(a) The liquor control board must work with the department of health and the department of revenue to develop recommendations for the legislature regarding the interaction of medical marijuana regulations and the provisions of Initiative Measure No. 502. At a minimum, the recommendations must include provisions addressing the following:

- (i) Age limits;
- (ii) Authorizing requirements for medical marijuana;
- (iii) Regulations regarding health care professionals;
- (iv) Collective gardens;
- (v) Possession amounts;
- (vi) Location requirements;
- (vii) Requirements for medical marijuana producing, processing and retail licensing; and
- (viii) Taxation of medical marijuana in relation to recreational marijuana.

(b) The board must submit its recommendations to the appropriate committees of the legislature by January 1, 2014.

1. Age limits

- Adults 18 to 20 years old should be allowed access to medical marijuana with proper authorization from a health care professional.
- Children 17 years old or younger should be allowed access to medical marijuana with parent or guardian consent to the authorization. The parent or guardian should participate in the child's treatment.
- Authorizing health care professionals should be required to engage in frequent re-examination and follow-up with a child patient and communication with the parent or guardian. The authorizing health care professional should also be required to consult with other health care providers involved in the child's treatment before authorization or reauthorization of medical marijuana.
- The child's parent or guardian should be required to act as the child's designated provider and be entered in the registry as such.
- The parent or guardian should have sole control over the child's medical marijuana. The child should be allowed to possess no more medical marijuana than necessary for his or her next dose.
- Medical marijuana consumed in a school setting should be held and administered by school personnel in the same manner as any other medication. Consistent with current law, schools should not be compelled to accommodate on-site use of medical marijuana on school grounds or school buses.
- Medical marijuana products should be prohibited from being labeled in a manner that mimics candy, soda or other treats attractive to children.

Under I-502:

A person must be 21 years old to legally possess marijuana, to hold a marijuana license or enter a licensed marijuana premise.

2. Authorizing requirements for medical marijuana

- A mandatory patient and designated provider registry should be established and maintained by the Department of Health.
- The registry should be mandatory for all patients as a condition of receiving an authorization.

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- The registry should be used to determine eligibility for exemption from state and local retail sales and use taxes on marijuana purchases by qualified patients.
- Designated providers should be required to participate in the registry in conjunction with the patient.
- Patient and designated provider information should be entered into the registry by the authorizing health care professional. The information must contain sufficient unique identifiers (Washington driver's license or identification card number or social security number) to ensure accurate identification of the patient or designated provider.
- Registration should expire annually and the patient or designated provider may be re-entered in the registry only after a new or follow-up examination.
- Cards should be issued from the registry to identify patients and designated providers.
- The registry should be available to law enforcement and to the Department of Revenue as necessary to verify tax-exempt purchases under Title 82 RCW.
- Disciplining authorities for the health care professions allowed to authorize medical marijuana should have access to the registry to monitor compliance by their licensees.
- Consistent and reliable funding must be provided to establish and maintain the registry.
- The registry should contain sufficient security features to protect patient privacy. Information in the registry that could identify patients should be excluded from public disclosure.
- All existing authorizations should expire on a date certain to coincide with full implementation of the registry and retail market. All patients with existing authorizations would need to be re-evaluated by a health care professional pursuant to the revised standards and placed in the registry within a designated timeframe.

Under I-502:

N/A

3. Regulations regarding health care professionals

- Define "debilitating" and "intractable pain" to clearly indicate the condition must be severe enough to significantly interfere with the patient's activities of daily living and ability to function, and can be objectively assessed and evaluated.
- Enact comprehensive requirements defining the standard of care for health care professionals who authorize medical marijuana similar to those required by ESHB 2876 (2010) regarding the use of opioids to manage chronic pain. The requirements should address topics such as adequacy of examination, follow-up care and recording keeping.
- Restrict a health care professional's practice to ensure it does not consist primarily of authorizing medical marijuana.
- Require a permanent physical location for a health care professional's place of practice.
- Require in person examinations for authorizations.
- Require an expiration of authorizations to ensure a regular cycle of re-examination and follow-up care.
- Eliminate the provision allowing for petitions to add qualifying conditions. Patients with conditions other than those already authorized can follow the legislative process to change the law and can avail themselves of the recreational marijuana market until such time as the law is changed. In the alternative, amend the petition provision to allow the Medical Quality Assurance Commission to make a preliminary finding of good cause prior to holding a hearing and expand the time frame for the hearing to be completed.

Under I-502:

N/A

4. Collective gardens

Eliminate Collective Gardens.

Under I-502:

N/A

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5. Possession amounts

- Reduce the amount a qualified patient or designated provider can possess at any given time from twenty-four ounces of useable marijuana (a sixty day supply) to three ounces (a one week supply).
- Allow additional limits for marijuana infused products in solid or liquid form.
- Eliminate home grows and the ability for a qualified patient or designated provider to possess marijuana plants in any stage of growth. Define "plant" to avoid any misconstruction of this provision.
- Eliminate the ability for designated providers to also be qualified patients and thus possess double the legal limit of medical marijuana.
- Require labeling to include the levels of tetrahydrocannabinol (THC) and cannabinoids in medical marijuana products.
- Restrict labeling and marketing of medical marijuana products to ensure that they are not intentionally attractive to minors or recreational users.
- Eliminate the provision in RCW 69.51A.045 that grants qualified patients or designated providers an affirmative defense to criminal charges of possession above the legal amount if they can prove at trial the patient's necessary medical use exceeds the amount determined in law.

Under I-502:

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

6. Location requirements

Not applicable because only current I-502 licensed retail stores may sell marijuana and accept medical marijuana authorization cards.

Under I-502: Medical marijuana licensed business cannot be within one thousand feet of the perimeter of the grounds of any of the following entities:

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

7. Requirements for medical marijuana producing, processing and retail licensing

A single system for medical and recreational producer and processor licenses. Only recreational marijuana stores with an endorsement may accept medical marijuana authorization cards. Make the new regulatory system for medical marijuana effective no sooner than January 1, 2015.

Under I-502:

1. Three separate license tiers: producer, processor and retailer;
2. A licensee may hold both a producer and processor license simultaneously, but not a retailer license;
3. Open registration for all license types for a 30-day window;
4. Three month state residency requirement to qualify for a license;
5. Personal criminal history, fingerprint and background checks of applicants;
6. Point system for all arrests and/or convictions;
7. License limits;
8. Production limits; and
9. Maximum allowable amount of marijuana on licensed locations.

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8. Taxation of medical marijuana in relation to recreational marijuana

Utilize the same tax structure as recreational marijuana, but provide an exemption from state and local retail sales and use taxes on purchases by medical marijuana patients registered with the Department of Health.

Under I-502:

1. Producers
 - a. Pay 25% excise tax on wholesale sales
 - b. Pay B&O tax as wholesaler
2. Processors
 - a. Pay 25% excise tax on wholesale sales
 - b. Pay B&O tax as manufacturer
3. Retailers
 - a. Pay 25% excise tax on retail sales
 - b. Pay B&O tax as retailer
 - c. Collect state/local retail sales & use tax
4. Retail Buyers
 - a. Pay state/local retail sales & use tax

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Medical Marijuana: Types of Ordinances and Decisions Adopted

Jurisdiction	Moratoria		Interim Ordinances			Permanent Ordinances		
	Dispensaries	Collective Gardens	Dispensaries Prohibited	Collective Gardens Prohibited	Collective Gardens Authorized	Collective Gardens Prohibited	Collective Gardens Authorized	De Facto Ban
Bellevue					X			
Bellingham					X			
Bonney Lake						X		
Castle Rock					X			
Chelan								X
Clark County							X	
Edgewood (2011)								X
Edgewood (2013)				X				
Edmonds	X							
Ellensburg					X			
Everett					X			
Issaquah							X	
Kent						X		
Longview							X	
Mountlake Terrace					X			
Mukilteo							X	
Richland								X
Ruston							X	
SeaTac (2011)	X	X						
SeaTac (2012)			X	X				
Seattle (2011)							X	
Shoreline (No.643)							X	
Shoreline (No.625)					X			
Spokane					X			
Stanwood							X	
Tukwila	X	X						
Woodinville						X		
Woodland (2011)								X
Woodland (2012)		X						
Yakima								X



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.

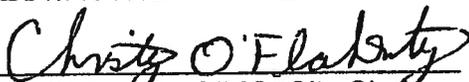
Section 13. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or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

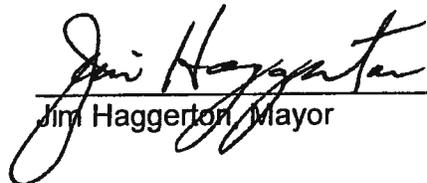
Section 14. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall 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

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON, RELATING TO LAND USE, ZONING AND LICENSING; ALLOWING STATE-LICENSED MARIJUANA PRODUCTION AND PROCESSING FACILITIES IN THE LIGHT INDUSTRIAL (LI) ZONE AND STATE-LICENSED RETAIL FACILITIES IN THE COMMUNITY BUSINESS- SOUTH (CB[S]) ZONE; AMENDING CHAPTER 5.04 MMC – BUSINESS LICENSES; REPEALING CHAPTER 5.70 MMC – MEDICAL CANNABIS COLLECTIVE GARDENS SAFETY LICENSE; AMENDING SECTION 17.08.020 MMC – DEFINITIONS; AMENDING SECTIONS 17.16.040A AND 17.16.040B MMC – PERMITTED, CONDITIONAL, TEMPORARY AND INTERIM USES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the voters of Washington State approved I-502 in November 2012 legalizing the recreational use of marijuana codified in Chapter 69.50 RCW; and

WHEREAS, the Washington State Liquor Control Board is in the process of establishing licensing rules and procedures for marijuana facilities and is expected to begin issuing licenses in December 2013; and

WHEREAS, the Mukilteo City Council and City of Mukilteo Planning Commission held a worksession on April 8, 2013 to discuss the issues related to recreational marijuana facilities;

WHEREAS, the Mukilteo City Council deems it to be in the public interest to establish zoning regulations related to state-licensed marijuana facilities and to require all such facilities to obtain a City of Mukilteo business license; and

WHEREAS, the intent to amend development regulations to allow state-licensed marijuana facilities and a SEPA Determination of Non Significance were noticed in accordance with City of Mukilteo procedures and regulations; and

WHEREAS, the City of Mukilteo Planning Commission held a public hearing on September 19, 2103 to consider this ordinance and forwarded a recommendation to the City Council;

WHEREAS, nothing in this Ordinance is intended, nor shall be construed, to authorize or approve violation of federal or state law;

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

Section 1. MMC 5.04.030(A)(3) - Amended. MMC 5.04030(A)(3), is hereby amended to read as follows:

5.04.030 Exemptions.

- A. The following shall be required to submit a completed license application to the finance director to determine if they are exempt from the licensing requirements, but shall not be required to pay a license fee:
1. Business activities including canvassing activities engaged in by any bona fide charitable or nonprofit organization, including but not limited to religious, civic, benevolent, fraternal, social or youth organizations;
 2. National banks, state banks, trust companies, mutual savings banks, and building and loan associations, with respect to their banking business, trust business, or saving and loan business;
 3. Any farmer, gardener or other person who sells, delivers or peddles any fruit, vegetables, berries, butter, eggs, fish, milk, poultry or meats or any farm produce or edibles raised, caught, produced or manufactured by such person, except for marijuana producers and processors;
 4. All honorably discharged veterans exempt from paying license fees as provided in RCW 73.04.050 and 73.04.060, as the same exist or may hereinafter be amended; or
 5. Any business or activity which is exempt from payment of such license fees as prescribed by this title by virtue of applicable provisions of the federal or state constitution or statutes.

