

August 07 2014 3:21 PM

KEVIN STOCK  
COUNTY CLERK

THE HONORABLE VICKI HOGAN  
NO. 14-2-10487-7

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

MMH, LLC, a Washington Limited Liability  
Company,

Plaintiff,

vs.

CITY OF FIFE, a Washington municipal  
corporation,

Defendant.

No. 14-2-10487-7

DECLARATION OF JAMES DUSEK  
IN SUPPORT OF MOTION TO  
INTERVENE

I, James Dusek, declare:

1. I am over the age of eighteen. I have direct knowledge of the matters set forth in this declaration, am competent to testify and provide evidence in these proceedings, and if called as a witness, would testify under oath that these statements are true and correct.

2. I am a member of, and the registered agent for, Downtown Cannabis Company, LLC ("Downtown Cannabis"), with business operations located at 898 Valentine Avenue Southeast in

DECLARATION OF JAMES DUSEK IN  
SUPPORT OF MOTION TO INTERVENE -- 1

AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON FOUNDATION  
901 FIFTH AVENUE, STE 630  
SEATTLE, WA 98164  
(206) 464-3184

1 Pacific, Washington. I am authorized to represent the company in this matter.

2 3. Downtown Cannabis was formed as a Washington State Limited Liability Company  
3 on July 4, 2013.

4 4. On November 18, 2013, Downtown Cannabis filed with the Washington State Liquor  
5 Control Board (LCB) its application for licenses to produce and process marijuana under  
6 Washington state law.

7 5. On November 19, 2013, I secured a lease for the location where Downtown Cannabis  
8 would produce and process marijuana if granted licenses by the State of Washington and City of  
9 Pacific.

10 6. On November 21, 2013, I emailed Pacific Mayor Leanne Guier to introduce myself,  
11 explain that Downtown Cannabis had secured a lease, and was in the process of applying for  
12 licenses to produce and process marijuana, in the Light Industrial zoned area of Pacific.  
13 Attached to this declaration as Exhibit A is a true and correct copy of my email to Mayor Guier.

14 7. I did not receive any communication from any representative of the City of Pacific  
15 until LCB forwarded to me a letter objecting to Downtown Cannabis's license application,  
16 received by LCB on January 10, 2014. Attached to this declaration as Exhibit B is a true and  
17 correct copy of the objection letter.

18 8. On February 3, 2014, the Pacific City Council adopted a six-month moratorium on  
19 issuing licenses to marijuana businesses. Attached to this declaration as Exhibit C is a true and  
20 correct copy of the ordinance.

21 9. On March 6, 2014, LCB issued Downtown Cannabis state licenses to produce and  
22 process marijuana at 898 Valentine Avenue Southeast in Pacific, Washington. Attached to this  
23 declaration as Exhibit D are true and correct copies of these licenses.

24 10. On July 28, 2014, the Pacific City Council extended its moratorium on issuing  
25 licenses to marijuana businesses for an additional six months. Attached to this declaration as  
26 Exhibit E is a true and correct copy of the adopted ordinance.

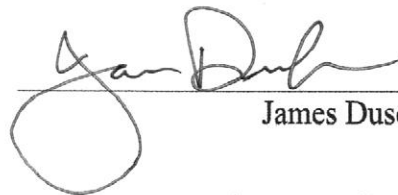
1 11. In a surprise turn of events, the Pacific City Council is now considering an outright  
2 ban on licensing any marijuana business. A new draft ordinance banning marijuana businesses  
3 was put forth by the Council at its July 28, 2014 meeting. A true and accurate copy is attached  
4 as Exhibit F.

5 12. Beginning on or about November 19, 2013, and continuing to the present day,  
6 Downtown Cannabis has invested and expended significant time and financial resources to build  
7 out and equip the Downtown Cannabis facility to meet state regulatory standards, execute  
8 necessary business documents, locate suppliers and vendors, meet with attorneys, accountants  
9 and consultants, attend educational seminars provided by LCB, participate in numerous City of  
10 Pacific council and planning commission meetings, and participate in the City of Pacific  
11 Marijuana Workgroup commissioned by the city council, all in an effort to launch a successful  
12 marijuana production and processing business. A rough estimate of the funds invested and  
13 expended to date is \$150,000. Costs continue to accrue each day that Downtown Cannabis is not  
14 issued a local business license by the City of Pacific.

15 13. I am very concerned that a ruling by this Court that cities can ban state-licensed  
16 marijuana businesses will push the Pacific City Council in the direction of adopting the new draft  
17 ban ordinance under consideration, and all investments of resources into, and potential earnings  
18 from, Downtown Cannabis will be lost.

19  
20 I declare under penalty of perjury under the laws of the State of Washington and the  
21 United States of America that the foregoing is true and correct.  
22

23 DATED this 6 day of August, 2014, at Pacific, Washington.  
24

25  
26   
James Dusek

# EXHIBIT A



James Dusek &lt;jamesdowntowncc@gmail.com&gt;

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## New Business Community Member Introduction

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**James Dusek** <jamesdowntowncc@gmail.com>

Fri, Jan 10, 2014 at 5:20 PM

Draft To: James Dusek &lt;jamesdowntowncc@gmail.com&gt;

On Fri, Jan 10, 2014 at 5:17 PM, James Dusek <jamesdowntowncc@gmail.com> wrote:

----- Forwarded message -----

From: **James Dusek** <jamesdowntowncc@gmail.com>

Date: Thu, Nov 21, 2013 at 7:50 AM

Subject: New Business Community Member Introduction

To: lguier@ci.pacific.wa.us

Good Morning Mayor Guier,

I hope everything is going well for you today. My name is James Dusek and I am the owner of DownTown Cannabis Company LLC. I have recently leased a building in the light industrial zoned area of the City of Pacific and I've have applied for the license to produce and process Cannabis for the Liquor Control Board per I-502. I am very excited to be a part of the business community in the City of Pacific and would appreciate the opportunity to meet with you to introduce myself, answer any questions and address any concerns you may have regarding operations of the business. As I mentioned we will only be producing and processing so there will be no signage or foot traffic to and from my location. My schedule is completely open this week and next. Please feel free to give me a call at any time. Thank you very much.