Section 2. MMC 5.04.060C - Amended. MMC 5.04.060C – Procedure for issuance of license, is hereby amended to read as follows:

- C. An application for a business license shall be denied if:
1. It contains a material omission of fact, misrepresentation or fraud;
 2. The applicant has been convicted of a criminal offense and if the time elapsed since the criminal offense is less than ten years and the criminal offense for which the applicant was convicted directly relates to the specific business for which the license is sought. Applicants who have a current state license to operate a marijuana facility who have applied for a business license to operate a marijuana business are exempted from the requirements of this subsection (2).
 3. The premises on or in which the business will be operated violates a building, zoning, fire or any other applicable laws of the city;
 4. The business for which the license is sought will result in a danger to the public health, safety or welfare, or the violation of any ~~federal~~, state or local law, ordinance or regulation;
 5. The applicant has had a similar license revoked by the city within a period of one year prior to the date of making application for a license hereunder; provided, that any applicant denied a license under the provisions of this chapter may reapply if and when the reasons for denial no longer exist; or

6. The applicant fails to pass the necessary criminal records or background check and it is determined that it is not in the public interest to grant such a license.

Section 3. MMC 5.04.140A - Amended. MMC 5.04.140A – Suspension or revocation of license, is hereby amended to read as follows:

- A. The finance director may suspend or revoke any business license when the licensee, licensee's officers, employees or agents, do any of the following:
1. Knowingly causes, aids, abets or conspires with another to cause any person to violate any of the laws of this state or the city which may affect the licensee's business; or
 2. Has obtained a license or permit by fraud, misrepresentation, concealment or through inadvertence or mistake; or
 3. Has been convicted of a criminal offense and if the time elapsed since the criminal offense is less than ten years and the criminal offense for which the licensee was convicted directly relates to the specific business for which the license was sought, except for business licenses issued to operators of a marijuana facility who have a current state license to operate a marijuana facility; or
 4. Conducts business operations in an unlawful manner or in such a manner as to constitute a breach of the peace, or menace to the health, safety or general welfare of the public; or
 5. Fails to pay any license fee established by this chapter when the same is due.

Section 4. MMC 17.08.020 - Amended. Section 17.08.020, MMC – definitions, is hereby amended so the following existing definitions read as follows:

School, Elementary, Middle, Junior or Senior High. "Elementary school," "middle school," "junior high school" or "senior high school," including public, private, and parochial schools means an institution of learning recognized by the Washington State Superintendent of Public Instruction which offers instruction in the several branches of learning and study required to be taught in the public schools by the Washington State Board of Education.

Section 5. MMC 17.08.020 - Amended. Section 17.08.020, MMC – definitions, is hereby amended to add the following new definitions:

"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. Child care centers include "Commercial Day Care", "Family Day Care" and "Day Nursery" entities.

"Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices.

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

“Marijuana facility” means a state-licensed marijuana production, processing, or retail facility or a medical cannabis collective garden. Marijuana facilities shall not be a home occupation as defined in MMC 17.08 – Definitions.

“Marijuana processing facility” means an entity licensed by the State of Washington to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. A marijuana processing facility shall not be a home occupation as defined in MMC 17.08 – Definitions.

“Marijuana production facility” means an entity licensed by the State of Washington to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producers. A marijuana production facility shall not be a home occupation as defined in MMC 17.08 – Definitions.

“Marijuana retail facility” means an entity licensed by the State of Washington to sell only usable marijuana, marijuana-infused products and marijuana paraphernalia to persons twenty-one years of age and older. A marijuana retail facility shall not be a home occupation as defined in MMC 17.08 – Definitions.

“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.

“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.

Section 6. MMC 17.16.040A - Amended. Table 17.16.040 in Section 17.16.040A, MMC – Permitted, Conditional, Temporary and Interim Use Matrix is hereby amended to include the “Use” lines to read as shown on “Exhibit A” attached to this ordinance and incorporated herein by reference as if set forth in full.

Section 7. MMC 17.16.040B - Amended. Section 17.16.040B(60), MMC – Reference Notes for Permitted Use Matrix is hereby amended to read as follows:

60. Medical Cannabis Collective Gardens. All medical cannabis collective gardens shall meet the following development standards:

- a. The definitions set forth in RCW 69.51A.010 and Section 17.08.020 shall apply.
- b. Location.
 - i. No more than one collective garden shall be located on a single parcel.
 - ii. Shall be located fully within a permanent structure designed to comply with the city building code and constructed under a building permit from the city regardless of the size or configuration of the structure.
 - iii. Shall not be located in a mobile structure.
 - iv. No collective garden shall be located within one thousand feet of the following. The measurement shall be taken in a straight line from property boundary to property boundary.
 - (A) Another existing collective garden; or
 - (B) Public park; or

- (C) Community center; or
 - (D) ~~Elementary or secondary school~~, middle, junior or senior high school (public and private); or
 - (E) Day care center; or
 - (F) Youth oriented facility; or
 - (G) Single-family, multifamily or PCB(S) zoning district.
- c. No production, processing or delivery of cannabis may be visible to the public nor may it be visible through windows.
 - d. A collective garden must meet all requirements under ~~E2SSB 5073~~ RCW 69.51A.085, including but not limited to limitations on number of members, number of plants, amount of usable cannabis on site, maintenance of each member's valid documentation of qualifying patient status.
 - e. All fertilizers, chemicals, gases and hazardous materials shall be handled in compliance with all applicable local, state and federal regulations. No fertilizers, chemicals, gases or hazardous materials shall be allowed to enter a sanitary sewer or stormwater sewer system nor be released into the atmosphere outside of the structure where the garden is located.
 - f. No odors shall be allowed to migrate beyond the interior portion of the structure where the garden is located.
 - g. A medical cannabis collective garden safety license pursuant to Chapter 5.70 shall be obtained prior to the start of operations of the collective garden.
 - h. Collective gardens shall be operated in compliance with public safety and development laws that similar activities are required to comply with, including but not limited to:
 - i. City of Mukilteo health and safety regulations as set forth in Title 8; and
 - ii. City of Mukilteo public peace, morals and welfare regulations as set forth in Title 9; and
 - iii. City of Mukilteo public services regulations as set forth in Title 13; and
 - iv. City of Mukilteo buildings and construction regulations as set forth in Title 15; and
 - v. City of Mukilteo zoning regulations as set forth in Titles 17 and 17B; and
 - vi. Alderwood water and wastewater district requirements; and
 - vii. Snohomish County public utility district No. 1 requirements; and
 - viii. State of Washington Chapter 70.160 RCW, smoking in public places regulations; and
 - ix. Americans with Disabilities Act requirements.

Section 8. MMC 17.16.040B - Amended. Section 17.16.040B, MMC – Reference Notes for Permitted Use Matrix is hereby amended to add a new reference note to read as follows:

- 66. Marijuana retail, processing and production facilities. All state-licensed marijuana facilities shall meet the following development standards:
 - a. All facilities must be state-licensed and comply with all of the standards for state-licensed marijuana facilities.
 - b. No marijuana facility shall be allowed as a home occupation.
 - c. The definitions set forth in RCW 69.50.101-.102, WAC 314-55-010 and MMC 17.08.020 shall control.

- d. Location.
- i. No more than one facility shall be located on a single parcel.
 - ii. Marijuana retail and processing facilities shall be located fully within a permanent structure designed to comply with the city building code and constructed under a building/tenant improvement permit from the city regardless of the size or configuration of the structure.
 - iii. Marijuana production facilities shall be located:
 - (A) Fully within a permanent structure designed to comply with the city building code and constructed under a building/tenant improvement permit from the city regardless of the size or configuration of the structure; or
 - (B) In non-rigid greenhouses, other structures, or an expanse of open or clear ground fully enclosed by a physical barrier enclosed by a sight obscuring wall or fence eight (8) feet high.
 - iv. Marijuana facilities shall not be located in a mobile structure.
 - v. No state-licensed marijuana facility shall be located within 1,000 feet of the perimeter of a parcel which has on it at least one of any of the land uses listed below. 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 parcels on which any of the following entities are located:
 - (A) Elementary or secondary school (public or private);
 - (B) Playground;
 - (C) Recreation center or facility;
 - (D) Child care center;
 - (E) Public park;
 - (F) Public transit center;
 - (G) Library;
 - (H) Any game arcade which allows admission to persons under 21 years of age.
 - vi. No state-licensed marijuana retail facility shall be located within 1,000 feet of the perimeter of a parcel which has on it a state-licensed marijuana production or processing facility nor shall a state-licensed marijuana production or processing facility be located within 1,000 feet of the perimeter of a parcel which has on it a state-licensed marijuana retail facility. 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 parcels on which a state-licensed marijuana production or processing facility.
 - e. No production, processing or delivery of marijuana may be visible to the public nor may it be visible through windows.
 - f. All fertilizers, chemicals, gases and hazardous materials shall be handled in compliance with all applicable local, state and federal regulations. No fertilizers, chemicals, gases or hazardous materials shall be allowed to enter a sanitary sewer or stormwater sewer system nor be released into the atmosphere outside of the structure where the facility is located.

- g. No odors shall be allowed to migrate beyond the interior portion of the structure where a marijuana facility is located.
- h. A City of Mukilteo business license pursuant to Chapter 5.04 MMC and a state license pursuant to Chapter 314-55 WAC shall be obtained prior to the start of operations of the facility.
- i. All facilities shall comply with Chapter 19.27 RCW, State Building Code Act and Chapter 15, Mukilteo Municipal Code, Buildings and Construction. Appropriate permits shall be obtained for all changes of use, tenant improvements, mechanical system improvements, electrical upgrades and similar work.

Section 9. Findings, Conclusions, and Analysis. In support of the amendments approved in this ordinance, the Mukilteo City Council adopts the Findings of Fact & Conclusions attached hereto as Exhibit "B" and incorporated herein by reference and the analysis contained in the Staff Report on the amendments.

Section 10. Severability. If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 11. Authority to make necessary corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 12. Conflict. In the event that there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 13. Effective Date. The ordinance shall take effect and be in full force five (5) days after publication of the attached Summary which is hereby approved.

PASSED by the City Council and APPROVED by the Mayor this 21st day of October, 2013.

CITY OF MUKILTEO

Mayor Joe Marine

ATTEST/AUTHENTICATED:

Christina J. Boughman, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. ####

Exhibit A

USE	RESIDENTIAL							COMMERCIAL					INDUSTRIAL					PUBLIC						
	RD12.5	RD12.5(S)	RD9.6	RD9.6(S)	RD8.4	RD7.5	RD7.2	WFB	MRD	MR	CB(S)	PCB(S)	DB	CB	PCB	WMU ¹	BP	IP	PI	LI	HI	FSP ²	OS ³	
Commercial Uses ⁴																								
Marijuana retail facility ⁶⁵																								
Industrial Use ⁴⁴																								
Marijuana processing facility ⁶⁶																								
Marijuana production facility ⁶⁶																								
Other																								
Medical cannabis collective gardens ⁶⁰																								

DRAFT

Exhibit B

DRAFT

ORDINANCE NO. 1819-13

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON, ADOPTING ZONING REGULATIONS PURSUANT TO RCW 35A.63220 AND RCW 36.70A.390; ADOPTING REGULATIONS ON MARIJUANA RELATED USES, PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS IN ALL ZONING DISTRICTS OF THE CITY; PERMITTING THE PRODUCTION, PROCESSING AND/OR RETAILING OF MARIJUANA AS REGULATED PURSUANT TO WASHINGTON STATE INITIATIVE NO. 502 ZONING DISTRICTS, AND ONLY AT FACILITIES THAT HAVE OBTAINED A VALID LICENSE ISSUED BY THE WASHINGTON STATE LIQUOR CONTROL BOARD; REPEALING ORDINANCE NO. 1787-12; ENTERING LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, recent amendments to Chapter 69.51A RCW, relating to the medical use of cannabis, have expanded the scope of certain activities involving the use of cannabis for medical purposes that are permitted under state law, and

WHEREAS, Section 69.51A.085 RCW allows "qualifying patients" to create and participate in "collective gardens" for the purpose of producing, processing, transporting, and delivering cannabis for medical use, subject to certain conditions, 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 understands that approved medical uses of cannabis may provide relief to patients suffering from debilitating or terminal conditions, but potential secondary impacts from the establishment of facilities for the growth, production, and processing of medical cannabis are not appropriate for any zoning designation within the City, and

WHEREAS, the City Council further understands that while the medical benefits of cannabis have been recognized by the state legislature, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession and use of cannabis is still a violation of federal law. The City Council wishes to exercise the authority granted pursuant to state law in order to clarify that the establishment of a collective garden will be deemed to be a violation of city zoning ordinances, but the City Council expressly disclaims any intent to exercise authority over collective gardens in a manner that would directly conflict with the CSA, and

WHEREAS, Initiative 502 directs the State Liquor Control Board 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, and

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

WHEREAS, the Planning Commission has held a public hearing on January 23, 2013 and has recommended adoption of the regulations set forth below; and

WHEREAS, the City completed SEPA review on the proposed regulations, and issued a DNS on December 20, 2012; and

WHEREAS, the 60-day Dept. of Commerce review has been completed, and

WHEREAS, the City Council held a public hearing on February 18, 2013, and

WHEREAS, nothing in this Ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law; NOW THEREFORE,

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

Section 1. Findings. The recitals set forth above are hereby adopted as the Milton City Council's findings in support of the zoning regulations imposed by this ordinance.

Section 2. Ordinance No. 1787-12, extended by Ordinance Nos. 1793-12 and 1813-13 extending the moratorium on the location, establishment, licensing and permitting of medical marijuana or cannabis collective gardens is hereby repealed.

Section 3. Chapter 17.08 of the Milton Municipal Code is amended to add a new Section 17.08.136 to read as follows:

17.08.136 Cannabis Related Uses: See 17.08.556: Marijuana Related Uses and 17.08.557 State licensed marijuana facilities.

Section 4. Chapter 17.08 of the Milton Municipal Code is amended to add a new Section 17.08.556 to read as follows:

17.08.556 Marijuana Related Uses:

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

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

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

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

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

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

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

Section 5. Chapter 17.08 of the Milton Municipal Code is amended to add a new Section 17.08.557 to read as follows:

Section 17.08.557 State-licensed marijuana facilities

A. Unless the context clearly indicates otherwise, all terms used in this section and in MMC 17.44.110 shall have the meanings established pursuant to RCW 69.50.101.

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

C. "Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into usable marijuana and marijuana infused products, package and label usable marijuana and marijuana infused products for sale in retail outlets, and sell usable marijuana and marijuana infused products at wholesale to marijuana retailers.

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

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

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

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

Section 6. Chapter 17.14.010 Table of Uses of the Milton Municipal Code is hereby amended to read as follows:

17.14.010 Table of uses.

Description of Use	RS	RM	RMD	MX	B	M-1	CF	OS
Residential Use Category								
Accessory apartment	acc ¹	acc	acc	acc				
Accessory structure larger than principal building	cup							
Adult day care facility	cup	au	au	au				
Adult family home	au	au	au	au				
Adult retirement community		au	au	au				
Apartment		au	cup	au				
Assisted living facility		cup	cup	cup				
Carport	acc	acc	acc	acc				
Dwelling, multifamily		au	cup	au				
Dwelling, single-family	au	au	au	au				
Dwelling, two-family	au ²	au	au	au				
Garage, private	acc	acc	acc	acc	acc	acc		
Group homes	cup	au	cup	au				
Mobile home park	cup	cup	cup					
Parking area, private	acc	acc	acc	acc	acc	acc		
Swimming pool, private	acc	acc	acc	acc				
Commercial Use Category								

Adult entertainment business					cup			
Ambulance service				au	au	au		
Amusement parks				su2	su2	su2	su2	su2
Animal hospital					au	au		
Auction house/barn (no vehicle or livestock)					au	au		
Automobile service station				cup	au	au		
Automobile wash					au	au		
Automobile, repair					au	au		
Automobile, sales					au	au		
Banks, savings and loan association				au	au			
Beauty/barber shop			cup	au	au			
Bed and breakfast	cup	au	cup	au				
Billiard hall and pool hall				au	au	au		
Child day care, commercial	cup	cup	cup	au	au	cup	cup	
Child day care, family	au	au	au	au				
Commercial recreation < 2 ac.		cup		cup	au		au	au
Commercial recreation > 2 ac.					cup		cup	
Confectionery stores (see Retail sales)				au	au			
Convenience store				au	au			
Crematories and mausoleums					su1	su1	su1	su1
Department stores (see Retail sales)					au			
Drug stores (see Personal services)				au	au			
Dry cleaners (see Personal services)				au	au			
Electric vehicle infrastructure ⁵	acc	acc	acc	au	au	au	acc	acc
Espresso stands				au	au	au		
Flea market						cup		
Food markets and grocery stores				au	au			
Golf and athletic facilities				su1	su1	su1	su1	su1
Greenhouses, private and noncommercial	au	au	au	cup	cup			
Hardware stores < 10,000 sf				au	au	au		
Hardware stores > 10,000 sf					au	au		
Health club		acc		au	au	acc		
Home occupation	au ⁴							
Horticultural nursery, wholesale and retail					au	au		
Hotel				cup	au			
Inn		cup		au	au			
Liquor stores				au	au	au		

Locksmiths				au	au	au		
Lumber yards					au	au		
Marijuana Producers or Processors, State licensed ⁶						au		
Marijuana Retailer, State licensed ⁶					au	au		
Medical marijuana or cannabis collective gardens	Prohibited in all zoning districts							
Mortuaries					au			
Motel				cup	au			
Outdoor advertising display				cup	au	au		
Pet shop				au	au			
Photographer's studio			cup	au	au			
Radio and TV repair shops				au	au	au		
Recreational areas, commercial, including tennis clubs and similar activities				su1	su1	su1	su1	su1
Recreational areas privately operated				su1	su1	su1	su1	su1
Recycling collection points		acc		acc	acc	acc	acc	acc
Restaurant				au	au	au		
Restaurants, drive-through					cup	au		
Retail <1,000 square feet				au	au	au		
Retail >1,000 square feet					au	au		
Rodeos					su1	su1	su1	su1
Secondhand store				cup	au	au		
Self-service storage facility		acc		acc	cup	au		
Shoe stores or repair shop				au	au			
Sports arenas					su1	su1	su1	su1
Stadiums					su2	su2	su2	su2
Stationery store				au	au			
Studios (i.e., recording, artist, dancing, etc.)				au	au			
Swimming pool, commercial		cup		cup	au		au	
Taverns				au	au	au		
Theaters, enclosed				cup	au	cup		
Video store (rental, not adult) < 5,000 sf				au	au	au		
Video store (rental, not adult) > 5,000 sf					au	au		
Civic Use Category								
Ballfield				su1	su1	su1	su1	su1
Bicycle paths, walking trails	au	au	au	au	au	au	au	au

Church	cup	au	cup	au	au	cup		
Club or lodge, private				cup	cup			
Fairgrounds					su1	su1	su1	su1
Garage, public						au		
Heliports					su2	su2	su2	su2
Hospitals and sanitariums					cup	cup		
Libraries				au	au		au	
Open-air theaters				su1	su1	su1	su1	su1
Parking area, public		acc		acc	acc	acc	acc	acc
Post office, branch or contract station				au	au			
Post office, distribution center or terminal						cup		
Public parks	cup	cup	cup	cup	cup	cup	au	au
Schools, elementary or secondary	cup	cup	cup	cup	cup		au	
Swimming pool, public	cup	cup	cup	cup	cup			
Transit facilities, bus barns, park-and-ride lots, transit stations				su1	su1	su1	su1	su1
Vocational schools/colleges				cup	cup	cup	cup	
Utilities Use Category								
Electric transmission substation	cup	cup	cup	cup	cup	au	cup	cup
Fuel storage tanks (underground, < 500 gal.)	acc	acc	acc	au	au	au		
Fuel storage tanks (underground, > 500 gal.)		cup	cup	cup	au	au		
Fuel storage tanks, above ground				au	au	au		
Public utility facilities (services)	cup	cup	cup	cup	au	au	au	
Public utility service yard						au	au	
Radio, cellular phone, microwave, and/or television transmission facilities or towers	cup							
Sewage treatment plants							cup	
Transfer station solid waste facility						cup	cup	
Industrial Use Category								
Blueprinting and photostating				au	au	au		
Buy-back recycling center						cup		
Cabinet shops (see Industry, light)					cup	au		
Cargo storage containers					acc	acc	acc	
Carpenter shops (see Industry, light)					cup	au		
Composting facilities					su2	su2	su2	su2
Contractor yards					au	au		
Distributing plants (see Industry, light)						au		

Electric/neon sign assembly, servicing repair						au			
Freight terminal, truck						cup			
Furniture repair (see Industry, light)					cup	au			
Industry, light						au			
Machine shops, punch press up to five tons (see Industry, light)						au			
Motor vehicle impound yard in enclosed building (see Industry, light)						au			
Nonautomotive, motor vehicle and related equipment sales, rental, repair and service					au	au			
Outdoor storage					cup	au			
Paint shop (see Industry, light)						au			
Parcel service delivery (see Industry, light)						au			
Pesticide application service (see Industry, light)						au			
Plumbing shop (see Industry, light)						au			
Plumbing supply yards (see Industry, light)						au			
Printing establishments					au	au			
Recycling processing centers					su2	su2	su2	su2	
Storage for transit and transportation equipment						cup			
Tool sales and rental				cup	au	au			
Trailer-mix concrete plant						cup			
Upholstering					au	au			
Warehousing						au			
Welding shops and sheets metal shops						cup			
Office/Business Use Category									
Medical-dental clinic			cup	au	au				
Professional offices			cup	au	au	au			
Resource Use Category									
Agricultural buildings	acc					acc	acc	acc	
Agricultural crops; orchards	au	cup	au			acc	acc	au	
Livestock	au ³								
Pasture	au								
Stable, private arena	au ³								
Surface mining						su2	su2	su2	su2
acc: Accessory Use au: Authorized or Permitted Use cup: Conditionally Permitted Use su1: Type I Special Use su2: Type II Special Use									

¹Minimum lot size 9,600 square feet.