Thank you,

James Dusek

DownTown Cannabis Company LLC

425-829-0836

# EXHIBIT B

WAR



# NOTICE OF MARIJUANA LICENSE APPLICATION

RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD  
License Division  
3000 Pacific, PO Box 43075  
Olympia, WA 98504-3075  
Customer Service: (360) 664-1600  
Fax: (360) 753-2710  
Website: www.liq.wa.gov  
DATE: 12/31/13

TO: CITY OF PACIFIC  
RE: NEW APPLICATION

UBI: 603-312-134-001-0001

License: 412075 - County: 27  
Tradename: DOWNTOWN CANNABIS COMPANY  
Loc Addr: 898 VALENTINE AVE SE  
PACIFIC, WA 98047-2100

Mail Addr: 527 GRANT AVE S  
RENTON, WA 98057-6041

Phone No.: 425-829-0836 JAMES DUSEK

APPLICANTS:

DOWNTOWN CANNABIS COMPANY LLC

DUSEK, JAMES

1975-09-08

RECEIVED  
JAN 10 2014  
LICENSING DIVISION

Privileges Applied For:  
MARIJUANA PRODUCER TIER 2  
MARIJUANA PROCESSOR

As required by RCW 69.50.331(7) the Liquor Control Board is notifying you that the above has applied for a marijuana license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of this license. If you need additional time to respond you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on the SSN, contact our Marijuana CHRI Desk at (360) 664-1772.

- |   | YES                                 | NO                                  |
|---|-------------------------------------|-------------------------------------|
| 1. Do you approve of applicant? .....   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 2. Do you approve of location? .....  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken (See WAC 314-55-160 for information about this process)? ..... | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 4. If you disapprove, per RCW 69.50.331(7)(c) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all the facts on which your objection(s) are based.          |                                     |                                     |

1/7/14  
DATE

 PUBLIC WORKS DIRECTOR  
SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS  
OR DESIGNEE



CITY OF PACIFIC  
100 3RD AVENUE SOUTHEAST  
PACIFIC, WASHINGTON 98047  
CITY HALL (253) 929-1100  
FAX (253) 939-6026

January 7, 2014

Washington State Liquor Control Board  
License Division  
3000 Pacific, Po Box 43075  
Olympia, WA 98504-3075

To whom it may concern,

The City Of Pacific currently has a moratorium in place, and we are currently working on an ordinance to deal with this matter. The moratorium will be extended in February for six more months, while we The City, complete the Ordinance process.

Sincerely

Kenneth C. Barnett  
Interim Public Works Director

RECEIVED  
JAN 10 2014  
LICENSING DIVISION



# EXHIBIT C

**CITY OF PACIFIC, WASHINGTON  
ORDINANCE NO. 2014-1855**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO THE RECREATIONAL AND MEDICAL USE OF MARIJUANA, ADOPTING AN INTERIM ZONING ORDINANCE PROHIBITING THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES, PROPERTY OR USES RELATING TO RECREATIONAL OR MEDICAL MARIJUANA PRODUCTION, PROCESSING, CULTIVATION, STORAGE, SALE, DELIVERY, EXCHANGE OR BARTERING, TO BE IN EFFECT UNTIL THE CITY ADOPTS "PERMANENT" ZONING REGULATIONS ON THE SAME SUBJECT, WHICH INCLUDES A PROHIBITION ON THE SUBMISSION OF BUSINESS LICENSE APPLICATIONS FOR SUCH USES, THIS INTERIM ORDINANCE TO BE EFFECTIVE IMMEDIATELY, SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THE INTERIM ZONING ORDINANCE, AND ESTABLISHING THE DATE OF A PUBLIC HEARING ON THE INTERIM ZONING ORDINANCE.

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**Medical Marijuana**

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, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law," (RCW 69.51A.005), but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes" (RCW 69.51A.020); and

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011, which directed employees of the Washington State Departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis; and

WHEREAS, this bill required that the Department of Health develop a secure registration system for licensed producers, processors and dispensers, but these

provisions, together with many others relating to dispensaries and definitions, were vetoed by the Governor; and

WHEREAS, ESSSB 5073 provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, under certain defined circumstances (possession of a limited number of plants or usable cannabis, cultivation of a limited number of plants in the qualifying patient or designated care provider's residence or in a collective garden); and

WHEREAS, Washington's Governor vetoed all of the provisions relevant to medical marijuana dispensaries in ESSSB 5073 but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually within their residences and in collective gardens; and

WHEREAS, ESSSB 5073 was codified in chapter 69.51A RCW; and

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and to impose business taxes on the production, processing or dispensing of medical cannabis or cannabis products; and

## **RECREATIONAL MARIJUANA**

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which "authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana"; and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana processors to "process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license a marijuana retailer to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (I-502, Sec. 4(3)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor Control Board's issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library,

or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Section 8); and

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

WHEREAS, the Washington State Liquor Control Board has adopted rules to implement I-502, which include, among other things: the state licensing of premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by which licensees may transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a Memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes; and

WHEREAS, in this Memo, the DOJ advised that in recent years, the DOJ has “focused its efforts on certain law enforcement priorities that are particularly important to the federal government,” such as: (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified 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”; and

WHEREAS, in this Memo, the DOJ warned that a regulatory system adequate to this task “must not only contain robust controls and procedures on paper, it must also be effective in practice”; and

WHEREAS, in this Memo, the DOJ advised that “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]” and that federal 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 but effective state regulatory system”; and

WHEREAS, on January 16, 2013, the Washington State Attorney General’s Office issued an opinion, which determined that local governments may decide to either zone or ban recreational marijuana uses within their jurisdictions; and

WHEREAS, while the LCB adopted one report on the environmental impacts associated with the cultivation of marijuana, the City is not aware of any other analyses performed by the State of Washington to determine the environmental or secondary land use impacts that a proliferation of medical and recreational marijuana uses would have on towns, cities and counties in Washington; and

WHEREAS, nothing indicates that the LCB will perform any analyses under the State Environmental Policy Act (SEPA) to determine the significant adverse environmental impacts associated with any individual licensee’s operation of a marijuana business; and

WHEREAS, the City plans under the Growth Management Act (“GMA,” chapter 36.70A RCW), and is required to perform SEPA prior to adopting any comprehensive plan or development regulations; and

WHEREAS, given that the City has no environmental information upon which to make any determinations relating to marijuana uses, the City must collect the same from either the experiences of other areas or by empirical knowledge (after the use has located in the City and the impacts are known); and

WHEREAS, the City intends to take careful, deliberate steps to evaluate marijuana uses, and to perform the environmental analysis that the State omitted; and

WHEREAS, the City passed Ordinance 1804, 1823, 1843 and 1848, all of which adopted a moratorium on medical marijuana, which acknowledged marijuana’s uncertain legal status and the lack of information available to the City; and

WHEREAS, the City acknowledges that it has not budgeted any funds for the implementation of any medical marijuana enforcement scheme that could satisfy the DOJ’s enforcement priorities; and

WHEREAS, the City Council therefore believes that the adoption of an interim zoning and business licensing ordinance temporarily banning all marijuana uses, is

necessary to preserve the status quo, until the City Council can study, draft, hold public hearings and adopt the appropriate regulations (if any) to address these new uses; and

WHEREAS, Section 36.70A.390 of the Revised Code of Washington authorizes the City Council to adopt an interim zoning ordinance for a period of up to six months proposal provided that a public hearing is held within at least sixty days of its adoption; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC DOES ORDAIN AS FOLLOWS:

**Section 1.** Definitions. The following definitions apply to the terms used in this Ordinance:

A. "Cannabis" or "Marijuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

B. "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

C. "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.

D. "Collective Garden" means those gardens authorized under RCW 69.51A.085, which 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 limited conditions, including:<sup>1</sup>

(1) No more than ten Qualifying Patients may participate in a single collective garden at any time;

(2) A Collective Garden may contain no more than fifteen plants per Qualifying Patient, up to a total of forty-five plants;

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<sup>1</sup> Additional definition appears in RCW 69.51A.085(2).

(3) 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; and

(4) A copy of each Qualifying Patient's valid documentation or proof of registration with the registry established in state law (now or in the future), including a copy of the Qualifying Patient's proof of identity, must be available at all times on the premises of the Collective Garden;

(5) No Usable Cannabis from the Collective Garden may be delivered to anyone other than one of the Qualifying Patients participating in the Collective Garden; and

(6) A business license must be obtained for the Collective Garden through the City.

E. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

F. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

G. "Designated care provider" means a person who:

(1) Is eighteen years of age or older;

(2) Has been designated in writing by a patient to serve as a designated provider under chapter 69.51A RCW; and

(3) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and

(4) Is the designated provider to only one patient at any one time.

H. "Dispensary, Medical Marijuana" means: any location that does not meet the definition of a "Collective Garden" and does not have a license from the Liquor Control Board of the State of Washington for a marijuana producer, processor or retailer pursuant to I-502, where medical cannabis or marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold to a qualified patient, designated provider or any other member of the public. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell or give away medical cannabis or marijuana to a qualified patient, designated provider or any other member of the public.

I. "Dispense" means the interpretation of a prescription or order for medical cannabis, and pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

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

K. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

L. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

M. “Legal parcel” means a parcel of land for which one legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this ordinance.

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

O. “Manager” means any person to whom a medical marijuana collective garden has delegated discretionary powers to organize, direct and carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the business: (a) to hire, select, or supervise employees or staff, including volunteers; (b) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (c) to disburse funds of the business other than for the receipt of regularly replaced items of stock; or (d) to make, or participate in making, policy decisions relative to operations of the business.

P. “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 usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

Q. “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.

R. “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.



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

T. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

U. "Medical (or medicinal) use of cannabis or marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(r), for the exclusive benefit of a Qualifying Patient in the treatment of his or her terminal or debilitating illness.

V. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

X. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

Y. "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, or address, either alone or when combined with other sources, that establish the person is a Qualifying Patient or Designated Provider.

Z. "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

AA. "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.

BB. "Process" means to handle or process cannabis in preparation for medical or recreational use.

CC. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

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

EE. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school

purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

FF. "Public Transit Center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

GG. "Qualifying Patient" means a person who:

1. Is a patient of a health care professional;
2. Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
3. Is a resident of the state of Washington at the time of such diagnosis;
4. Has been advised by that health care professional about the risks and benefits of the medical use of marijuana;
5. Has been advised by that health care professional that he or she may benefit from the medical use of marijuana; and
6. Is otherwise in compliance with the terms and conditions established in chapter 69.51A RCW.

HH. "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.

II. "Residential treatment facility" means a facility providing for treatment of drug and alcohol dependency;

JJ. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

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

LL. "Terminal or debilitating medical condition" means:

1. Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
2. Intractable pain, limited for the purpose of this ordinance to mean pain unrelieved by standard medical treatments and medications; or
3. Glaucoma, either acute or chronic, limited for the purpose of this ordinance to mean increased intraocular pressure unrelieved by standard treatments and medications; or
4. Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or
5. Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
6. Diseases, including anorexia, which result in nausea, vomiting, cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or
7. Any other medical condition duly approved by the Washington State Medical Quality Assurance Commission in consultation with the Board of Osteopathic Medicine and Surgery as directed in chapter 69.51A RCW.

MM. "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

NN. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term "usable cannabis or usable marijuana" does not include marijuana-infused products or cannabis products.

OO. "Valid documentation" means:

1. A statement signed and dated by a Qualifying Patient's Health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis/marijuana;
2. Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and
3. In the case of a Designated Provider, the signed and dated document valid for one year from the date of signature executed by the Qualifying Patient who has designated the Provider.

**Section 2:** **Findings.** The Council adopts all of the "whereas" sections of this Ordinance as findings to support this interim zoning ordinance, as well as the following:

A. The purpose of this interim zoning ordinance is to maintain the status quo while the City drafts and considers a new ordinance on the subject of medical cannabis/marijuana and recreational marijuana. Based on the information available to the City today, it is predicted that this draft ordinance will (1) explicitly prohibit medical marijuana dispensaries, medical marijuana collective gardens (including those defined

in RCW 69.51A.085); and (2) explicitly prohibit recreational marijuana retailers, producers and processors, including those licensed by the State of Washington.

B. The City will consider adoption and enforcement of such an ordinance during the next six months, while this interim zoning ordinance is in effect. During this time, if the Washington State Legislature acts to adopt laws addressing medical and/or recreational marijuana, the City shall evaluate these new laws to determine whether this position should change. In addition, the City will consider whether there is any information (whether on the environmental, secondary land use and/or economic impacts) associated with marijuana uses that can be used for purposes of drafting regulations addressing such uses.

C. During the period of time that this interim zoning ordinance is in effect, the City will also consider the manner in which the negative impacts and secondary effects associated with the marijuana uses (on-going or predicted) in the City can be ameliorated, including but not limited to, the demands that will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana prescriptions, murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.