²Minimum lot size 12,000 square feet.

³Maximum one animal/acre.

⁴Subject to the limitations of MMC 17.44.090.

⁵Battery exchange stations and rapid charging stations are only allowed in the MX, B, and M-1 zones.

⁶Subject to limitations of MMC 17.44.120.(Ord. 1775 § 5, 2011; Ord. 1769 § 3, 2011; Ord. 1586 § 1, 2003; Ord. 1579 § 4, 2003; Ord. 1578 § 2, 2003; Ord. 1405 § 2, 1999).

Section 7. Chapter 17.44 is hereby amended to add Section 17.44.120 Marijuana Related Uses to read as follows:

Section 17.44.120 Marijuana related uses.

A. The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Milton 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 Milton and then only pursuant to a license issued by the State of Washington. The purposes of these provisions is solely to acknowledge the enactment by Washington voters of Initiative 502 and a state licensing procedure and to permit to, but only to, the extent required by state law marijuana producers, marijuana processors, and marijuana retailers to operate in designated zones of the City.

B. Marijuana producing or processing facilities may be located only in the Light Manufacturing (M-1) zone of the City. Such facilities and uses may be located only at designated sites licensed by the state of Washington and fully conforming to state law.

C. Marijuana retailers may locate only in the Light Manufacturing (M-1) and Business (B) zones, at designated sites licensed by the state of Washington and fully conforming to state law.

D. 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 8. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

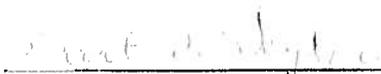
invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 9. Publication. This ordinance shall be published by an approved summary consisting of the title.

Section 10. Effective Date. This ordinance shall become effective and be in full force five (5) days after passage, approval, and publication as provided by law.

PASSED by the Council and approved by the Mayor of the City of Milton, this 11th day of March, 2013.

CITY OF MILTON



Mayor Pro Tem Bart Taylor

ATTEST/AUTHENTICATED:



Lisa Tylor, City Clerk

APPROVED AS TO FORM:



W. Scott Snyder, City Attorney

Published:
Effective Date:

Marijuana Related Uses
Code Amendment Project

Public Hearing

City of Oak Harbor Planning Commission Report

Date: November 26, 2013
Subject: Marijuana Related Uses – Code
Amendment Project

FROM: Steve Powers, Development Services Director

PURPOSE

This report presents a draft ordinance for the Planning Commission's consideration. The draft ordinance establishes the zoning districts and standards associated with marijuana related uses as allowed by I-502.

BACKGROUND

Last month staff provided the Planning Commission background information on recent State laws pertaining to medical and recreational marijuana. In short, the information summarized actions at the State level, advised the Planning Commission that the City Council had enacted two moratorium ordinances intended to provide the City time to respond to these laws (through the drafting of development and licensing regulations) and presented a tentative schedule for completing the work. Staff also presented a preliminary map depicting 1,000 foot buffers applied around those sensitive land uses identified by I-502.

This month staff presents a revised map, the results of a zoning code review intended to help determine similarities between existing uses and marijuana related uses (and the zoning districts they may locate in), and an initial draft ordinance.

DISCUSSION

Staff's approach to preparing the initial draft ordinance to regulate those uses approved by I-502 included the following:

- applying the State required 1,000 foot buffer around sensitive uses to Oak Harbor's land use geography;
- reviewing Oak Harbor's zoning code to determine which uses may be similar from a land use impact perspective to the new marijuana related uses (as a means to begin to establish which zoning districts may be appropriate to locate those uses); and
- reviewing codes from other communities to see how they have addressed marijuana related uses and apply those concepts to Oak Harbor.

Updated Preliminary Map

The preliminary map has been updated since the October Planning Commission meeting. For the

updated map staff eliminated properties that were either fully or partially contained within the 1,000 foot buffer radius. For the partially contained parcels, if a portion of a property fell within this distance the entire parcel was deemed to be unavailable for the possible siting of a marijuana related use. The updated map also ‘whites out’ all parcels zoned any of the Residential districts, and the Public Facilities and Open Space districts as the draft code assumes these zoning districts will not be considered as possible locations. The updated map (Attachment 1) shows the areas encumbered by the various buffers and that in general the northern portion of Oak Harbor has the most properties available for marijuana related uses.

Zoning Code Review

Staff reviewed the current zoning code to determine where marijuana related uses might locate, based on matching their basic land use characteristic with existing uses in the City’s various zoning districts. The results of this review are shown in a table (see Attachment 2).

The ‘Similar or Related Uses’ columns of the table display those existing uses in the zoning code (principal permitted, conditional or accessory) that are similar or related from a land use perspective only to the three categories of marijuana related uses (production, processing and retailing). Examples include greenhouses as a conditional use in the R-1 zoning district (similar to marijuana production) and retail bakery in the C-1 zoning district (similar to marijuana retailing).

The X’s in the ‘Marijuana Related Uses’ columns of the table signify which zoning district each of the three categories of marijuana related uses (production, processing and retailing) could be located in when evaluated from a land use perspective only. This evaluation does not address appropriateness of the use in the zoning district or take into account any potential negative impacts of the proposed uses; it is merely a ‘does it fit’ evaluation. Please note the X’s in the columns do not represent a recommendation that the marijuana related use should be included in that district’s permitted, conditional or accessory uses.

Codes from Other Cities

In researching approaches to drafting the code, staff reviewed codes from the following cities: Aberdeen, Burien, Milton, Monroe, Mukilteo, Normandy Park, Redmond, Seattle, Spokane, Tacoma and Tukwila. Concepts and language from some of these codes were used in preparing the initial draft.

The Draft Code

The draft code contains a list of appropriate definitions, the standards for locating a marijuana production, processing or retailing facility, and the development standards applicable to each facility. After reviewing the information noted above, *and only as a means to start the community conversation*, staff drafted the initial ordinance using the following zoning districts

for the various marijuana related uses:

- Production: Planned Industrial Park and Industrial
- Processing: Planned Industrial Park and Industrial
- Retailing: C-4 and Industrial

A variety of development standards are recommended as a means to limit potential negative impacts from these uses. In addition to these unique standards, each facility will be required to meet the standards of the underlying zoning district and all other applicable Municipal Code regulations.

The initial draft ordinance is of course subject to change as part of the public review process. Please also note that the draft is still undergoing staff review and it is possible that staff may suggest revisions to it as well.

Medical Marijuana

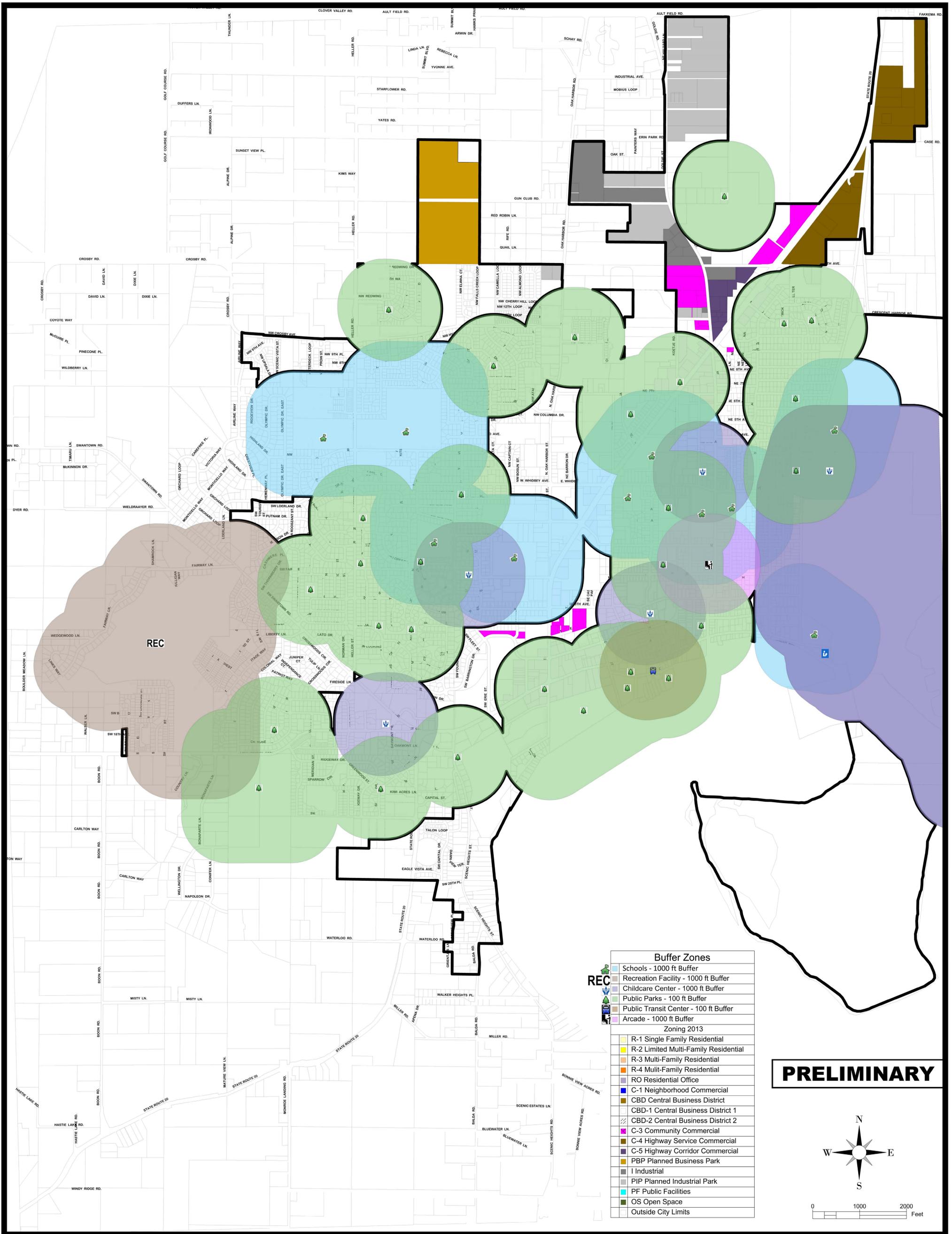
The State Legislature has directed the LCB to work with the Departments of Health and Revenue to clarify the interaction between the medical marijuana law and I-502. With this effort in progress staff believes it is appropriate to delay drafting a medical marijuana code at this time. Once the State determines how (or if) the two bodies of law are integrated the City could modify this draft code or draft a separate one as necessary.

RECOMMENDATION

- Open public hearing, accept public testimony, provide feedback to staff and continue the hearing to December 10, 2013.

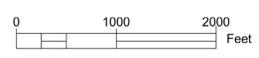
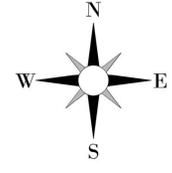
ATTACHMENTS

1. Updated preliminary map
2. Zoning district comparison table
3. Draft ordinance



Buffer Zones	
	Schools - 1000 ft Buffer
	Recreation Facility - 1000 ft Buffer
	Childcare Center - 1000 ft Buffer
	Public Parks - 100 ft Buffer
	Public Transit Center - 100 ft Buffer
	Arcade - 1000 ft Buffer
Zoning 2013	
	R-1 Single Family Residential
	R-2 Limited Multi-Family Residential
	R-3 Multi-Family Residential
	R-4 Multi-Family Residential
	RO Residential Office
	C-1 Neighborhood Commercial
	CBD Central Business District
	CBD-1 Central Business District 1
	CBD-2 Central Business District 2
	C-3 Community Commercial
	C-4 Highway Service Commercial
	C-5 Highway Corridor Commercial
	PBP Planned Business Park
	I Industrial
	PIP Planned Industrial Park
	PF Public Facilities
	OS Open Space
	Outside City Limits

PRELIMINARY



Marijuana Related Uses and Zoning Code Similar or Related Uses Comparison

Zoning District	Similar or Related Uses ¹			Marijuana Related Uses ²		
	Principal Permitted Use	Conditional Use	Accessory Use	Marijuana Production	Marijuana Processing	Marijuana Retailing
PRE Planned Residential Estate	None	None	Accessory uses and structures - greenhouses	X		
R-1 Single-family Residential	None	Nursery and landscape material, including greenhouses	Accessory uses and structures - greenhouses	X		
R-2 Limited Multiple-family Residential	None	Any conditional use permitted in an R-1 district	Accessory uses and structures - greenhouses	X		
R-3 Multiple-family Residential	None	Any conditional use permitted in an R-2 district	Accessory uses and structures - greenhouses	X		
R-4 Multiple-family Residential	None	Any conditional use permitted in an R-3 district	Accessory uses and structures - greenhouses	X		
RO Residential Office	None	Any conditional use permitted in an R-4 district	Accessory uses and structures - greenhouses	X		

¹ The 'Similar or Related Uses' columns display those existing uses in the zoning code that have land use characteristics similar to the marijuana related uses.

² The X's in the 'Marijuana Related Uses' columns signify which zoning district each of the three categories of marijuana related uses could be located in when evaluated from a land use perspective only. This evaluation does not take into account any secondary or negative impacts; it merely matches the marijuana related uses to an existing zoning district.

Zoning District	Similar or Related Uses ¹			Marijuana Related Uses ²		
	Principal Permitted Use	Conditional Use	Accessory Use	Marijuana Production	Marijuana Processing	Marijuana Retailing
C-1 Neighborhood Commercial	Retail uses including: •Bakery, retail only; •Dairy products, retail only; •Florist shop; •Garden supplies and horticultural nursery, not including greenhouses;	Nursery and landscape material including greenhouses	None	X		X
CBD Central Business District	Retail uses including: •Bakery, retail only ; •Confectionery store; •Gift shop ; •Pharmacy and drug store ; •Variety store	None	None			X
C-3 Community Commercial	Retail uses including: •Any principal use permitted in a C-1 and CBD district; •Nursery and landscape material including greenhouses	Conditional uses permitted in a C-1 and CBD district	None	X		X
C-4 Highway Service Commercial	Farm and garden supplies, plant nurseries	None	None	X		X

Zoning District	Similar or Related Uses ¹			Marijuana Related Uses ²		
	Principal Permitted Use	Conditional Use	Accessory Use	Marijuana Production	Marijuana Processing	Marijuana Retailing
C-5 Highway Corridor Commercial	Retail uses including: •Any principal use permitted in a C-1; •Nursery and landscape material including greenhouses	Conditional uses permitted in a C-1 and CBD district	None	X		X
PBP Planned Business Park	Manufacturing, processing and packaging of food, pharmaceuticals	None	None		X	
PIP Planned Industrial Park	•Manufacturing, processing and packaging of food, pharmaceuticals •Nursery and landscape material including greenhouses	Small businesses specializing in the production of chemical products	None	X	X	
I Industrial	•Principal uses permitted in a C-3 district; •Food and drug processing	•Any conditional use permitted in a C-3 district; •Produce stand	None	X	X	X
PF Public Facilities	None	None	None			
OS Open Space	Agriculture land	None	None	X		

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF OAK HARBOR

WHEREAS, the voters of Washington State approved Initiative 502 (I-502) in November 2012 legalizing, taxing and regulating the recreational use of marijuana, codified in Chapter 69.50 RCW ; and

WHEREAS, under I-502, the Washington State Liquor Control Board (LCB) was tasked with the responsibility to adopt the rules governing the licensing and operations of marijuana producers, processors, and retailers, and the rules went into effect on Nov. 16, 2013; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice distributed a guidance memo to U.S. Attorneys regarding state implementation of recreational marijuana ballot measures and setting forth the federal government enforcement priorities, essentially acknowledging that as long as state regulation and enforcement is sufficiently robust and consistent with federal priorities, the federal government may choose not to interfere; and

WHEREAS, the 1,000-foot separations required by I-502 and included in the adopted licensing rules are about protecting children, which the City Council and the citizens of Oak Harbor support; and

WHEREAS, the LCB has created three categories of state licenses and prohibits holders of a retail license from also holding a production or processing license;

WHEREAS, the establishment of marijuana related uses without appropriate regulations could lead to negative impacts to the community, including but not necessarily limited to:

1. Conversion of residential uses into cannabis cultivation and processing facilities removing valuable housing stock from the community.
2. Degraded neighborhood aesthetics due to shuttered-up homes, offensive odors, increased nighttime traffic, and parking.
3. Environmental damages from chemicals being discharged into surrounding and off-site soils, and into storm and sanitary sewer systems.
4. Risk of fire hazard due to overloaded service connections used to operate grow lights and fans.
5. Illegal structural modifications.

WHEREAS, an undue concentration of licensed marijuana facilities in the City of Oak Harbor could be detrimental to the quality of life of Oak Harbor residents and the economic well-being of the city; and

WHEREAS, the Oak Harbor City Council deems it to be in the public interest to establish zoning regulations related to state-licensed marijuana facilities and to require all such facilities to obtain a City of Oak Harbor business license; and

WHEREAS, the intent to amend development regulations to allow state-licensed marijuana facilities and a SEPA Determination of Non Significance were noticed in accordance with city of Oak Harbor procedures and regulations; and

WHEREAS, a Determination of Non Significance was issued on _____

WHEREAS, the City of Oak Harbor Planning Commission held a public hearing on November 26, 2013 and December 10, 2013 to consider this ordinance and forwarded a recommendation to the City Council; and

WHEREAS, the City of Oak City Council held a public hearing on _____, 2013 to consider this ordinance; and

WHEREAS, nothing in this Ordinance is intended, nor shall be construed, to authorize or approve violation of federal or state law; and

NOW, THEREFORE, the City Council of the City of Oak Harbor do ordain as follows:

Section One. There is hereby added a new Chapter 19.22 to the Oak Harbor Municipal Code which shall have the following title and sections:

**Chapter 19.22
MARIJUANA RELATED USES**

Sections:

- 19.22.010 Purpose and Intent**
- 19.22.020 Definitions**
- 19.22.030 Locations Allowed**
- 19.22.040 Development Standards**
- 19.22.050 Non-conforming Use**

Section Two.

There is hereby added new Section 19.22.010 entitled “Purpose and Intent” to the Oak Harbor Municipal Code to read as follows:

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 Oak Harbor 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 Oak Harbor 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 state licensing procedure and to permit to, but only to, the extent required by state law marijuana producers, marijuana processors, and marijuana retailers to operate in designated zones of the City. These provisions are intended to mitigate potential impacts of marijuana related uses on nearby properties and the community and to

promote the public health, safety and welfare through the application of appropriate locational criteria and development standards.

Section Three.

There is hereby added new Section 19.22.020 entitled “Definitions” to the Oak Harbor Municipal Code to read as follows:

- (1) “Child care center” means an entity that regularly provides child day care, preschool 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. Child care centers include: Commercial Day Care, “Family Day Care” and “Day Nursery” entities.
- (2) “Game arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices.
- (3) “Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.
- (4) “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 seeds of the plant which is incapable of germination.
- (5) “Marijuana facility” means a state-licensed marijuana production, processing, or retail facility or a medical cannabis collective garden. Marijuana facilities shall not be a home occupation as defined in OHMC 19.08 -Definitions and as authorized under OHMC 19.34.
- (6) “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.
- (7) “Marijuana processing facility” means an entity licensed by the State of Washington to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. A marijuana processing facility shall not be a home occupation as defined in OHMC 19.08 – Definitions and as authorized under OHMC 19.34.
- (8) “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 usable marijuana and marijuana-infused products at wholesale to marijuana retailers.

- (9) “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.
- (10) “Marijuana production facility” means an entity licensed by the State of Washington to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producers. A marijuana production facility shall not be a home occupation as defined in OHMC 19.08 - Definitions and as authorized under OHMC 19.34.
- (11) “Marijuana retailer” means a person licensed by the state liquor control board to sell usable marijuana and marijuana-infused products in a retail outlet.
- (12) “Marijuana retail facility” means an entity licensed by the State of Washington to sell only usable marijuana, marijuana-infused products and marijuana paraphernalia to persons twenty-one years of age and older. A marijuana retail facility shall not be a home occupation as defined in OHMC 19.08 – Definitions and as authorized under OHMC 19.34.
- (13) “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.
- (14) “Recreation center or facility” means a supervised center that provides a broad range of activities and events including programming for persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government. Examples include, but are not limited to, the John Vanderzicht Memorial Pool and Oak Harbor Boy's & Girl's Club.
- (15) “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of usable marijuana and marijuana-infused products.
- (16) “Useable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

Section Four.

There is hereby added new Section 19.22.030 entitled “Locations Allowed” to the Oak Harbor Municipal Code to read as follows:

- (1) State licensed marijuana producers and marijuana processors may locate in the city pursuant to the following restrictions:

- (a) Marijuana producers and marijuana processors must comply with all requirements of state law and the Washington State Liquor Control Board’s regulations.
 - (b) Marijuana producers and marijuana processors may locate only in the Planned Industrial Park or Industrial district(s).
 - (c) Marijuana producers and marijuana 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 Planned Industrial Park or Industrial district(s).
 - (d) Marijuana producers and marijuana processors shall not operate as an accessory to a primary use or as a home occupation.
 - (e) Marijuana producers and marijuana 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.
- (2) State licensed marijuana retailers may locate in the city pursuant to the following restrictions:
- (a) Marijuana retailers must comply with all requirements of state law and the Washington State Liquor control Board’s regulations.
 - (b) Marijuana retailers may locate only in the C-4 and Industrial district(s).
 - (c) Marijuana retailers shall not locate in a building in which non-conforming retail uses have been established in any residential or office zone.
 - (e) Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation.
 - (f) 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.

Section Five.

There is hereby added new Section 19.22.040 entitled “Development Standards” to the Oak Harbor Municipal Code to read as follows:

- (1) Marijuana retail, processing and production facilities. In addition to the standards of the underlying zoning district and all other applicable Municipal Code regulations, all state-licensed marijuana facilities shall meet the following development standards:
 - (a) All facilities must be state-licensed and comply with all of the standards for state licensed marijuana facilities.
 - (b) No marijuana facility shall be allowed as a home occupation.
 - (c) The definitions set forth in RCW 69.50.101-.102, WAC 314-55-010 and OHMC Section 19.22.020 shall control. In the event of conflict, the provisions of OHMC shall prevail.
 - (d) Location.
 - (i) No more than one facility shall be located on a single parcel.