D. The State of Washington has adopted a strict regulatory and enforcement system for the cultivation, processing and sale of recreational marijuana, but no licenses have yet issued, and there is no way to determine whether (or the manner in which) the State will enforce these rules. The Council also acknowledges that the State has not performed any environmental analyses that will assist cities, towns and counties in the adoption of local regulations addressing marijuana uses, and that municipalities must therefore either develop their own analyses or observe these impacts after-the-fact (or, *after* these marijuana uses locate and begin operation in cities, towns and counties throughout Washington.) Then, the municipalities will be required to “fix” the problems stemming from these uses with their already scarce resources.

E. In sum, the City Council believes that it cannot adopt legislation to address the negative environmental impacts and secondary land use effects of medical and recreational marijuana uses until the extent of these impacts are known, new laws are adopted to bridge the gap between recreational and medical marijuana uses, and there is strict enforcement of these laws.

F. No part of this interim ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. This interim ordinance is not intended to address or invite litigation over the question whether the State of Washington’s medical or recreational marijuana laws (or this City’s laws) satisfy the

federal government's enforcement priorities. Nothing in this interim ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this interim ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this interim ordinance be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

**Section 3. Interim Ordinance Adopted.** This interim ordinance is immediately adopted for a period of six months in order to provide the City adequate time to:

A. Study the secondary land use impacts associated with the location and siting of structures and uses in which medical and recreational marijuana production, marijuana processing or marijuana retailing may take place. This includes, but is not limited to, all activities associated with medical marijuana, including individual cultivation, collective gardens, transfer, bartering, exchange and delivery of marijuana between qualified patients and designated providers. This work will begin upon adoption of this ordinance and is expected to take 4 months.

B. Allow the City adequate time to study the effects of state licensed marijuana uses as they operate in other areas (throughout Washington, Colorado and other states adopting similar laws). This work will begin upon adoption of this ordinance and is expected to take 4 months.

C. Await the Legislature's adoption of any new legislation on the subject of marijuana uses in Washington. The Council shall continue monitoring the Legislature's activity while this ordinance is in effect, or for the next six months.

D. Draft ordinances addressing marijuana uses in the City. This work will begin immediately after the activities described in A and B of this Section are complete.

E. Hold a public hearing(s) on the draft ordinances, obtain public input on such ordinances, allow the Planning Commission to make recommendations to the City Council, for the City Council to review the draft ordinance and, if desired, to adopt new regulations or prohibitions on marijuana uses. This work will begin immediately after the activities described in A, B and D are complete.

Ordinance 1848, which adopted a moratorium on marijuana uses, is hereby repealed as of the effective date of this interim zoning ordinance.

**Section 4. Effect of Interim Zoning Ordinance.** The City Council imposes an immediate six-month prohibition on the acceptance of all development permit and business license applications for any structure, use or operation involving marijuana production, marijuana processing or marijuana retailing, as the same are defined in this Ordinance.

All such development permit and business license applications shall be rejected and returned to the applicant.

**Section 5. Duration of Interim Zoning Ordinance.** This interim zoning ordinance shall commence on the effective date set forth in Section 10 herein. As long as the City holds a public hearing on the interim zoning ordinance and adopts findings and conclusions in support of the interim zoning ordinance (as contemplated by Section 6 herein), the interim zoning ordinance shall not terminate until six (6) months after the date of adoption, or at the time all of the events described in Section 3 have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

**Section 6. Public Hearing on Interim Zoning.** Pursuant to RCW 36.70A.390 and RCW 35.63.200, the City Council shall hold a public hearing on this interim zoning ordinance within sixty (60) days of its adoption, or before April 3, 2014. The Council hereby schedules this hearing for March 10, 2014. During the next Council meeting immediately following, the City Council shall adopt findings of fact on the subject of this interim zoning ordinance and either justify its continued imposition or repeal this ordinance.

**Section 7. Declaration of Emergency.** The City Council hereby declares that an emergency exists necessitating that this interim zoning ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum.<sup>2</sup> If this interim zoning ordinance is not adopted immediately, applications for marijuana uses and business licenses could be submitted to the City and arguably become vested, leading to development that could be incompatible with the regulations eventually adopted by the City (after the process described herein). Therefore, the interim zoning ordinance must be adopted immediately as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time.

**Section 8. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

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

**Section 10. Effective Date.** This Ordinance shall take effect and be in full force immediately upon passage, having received the vote of a majority plus one of the entire Council.

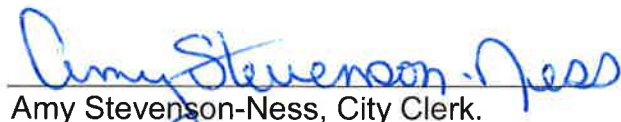
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<sup>2</sup> RCW 35A.12.130 for code cities.

PASSED by the City Council of Pacific this 3<sup>rd</sup> day of February, 2014.

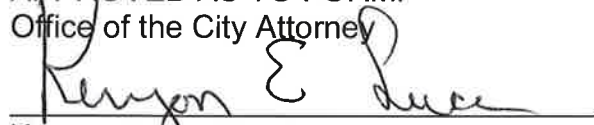
  
Learnie Guier, Mayor

AUTHENTICATED:

  
Amy Stevenson-Ness, City Clerk.

APPROVED AS TO FORM:

Office of the City Attorney

  
Kenyon Luce, City Attorney

PUBLISHED:

EFFECTIVE DATE:

# EXHIBIT D





STATE OF  
WASHINGTON

# BUSINESS LICENSE

Domestic Limited Liability Company

DOWNTOWN CANNABIS COMPANY LLC  
DOWNTOWN CANNABIS COMPANY  
898 VALENTINE AVE SE  
PACIFIC WA 98047 2100

Unified Business ID #: 603 312 134

Business ID #: 1

Location: 1

Expires: 03-31-2015

TAX REGISTRATION  
MARIJUANA PRODUCER TIER 2 #412075  
(Expires: 07-31-2014)  
MARIJUANA PROCESSOR #412075

(Expires: 07-31-2014)  
SCALE-SMALL (1)

REGISTERED TRADE NAMES:  
DOWNTOWN CANNABIS COMPANY

This document lists the registrations, endorsements, and licenses authorized for the business named above. By accepting this document, the licensee certifies the information on the application was complete, true, and accurate to the best of his or her knowledge, and that business will be conducted in compliance with all applicable Washington state, county, and city regulations.