- (ii) Marijuana retail and processing facilities shall be located fully within a permanent structure designed to comply with the city building code and constructed under a building/tenant improvement permit from the city regardless of the size or configuration of the structure.
- (iii) Marijuana production facilities shall be located:
 - (A) Fully within a permanent structure designed to comply with the city building code and constructed under a building/tenant improvement permit from the city regardless of the size or configuration of the structure; or
 - (B) In non-rigid greenhouses, other structures, or an expanse of open or clear ground fully enclosed by a physical barrier enclosed by a sight obscuring wall or fence eight (8) feet high.
- (iv) Marijuana facilities shall not be located in a mobile structure.
- (v) No state-licensed marijuana facility shall be located within 1,000 feet of the perimeter of the parcel on which any of the entities listed below are located. The distance shall be measured in the manner set forth in WAC 314-55-050(10).
 - (A) Elementary or secondary school (public or private);
 - (B) Playground;
 - (C) Recreation center or facility;
 - (D) Child care center;
 - (E) Public park;
 - (F) Public transit center;
 - (G) Library;
 - (H) Any game arcade which allows admission to persons under 21 years of age.
- (vi) No state-licensed marijuana retail facility shall be located within 1,000 feet of the perimeter of a parcel on which a state-licensed marijuana production or processing facility or medical cannabis collective garden is located nor shall a state-licensed marijuana production or processing facility be located within 1,000 feet of the perimeter of a parcel on which a state-licensed marijuana retail facility or medical cannabis collective garden is located. The distance shall be measured in the manner set forth in WAC 314-55-050(10).
- (e) No production, processing or delivery of marijuana may be visible to the public nor may it be visible through windows.
- (f) Marijuana retail uses shall not include drive-throughs, exterior, or off-site sales.
- (g) All fertilizers, chemicals, gases and hazardous materials shall be handled in compliance with all applicable local, state and federal regulations. No fertilizers, chemicals, gases or hazardous materials shall be allowed to enter neither a sanitary sewer or stormwater sewer system nor be released into the atmosphere outside of the structure where the facility is located.
- (h) No odors shall be allowed to migrate beyond the interior portion of the structure where a marijuana facility is located.
- (i) A City of Oak Harbor business license pursuant to Chapter 5.03 OHMC and a state license pursuant to Chapter 314-55 WAC shall be obtained prior to the start of operations of the facility.
- (j) All facilities shall comply with Chapter 19.27 RCW, State Building Code Act

and Title 17 Buildings. Appropriate permits shall be obtained for all changes of use, tenant improvements, mechanical system improvements, electrical upgrades and similar work.

Section Five.

There is hereby added new Section 19.22.040 entitled “Non-conforming Uses” to the Oak Harbor Municipal Code to read as follows:

- (1) 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 Oak Harbor Municipal Code and that us shall not be entitled to claim legal non-conforming status.

Section Six. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Seven. Effective Date. This Ordinance shall be in full force and effect five days after publishing.

PASSED by the City Council this _____ day of _____ 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

Valerie J. Loffler, City Clerk

Grant K. Weed, Interim City Attorney

Published: _____

Transportation Improvement
Program
(TIP)
Amendment

Public Hearing

**City of Oak Harbor
Planning Commission**

Date: _____
Subject: Six-Year Transportation
Improvement Program

FROM: Cac Kamak, Senior Planner

PURPOSE:

The Planning Commission is requested to hold a public hearing to consider an amendment to Oak Harbor's 2014-2019 Transportation Improvement Program (TIP) to include improvements to the Waterfront Trail and make a recommendation to the City Council for consideration and adoption.

DISCUSSION

The City adopts a six-year TIP every year in July in accordance to state law. The primary purpose of the TIP is to facilitate use of Federal transportation funds awarded to the City. Projects that have federal funding must appear in the six-year TIP at the local and state level so that the City can obligate and eventually use the federal funds. The projects listed on the TIP are coordinated with those listed in the Transportation Element of the Comprehensive Plan.

The Planning Commission is requested to consider an amendment to include the Waterfront Trail in the TIP. The Waterfront Trail is included in several of the City's plans such as the Parks, Recreation and Open Space Plan and the Transportation Plan. These plans indicate the importance of the Waterfront Trail to the community and the enhancement of it as a non-motorized trail that serves transportation and recreational needs of the community. Including the Waterfront Trail in the TIP provides an opportunity to consider improvements to it when federal grant monies are available.

The City's Waterfront Trail can benefit from improvements such as, but not limited to, informational kiosks, scenic overlooks, erosion control and shoreline enhancement with native vegetation. Some of these improvements can be funded with grant money available through Transportation Alternative Program (TAP) funds. TAP funds are federal dollars that are distributed regionally through the State and the Regional Transportation Planning Organizations (RTPO). Since the Waterfront Trail is one of the most used trails in the City and can benefit from upgrades and enhancements, it would be wise to include it in the TIP and position it for a better opportunity to qualify for grants. Most grant programs are competitive and inclusions of the project in the appropriate plans can provide an edge for funding.

The city is applying for grants to improve sections of the Waterfront Trail along the VFW park where a recent landslide has diverted the trail. There are also long standing plans to provide informational kiosk along the waterfront. Including the Waterfront Trail improvements in the TIP will help the project qualify and compete with other projects from Island County, Island Transit, Coupeville, Langley and Skagit County.

RECOMMENDED ACTION:

1. Conduct a public hearing.
2. Recommend the amendment to include Waterfront Trail improvements into the 2014-2019 Six-Year Transportation Improvement Program.

ATTACHMENTS:

- ✓ Six-Year Transportation Improvement Program (TIP)

Six Year Transportation Improvement Program From 2014 to 2019

Agency: Oak Harbor

County: Island

MPO/RTPO: Skagit Island
RTPO

Y Inside

N Outside

Functional Class	Priority Number	A. PIN/Project No. C. Project Title D. Road Name or Number E. Begin & End Termini F. Project Description	B. STIP ID G. Structure ID	Hearing	Adopted	Amendment	Resolution No.	Improvement Type	Utility Codes	Total Length	Environmental Type	RW Required
00	9	Waterfront Trail Enhancement Project Waterfront Trail Oak Harbor Marina to SW Scenic Heights St New sidewalk, way-finding information, landscaping, historic and environmental education.	WA-06418					28	C G P S T W	2.090	CE	No

Funding								
Status	Phase	Phase Start Year (YYYY)	Federal Fund Code	Federal Funds	State Fund Code	State Funds	Local Funds	Total Funds
P	PE	2014	STP(R)	31,242		0	4,876	36,118
P	PE	2015	STP(R)	25,950		0	4,050	30,000
P	CN	2014	STP(R)	103,800		0	16,200	120,000
P	CN	2016	STP(R)	103,800		0	16,200	120,000
P	CN	2017	STP(R)	167,708		0	26,174	193,882
Totals				432,500		0	67,500	500,000

Expenditure Schedule					
Phase	1st	2nd	3rd	4th	5th & 6th
PE	36,188	30,000	0	0	0
CN	0	120,000	120,000	193,822	0
Totals	36,188	150,000	120,000	193,822	0

	Federal Funds	State Funds	Local Funds	Total Funds
Grand Totals for Oak Harbor	432,500	0	67,500	500,000

2013 Comprehensive Plan

Update

Public Hearing

City of Oak Harbor Planning Commission

Bill No. _____
Date: November 26, 2013
Subject: 2013 Comprehensive Plan
Amendments

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

This memo presents the 2013 Comprehensive Plan Amendments. The 2013 Comprehensive Plan Amendment Docket included the Shoreline Master Program (SMP), Land Use change for 1000 SE City Beach Street, 2016 Comprehensive Plan Update process and continuation of the Scenic View Study.

The Planning Commission is requested to open a public hearing at the November 26th meeting and take public testimony on any 2013 Comprehensive Plan Amendment docket items. Since the work done in 2013 did not result in actual amendments to the City's Comprehensive Plan, no action is required to amend the Plan. However, the Planning Commission is recommended to continue some of the docket items into 2014.

BACKGROUND

The City Council approved the docket for the 2013 Comprehensive Plan Amendments on March 5, 2013 (Attachment 1). The docket included a land use amendment for 1000 SE City Beach Street, adoption of the Shoreline Master Program, continued work on the Scenic View study and initiating the 2016 Comprehensive Plan update process.

The major focus in 2013 was to initiate and review the 2016 Comprehensive Plan update requirements and determine the scope along with a Public Participation Plan (PPP). The Shoreline Master Program was locally approved by the City Council in 2012 and was forwarded to the Department of Ecology (DOE) for their review. DOE reviewed the SMP in 2013 and provided some minor comments. These comments have been addressed by staff and the SMP is ready for adoption by the City Council in December.

A couple of the docket items (1000 SE City Beach Street and Scenic View study) will be continued into the 2014 docket and will remain until there is further action. 1000 SE City Beach Street is currently designated High Density Residential. The city owns this property and will therefore not be developed as residential uses. The future designation of this property is yet to be determined. Once the future use of this property is determined, the land use designation can be changed. The scenic view study will also be carried over to the 2014 docket. Further work will be done as resources become available.

DISCUSSION

Scope and Public Participation Plan (PPP) for the 2016 Update

The majority of the work done in 2013 regarding comprehensive plan amendments was focused on the 2016 update. The 2016 update is a large undertaking and the Planning Commission reviewed the scope of the updates and a PPP. The review of the scope and the PPP does not result necessarily in an

City of Oak Harbor Planning Commission

amendment/action to the existing Comprehensive Plan since it is an initial step towards amendments and updates to the Plan. Therefore, there is no specific action required at this time to incorporate the review and PPP.

The PPP is an important piece of the 2016 update and outlines the procedures for early and continuous public participation in the update process. Though the PPP is not an amendment to the Comprehensive Plan it can be adopted by resolution as an integral part of the 2016 update process. Adopting the PPP can be done outside of the Comprehensive Plan amendment process. Staff anticipates bringing it forward to Planning Commission in January 2014 for formal action.

Shoreline Master Program (SMP)

RCW 90.58.050 requires each jurisdiction to have a Shoreline Master Program for managing its shoreline. RCW 90.58.080 requires that Oak Harbor update its Shoreline Master Program by December 1, 2012. Oak Harbor updated its SMP in 2012 and forwarded it for review to DOE. DOE has reviewed Oak Harbor's SMP and suggested minor modification. The SMP has been updated with the suggested changes and is ready for adoption.

RCW 36.70A.480 states that "The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan". It also states that "The shoreline master program shall be adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations". Based on this, the adoption of the Shoreline Master Program by the City Council will automatically incorporate the SMP into the City's comprehensive plan and therefore a separate action is not required.

RECOMMENDATIONS

Based on the above, there is no specific action necessary at this time to amend the Comprehensive Plan document. The Planning Commission is recommended to hold a hearing and take any comments from the public on items that are currently on the 2013 Comprehensive Plan Amendment docket. The Planning Commission is recommended to continue the 2016 Comprehensive Plan Update, Land Use change for 1000 SE City Beach Street and the Scenic View Study and include it in the Preliminary Docket for the 2014 Comprehensive Plan Amendments.

ATTACHMENTS

1. 2013 Comprehensive Plan Amendment Docket.