Director, Department of Revenue





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WASHINGTON

# BUSINESS LICENSE

Domestic Limited Liability Company

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Director, Department of Revenue

# EXHIBIT E

**CITY OF PACIFIC, WASHINGTON  
ORDINANCE NO. 2014-1866**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO THE RECREATIONAL AND MEDICAL USE OF MARIJUANA, EXTENDING THE INTERIM ZONING ORDINANCE ADOPTED ON 2-3-14 UNDER ORDINANCE NO. 2014-1855, PROHIBITING THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES, PROPERTY OR USES RELATING TO RECREATIONAL OR MEDICAL MARIJUANA PRODUCTION, PROCESSING, CULTIVATION, STORAGE, SALE, DELIVERY, EXCHANGE OR BARTERING, TO BE IN EFFECT UNTIL THE CITY ADOPTS "PERMANENT" ZONING REGULATIONS ON THE SAME SUBJECT, WHICH INCLUDES A PROHIBITION ON THE SUBMISSION OF BUSINESS LICENSE APPLICATIONS FOR SUCH USES, THIS INTERIM ORDINANCE TO BE EFFECTIVE IMMEDIATELY, SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THIS EXTENSION OF THE INTERIM ZONING ORDINANCE, AND ESTABLISHING THE DATE OF A PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE INTERIM ZONING ORDINANCE.

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**MEDICAL MARIJUANA**

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, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law," (RCW 69.51A.005), but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes" (RCW 69.51A.020); and

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011, which directed employees of the Washington State Departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis; and

WHEREAS, this bill required that the Department of Health develop a secure registration system for licensed producers, processors and dispensers, but these provisions, together with the provisions relating to dispensaries and the definitions, were vetoed by the Governor; and

WHEREAS, ESSSB 5073 provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, under certain defined circumstances (participation in the registry, possession of a limited number of plants or usable cannabis, cultivation of a limited number of plants in the qualifying patient or designated care provider's residence or in a collective garden); and

WHEREAS, Washington's Governor vetoed all of the provisions relevant to medical marijuana dispensaries in ESSSB 5073 but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually within their residences and in collective gardens; and

WHEREAS, ESSSB 5073 was codified in chapter 69.51A RCW; and

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and to impose business taxes on the production, processing or dispensing of medical cannabis or cannabis products, which the Washington Court of Appeals has interpreted to authorize complete bans on medical marijuana uses, such as collective gardens (*Cannabis Action Coalition v. City of Kent*, 322 P.3d 1246, 1253 (2014)); and

## **RECREATIONAL MARIJUANA**

WHEREAS, In November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors and retailers; and

WHEREAS, on the LCB adopted regulations (chapter 314-55 WAC) which: prohibit the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, describes the manner in which marijuana growing may take place,<sup>1</sup> limits the average inventory on the licensed premises at any time,

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<sup>1</sup> Under WAC 314-55-075, recreational marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

WHEREAS, according to the administrative rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on January 14, 2014, the Washington State Attorney General issued an opinion finding that local governments are not preempted by state law from banning the location of a recreational marijuana business, even if the business has been licensed by the LCB (AGO 2014 No. 2)); and

WHEREAS, in the same Attorney General Opinion, the Attorney General also gave the opinion that cities could establish restrictions on recreational marijuana businesses licensed by the LCB, even if such restrictions made it “impractical for a licensed marijuana business to locate within their jurisdiction” (AGO 2014 No. 2); and

WHEREAS, the City adopted Ordinances 1804, 1823, 1843, 1848 and 1855, adopting moratoria or interim zoning on marijuana uses (including recreational marijuana uses); and

WHEREAS, the detailed licensing and comprehensive regulatory system for recreational marijuana in I-502 is substantially different from what little remains in chapter 69.51A RCW to regulate medical marijuana after the Governor’s veto; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a Memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes; and

WHEREAS, in this Memo, the DOJ advised that in recent years, the DOJ has “focused its efforts on certain law enforcement priorities that are particularly important to the federal government,” such as: (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified 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”; and

WHEREAS, in this Memo, the DOJ warned that a regulatory system adequate to this task “must not only contain robust controls and procedures on paper, it must also be effective in practice”; and

WHEREAS, in this Memo, the DOJ advised that “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]” and that federal 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 but effective state regulatory system”; and

WHEREAS, a comparison of the LCB’s rules for recreational marijuana and chapter 69.51A RCW for medical marijuana demonstrates that there is virtually no state regulatory system for medical marijuana, and that even if local governments decided to adopt the type of medical marijuana system that would protect against the harms identified in the federal government’s enforcement priorities, most local governments do not have the resources to be able to enforce such regulations; and

WHEREAS, after considering the August 29, 2013 DOJ Memo, the City has determined that even if the City decided to adopt an ordinance on the subject of medical marijuana in order to provide the type of regulatory system that the DOJ might find adequate to protect against the harms identified in the federal government’s enforcement priorities, the City does not have the resources to enforce such a system; and



WHEREAS, the City adopted Ordinances 1804, 1823, 1848 and 1855, adopting moratoria or interim zoning on marijuana uses; and

WHEREAS, on July 28, 2014, the Council considered this ordinance during its regular meeting; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC DOES ORDAIN AS FOLLOWS:

**Section 1.** Definitions. The following definitions apply to the terms used in this Ordinance:

A. "Cannabis" or "Marijuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

B. "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

C. "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.

D. "Collective Garden" means those gardens authorized under RCW 69.51A.085, which 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 limited conditions, including:<sup>2</sup>

(1) No more than ten Qualifying Patients may participate in a single collective garden at any time;

(2) A Collective Garden may contain no more than fifteen plants per Qualifying Patient, up to a total of forty-five plants;

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<sup>2</sup> Additional definition appears in RCW 69.51A.085(2).



(3) 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; and

(4) A copy of each Qualifying Patient's valid documentation or proof of registration with the registry established in state law (now or in the future), including a copy of the Qualifying Patient's proof of identity, must be available at all times on the premises of the Collective Garden;

(5) No Usable Cannabis from the Collective Garden may be delivered to anyone other than one of the Qualifying Patients participating in the Collective Garden; and

(6) A business license must be obtained for the Collective Garden through the City.

E. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

F. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

G. "Designated care provider" means a person who:

- (1) Is eighteen years of age or older;
- (2) Has been designated in writing by a patient to serve as a designated provider under chapter 69.51A RCW; and
- (3) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and
- (4) Is the designated provider to only one patient at any one time.

H. "Dispensary, Medical Marijuana" means: any location that does not meet the definition of a "Collective Garden" and does not have a license from the Liquor Control Board of the State of Washington for a marijuana producer, processor or retailer pursuant to I-502, where medical cannabis or marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold to a qualified patient, designated provider or any other member of the public. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell or give away medical cannabis or marijuana to a qualified patient, designated provider or any other member of the public.

I. "Dispense" means the interpretation of a prescription or order for medical cannabis, and pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

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

K. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

L. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

M. “Legal parcel” means a parcel of land for which one legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this ordinance.

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

O. “Manager” means any person to whom a medical marijuana collective garden has delegated discretionary powers to organize, direct and carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the business: (a) to hire, select, or supervise employees or staff, including volunteers; (b) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (c) to disburse funds of the business other than for the receipt of regularly replaced items of stock; or (d) to make, or participate in making, policy decisions relative to operations of the business.

P. “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 usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

Q. “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.

R. “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.

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

T. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

U. "Medical (or medicinal) use of cannabis or marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(r), for the exclusive benefit of a Qualifying Patient in the treatment of his or her terminal or debilitating illness.

V. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

X. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

Y. "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, or address, either alone or when combined with other sources, that establish the person is a Qualifying Patient or Designated Provider.

Z. "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

AA. "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.

BB. "Process" means to handle or process cannabis in preparation for medical or recreational use.

CC. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

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

EE. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school

purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

FF. “Public Transit Center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

GG. “Qualifying Patient” means a person who:

1. Is a patient of a health care professional;
2. Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
3. Is a resident of the state of Washington at the time of such diagnosis;
4. Has been advised by that health care professional about the risks and benefits of the medical use of marijuana;
5. Has been advised by that health care professional that he or she may benefit from the medical use of marijuana; and
6. Is otherwise in compliance with the terms and conditions established in chapter 69.51A RCW.

HH. “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.

II. “Residential treatment facility” means a facility providing for treatment of drug and alcohol dependency;

JJ. “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

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

LL. "Terminal or debilitating medical condition" means:

1. Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
2. Intractable pain, limited for the purpose of this ordinance to mean pain unrelieved by standard medical treatments and medications; or
3. Glaucoma, either acute or chronic, limited for the purpose of this ordinance to mean increased intraocular pressure unrelieved by standard treatments and medications; or
4. Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or
5. Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
6. Diseases, including anorexia, which result in nausea, vomiting, cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or
7. Any other medical condition duly approved by the Washington State Medical Quality Assurance Commission in consultation with the Board of Osteopathic Medicine and Surgery as directed in chapter 69.51A RCW.

MM. "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

NN. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term "usable cannabis or usable marijuana" does not include marijuana-infused products or cannabis products.

OO. "Valid documentation" means:

1. A statement signed and dated by a Qualifying Patient's Health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis/marijuana;
2. Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and
3. In the case of a Designated Provider, the signed and dated document valid for one year from the date of signature executed by the Qualifying Patient who has designated the Provider.

**Section 2:** **Findings.** The Council adopts all of the "whereas" sections of this Ordinance as findings to support this interim zoning ordinance, as well as the following:

A. The purpose of this interim zoning ordinance is to maintain the status quo while the City drafts, considers and adopts a new ordinance on the subject of medical cannabis/marijuana and recreational marijuana.

B. The City will consider adoption and enforcement of such an ordinance during the next six months, while this interim zoning ordinance is in effect. During the period of time that this interim zoning ordinance is in effect, the City will also consider the manner in which the negative impacts and secondary effects associated with the marijuana uses (on-going or predicted) in the City can be ameliorated, including but not limited to, the demands that will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana prescriptions, murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.

C. The State of Washington has adopted a strict regulatory and enforcement system for the cultivation, processing and sale of recreational marijuana. The Liquor Control Board has recently begun issuing the licenses, but it is still too early to determine whether (or the manner in which) the State will enforce these rules. The Council also acknowledges that the State has not performed any environmental analyses that will assist cities, towns and counties in the adoption of local regulations addressing marijuana uses, or the environmental impacts associated with individual licenses and that municipalities must therefore either develop their own analyses or observe these impacts after-the-fact (or, *after* these marijuana uses locate and begin operation in cities, towns and counties throughout Washington.) Then, the municipalities will be required to “fix” the problems stemming from these uses with their already scarce resources.

D. No part of this interim ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. This interim ordinance is not intended to address or invite litigation over the question whether the State of Washington’s medical or recreational marijuana laws (or this City’s laws) satisfy the federal government’s enforcement priorities. Nothing in this interim ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this interim ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this interim ordinance be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

**Section 3. Interim Ordinance Adopted.** This interim ordinance is immediately adopted for a period of six months in order to provide the City adequate time to:

A. Hold a public hearing on the secondary land use impacts associated with the location and siting of structures and uses in which medical and recreational marijuana production, marijuana processing or marijuana retailing may take place. This includes, but is not limited to, all activities associated with medical marijuana, including individual cultivation, collective gardens, transfer, bartering, exchange and delivery of marijuana between qualified patients and designated providers. Have the City Council direct the Planning Commission to consider a draft ordinance. This work will begin upon adoption of this ordinance and is expected to take 1-2 months.

B. Have the Planning Commission hold a public hearing(s) on the draft ordinances, obtain public input on such ordinances, and allow the Planning Commission to make recommendations to the City Council. This will take up to 3 months.

C. Have the City Council review the draft ordinance and the Planning Commission's recommendation and, if desired, to adopt new regulations or prohibitions on marijuana uses. This work will begin immediately after the activities described in A and B are complete.

**Section 4. Effect of Interim Zoning Ordinance.** This interim zoning ordinance extends the previous interim zoning ordinance for another six months, and imposes a prohibition on the acceptance of all development permit and business license applications for any structure, use or operation involving marijuana production, marijuana processing or marijuana retailing, as the same are defined in this Ordinance. All such development permit and business license applications shall be rejected and returned to the applicant.

**Section 5. Duration of Interim Zoning Ordinance.** This interim zoning ordinance shall commence on the effective date set forth in Section 10 herein. As long as the City holds a public hearing on the interim zoning ordinance and adopts findings and conclusions in support of the interim zoning ordinance (as contemplated by Section 6 herein), the interim zoning ordinance shall not terminate until six (6) months after the date of adoption, or at the time all of the events described in Section 3 have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

**Section 6. Public Hearing on Moratorium.** Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this interim zoning ordinance within sixty (60) days of its adoption, or before September 28, 2014. The Council hereby schedules this hearing for **September 8, 2014**. During the next Council meeting immediately following, the City Council shall adopt findings of fact on the subject of this interim zoning ordinance and either justify its continued imposition or repeal this ordinance.