RESOLUTION NO. 13-08

A RESOLUTION ADOPTING THE DOCKET FOR THE 2013 COMPREHENSIVE PLAN AMENDMENTS

WHEREAS, the City of Oak Harbor first adopted a Comprehensive Plan consistent with the requirements of the Washington State Growth Management Act (Chapter 36.70A RCW) in 1995 by Ordinance 1027, and adopted amendments to the plan in 1997 by Ordinance 1100, in 1998 by Ordinance 1161, in 2000 by Ordinance 1215, in 2001 by Ordinance 1287, in 2003 by Ordinance 1340, in 2004 by Ordinance 1396, in 2005 by Ordinance 1439 and in 2007 by Ordinance 1488 and in 2008 by Ordinance 1542; and and in 2009 by Ordinance 1564; and 2010 by Ordinance 1594; and 2012 by Ordinance 1647; and

WHEREAS, THE CITY OF OAK HARBOR, in the public interest, may adopt amendments or revisions to the Comprehensive Plan no more frequently than once per year in accordance with the State of Washington Growth Management Act RCW 36.70A.130(2); and

WHEREAS, the City of Oak Harbor in accordance with RCW 36.70A.130 has adopted Ordinance 1565 that established a schedule and process to review and amend the Comprehensive Plan; and

WHEREAS, the proposals in the preliminary docket, as presented below, were reviewed against the criteria established in OHMC 18.15.070(2) and determined to be generally consistent; and

WHEREAS, the Planning Commission conducted a public hearing on the preliminary docket on January 22, 2013 and recommended approval; and

WHEREAS, the City Council conducted a public hearing on the docket on March 5, 2013; and

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Oak Harbor that the docket contained herein shall be established as the 2013 Comprehensive Plan Docket:

2013 Comprehensive Plan Amendment Docket

Proposed Amendment	Type of Amendment	Priority as per OHMC 18.15.050
2016 Comprehensive Plan Update	Mandated RCW 36.70A.130	Priority A
Shoreline Master Program	Mandated RCW 36.70A.130	Priority A
Land Use Changes – 1000 SE City Beach Street	Sponsored	Priority B
Study on Scenic Views	Discretionary	Priority C

PASSED by the City Council and approved by its Mayor this 5th day of March, 2013.

THE CITY OF OAK HARBOR



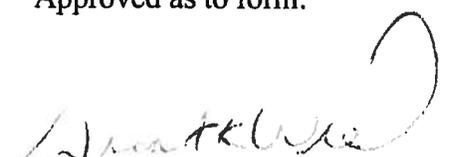
Scott Dudley
Mayor

Attest:



City Clerk

Approved as to form:



City Attorney

2014 Comprehensive Plan

Update

Public Meeting

**City of Oak Harbor
Planning Commission Report**

Date: November 26, 2013
Subject: Comprehensive Plan
Amendments – Discussion of
items for 2014 Docket

FROM: Cac Kamak, AICP
Senior Planner

PURPOSE

The purpose of this memo is to provide a framework for discussing the Preliminary¹ Comprehensive Plan Amendment docket for 2014.

BACKGROUND

The 2013 docket for the city’s Comprehensive Plan Amendments included the Shoreline Master Program (SMP), Land Use change for 1000 SE City Beach Street, 2016 Comprehensive Plan Update process and continuation of the Scenic View Study. Most of the focus in 2013 was on the 2016 Update process to determine the scope of the update and to also formulate a Public Participation Plan. As described in the memo to Planning Commission on the 2013 amendments, the Shoreline Master Program that was being reviewed by DOE in 2013 is being considered separately for adoptions in accordance with RCW 90.58.050 and the. The land use change to 1000 SE City Beach Street and the scenic view study have been recommended for continuation.

As a refresher for the Planning Commission, the process of amending the City’s comprehensive plan as outlined in Oak Harbor Municipal Code Chapter 18.12 is summarized below.

Process

In accordance with OHMC 18.12.040, the preliminary docket is compiled each year with input from the public and the Planning Commission. This is done prior to a December 1st deadline. The intent of compiling the preliminary docket prior to December 1st is to provide public notice of the preliminary docket. The preliminary docket is advertised in the local newspaper paper and the City’s website. The Planning Commission then reviews the preliminary docket at its regular meeting in December and January and forwards it with a recommendation to the City Council before January 31st. The City Council then reviews it in February/March and approves a final docket for the year before March 31st.

Docket items

The Oak Harbor Municipal Code provides some direction on amendments that can be considered for a docket. The three types of amendments that can be placed on a docket are Sponsored, Mandated and Discretionary. These amendments are defined in OHMC 18.50.050 (3).

¹ The docket is considered “preliminary” until the City Council approves it. After approval, it is referred to as “final” or “annual”.

Sponsored Amendments

These are amendments that are proposed through an application process that is open to the general public. Sponsored amendments can either be *private* or *public*. An example of a *private* amendment is a request for changes to land use designations for private property that result in a change to the Future Land Use Map in the Comprehensive Plan. These are the most commonly received applications. The City has not received any applications to date but the deadline for submitting a request is December 2, 2013. *Public* sponsored amendments are requests for changes to policies with the Comprehensive Plan. Since changes to policies have potential for a larger community-wide impact and may affect other referenced plans, the procedures to consider these changes are different than the private sponsored amendments. The procedures are outlined in OHMC 18.15.060(2). The City has not received any public sponsored amendments to date. The land use change for 1000 SE City Beach street is considered a sponsored amendment and was added to the 2013 docket by the Development Services Director in accordance with OHMC 18.15.030(1)(d). This land use change consideration will be continued on the 2014 docket since further information is needed to process this amendment.

Mandated Amendments

These are amendments mandated by the State through the Growth Management Act (GMA), Shoreline Management Act (SMA) or other laws. The 2016 Comprehensive Plan Update is a mandated amendment required by the GMA and the City is expected to continue work on the 2016 Update in 2014 and in 2015. The Shoreline Master Program was mandated by the Shoreline Management Act (SMA) and required the City of Oak Harbor to approve a Shoreline Master Program (SMP) by December 2012. The City approved a SMP in 2012 and forwarded it for review to the Washington Department of Ecology (DOE). As mentioned earlier, the SMP is being adopted separately and its adoption will be considered an amendment to the Comprehensive Plan in accordance with RCW 90.58.050. The Capital Improvements Plan will also be updated in 2014 and is considered a mandated amendment. Mandated amendments are automatically given a Priority A in accordance to OHMC 18.15.050 (4).

Discretionary Amendments

As described in OHMC 18.15.050(3)(c), these amendments are added to the annual docket to proactively add, amend, revise, delete or further goals and policies in the Comprehensive Plan. Discretionary items can be added to the docket by boards, commissions, city council and by the director of development services. This is the category under which the Planning Commission can add items for consideration. The current study on scenic views was added to the docket under this provision. The Scenic View study is still underway and will be continued into 2014.

The Planning Commission can discuss whether the City can benefit from a discretionary amendment at this time. The marina uplands “Maritime” land use district was included on to the 2012 docket by Planning Commission recommendation. The scenic view study that is still on the docket was also recommended by the Planning Commission. Similar to past years, the Planning Commission can add items to the preliminary docket and review

it in January before making a final recommendation to the City Council at its January 28, 2014 meeting.

Attachments:

- Attachment 1 - OHMC Chapter 18.15 Comprehensive Plan Amendment Process
- Attachment 2 - Draft Preliminary Docket for 2014 Comprehensive Plan Update

Chapter 18.15 COMPREHENSIVE PLAN AMENDMENT PROCESS

Sections:

- 18.15.010 Comprehensive plan amendment process and public participation program.
- 18.15.020 Applicability.
- 18.15.030 Responsibility.
- 18.15.040 Amendment process and schedule.
- 18.15.050 Docket.
- 18.15.060 Sponsored amendments.
- 18.15.070 Preliminary docket review criteria.
- 18.15.080 Annual amendment decision criteria.
- 18.15.090 Public participation – Notice provisions.
- 18.15.100 Public participation program.
- 18.15.110 Technical advisory group.
- 18.15.120 Appeals.

18.15.010 Comprehensive plan amendment process and public participation program.

This chapter establishes the authority, process, format, and criteria by which the comprehensive plan may be amended in accordance with Chapter 36.70A RCW. This chapter also establishes the city's public participation program as required by RCW 36.70A.140. (Ord. 1565 § 2, 2009).

18.15.020 Applicability.

(1) This chapter shall apply to updates, amendments or revisions to the comprehensive plan that are considered by the city council no more frequently than once a year. At the discretion of the mayor, amendments may be considered more frequently than once a year for the following circumstances:

(a) The initial adoption of a subarea plan that does not modify the general vision, goals and policies of the comprehensive plan;

(b) The adoption or amendment of a shoreline master program under the procedures set forth in Chapter 90.58 RCW;

(c) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of the city budget.

(2) Although sometimes referred to as the annual docket, nothing in this chapter shall be deemed as requiring that amendments be undertaken every year. (Ord. 1565 § 3, 2009).

18.15.030 Responsibility.

(1) The director of development services shall have the responsibility to:

(a) Administer this chapter.

(b) Establish application and administrative procedures that may also include fee collection, refunds, etc.

(c) Review the applications and make a determination of completeness for inclusion in the preliminary docket for planning commission review.

(d) Place amendments on the preliminary docket for planning commission and city council consideration.

(e) Make a recommendation to the planning commission and the city council on the annual docket and work program.

(2) The planning commission shall have the responsibility to:

(a) Review proposed amendments to the comprehensive plan that are included in the annual preliminary docket.

(b) Hold a public hearing, deliberate, and make recommendations to the city council on the said annual preliminary docket.

(c) Place items, as determined by majority vote, on the preliminary docket for city council consideration.

(d) Review and study proposed amendments to the comprehensive plan that are included in the city council-approved annual docket for each year and hold a public hearing, deliberate, and make recommendations to the city council on said proposals.

(3) The city council shall have the responsibility to:

(a) Review each proposal on the preliminary docket to amend the comprehensive plan and make a final decision that results in establishing the planning commission's annual docket work program for each year.

(b) Place items, as determined by majority vote, on the annual docket.

(c) Hold a public hearing and make a final decision on the amendments pursuant to this section after the planning commission has provided a recommendation to the city council. (Ord. 1565 § 4, 2009).

18.15.040 Amendment process and schedule.

The comprehensive plan shall be amended pursuant to this chapter, no more frequently than once a year as part of the amendment cycle established in this chapter, except as provided in OHMC 18.15.020.

(1) The public shall be made aware of the deadline to submit proposed amendments to the comprehensive plan by means of two publications in the local newspaper of general circulation in the city, with the first notice published at least 30 days prior to the deadline.

(2) The deadline for submitting an application for amendments pursuant to this chapter is 5:00 p.m., December 1st of each year, or the next business day if December 1st falls on a Saturday or Sunday.

(3) Only applications that fulfill the requirements of OHMC 18.15.060 by the deadline in subsection (2) of this section shall be placed on the preliminary docket for consideration in the next annual amendment process.

(4) The planning commission may recommend amendments be added to the preliminary docket, but such recommendation shall be made before December 1st of each year so that they may be published along with other proposed amendments. Only such amendments that have received a majority vote by the planning commission shall be included in the preliminary docket for consideration.

(5) The director of development services shall review all complete applications submitted by the deadline set forth in subsection (2) of this section based upon the

threshold criteria set forth in OHMC 18.15.070(1) and place them on the preliminary docket along with the discretionary and mandated items in accordance with OHMC 18.15.050.

(6) The director of development services shall advertise the preliminary docket in the local newspaper of general circulation prior to its consideration for recommendation by the planning commission.