**Section 7. Declaration of Emergency.**<sup>3</sup> The City Council hereby declares that an emergency exists necessitating that this interim zoning ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum.<sup>4</sup> If this interim zoning ordinance is not adopted immediately, applications for marijuana uses and business licenses could be submitted to the City and arguably become vested, leading to development that could be incompatible with the regulations eventually adopted by the City (after the process described herein). Therefore, the interim zoning ordinance must be adopted immediately as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time.

**Section 8. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

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

**Section 10. Effective Date.** This Ordinance shall take effect and be in full force immediately upon passage, having received the vote of a majority plus one of the entire Council.

PASSED by the City Council of Pacific this 28<sup>th</sup> day of July, 2014.

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Leanne Guier, Mayor

AUTHENTICATED:

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Amy Stevenson-Ness, City Clerk.

APPROVED AS TO FORM:  
Office of the City Attorney

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<sup>3</sup> If the City does not have sufficient votes to pass this ordinance on an emergency basis, this section should be deleted. Without a majority plus one of the full membership of the.

<sup>4</sup> RCW 35A.12.130 for code cities.



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Carol Morris, City Attorney

PUBLISHED: 08/01/2014

EFFECTIVE DATE: 07/28/2014

# EXHIBIT F

**CITY OF PACIFIC, WASHINGTON  
ORDINANCE NO.**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO THE RECREATIONAL AND MEDICAL USE OF MARIJUANA, ADOPTING A COMPLETE PROHIBITION ON THE SITING, ESTABLISHMENT, OPERATION OR LICENSING OF ANY STRUCTURES, PROPERTY, USES OR BUSINESSES RELATING TO RECREATIONAL OR MEDICAL MARIJUANA PRODUCTION, PROCESSING, CULTIVATION (WHETHER INDIVIDUAL OR GROUP CULTIVATION), STORAGE, SALE, DELIVERY, EXCHANGE OR BARTERING; ADOPTING FINDINGS TO SUPPORT THE PROHIBITION, DESCRIBING THE MANNER IN WHICH VIOLATIONS WILL BE ENFORCED, AND ADDING A NEW CHAPTER 20.08 TO THE PACIFIC MUNICIPAL CODE.

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**Medical Marijuana**

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, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law," (RCW 69.51A.005), but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes" (RCW 69.51A.020); and

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011, which directed employees of the Washington State Departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis; and

WHEREAS, this bill required that the Department of Health develop a secure registration system for licensed producers, processors and dispensers, but these provisions, together with many others relating to dispensaries and definitions, were vetoed by the Governor; and

WHEREAS, ESSSB 5073 provided that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, under certain defined circumstances (possession of a limited number of plants or usable cannabis, cultivation of a limited number of plants in the qualifying patient or designated care provider's residence or in a collective garden); and

WHEREAS, Washington's Governor vetoed all of the provisions relevant to medical marijuana dispensaries in ESSSB 5073 but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually within their residences and in collective gardens; and

WHEREAS, ESSSB 5073 was codified in chapter 69.51A RCW; and

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and to impose business taxes on the production, processing or dispensing of medical cannabis or cannabis products, which the Washington Court of Appeals has interpreted to authorize complete bans on medical marijuana uses, such as collective gardens (*Cannabis Action Coalition v. City of Kent*, 322 P.2d 1246, 1253 (2014)); and

## **RECREATIONAL MARIJUANA**

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which "authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana"; and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana processors to "process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license a marijuana retailer to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (I-502, Sec. 4(3)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor Control Board's issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Section 8); and

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

WHEREAS, the Washington State Liquor Control Board has adopted rules to implement I-502, which include, among other things: the state licensing of premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by which licensees may transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, according to these rules, the LCB will determine whether the recreational marijuana business licensee is within 1,000 feet of the sensitive uses identified in WAC 314-55-050(10) and shall not issue the license if it is within this area; and

WHEREAS, the LCB has begun issuance of licenses for recreational marijuana uses; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a Memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes; and

WHEREAS, in this Memo, the DOJ advised that in recent years, the DOJ has “focused its efforts on certain law enforcement priorities that are particularly important to the federal government,” such as: (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified 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”; and

WHEREAS, in this Memo, the DOJ warned that a regulatory system adequate to this task “must not only contain robust controls and procedures on paper, it must also be effective in practice”; and

WHEREAS, in this Memo, the DOJ advised that “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]” and that federal 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 but effective state regulatory system”; and

WHEREAS, on January 16, 2013, the Washington State Attorney General’s Office issued an opinion, which determined that local governments may decide to either zone or ban recreational marijuana uses within their jurisdictions; and

WHEREAS, while the LCB adopted one report on the environmental impacts associated with the cultivation of marijuana, the City is not aware of any other analyses performed by the State of Washington to determine the environmental or secondary land use impacts that a proliferation of medical and recreational marijuana uses would have on towns, cities and counties in Washington; and

WHEREAS, nothing indicates that the LCB will perform any analyses under the State Environmental Policy Act (SEPA) to determine the significant adverse environmental impacts associated with any individual licensee’s operation of a marijuana business and the LCB does not require the submission of a SEPA checklist as part of a recreational marijuana license application; and

WHEREAS, the City plans under the Growth Management Act (“GMA,” chapter 36.70A RCW), and is required to review any “action” under SEPA prior to adopting any comprehensive plan or development regulations; and

WHEREAS, given that the City has no environmental information upon which to make any determinations relating to marijuana uses, the City must collect the same from either the experiences of other areas or by empirical knowledge (after the use has located in the City and the impacts are known); and

WHEREAS, the City intends to take careful, deliberate steps to evaluate marijuana uses, and to perform the environmental analysis that the State omitted; and

WHEREAS, the City passed Ordinances 1804, 1823, 1843, 1848 and 1855, all of which adopted moratoria or interim zoning on medical and recreational marijuana uses and activities, which acknowledged marijuana’s uncertain legal status and the lack of information available to the City; and

WHEREAS, the City acknowledges that it has not budgeted any funds for the implementation of any medical marijuana enforcement scheme that could satisfy the DOJ's enforcement priorities; and

WHEREAS, the City Council therefore believes that the adoption of a complete ban on all marijuana uses, whether recreational or medical, is necessary to preserve the status quo;

WHEREAS, the City SEPA Responsible Official issued a \_\_\_\_\_ for this Ordinance on \_\_\_\_\_, 2014; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on \_\_\_\_\_, 2014, and submitted its written recommendation to the City Council; and