(7) The planning commission shall hold a public hearing on the preliminary docket and review said docket based on the criteria set forth in OHMC 18.15.070(2) and make a recommendation to the city council before January 31st of each year.

(8) The city council shall hold a public hearing and review the preliminary docket and, after such review and deliberation, establish an annual docket before March 31st of each year.

(9) The annual docket shall be advertised in the local newspaper of general circulation.

(10) Proposals on the annual docket shall be open for public input throughout the amendment process. However, formal and informal meetings such as but not limited to neighborhood meetings, town hall meetings, open houses, etc., will generally be scheduled between August 1st of each year and September 30th of each year to provide consistency and predictability. Public input on the amendments shall be in accordance with OHMC 18.15.090.

(11) A draft of the proposed amendments on the annual docket shall be transmitted to the Washington State Department of Commerce in accordance with the requirements of RCW 36.70A.106 not later than August 31st of each year.

(12) The planning commission shall hold a public hearing on the proposed amendments in the annual docket based on the criteria set forth in OHMC 18.15.080 and make a recommendation on each proposal to the city council before October 31st of each year.

(13) The city council shall hold a public hearing on the proposed amendments in the annual docket and take action on such amendments before December 31st of each year. (Ord. 1565 § 5, 2009).

18.15.050 Docket.

(1) Responsibility. The director of development services shall have responsibility to manage the preliminary docket as set forth in this section and assure that the process and schedule set forth in OHMC 18.40.040 are followed.

(2) Format.

(a) The docket shall not span a term of more than one year.

(b) The items on the preliminary docket shall be categorized by the type of amendments as set forth in subsection (3) of this section.

(c) Each agenda item on the preliminary docket shall be assigned a predetermined priority based on the criteria established in subsection (4) of this section.

(3) Types of Amendments.

(a) Sponsored Amendments. These are amendments that are proposed through the application process submitted prior to December 1st of each year for consideration in the annual docket. Sponsored amendments are limited to those amendments as set forth in OHMC 18.15.060.

(b) **Mandated Amendments.** These amendments are proposed for the annual docket in response to existing and scheduled mandates from the state and the countywide planning policies. The director of development services shall be responsible for placing proposals to meet such mandates on the preliminary docket for the year in which the mandate requires action.

(c) **Discretionary Amendments.** These amendments are added to the annual docket to proactively add, amend, revise, delete or further goals and policies in the comprehensive plan. Discretionary items can be added to the docket by boards, commissions or the council as established by the OHMC and by the director of development services. Discretionary items from boards and commissions shall be added to the docket only after such items have received a majority vote by said board, commission or council.

(4) **Prioritization.** Each item on the preliminary docket shall be assigned a pre-determined priority by the director based on the following criteria:

(a) **Priority A – Mandated.** Amendments and updates that are in response to an existing or scheduled mandate from the state or countywide planning policies shall automatically be considered during the appropriate amendment cycle.

(b) **Priority B – Sponsored.**

(i) Private amendments that are sponsored by an individual property owner or a group, that impact specific properties.

(ii) Public amendments that meet the requirements set forth in OHMC 18.15.060(2).

(c) **Priority C – Discretionary.** Discretionary amendments that are generated by boards, commissions and the council to further the goals and policies of the comprehensive plan.

(5) **Approval.** The city council shall establish by resolution the annual docket. The annual docket shall specifically apply only to the amendments listed for the current year. (Ord. 1565 § 6, 2009).

18.15.060 Sponsored amendments.

Sponsored amendments are initiated by the public through the application process. Sponsored amendments are classified into two categories as described below:

(1) **Private Amendments.** These are applications initiated by an individual property owner or a group of property owners who are requesting changes that will primarily impact properties that they own or control.

(a) **Application Requirements.**

(i) An application form provided by the department of development services and completed by the applicant that includes, at minimum, the applicant's name, address, contact information, property address and location, parcel number(s), existing land use designation, proposed land use designation and zoning designation.

(ii) A map of the property clearly showing the subject properties and its surrounding context.

(iii) A narrative clearly stating the proposal and what the amendment is attempting to accomplish.

(iv) A completed environmental checklist, if required by the director.

(v) An application processing fee in accordance with RCW 82.02.020.

(2) Public Amendments. These are applications initiated by the public requesting changes, additions, or updates to elements, maps, data, goals and policies that have an areawide or citywide significance. Since these requests can have an impact to the community at large, the application requirements vary from the private amendments.

(a) Application Requirements.

(i) A narrative clearly stating the proposal and what the amendment is attempting to accomplish.

(ii) Identification, address and contact information of the lead person or group initiating the proposed amendment.

(iii) Identify the goals and policies within the comprehensive plan that are proposed to be amended.

(iv) Proposed new or replacement language.

(v) Identify goals and policies that support the proposed amendment.

(vi) Supporting studies or findings that justify the proposed amendments.

(vii) A petition supporting the proposed amendment that includes the signatures and names and addresses of one of the following:

(A) No less than 250 residents or property owners of the city and its urban growth area; or

(B) Sixty percent of the property owners impacted by the proposed amendments.

(viii) An application processing fee is waived for public amendments. (Ord. 1565 § 7, 2009).

18.15.070 Preliminary docket review criteria.

(1) Applications. The director of development services shall review all complete applications submitted by the deadline set forth in OHMC 18.15.040 and make a decision whether each application should be placed on the preliminary docket based upon the following criteria:

(a) The application is complete and all relevant information in accordance with the requirements of OHMC 18.15.060(1)(a) or (2)(a) has been provided.

(b) The application was submitted by the deadline established in OHMC 18.15.040.

(c) The correct application processing fee has been paid in full by the deadline established in OHMC 18.15.040.

(2) The Preliminary Docket. The planning commission will review the proposed amendments on the preliminary docket and make a recommendation to the city council. Recommendations on whether agenda items shall be included in the annual docket should be based on one or more of the following criteria:

(a) The proposed amendments are consistent with the Growth Management Act and the countywide planning policies.

(b) The proposal does not appear to contradict other elements, goals and policies within the comprehensive plan.

(c) The proposal will implement or further existing goals and policies in the comprehensive plan.

(d) The proposal would correct an inconsistency within or make a clarification to a provision of the comprehensive plan.

(e) The proposed amendments have been clearly defined to determine a fairly accurate scope of work.

(f) The proposed amendments respond to an expressed desire by the community.

(g) The public interest would be best served by considering the proposal in the current year. (Ord. 1565 § 8, 2009).

18.15.080 Annual amendment decision criteria.

The planning commission shall review and the city council shall decide on all proposed amendments based on the following decision criteria, where applicable:

(1) The amendment will not adversely affect the public health, safety and welfare in any significant way.

(2) The proposed amendment is consistent with the overall goals and intent of the comprehensive plan.

(3) The amendment is in compliance with the Growth Management Act and the countywide planning policies.

(4) The amendment addresses the needs or changing circumstances of the community as a whole or resolves inconsistencies in the city's comprehensive plan.

(5) Environmental impacts from the amendments have been addressed through SEPA review and/or measures have been included that reduce possible impacts.

(6) The amendment is consistent with the land uses and growth projections which were the basis of the comprehensive plan or to subsequent updates to growth allocations.

(7) The amendment is generally compatible with neighboring land uses and surrounding neighborhoods.

(8) The proposed amendment accommodates new policy direction from the city council.

(9) Other specific criteria that may have been identified at the beginning of the process. (Ord. 1565 § 9, 2009).

18.15.090 Public participation – Notice provisions.

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

(a) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;

(b) Posting the property for site-specific proposals;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;
and

(e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

(2) Changes to Proposed Amendments.

(a) Except as otherwise provided in subsection (2)(b) of this section, if the legislative body for a county or city chooses to consider a change to an amendment to a

comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the city's procedures, an opportunity for review and comment on the proposed change shall be provided before the council votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under subsection (2)(a) of this section if:

(i) An environmental impact statement has been prepared under Chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;

(ii) The proposed change is within the scope of the alternatives available for public comment;

(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;

(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or

(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390. (Ord. 1565 § 10, 2009).

18.15.100 Public participation program.

Early, continuing and widespread public participation shall be provided during the comprehensive plan amendment process. The public notices for comprehensive plan amendments shall be in accordance with OHMC 18.20.380(5) pertaining to the Type V review process and with OHMC 18.20.386, where applicable. In accordance with RCW 36.70A.140, the following public participation program shall be incorporated into the amendment process:

(1) Broad Dissemination of Proposals and Alternatives.

(a) The call for proposals to amend the comprehensive plan shall be advertised in the local newspaper 30 days before the deadline for filing applications in accordance with the schedule in OHMC 18.15.040.

(b) The preliminary docket shall be advertised in the local newspaper prior to its review by the planning commission.

(c) The annual docket shall be advertised in the local newspaper after approval by city council.

(2) Opportunity for Written Comment. Written comments regarding items on the proposed docket or the annual docket can be submitted at any time during the review process up to the final city council hearing.

(3) Public Meetings After Effective Notice. All public hearings regarding comprehensive plan amendments shall follow the public notice provisions provided in OHMC 18.20.380 and 18.20.386, where applicable.

(4) Provisions for Open Discussions, Communication Programs and Information Services. The director of development services shall determine the appropriate public input forum to discuss items on the annual docket. Forums may include but not be limited to the following:

(a) Public Meeting and Workshops. Informal at-large public gatherings to solicit ideas, present proposals and encourage constructive feedback.

(b) Neighborhood Discussions. When a proposed amendment has a clear geographical interest.

(c) Open Houses. Advertised event to display information related to the amendments to the public including informal discussions with staff.

(d) Display Kiosks. Information display at general public events and venues.

(e) Websites and Blogs. An internet-based information distribution, discussion and input mechanism.

(5) Consideration of and response to comments may vary in form and may include letters, staff reports, responses on the web and web-based media. Written comments received after the final staff report on the subject amendment is prepared may not be responded to in writing. (Ord. 1565 § 11, 2009).

18.15.110 Technical advisory group.

(1) The mayor has the authority to appoint members to a technical advisory group if the city council approves the need for such a group and approves it as part of the annual docket approval process. The need for a technical advisory group shall be based on whether a specific amendment or amendments require:

(a) Technical expertise; or

(b) Scientific expertise; or

(c) Experience in a specific or unique field; or

(d) Input from two or more impacted groups; or

(e) Input from two or more public/government entities; or

(f) Any other reason not mentioned above as determined by the mayor.

(2) The term for members on the technical advisory group is limited to the duration of the specific amendment for which the group was formed. (Ord. 1565 § 12, 2009).

18.15.120 Appeals.

Appeal of a city council decision on a comprehensive plan amendment is governed by state law. (Ord. 1565 § 13, 2009).

Preliminary Docket for 2014 Comprehensive Plan Amendment

Category of Amendment	Amendments	Type of Amendment	Priority as per OHMC 18.15.050
Sponsored Amendments	1000 SE City Beach Street – continued Deadline for private amendments is Dec 2, 2013. Applications received will be added to the preliminary docket for review.		Priority B
Mandated Amendments	Capital Improvements Plan update Annual update to the projects list, revenues and expenditure.	Mandated RCW 36.70A.130	Priority A
	2016 Update to the Comprehensive Plan - continued	Mandated RCW 36.70A.130	Priority A
Discretionary Amendments	Scenic View study – continued	Discretionary	Priority C