WHEREAS, on \_\_\_\_\_, 2014, the City Council (either adopted the ordinance as recommended by the Planning Commission or held another public hearing and adopted this Ordinance); NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC DOES ORDAIN AS FOLLOWS:

**Section 1.** Section A. The City Council adopts the following new chapter 20.08 to the Pacific Municipal Code:

**CHAPTER 20.08  
MEDICAL AND RECREATIONAL MARIJUANA**

**Sections.**

- 20.08.010 Findings.**
- 20.08.020 Definitions.**
- 20.08.030 Prohibited Activities.**
- 20.08.040 Uses Not Permitted in Any Zone.**
- 20.08.050 Violations.**
- 20.08.060 Enforcement.**

**20.08.010. Findings.** The Council adopts all of the “whereas” sections of this Ordinance as findings to support this ban on medical marijuana, as well as the following:

A. The purpose of this Chapter is to enact a ban medical cannabis/medical marijuana, which explicitly prohibits medical marijuana dispensaries, medical marijuana collective gardens (including those

defined in RCW 69.51A.085), individual cultivation of marijuana, recreational marijuana production, processing and retailing, including those recreational marijuana businesses licensed by the State of Washington Liquor Control Board. This prohibition will be enforced until such time as the Washington State Legislature acts to adopt a regulatory and enforcement system for medical marijuana uses that satisfies the enforcement priorities established by the federal government. Once the Washington State Legislature acts. The City Council also acknowledges that the State of Washington has not performed any environmental analyses that will assist cities, towns and counties in the adoption of local regulations addressing marijuana uses, or the environmental impacts associated with the individual recreational marijuana businesses. As a result, municipalities must therefore either develop their own analyses or observe these impacts after-the-fact (or, after the marijuana uses locate and begin operations in cities, towns and counties throughout Washington). Then, the municipalities will be required to “fix” the problems stemming from these uses with their already scarce resources.

B. It is also the purpose of this Ordinance to stem the negative impacts and secondary effects associated with all marijuana uses, whether medical or recreational, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using marijuana prescriptions and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.

C. No part of this Ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. This Ordinance is not intended to address or invite litigation over the question whether the State of Washington’s medical marijuana laws (or this City’s medical marijuana laws) satisfy the federal government’s enforcement priorities. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be



interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

**20.08.002. Definitions.** For purposes of this Ordinance, the following definitions apply:

A. "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

B. "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

C. "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.

D. "Collective Garden" means those gardens mentioned in RCW 69.51A.085.

E. "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

F. "Deliver or Delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

G. "Dispensary, Medical Marijuana" means: any location that does not meet the definition of a "Collective Garden" and does not have a license from the Liquor Control Board of the State of Washington for a marijuana producer, processor or retailer pursuant to I-502, where medical

cannabis or marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell, barter, trade or give away medical cannabis or marijuana.

H. “Dispense” means the interpretation of a prescription or order for medical cannabis, and pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

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

J. “Game Arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

K. “Indoors” means within a fully enclosed and secure structure that complies with the Washington State Building Code, as adopted by the City, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2” by 4” or thicker studs overlain with 3/8” or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

L. “Legal parcel” means a parcel of land for which one legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels shall be counted as a single parcel for purposes of this ordinance.

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

N. “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. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds

of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

O. "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.

P. "Marijuana, Usable" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

Q. "Medical (or medicinal) use of cannabis or marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(r).

R. "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

S. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

T. "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

U. "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.

V. "Process" means to handle or process cannabis in preparation for medical or recreational use.

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

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

Y. "Produce or Production" means to manufacture, plant, grow or harvest cannabis or marijuana.

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

AA. "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

BB. "Public Transit Center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

CC. "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.

DD. "Retailer, Marijuana" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

EE. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

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

GG. "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

HH. "Useable cannabis or usable marijuana" means dried flowers of the *Cannabis* plant. The term "usable cannabis or usable marijuana" does not include marijuana-infused products or cannabis products.

#### **20.08.030. Prohibited Activities.**

A. It is unlawful to own, establish, site, operate, use or permit the establishment or operation of a medical marijuana dispensary, medical marijuana collective garden, or to produce, process or sell recreational marijuana. This prohibition extends to recreational marijuana producers, processors and retailers, even if the same are licensed by the State of Washington. This prohibition applies to any person who participates as an employee, contractor, agent or volunteer, or in any other manner or capacity in any marijuana business, regardless of whether it has a license from the State of Washington.

B. It is unlawful to perform any individual or group marijuana cultivation activities anywhere in the City, regardless of whether such individual or group cultivation is addressed in chapter 69.51A RCW.

C. It is unlawful to lease, rent or otherwise allow any medical marijuana dispensary, medical marijuana collective garden, recreational marijuana production, processing or retailing business, whether it is located outdoors, indoors, in any building, structure, premises, location or land in the City and regardless of whether activity has been licensed by the State of Washington.

D. The City shall not issue any business license for any medical marijuana or recreational marijuana business. Any business license obtained through misrepresentation of the activities conducted by the individual business shall be invalid and of no force and effect.

**20.08.040. Use Not Permitted In Any Zone.** The use of any building, structure, location, premises or land for a medical marijuana dispensary,

medical marijuana collective garden, recreational production, processing or retailing is not currently allowed in the City, and such uses and activities are not permitted use(s) in any zone. So long as this Ordinance remains in effect, the City shall not, determine either through interpretation or otherwise, that the use of any building, structure, location, premises or land as a one of these prohibited uses may be permitted in any zone.

**20.08.050. No Vested or Nonconforming Rights.** Neither this Ordinance nor any other City Ordinance, City action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana business, collective garden, or recreational marijuana producer, processor or retailer, even if licensed by the State of Washington.

**20.08.060. Violations.**

Any violations of this Ordinance may be enforced as set forth in chapter \_\_\_\_ (Enforcement of Zoning Code Violations), or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this Ordinance may be deemed to be a public nuisance and may be abated by the City under the procedures set forth in state law for the abatement of public nuisances.

**Section 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**Section 4.** This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of Pacific this \_\_\_\_<sup>nd</sup> day of \_\_\_\_, 2014.

\_\_\_\_\_  
\_\_\_\_\_, Mayor

AUTHENTICATED:

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\_\_\_\_\_, City Clerk.

APPROVED AS TO FORM:  
Office of the City Attorney

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City Attorney

PUBLISHED:  
EFFECTIVE DATE: