

July 31 2014 3:00 PM

KEVIN STOCK
COUNTY CLERK
NO: 14-2-10487-7

Hon. Vicki Hogan

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MMH, LLC, a Washington limited liability
company,

Plaintiff,

vs.

CITY OF FIFE, a Washington municipal
corporation,

Defendant.

No. 14-2-10487-7

DECLARATION OF DAVID OSAKI IN
SUPPORT OF SUMMARY JUDGMENT

The undersigned makes the following Declaration under penalty of perjury as permitted by RCW
9A.72.085:

I, David Osaki, state and declare as follows:

1. I am over the age of eighteen (18) and not a party to the above referenced action. The matters hereinafter set forth are within my own direct knowledge and I am competent to provide evidence and testimony in these proceedings.
2. I am the Director of Community Development for the City of Fife.
3. On August 13, 2013, the Fife City Council passed Ordinance No. 1841, a one (1) year moratorium on the creation, establishment, location, operation, licensing, maintenance or continuation of any facility, business or use for producing, processing, or retailing of marijuana or marijuana infused products and any collective garden for the purpose of producing, processing, transporting, and/or delivering marijuana for medical use.

- 1 4. While the moratorium was in effect, the producing, processing, and retailing of marijuana
2 and marijuana infused products were prohibited uses in all zoning districts in the City of
3 Fife.
- 4 5. While the moratorium was in effect, no business license application could be accepted nor
5 any business license issued to any person for producing, processing, or retailing of
6 marijuana or marijuana infused products, or for a medical marijuana collective garden.
- 7 6. The moratorium directed the City staff to study the issues concerning the establishment and
8 operation of medical marijuana collective gardens presumably allowed under E2SSB and
9 the producing, processing, and retailing businesses allowed under Initiative-502, and to
10 prepare appropriate regulations in accordance with a work plan that was attached to the
11 ordinance. (See attached as Exhibit A)
- 12 7. Part of that work plan instructed the Planning Commission to review the issues and develop
13 an ordinance to be recommended to the City Council.
- 14 8. The City staff complied with all requirements of the adopted work plan.
- 15 9. In response to Ordinance No. 1841, the Fife Planning Commission met several times
16 between January 2014 and May 2014 to discuss the issues surrounding medical marijuana
17 collective gardens and recreational marijuana production, processing, and retail businesses.
- 18 10. During this time, the Fife Planning Commission accepted public testimony and received
19 multiple briefings from the City staff, including myself.
- 20 11. Beginning in at least January 2014, I sent emails to an "interested parties" email contact
21 list, alerting recipients to upcoming Fife Planning Commission meetings and Fife City
22 Council meetings where the topic of marijuana was on the agenda. These emails were sent
23 to anyone who requested to be on my email list, anyone who had called or emailed me
24 directly with questions or comments regarding marijuana (and who consented to be on the
email list), and others I thought might have an interest in the subject. (The "interested
parties emails sent between April 30, 2014 and May 30, 2014 are attached as Exhibit B.)

1 12. A person representing himself to be the business partner of the plaintiff's managing
2 member, i.e., Edward "Tedd" Wetherbee is on this mass email list.

3 13. Contained in most of my mass emails, including, specifically, my mass email of May 20,
4 2014, (see attached as Exhibit B), was the following language:

5 "As has been previously mentioned to many of you, the Fife Planning
6 Commission is an advisory body to the Fife City Council. When it gets to the
7 point of taking action, the Fife City Council may accept, modify and/or reject the
8 recommendation of the Fife Planning Commission, and/or may remand the issue
back to the Fife Planning Commission for further study.

9 In the meantime, the moratorium which the City of Fife currently has on the
10 acceptance of any permits or licenses for marijuana related land uses remains in
effect."

11 14. Edward "Tedd" Wetherbee, exchanged multiple emails directly with me on April 20, 2014,
12 and April 23, 2014 where I communicated the exact same warnings that my May 20, 2014
13 mass email contained in similar, if not the same, language. (See attached as Exhibit C)

14 15. In those emails to Mr. Wetherbee, I repeatedly informed him that any action he took
15 regarding buying or leasing property in Fife with the intent of operating a marijuana retail
16 business was at his own risk. (See attached as Exhibit C). Additionally, I cautioned him
17 that there was no guarantee that the Planning Commission would make a final
18 recommendation allowing marijuana retail, and, even if they did, there was no guarantee
19 that the City Council would accept and approve such a recommendation. (See attached as
20 Exhibit C).

21 16. The Planning Commission drafted a recommendation to the City Council on May 5, 2014
22 which recommended allowing marijuana retail businesses in a highly limited fashion in the
23 Regional Commercial (RC) zoning district, allowing marijuana processing and marijuana
24 production businesses in a limited fashion in the Industrial (I) zoning district, and banning
medical marijuana collective gardens in all zoning districts. (See attached as Exhibit D)

- 1 17. At its May 20, 2014 study session, the Fife City Council received a marijuana zoning
2 briefing from City staff, including the Planning Commission recommendation.
- 3 18. The Planning Commission's draft of a proposed ordinance including the Planning
4 Commission's recommendations was formally presented to the City Council on June 10,
5 2014. (See attached as Exhibit D).
- 6 19. The City Council held a public hearing, at a regularly scheduled city council meeting on
7 June 10, 2014, to accept public comment on proposed Ordinance No. 1872 which, when
8 initially presented to the City Council, reflected the Planning Commission's
9 recommendation.
- 10 20. There was a first reading of proposed Ordinance No. 1872 at a regularly scheduled City
11 Council meeting on June 24, 2014.
- 12 21. At the June 24, 2014 City Council meeting, Councilmember Johnson moved to amend
13 proposed Ordinance No. 1872 to ban all marijuana production, processing, and retail
14 businesses. This amendment passed.
- 15 22. On July 8, 2014, at a regularly scheduled City Council meeting, the Council voted 5-2 to
16 pass Ordinance No. 1872, as amended. (See attached as Exhibit E)

17 Dated at Tacoma, Washington, this ^{31st} day of July, 2014

18 VSI LAW GROUP, PLLC

19 

20 David Osaki

21 Community Development Director for the City of Fife

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF PIERCE

9 MMH, LLC, a Washington Limited liability
10 company,

11 Plaintiff,

12 vs.

13 CITY OF FIFE, a Washington municipal
14 corporation,

15 Defendant.

Cause No. 14-2-10487-7

DECLARATION RE: SIGNATURE on
ELECTRONIC DOCUMENT

16 I, Alison Rigby, declare under penalty of perjury under the laws of the state of Washington,
17 that the foregoing electronic documents attached to this declaration, which consist of five (5) pages
18 including this declaration page, is a complete and legible image that I have examined personally and
19 that was received by me via:

20 E-mail at the following address arr@vsilawgroup.com

21 DATED at Tacoma, Washington, this 31st day of July, 2014.

22
23 
24 Alison Rigby, Paralegal

DECLARATION RE: SIGNATURE ON
ELECTRONIC DOCUMENT- 1

VSI LAW GROUP, PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424
Phone: 253.922.5464 Fax: 253.922.5848

EMERGENCY ORDINANCE

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1841

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, TERMINATING THE MORATORIUM ENACTED BY ORDINANCE NO. 1750, IMPOSING A MORATORIUM ON THE ESTABLISHMENT, LOCATION, PERMITTING, LICENSING OR OPERATION OF MEDICAL MARIJUANA COLLECTIVE GARDENS, AND MARIJUANA PRODUCTION, PROCESSING, AND RETAILING, AND DECLARING THIS ORDINANCE A PUBLIC EMERGENCY ORDINANCE AND THUS EFFECTIVE IMMEDIATELY

WHEREAS, in 2011, the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073, effective July 22, 2011, which authorizes qualifying patients to create and participate in "collective gardens" for the purpose of producing, processing, transporting, and delivering marijuana for medical use, subject to certain conditions contained therein; and

WHEREAS, under E2SSB 5073 there is no limit to the number of collective gardens that may be located at any site nor restrictions as to where collective gardens may be located in relation to other uses; and

WHEREAS, collective gardens are not currently addressed in the Fife Zoning Code, and

WHEREAS, Section 1102 of E2SSB 5073 authorizes cities to adopt and enforce zoning regulations, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana within their jurisdiction; and

WHEREAS, the City enacted a moratorium on medical marijuana collective gardens by Emergency Ordinance No. 1750 on August 9, 2011, and subsequently extended the moratorium by Ordinance No. 1765, Ordinance No. 1781, Ordinance No. 1825, and Ordinance No. 1838; and

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 add a new threshold for driving under the influence of marijuana" (I-502, Sec. 1(3)); and

WHEREAS, I-502 allows the 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

EXHIBIT
" A "

EMERGENCY ORDINANCE

WHEREAS, I-502 allows the 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 liquor control board to license marijuana retailers to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (I-502, Sec. 4(3)); and

WHEREAS, the liquor control board has issued draft regulations for implementation of I-502 which it intends to adopt effective September 16, 2013; and

WHEREAS, as mandated by I-502, the liquor control board will begin issuing producer, processor, and retailer licenses to qualified applications as early as December 1, 2013; and

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

WHEREAS, the U.S. Department of Justice has not yet announced the position of the federal government on Washington’s legalization of recreational marijuana under I-502, however on July 24, 2013 the Drug Enforcement Agency raided several medical marijuana dispensaries in the Puget Sound area for violation of federal law; and

WHEREAS, the City does not currently have any regulations addressing the facilities or uses authorized in I-502; and

WHEREAS, the State Environmental Policy Act (SEPA) checklist prepared by the Washington State Liquor Control Board on the proposed rulemaking for WAC 314-55 related to marijuana licenses, application process, requirements and reporting includes the statement that “A licensee must follow all local and state land and shoreline laws and regulations”; and

WHEREAS, the facilities and uses authorized in I-502 have never been allowed in any state or city in the United States, so there is little existing land use regulation to guide the City; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to adopt moratoria; and

WHEREAS, the City requires time to conduct appropriate research to understand the extent and validity of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for the uses and activities that are allowed under I-502 and E2SSB 5073; and

EMERGENCY ORDINANCE

WHEREAS, in addition to the legal issues, the City must study, without limitation, the impacts of the location of uses and facilities for the production, processing, and sale of marijuana products and the siting of collective gardens, marijuana cultivation facilities, facilities for the creation of marijuana products, and State licensed marijuana stores in commercial and residential zones, as well as impacts arising from the proximity of these uses, activities and facilities to schools, day cares, parks, religious and cultural facilities, and accordingly the City Council finds that a zoning, licensing and permitting moratorium should be established pending local review of appropriate locations and design requirements of these operations and impacts of I-502 and E2SSB 5073 and its interaction with federal law; and

WHEREAS, since the issues and work plan regarding collective gardens authorized under E2SSB 5073 and the production, processing, and sale of marijuana under I-502 are substantially similar, it will be more clear and efficient to have one moratorium that includes both, rather than two separate moratoria; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act; and

WHEREAS, the immediate enactment of a moratorium on collective gardens, marijuana production, processing, and retailing is necessary to protect the public health, safety or welfare and is a legitimate exercise of the City's police power; now therefore,

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this Ordinance. The City Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 5 below.

Section 2. Prior Moratorium Terminated. The moratorium on medical marijuana collective gardens, passed by Emergency Ordinance No. 1750 on August 9, 2011 and extended by Ordinance No. 1765, Ordinance No. 1781, Ordinance No. 1825, and Ordinance No. 1838 is hereby terminated.

Section 3. Moratorium Imposed. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a moratorium is hereby imposed prohibiting the creation, establishment, location, operation, licensing, maintenance or continuation of:

EMERGENCY ORDINANCE

(a) any facility, business or use for producing, processing or retailing of marijuana or marijuana infused products; and

(b) any collective garden, as authorized by E2SSB 5073 for the purpose of producing, processing, transporting, and/or delivering marijuana (cannabis) for medical use.

Section 4. Use Prohibited. While this moratorium is in effect, the producing, processing, and retailing of marijuana or marijuana infused products are hereby designated as prohibited uses in all zoning districts in the City of Fife. No business license application shall be accepted and no business license shall be issued under FMC Chapter 5.01 to any person for producing, processing or retailing of marijuana or marijuana infused products.

Section 5. Use Prohibited—Collective Gardens. While this moratorium is in effect Collective gardens as referenced and defined in E2SSB 5073 are hereby designated as prohibited uses in the City of Fife. No business license application shall be accepted and no business license shall be issued under FMC Chapter 5.01 to any person for a medical marijuana collective garden.

Section 6. Definitions. As used in this ordinance, the following definitions apply:

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

"Marijuana processing" means processing marijuana into useable marijuana and marijuana-infused products, packaging and labeling useable marijuana and marijuana-infused products for sale in retail outlets, and selling useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

"Marijuana producing" means producing and selling marijuana at wholesale to marijuana processors and other marijuana producers.

"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.

EMERGENCY ORDINANCE

"Marijuana retailing" means selling useable marijuana and marijuana-infused products in a retail outlet.

"Retail outlet" means a location for the retail sale of useable marijuana and marijuana-infused products.

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

Section 7. Duration. This moratorium shall remain in effect until August 13, 2014, unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless earlier terminated by the City Council.

Section 8. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be held on the moratorium at 7:00 P.M. on August 27, 2013 at Fife City Hall, 5411 23rd Street East, Fife, Washington.

Section 9. Work Plan. During the moratorium period, the City staff shall study the issues concerning the establishment and operation of medical marijuana collective gardens allowed under E2SSB 5073, and the producing, processing and retailing facilities allowed under I-502, prepare appropriate regulations in accordance with the work plan attached hereto as Exhibit A.

Section 10. Emergency Ordinance. This Ordinance, passed by a majority plus one of the whole membership of the City Council, is hereby designated as a Public Emergency Ordinance necessary for the protection of public health, safety, public property or the public peace and shall be effective upon adoption.

Section 11. Severability. Each and every provision of this Ordinance shall be deemed severable. If any provision of this Ordinance should be deemed to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, then it shall not affect the validity of the remaining sections so long as the intent of the Ordinance can be fulfilled without the illegal section.

Introduced the 13th day of August, 2013.

Passed by the City Council on the 13th day of August, 2013.


David K. Zabell, City Manager

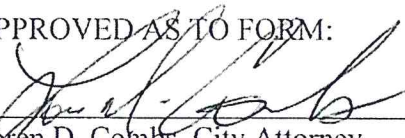
EMERGENCY ORDINANCE

ATTEST:



Carol Etgen, City Clerk

APPROVED AS TO FORM:



Loren D. Combs, City Attorney

Published: 8/15/13
Effective Date: 8/13/13, 2013

EXHIBIT A

CITY OF FIFE WORK PLAN TIMELINE*					
WORK ITEM NO.**	WORK ITEM	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
1	City Council Public Hearing to Accept Testimony on Moratorium	x	X		
2	Review Literature, Reports, Studies Related to Secondary Impacts of Marijuana Related Land Uses.	x	x	x	x
3	Review Adopted Washington State Liquor Control Board Rules	x	x		
4	Review State - Federal Law Conflict on Legality of Marijuana	x	x	x	x
5	Planning Commission Review of Issues/ Development of Ordinance	x	x	x	
6	Planning Commission Recommendation			x	
7	Transmit Proposed Development Regulation Amendment to State Department of Commerce		x	x	
8	SEPA Review and Issuance of SEPA Determination		X	X	
9	City Council Public Hearing				x
10	City Council Action				x
11	Transmit Adopted Development Regulation to State Department of Commerce; Ordinance Publication				X

“X” means task is actively planned for that quarter.

* Timeline is based on “quarters” (three month increments). Quarters (e.g. 1st quarter, 2nd quarter) are based on one year duration of moratorium.

** A description of each work item is provided in the accompanying narrative below with the corresponding work item number.

EXHIBIT A

Work Plan Narrative

1. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be held on the moratorium. The moratorium is scheduled to be held at 7:00 P.M. on August 27, 2013 at Fife City Hall, 5411 23rd Street East, Fife, Washington. During this public hearing, the public will be invited to comment on the moratorium and related issues.
2. Throughout the duration of the moratorium, the City will continually research and review literature, reports, studies and other materials related to secondary effects of medical marijuana and recreational marijuana related land uses.

This work plan item recognizes that characteristics and secondary effects of marijuana land uses within the City may have an impact on the type and manner of regulation which the City chooses to employ. Review of literature, studies, reports and other materials on the secondary effects of medical and recreational marijuana related businesses is necessary to determine an appropriate local regulatory approach.

3. The Washington State Liquor Control Board (WSLCB) rules related to implementation of Initiative 502 are scheduled for adoption by the WSLCB on August 14, 2013. The effective date of the rules is scheduled for September 16, 2013. The rules set forth requirements for State licensing of marijuana producers, processors and retailers. This includes, but is not limited to, provisions for the license application process, applicant qualifications, taxation, security, transportation, waste disposal, signage, hours of operation, distances from certain sensitive land uses and other considerations that have relation to impacts upon the community and surrounding land uses.

This work item will evaluate the extent to which the adopted WSLCB State rules address land use impacts associated with marijuana related land uses in the City of Fife and the extent to which additional development regulations are needed. Review of the State rules, when adopted, is necessary to determine an appropriate local regulatory approach.

Further, although Washington State law authorizes medical marijuana collective gardens (Chapter 69.51A RCW) separately from Initiative-502, the secondary effects for medical marijuana collective gardens and Initiative 502 related land uses may have some similarity. This makes it appropriate that they be reviewed together.

4. The cultivation, possession or distribution of cannabis marijuana, and marijuana products, even for medical purposes, has been and continues to be a violation of federal law through the Controlled Substances Act. The U.S. Department of Justice has not yet announced the position of the federal government on Washington's legalization of recreational marijuana under I-502, however on July 24, 2013 the Drug Enforcement Agency raided several medical marijuana dispensaries in the Puget Sound area for violation of federal law.

During the moratorium period the City will monitor and evaluate the federal government's position on Washington State's legalization of recreational marijuana as well as on marijuana use for medical purposes. The City will also monitor and review pertinent legal writings, opinions and decisions. Review of the relationship of federal and State law is necessary to determine an appropriate local regulatory approach.

5, 6. Fife Municipal Code section 14.02.030 "Project permit application framework" requires that the City of Fife Planning Commission ("Planning Commission") make a recommendation on zoning code text amendments. During the moratorium period City staff will work with the Planning Commission to prepare draft code amendment for marijuana related land uses and make a recommendation to the City Council. The draft code amendment will result from staff review of the adopted State rules and studies, literature and reports addressing negative secondary

EXHIBIT A

effects of such uses. It will also take into consideration information related to the federal government's position on the recreational, medical or other use of marijuana and/or marijuana related products. Other sources of information that may become available through, for example, public comment will also be reviewed and considered.

7. RCW 36.70A.106 (1) requires each county and city proposing to adopt development regulations to notify the Washington State Department of Commerce of its intent to adopt such regulations at least sixty (60) days prior to final adoption (unless expedited review is requested and granted pursuant to RCW 36.70A.106 3(b)).

The City shall comply with this requirement.

8. Amendments to development regulations are subject to the State Environmental Policy Act (SEPA). The City of Fife SEPA procedures are contained in FMC Chapter 17.04 entitled "SEPA Guidelines".

The City shall comply with this requirement.

9, 10. Fife Municipal Code section 14.04.030 requires a public hearing and decision on code amendments by the City Council.

The City shall comply with this requirement. Unless adopted by emergency, the ordinance shall go through one or two readings prior to final passage.

11. RCW 36.70A.106 (1) requires that each county and city transmit a complete and accurate copy of its comprehensive plan or development regulations amendment to the Washington State Department of Commerce within ten days after final adoption. Fife Municipal Code section 1.16.010 entitled "Documents publication" requires that all ordinances approved, passed and enacted by the city council shall be published in The News Tribune, (the official newspaper of the city.)

The City shall comply with these requirements.

From: David Osaki [mailto:dosaki@cityoffife.org]
Sent: Wednesday, April 30, 2014 6:26 PM
Cc: David Osaki
Subject: May 5, 2014 Planning Commission meeting

Interested Parties:

At its Monday, May 5, 2014 meeting, the City of Fife Planning Commission will continue its review of marijuana related land use regulations with the objective of making a recommendation to the City Council.

The Planning Commission meeting will begin at 7:00PM at the Fife City Hall Council Chambers located at 5411 23rd Street East. Public comment will be accepted.

Based on discussion at the Planning Commission's April 7, 2014 public meeting, a revised draft ordinance has been prepared which may be found on the City's website at www.cityoffife.org by clicking on the "Mon, May 5, 2014 - Planning Commission marijuana meeting" notice under "Upcoming Events!" on the City's Home Page.

The Planning Commission is an advisory body to the Fife City Council and will make a recommendation to the Fife City Council. The City Council will also accept public comment on this issue at a later date (unscheduled at this time) once the Planning Commission completes its review and makes its recommendation. The City Council may accept, modify or reject the recommendation of the Planning Commission when it (City Council) considers the issue.

Thank you.

David Osaki

Community Development Director
Community Development Department
Office: 253-896-8633
5411 23rd St E
Fife, WA 98424



EXHIBIT
" B "

From: David Osaki [mailto:dosaki@cityoffife.org]
Sent: Thursday, May 15, 2014 3:25 PM
Cc: David Osaki
Subject: May 20 2014 Fife City Council Study Session

Interested parties:

On Tuesday, May 20, 2014 the Fife City Council will hold a regularly scheduled Study Session. One of the discussion topics on the May 20, 2014 Study Session agenda will be for the City Council to receive and be briefed on the Planning Commission recommendation on zoning for marijuana related land uses. The discussion topic portion of the City Council Study Session will start at 7:00 pm, and will be held in the Fife City Hall Council Chambers located at 5411 23rd Street East.

Study sessions are open to the public and all members of the public are welcome to attend. However, public testimony or public comment is not accepted at Study Sessions.

At some point in the future, it is expected that the Fife City Council will hold a public hearing to accept public comment on zoning for marijuana related land uses. The date for such a hearing has not yet been set, but all of you on this email list will be apprised of that date when it is set.

As has been previously mentioned to many of you, the Fife Planning Commission is an advisory body to the Fife City Council. When it gets to the point of taking action, the Fife City Council may accept, modify and/or reject the recommendation of the Fife Planning Commission, and/or may remand the issue back to the Fife Planning Commission for further study.

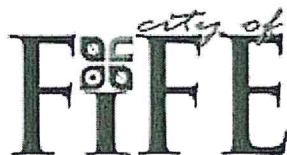
In the meantime, the moratorium which the City of Fife currently has on the acceptance of any permits or licenses for marijuana related land uses remains in effect.

Thank you.

David Osaki

David Osaki

Community Development Director
Community Development Department
Office: 253-896-8633
5411 23rd St E
Fife, WA 98424



From: David Osaki [mailto:dosaki@cityoffife.org]
Sent: Friday, May 30, 2014 3:57 PM
Cc: Steve Montgomery; Melissa Pattee
Subject: June 10, 2014 City Council Public Hearing

INTERESTED PARTIES:

You are receiving this email because you have either expressed interest in this issue or because you may have an interest in this issue.

The City of Fife City Council will, on **Tuesday, June 10, 2014**, hold a public hearing to accept public comment on a draft ordinance addressing medical marijuana collective gardens and Initiative 502 related marijuana producing, processing and retailing. The City Council meeting will begin **at 7:00 PM in the Fife City Hall Council Chambers, 5411 23rd Street East**.

The draft ordinance, as recommended to the Fife City Council by the City of Fife Planning Commission, proposes where marijuana land uses may and may not be allowed in the City of Fife.

All members of the public are welcome to attend the public hearing and provide written and/or oral comment.

Written comment may also be submitted prior to the public hearing and will be provided to the City Council at the public hearing *if the written comment is received by 5:00 PM, June 10, 2014*.

Written comment submitted in advance of the June 10, 2014 public hearing may be emailed to: comdev@cityoffife.org or may be mailed/hand delivered to:

City of Fife Community Development
ATTN: David Osaki
5411 23rd Street East
Fife, Washington 98424

A copy of the draft ordinance, as recommended by the Planning Commission to the City Council, is available on-line at www.cityoffife.org through the "Upcoming Events!" link.

Please note that the Fife City Council may accept, modify or reject the recommendation of the Planning Commission.

For additional information, please contact the City of Fife Community Development Department at (253) 922-9625.

David Osaki
Community Development Director

Community Development Department
Office: 253-896-8633
5411 23rd St E
Fife, WA 98424



From: David Osaki [mailto:dosaki@cityoffife.org]
Sent: Sunday, April 20, 2014 4:32 PM
To: tw@thegalleryco.com
Subject: RE: Question

Mr. Wetherbee:

Thank you for the email.

With respect to your question, the April 15, 2014 City Council meeting was intended to be a high level briefing on the marijuana issue to the City Council, while the Planning Commission continues its work on developing a recommendation on a possible code amendment for marijuana related land uses to the City Council. It was intended to provide the City Council with some background now, so that when the Planning Commission recommendation does come forward the City Council will be familiar with broad issues that have transpired since the moratorium was passed last August such as, for example, federal law, WSLCB actions and what the legislature did (or did not) do this past session.

So while the City Council received background information and an update on various events that have occurred over the past several months related to marijuana, it (City Council) did not get a detailed presentation on the preliminary ordinance being discussed by the Planning Commission at this time. That was, in good measure, because the Planning Commission has not completed its recommendation process to the City Council. I don't expect that (Planning Commission recommendation) to happen until the Planning Commission's next meeting on Monday, May 5, 2014 at the earliest.

All I can say about your timing issue is that you will not know whether or not the variance option is going to be approved by May 2, 2014, if for no other reason than there is no way that any ordinance will be adopted by the City Council incorporating such a variance by that date. For that matter, like I indicated above, the Planning Commission will not even conclude its work on making recommendation by that (May 2, 2014) date. So you would not even know for certain whether it (variance option) will be part of the Planning Commission recommendation.

Further, once the Planning Commission completes its recommendation process, the matter of marijuana land use regulations must still be docketed for the City Council to hold a public hearing and accept public testimony. The City Council may or may not accept the recommendation of the Planning Commission and in fact, could decide to not allow marijuana related land uses in the City of Fife as other local governments have done. I only mention that so you are aware of the level of risk you will be taking if you decide to go forward with purchasing property prior to any ordinance being passed. Any action you (or others) might take by May 2, 2014 on property acquisition/leasing etc. would be without the knowledge as to

EXHIBIT
" C "

whether the variance concept were to be approved in code, let alone whether or not marijuana related land uses will or will not even be allowed in the City of Fife.

The other important item to consider is that *even if* the variance option were to be passed by the City Council, which again is still unknown at this time, the preliminary ordinance as drafted and presented to the Planning Commission requires that the variance be processed in accordance with Fife Municipal Code Chapter 19.88 (cut and paste below). I mention that because variances are discretionary land use decisions requiring a public hearing and decision by the City Hearing Examiner. By discretionary I mean that the variance itself may or may not be approved. Public notice is required of variance applications and the applicant must justify the application/request based on certain criteria (FMC section 19.88.030 below). Should an application not meet the variance criteria, then the Hearing Examiner will deny the request. So even if the variance concept were legislatively adopted in code, there is no guarantee the variance application for a specific party involving a specific property would be approved by the Hearing Examiner.

Finally, I do have a question of you if you are inclined to respond. I noticed that your marijuana retail application for the location you referenced in your email no longer is showing up on the WSLCB weekly list of marijuana retail license applications for Fife, and has not for the past few weeks. Do you know what might be the reason for this?

Thanks again for your interest and continued involvement.

David Osaki

Chapter 19.88

VARIANCES AND CONDITIONAL USE PERMITS

Sections:

19.88.010 Purpose.

19.88.020 Application procedure.

19.88.030 Variances.

19.88.040 Conditional use permits.

19.88.050 Expiration or renewal.

19.88.060 Modification or revocation.

19.88.070 Previously granted variances and conditional use permits may continue.

19.88.080 Appeal procedure.

19.88.010 Purpose.

The purpose of a variance is to provide a means of altering the requirements of this title in specific instances where the strict application of these regulations would deprive a property of privileges enjoyed by other properties which are similarly situated, due to special features or constraints unique to the property involved.

The purpose of a conditional use permit is that certain uses, because of size, location with respect to surroundings, equipment, unique characteristics or effects or demands on public facilities, require a

special degree of control in order to ensure compatibility with properties within the vicinity. (Ord. 1317 § 3, 1998).

19.88.020 Application procedure.

The application procedure for a variance request or conditional use permit is described in Chapter 14.03 FMC, Type I Through Type IV Project Permit Applications. (Ord. 1317 § 3, 1998).

19.88.030 Variances.

A. Variance Authority. The hearing examiner shall have the authority to grant a variance from the terms of this title. The hearing examiner may impose conditions or restrictions on an existing or proposed use or structure in order to ensure that a requested variance will conform to the required findings below.

B. Required Findings. The hearing examiner shall not grant a variance from the development standards of this title unless the hearing examiner finds that the variance request meets all of the following criteria and the hearing examiner makes written findings to that effect:

1. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

2. That such variance is necessary, because of special circumstances relating to size, shape, topography, location or surroundings of the subject property, to provide it with the use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

3. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

4. That the variance, if granted, is consistent with the zoning district intent and comprehensive land use designation of the subject property; and

5. That such practical difficulties or unnecessary hardships have not been created by the owner or by a predecessor in title. (This finding does not apply if the zoning classification for the property has changed and such difficulties or hardships were created solely as a result of such reclassification.)

C. Granting of a Use Variance Is Not Authorized. The hearing examiner shall not grant a variance which establishes a use otherwise prohibited within a zoning district. (Ord. 1593-06 § 72, 2006; Ord. 1317 § 3, 1998).

19.88.040 Conditional use permits.

A. Conditional Use Permit Authority. The hearing examiner shall have the authority to issue a conditional use permit. When considering a request for a conditional use permit, the hearing examiner shall consider the applicable standards, criteria, intent and policies established by this title and the comprehensive land use plan as they pertain to the proposed use.

The hearing examiner may impose specific conditions upon the use, including an increase in the standards of this title, which will enable the hearing examiner to make the required findings below. The hearing examiner may impose conditions which include, but are not limited to, restrictions in hours of operations; locational restrictions for structures and uses; structural requirements, including safety, noise reduction, view protection, aesthetics; and increased buffering requirements, including open space, berms, fencing and landscaping.

B. Required Findings. The hearing examiner shall not grant a conditional use permit unless the hearing examiner finds that the conditional use permit request meets all of the following criteria and the hearing examiner makes written findings to that effect:

1. The proposed use shall meet or exceed the development and performance standards that are required in the district in which it is located; and

2. The proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and
3. The proposed use is compatible with property or improvements in the vicinity; and
4. The proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity, and will not adversely affect the established character of the surrounding neighborhood; and
5. The proposed use is consistent with the goals and policies of the comprehensive plan. (Ord. 1593-06 § 73, 2006; Ord. 1317 § 3, 1998).

19.88.050 Expiration or renewal.

A variance or conditional use permit shall automatically expire when such variance or permit is not substantially acted upon within the time specified by the hearing examiner or, if no date is specified, within one year from date of issuance. The hearing examiner may grant one renewal for a conditional use permit or variance if the party seeking renewal can demonstrate extraordinary circumstances or conditions which were not known or foreseeable at the time of original application. A renewed variance or conditional use permit shall be substantially acted upon within six months or the variance or permit shall automatically expire. (Ord. 1593-06 § 74, 2006; Ord. 1317 § 3, 1998).

19.88.060 Modification or revocation.

The hearing examiner may modify or revoke a variance or conditional use permit. Such revocation or modification may be initiated by a request from the applicant, property owner, aggrieved party or a motion by either the hearing examiner or city council.

A. Public Hearing and Notification. Prior to acting upon a motion, recommendation or request for modification or revocation, a public hearing is required before the hearing examiner. The procedures concerning public notice, reporting and appeals shall be the same as for an initial variance or conditional use permit request.

B. Modification or Revocation Request from Applicant or Property Owner. A modification of a variance or conditional use permit which is initiated by the applicant or property owner shall comply with the applicable required findings in this chapter.

C. Modification or Revocation Initiation from Hearing Examiner, City Council or Aggrieved Party. A modification or revocation of a variance or conditional use permit which is initiated by the hearing examiner, city council or an aggrieved party shall be made on any one or more of the following grounds:

1. That the approval was obtained by deception, fraud or other intentional or misleading representations;
2. That the use for which such approval was granted has been abandoned;
3. That the use for which such approval was granted has ceased to exist or has been suspended for six months or more;
4. That the variance or permit granted is being, or has recently been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, resolution, code, law or regulation; or
5. That the use for which the approval was granted was exercised in a manner as to be detrimental to the public health, safety, morals or general welfare. (Ord. 1593-06 §§ 75, 76, 2006; Ord. 1317 § 3, 1998).

19.88.070 Previously granted variances and conditional use permits may continue.

Where, prior to the effective date of the ordinance codified in this title and title amendments, a conditional use permit or variance was granted for a particular use or structure, and such use or structure is not otherwise permitted in the zone in which it is located, such previous permit or variance

is, by this section, declared to be continued for the time specified in the original approval, or until such time as the city council may determine subsequent to this title. (Ord. 1317 § 3, 1998).

19.88.080 Appeal procedure.

The action of the hearing examiner shall be final and conclusive, unless:

A. Within 21 days of the issuance of the decision, the applicant or another aggrieved person files and serves a land use petition pursuant to Chapter 36.70C RCW; or

B. Within 10 days from the date of the action, the original applicant or an adverse party makes application to the Pierce County superior court for a writ of prohibition or writ of mandamus. (Ord. 1593-06 § 77, 2006; Ord. 1317 § 3, 1998).

From: Tedd Wetherbee [<mailto:tw@thegalleryco.com>]

Sent: Sunday, April 20, 2014 1:53 PM

To: David Osaki

Subject: Question

Hello David,

I have just returned from Colorado and watched the video of the meeting from the 15th of April. It appears as though all the questions of the Council were answered to their satisfaction and that seems like a good thing.

My only question is that I didn't hear any mention of the possibility of the variance of the location having to front Pacific Hwy. E. Is this still an option? My purchase of the property on Willows (for which we signed the Purchase & Sale agreement on Friday) is contingent upon being able to apply for this variance. If the variance is off of the table I need to cancel the contract prior to losing my earnest money on the 2nd of May.

Thank you for your continued good work on this matter.

Regards,

Tedd Wetherbee

From: David Osaki [mailto:dosaki@cityoffife.org]
Sent: Wednesday, April 23, 2014 2:27 PM
To: tw@thewetherbeegroup.com
Subject: RE: Question

Mr. Wetherbee:

First, you didn't bother me at all. I was in the office working anyway when your email came in so I actually had some undisturbed time to respond.

With respect to your two questions, I'll answer them together as follows.

I really do not know what the City Council will do on the issue of marijuana land use regulations, regardless of what the Planning Commission recommendation might be. I'm not trying to be evasive or coy, it is just that recreational marijuana land use regulation is unique, novel and to a large extent a dynamic (with new information frequently presenting itself) issue. Any guess on my part on what the City Council might do would just be speculative and conjecture, and I don't even want to go that route.

So I am just going to have to repeat my earlier email that there is risk for you in moving forward with purchasing property (or putting yourself in a position to forfeit earnest money) prior to any ordinance being passed (or for that matter, obtaining a variance should that option even exist in whatever ordinance is eventually passed.) There is always the possibility that the City Council may just preclude recreational marijuana land uses altogether.

And thank you also for the information about the other license application. I appreciate it.

Please feel free to contact me should you have questions.

David Osaki

From: Tedd Wetherbee [mailto:tw@thewetherbeegroup.com]
Sent: Sunday, April 20, 2014 9:37 PM
To: David Osaki
Cc: Mike Henery
Subject: Re: Question

David,

Firstly, let me thank you for your detailed reply on a Sunday. I had no intention of bothering you today, I assumed you would get to this sometime in the week, so again, thank you.

Indeed, the risk of purchasing before having a finalized ordinance is high and that's why we try to keep up on all the information I can so as to mitigate as much of that risk as possible. So that being said, I was seeking clarification as to whether the language concerning the option of a variance had/had not been specifically stricken as I did not hear it mentioned. I now understand, that you were presenting an overview of the Planning Commission's inclination for recommendation and not a full, word by word walk through and that as things stand at this moment, the variance option remains in the recommendation. Thank you for that clarification.

I would be happy to answer your question about the application previously submitted for our address that is no longer in the system. That was not our application. Whomever used it prior to our agreement to purchase was simply using what they thought might be a viable address for them but then did not have the means to purchase it as we have. Or perhaps they applied with the hope of getting a license based on that location and then planned on having time to find a site during the interview and documentation period. Many of the original applicants did that as I'm sure you're aware. The WSLCB sent out an email that indicated that a full 25% of applicants didn't even return the prequalification documents at all while another 20 – 50% were being disqualified for submitting incomplete or incorrect documentation.

We will be moving 1 of the at large licenses we receive from a Gig Harbor address to the Fife location on Willows.

In closing, I have a question for you, if you would be so inclined to respond. In your opinion, what is the overall stance of the City Council regarding allowing retail to go forward? And how often does the Council not adopt the recommendations of the planning commission? I guess that's 2 questions...

Again, thank you and I look forward to seeing you at the next meeting.

All the best,
Tedd Wetherbee
the gallery

From: David Osaki
Sent: Sunday, April 20, 2014 4:32 PM
To: tw@thegalleryco.com
Subject: RE: Question

Mr. Wetherbee:

Thank you for the email.

With respect to your question, the April 15, 2014 City Council meeting was intended to be a high level briefing on the marijuana issue to the City Council, while the Planning Commission continues its work on developing a recommendation on a possible code amendment for marijuana related land uses to the City Council. It was intended to provide the City Council with some background now, so that when the Planning Commission recommendation does come forward the City Council will be familiar with broad issues that have transpired since the moratorium was passed last August such as, for example, federal law, WSLCB actions and what the legislature did (or did not) do this past session.

So while the City Council received background information and an update on various events that have occurred over the past several months related to marijuana, it (City Council) did not get a detailed presentation on the preliminary ordinance being discussed by the Planning Commission at this time. That was, in good measure, because the Planning Commission has not completed its recommendation process to the City Council. I don't expect that (Planning Commission recommendation) to happen until the Planning Commission's next meeting on Monday, May 5, 2014 at the earliest.

All I can say about your timing issue is that you will not know whether or not the variance option is going to be approved by May 2, 2014, if for no other reason than there is no way that any ordinance will be adopted by the City Council incorporating such a variance by that date. For that matter, like I indicated above, the Planning Commission will not even conclude its work on making recommendation by that (May 2, 2014) date. So you would not even know for certain whether it (variance option) will be part of the Planning Commission recommendation.

Further, once the Planning Commission completes its recommendation process, the matter of marijuana land use regulations must still be docketed for the City Council to hold a public hearing and accept public testimony. The City Council may or may not accept the recommendation of the Planning Commission and in fact, could decide to not allow marijuana related land uses in the City of Fife as other local governments have done. I only mention that so you are aware of the level of risk you will be taking if you decide to go forward with purchasing property prior to any ordinance being passed. Any action you (or others) might take by May 2, 2014 on property acquisition/leasing etc. would be without the knowledge as to whether the variance concept were to be approved in code, let alone whether or not marijuana related land uses will or will not even be allowed in the City of Fife.

The other important item to consider is that *even if* the variance option were to be passed by the City Council, which again is still unknown at this time, the preliminary ordinance as drafted and presented to the Planning Commission requires that the variance be processed in accordance with Fife Municipal Code Chapter 19.88 (cut and paste below). I mention that because variances are discretionary land use decisions requiring a public hearing and decision by the City Hearing Examiner. By discretionary I mean that the variance itself may or may not

be approved. Public notice is required of variance applications and the applicant must justify the application/request based on certain criteria (FMC section 19.88.030 below). Should an application not meet the variance criteria, then the Hearing Examiner will deny the request. So even if the variance concept were legislatively adopted in code, there is no guarantee the variance application for a specific party involving a specific property would be approved by the Hearing Examiner.

Finally, I do have a question of you if you are inclined to respond. I noticed that your marijuana retail application for the location you referenced in your email no longer is showing up on the WSLCB weekly list of marijuana retail license applications for Fife, and has not for the past few weeks. Do you know what might be the reason for this?

Thanks again for your interest and continued involvement.

David Osaki

Chapter 19.88

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The purpose of a conditional use permit is that certain uses, because of size, location with respect to surroundings, equipment, unique characteristics or effects or demands on public facilities, require a special degree of control in order to ensure compatibility with properties within the vicinity. (Ord. 1317 § 3, 1998).

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The application procedure for a variance request or conditional use permit is described in Chapter 14.03 FMC, Type I Through Type IV Project Permit Applications. (Ord. 1317 § 3, 1998).

19.88.030 Variances.

A. Variance Authority. The hearing examiner shall have the authority to grant a variance from the terms of this title. The hearing examiner may impose conditions or restrictions on an existing or proposed use or structure in order to ensure that a requested variance will conform to the required findings below.

B. Required Findings. The hearing examiner shall not grant a variance from the development standards of this title unless the hearing examiner finds that the variance request meets all of the following criteria and the hearing examiner makes written findings to that effect:

1. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

2. That such variance is necessary, because of special circumstances relating to size, shape, topography, location or surroundings of the subject property, to provide it with the use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

3. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and

4. That the variance, if granted, is consistent with the zoning district intent and comprehensive land use designation of the subject property; and

5. That such practical difficulties or unnecessary hardships have not been created by the owner or by a predecessor in title. (This finding does not apply if the zoning classification for the property has changed and such difficulties or hardships were created solely as a result of such reclassification.)

C. Granting of a Use Variance Is Not Authorized. The hearing examiner shall not grant a variance which establishes a use otherwise prohibited within a zoning district. (Ord. 1593-06 § 72, 2006; Ord. 1317 § 3, 1998).

19.88.040 Conditional use permits.

A. Conditional Use Permit Authority. The hearing examiner shall have the authority to issue a conditional use permit. When considering a request for a conditional use permit, the hearing examiner shall consider the applicable standards, criteria, intent and policies established by this title and the comprehensive land use plan as they pertain to the proposed use.

The hearing examiner may impose specific conditions upon the use, including an increase in the standards of this title, which will enable the hearing examiner to make the required findings below. The hearing examiner may impose conditions which include, but are not limited to, restrictions in hours of operations; locational restrictions for structures and uses; structural requirements, including safety, noise reduction, view protection, aesthetics; and increased buffering requirements, including open space, berms, fencing and landscaping.

B. Required Findings. The hearing examiner shall not grant a conditional use permit unless the hearing examiner finds that the conditional use permit request meets all of the following criteria and the hearing examiner makes written findings to that effect:

1. The proposed use shall meet or exceed the development and performance standards that are required in the district in which it is located; and

2. The proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and

3. The proposed use is compatible with property or improvements in the vicinity; and

4. The proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity, and will not adversely affect the established character of the surrounding neighborhood; and

5. The proposed use is consistent with the goals and policies of the comprehensive plan. (Ord. 1593-06 § 73, 2006; Ord. 1317 § 3, 1998).

19.88.050 Expiration or renewal.

A variance or conditional use permit shall automatically expire when such variance or permit is not substantially acted upon within the time specified by the hearing examiner or, if no date is specified, within one year from date of issuance. The hearing examiner may grant one renewal for a conditional use permit or variance if the party seeking renewal can demonstrate extraordinary circumstances or conditions which were not known or foreseeable at the time of original application. A renewed variance or conditional use permit shall be substantially acted upon within six months or the variance or permit shall automatically expire. (Ord. 1593-06 § 74, 2006; Ord. 1317 § 3, 1998).

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A. Public Hearing and Notification. Prior to acting upon a motion, recommendation or request for modification or revocation, a public hearing is required before the hearing examiner. The procedures concerning public notice, reporting and appeals shall be the same as for an initial variance or conditional use permit request.

B. Modification or Revocation Request from Applicant or Property Owner. A modification of a variance or conditional use permit which is initiated by the applicant or property owner shall comply with the applicable required findings in this chapter.

C. Modification or Revocation Initiation from Hearing Examiner, City Council or Aggrieved Party. A modification or revocation of a variance or conditional use permit which is initiated by the hearing examiner, city council or an aggrieved party shall be made on any one or more of the following grounds:

1. That the approval was obtained by deception, fraud or other intentional or misleading representations;
2. That the use for which such approval was granted has been abandoned;
3. That the use for which such approval was granted has ceased to exist or has been suspended for six months or more;
4. That the variance or permit granted is being, or has recently been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, resolution, code, law or regulation;
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5. That the use for which the approval was granted was exercised in a manner as to be detrimental to the public health, safety, morals or general welfare. (Ord. 1593-06 §§ 75, 76, 2006; Ord. 1317 § 3, 1998).

19.88.070 Previously granted variances and conditional use permits may continue.

Where, prior to the effective date of the ordinance codified in this title and title amendments, a conditional use permit or variance was granted for a particular use or structure, and such use or structure is not otherwise permitted in the zone in which it is located, such previous permit or variance is, by this section, declared to be continued for the time specified in the original approval, or until such time as the city council may determine subsequent to this title. (Ord. 1317 § 3, 1998).

19.88.080 Appeal procedure.

The action of the hearing examiner shall be final and conclusive, unless:

- A. Within 21 days of the issuance of the decision, the applicant or another aggrieved person files and serves a land use petition pursuant to Chapter 36.70C RCW; or
- B. Within 10 days from the date of the action, the original applicant or an adverse party makes application to the Pierce County superior court for a writ of prohibition or writ of mandamus. (Ord. 1593-06 § 77, 2006; Ord. 1317 § 3, 1998).

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Thank you for your continued good work on this matter.

Regards,

Tedd Wetherbee

DRAFT

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AMENDING FIFE MUNICIPAL CODE CHAPTER 19.06 TO ADD EIGHT NEW DEFINITIONS AND RENUMBER EXISTING SECTIONS WITHIN THAT CHAPTER, ADDING A NEW FIFE MUNICIPAL CODE SECTION 19.68.085, AND AMENDING FIFE MUNICIPAL CODE SECTIONS 19.44.020, 19.48.020, 19.56.040 AND 19.64.120 ALLOWING MARIJUANA PROCESSING, MARIJUANA PRODUCTION AND MARIJUANA RETAIL IN CERTAIN ZONING DISTRICTS SUBJECT TO REQUIREMENTS AND PROHIBITING MEDICAL MARIJUANA COLLECTIVE GARDENS IN THE CITY

WHEREAS, on August 13, 2013 the City of Fife City Council passed Ordinance No. 1841 imposing a one year moratorium on the establishment, location, permitting, licensing or operation of medical marijuana collective gardens and marijuana production, processing and retailing; and

WHEREAS, Ordinance No. 1841 includes a one year work program for the City's development of regulations for marijuana related land uses; and

WHEREAS, in 2011, the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073, effective July 22, 2011, which authorizes qualifying patients to create and participate in "collective gardens" for the purpose of producing, processing, transporting, and delivering marijuana for medical use, subject to certain conditions contained therein; and

WHEREAS, under E2SSB 5073 there is no limit to the number of collective gardens that may be located at any site nor restrictions as to where collective gardens may be located in relation to other uses; and

WHEREAS, Section 1102 of E2SSB 5073 authorizes cities to adopt and enforce zoning regulations, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana within their jurisdictions; and

WHEREAS, collective gardens are not currently addressed in the Fife Zoning Code; and

WHEREAS, in November 2012, Washington State voters approved Initiative 502 (I-502), which "authorizes the Washington State Liquor Control Board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana" (I-502, Sec. 1(3)); and

WHEREAS, I-502 allows the 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 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 liquor control board to license marijuana retailers to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (I-502, Sec. 4(3)); and

WHEREAS, in September 2013 the Washington State Liquor Control Board adopted rules for implementation of I-502 which became effective in October 2013; and

WHEREAS, in November 2013 the Washington State Liquor Control Board began accepting State license applications for marijuana producers, processors, and retailers authorized by I-502; and

WHEREAS, the City does not currently have any regulations addressing the uses authorized in I-502; and

WHEREAS, on August 29, 2013 the U.S. Department of Justice issued a memorandum regarding its guidance on marijuana enforcement which generally indicates that the federal government will not interfere with State marijuana regulation, if the States create a tightly regulated market that address certain federal enforcement priorities identified in that memorandum; and

WHEREAS, despite the August 29, 2013 U.S. Department of Justice memorandum, the cultivation, possession, or distribution of cannabis marijuana, and marijuana products has been and continues to be a violation of federal law through the Controlled Substances Act; and

WHEREAS, on January 16, 2014 the Washington State Attorney General issued a formal opinion, in response to a request from the Washington State Liquor Control Board, that concluded that local governments have the authority to prohibit and/or regulate I-502 related land uses through zoning/licensing; and

WHEREAS, on March 31, 2014 the Washington State Court of Appeals (Division One) issued a ruling that the City of Kent acted within its authority by enacting an ordinance banning collective gardens and concludes, in part, by stating,

"As the plain language of the statute and the governor's veto message indicate, collective gardens are not legal activity. The ordinance, by prohibiting collective gardens, prohibits an activity that constitutes an offense under state law. As it prohibits an activity that is also prohibited under state law, the Ordinance does not conflict with the MUCA."; and

WHEREAS, the State Environmental Policy Act (SEPA) checklist prepared by the Washington State Liquor Control Board on the proposed rulemaking for WAC 314-55 related to marijuana licenses, application process, requirements, and reporting includes the statement that "A licensee must follow all local and state land and shoreline laws and regulations"; and

WHEREAS, Ordinance No. 1841 provides that the Planning Commission is to make a recommendation to the City Council on development regulations for marijuana related land uses; and

WHEREAS, on January 27, 2014 the City of Fife Planning Commission held a special meeting expressly for the purpose of taking public comment on how the City might proceed on developing amendments to address marijuana; and

WHEREAS, studies related to secondary effects of marijuana land uses were compiled and presented to the Planning Commission, with said studies being available for public inspection at the City of Fife Department of Community Development; and

WHEREAS, on May 5, 2014, the Planning Commission, at a public meeting, recommended approval of certain amendments to the City of Fife zoning code; and

WHEREAS, in making that recommendation, the Planning Commission considered public comment, the WSLCB adopted Rules, federal and state law, and secondary impacts as directed by Ordinance No. 1841; and

WHEREAS, on June 10, 2014, 2014, the Fife City Council held a public hearing on the proposed amendments as recommended by the Planning Commission; and

WHEREAS, in considering the Planning Commission recommendation, additional public testimony and other factors, the City Council _____; and

WHEREAS, on March 27, 2014, the City of Fife State Environmental Policy Act (SEPA) Responsible Official issued a State Environmental Policy Act (SEPA) (DNS/MDNS/DS) on the proposed code amendment [with no appeal filed]; and

WHEREAS, in accordance with RCW 36.70A.106(3)(b), the City of Fife transmitted the proposed development regulation amendment to the Washington State Department of Commerce for the purpose of State agency review requesting 14-day expedited review with said expedited review having granted and no comments from State agencies having been received; and

WHEREAS, the City of Fife has fulfilled all procedural requirements for the adoption of the development regulations; now therefore

THE CITY COUNCIL OF THE CITY OF FIFE, WASHINGTON DO ORDAIN

Section 1. Fife Municipal Code Chapter 19.06 entitled "Definitions", is hereby amended to add new sections and amend existing sections as follows,

19.06.471 Marijuana or marihuana

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

19.06.472 Marijuana concentrates

"Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than sixty (60) percent. The term "marijuana concentrates" does not include useable marijuana or marijuana infused products.

19.06.473 Marijuana processing

"Marijuana processing" means a business, licensed by the Washington State Liquor Control Board, processing marijuana into useable marijuana and/or marijuana-infused products, and/or packaging and labeling useable marijuana and/or marijuana-infused products for sale in retail outlets, and/or selling useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

19.06.474 Marijuana producing

"Marijuana producing" means a business, licensed by the Washington State Liquor Control Board, producing and/or selling marijuana at wholesale to marijuana processors and other marijuana producers.

19.06.475 Marijuana-infused products

"Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration greater than 0.3 percent and no greater than sixty (60) percent. The term "marijuana-infused products" does not include useable marijuana or marijuana concentrates.

19.06.476 Marijuana retailing or Marijuana retailer

"Marijuana retailing" or "Marijuana retailer" means a business, licensed by the Washington State Liquor Control Board, selling useable marijuana and/or marijuana-infused products in a retail outlet.

19.06.477 Marijuana, useable

"Marijuana, useable" (or "useable marijuana") means dried marijuana flowers. The term "Marijuana, useable" does not include either marijuana concentrates or marijuana-infused products.

19.06.475-8 Medical or dental clinic.

"Medical or dental clinic" means a building or complex occupied and used by physicians and dentists and other medical practitioners recognized by the state of Washington, for outpatients only; and including accessory uses including, but not limited to, therapeutic room and x-ray room, medical and dental laboratories, the dispensing of medicine and medical aides to outpatients of the clinic.

19.06.479 Medical marijuana collective garden

"Medical marijuana collective garden" shall mean the growing of medical cannabis by qualifying patients as provided in Chapter 69.51A RCW, now or hereafter amended, and subject to the provisions of this section. A collective garden may also include ancillary processing and distribution of medical cannabis to support the collective garden. Medical marijuana collective gardens are a prohibited land use in the City. In addition, a location used solely for processing or distributing medical cannabis, or not meeting the requirements of this section, shall not be considered a collective garden and is also prohibited.

19.06.47980 Medium-speed electric vehicle.

"Medium-speed electric vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than 25 miles per hour but not more than 35 miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Section 571.500. (Ord. 1780 § 2, 2012).

19.06.4803 Metal products, nonprecious.

"Nonprecious metal products" include ferrous, nonferrous or alloyed metals formed into bar stock sheets, tubes, wire and other extrusions. (Ord. 1317 § 3, 1998).

Section 2. FMC Section 19.44.020 "Permitted Uses" in the Regional Commercial (RC) District is hereby amended as follows:

19.44.020 Permitted uses.

Permitted uses in the RC district are:

- A. Single-family dwelling;
- B. Duplex dwelling;

C. Multifamily structure consisting of retirement home located within 500 feet of a transit line permitted through a planned residential development (PRD);

D. Mixed use structure only if permitted through a planned residential development (PRD), and where all residential units are located on the upper floors of a mixed use structure with nonresidential uses on the first floor, and meeting the design requirements of Chapter 19.60 FMC;

E. Adult or child day-care center;

F. General group home;

G. Manufactured home park through a planned residential development (PRD);

H. Agricultural use, including plant nursery, feed and seed store, livestock (see Chapter 19.68 FMC) and roadside stand for the sale of agricultural goods;

I. Professional office;

J. Veterinary clinic, with treatment and storage of animals within an enclosed building;

K. Retail sales store including, but not limited to, the sale or rental of the following items: antiques, appliances, art, automobiles, baked goods, bicycles, boats, books, carpets, clothing, convenience goods, fabrics, flowers, food, furniture, garden supply, gifts, glass (artistic or commercial use), hardware, hobby supplies, jewelry, lumber, motorcycles, newspapers, office equipment or supplies, paint, pets or pet supplies, pharmaceuticals, photography supplies, pottery, secondhand merchandise, shoes, sporting goods, stationery, textile, tile, toys, vehicle parts (new/remanufactured); videos and wallpaper;

L. Retail sales office and lot including, but not limited to, automobile, boat, manufactured home (sales only), recreational vehicle and truck sales;

M. Commercial service including, but not limited to, advertising, ambulance (private), auction (indoor), banking, beauty and hair care, cleaning, consulting, construction contracting, copying, decorating, dry cleaning, employment, funeral, glass (repair, replacement, studios), financial, gasoline (station), health (club), insurance, kennel (indoor), laundry, locksmithing, masonry, newspapers, paging, parcel delivery, pet grooming, plumbing, printing (small-scale), studio photography, real estate sales, repair of products listed in subsection (K) of this section, roofing, security, signs, tailoring, telecommunication sales, title, upholstery, vehicle detailing, vehicle painting and vehicle washing;

N. Indoor entertainment facility including, but not limited to, arcade, billiard room, bowling alley, movie or stage theater, miniature golf course, skating/skateboard facility, racquetball court and tennis court. Excludes shooting range;

O. Commercial instruction including, but not limited to, airline, art, barber, beauty, business, computer, dance, driving, gaming dealers, language, music, photography, self defense and trade;

P. Public and quasi-public use and facility including, but not limited to, community center, court, fire station, governmental office, museum, parking facility, park, police station, pool, post office, public works facility, senior center, school, substation, utility and well facility;

Q. Vehicle repair, minor or major. A vehicle for repair shall not be located in the front yard for more than one week. On-site storage of vehicles not actively being repaired or used by the facility shall be prohibited;

- R. Radio station;
- S. Hotel;
- T. Supermarket;
- U. Shopping center;
- V. Restaurant, excluding dancing, live stage or similar entertainment activities;
- W. Espresso stand;
- X. Liquor store, located at least 500 feet from the closest property line of any public school or park;
- Y. Bar, tavern and nightclub, located at least 500 feet from the closest property line of any public school, park, adult use business, residential use and residential zoning district;
- Z. Religious institution;
- AA. Civic, labor, social or fraternal organization;
- BB. Technological use including, but not limited to, scientific research, testing and experimental development laboratory (excludes biotechnology);
- CC. Attached wireless communication facility (WCF) on nonresidential attachment structure (see Chapter 19.72 FMC);
- DD. An off-site parking lot located within 500 feet of the associated use lot; provided, that the off-street parking lot is legally encumbered to serve the associated use;
- EE. Mini-storage;
- FF. Electric vehicle infrastructure;
- GG. Mobile food units subject to the requirements of FMC section 19.68.075;
- HH. Marijuana retailing subject to the requirements of FMC section 19.68.085.

Section 3. FMC Section 19.48.020 "Permitted Uses" in the Industrial District is hereby amended as follows:

19.48.020 Permitted uses.

Permitted uses in the I district are:

- A. Existing dwelling unit. A legally constructed dwelling unit for residential occupancy as of the effective date of the ordinance codified in this title;
- B. Manufacturing of products using processed materials. Chemical, paint and tire related manufacturing are excluded;
- C. Pharmaceutical products manufacturing;
- D. Food products manufacturing, excluding meat products, seafood products, distilling, fermenting, canning, slaughtering, rendering, curing and tanning;
- E. Machine shop;
- F. Saw and filing shop;
- G. Assembly of commercial, professional or household electronic components, products and equipment including, but not limited to, appliances, communication devices, computers and related accessories, stereo equipment, telecommunications equipment and televisions;
- H. Warehousing and distribution facilities, including mini-storage. Excludes ocean cargo container storage yard;
- I. Mail and package shipping facilities;

J. Professional offices;
 K. Construction contracting;
 L. Technological uses including scientific research, testing and experimental development laboratories (excludes biotechnology);
 M. Retail and wholesale sale of products manufactured on-site. The site shall be on a lot with at least 100 feet of frontage on a principal or minor arterial;
 N. Agricultural use, including plant nursery, feed and seed store, livestock (see Chapter 19.68 FMC) and roadside stand for the sale of agricultural goods;
 O. Retail sales or service use, fronting on a minor or principal arterial, which shall primarily serve the needs of the industrial district, be compatible with the permitted types of industrial uses, and not interfere with the orderly development of the industrial area;
 1. Permitted uses include, but are not limited to, the sale or rental of the following items: electronic equipment, forklifts, heavy equipment, trucks, newspapers and office equipment and supplies;
 2. Permitted uses include, but are not limited to, the following services: electric motor repair, espresso stand (including drive-thru), heavy equipment repair, vehicle wash and vehicle repair;
 3. Other retail and service type uses which are within the same structure as a permitted manufacturing, warehousing, distribution or office use and occupy less than or equal to 35 percent of the structure's gross floor area;
 4. Additional permitted uses within retail overlay zone:
 Retail sales store including, but not limited to, the sale or rental of the following items: antiques, appliances, art, automobiles, baked goods, bicycles, boats, books, carpets, clothing, convenience goods, fabrics, flowers, food, furniture, garden supply, gifts, glass (artistic or commercial use), hardware, hobby supplies, jewelry, lumber, motorcycles, newspapers, office equipment or supplies, paint, pets or pet supplies, pharmaceuticals, photography supplies, pottery, secondhand merchandise, shoes, sporting goods, stationery, textile, tile, toys, vehicle parts (new/remanufactured), videos and wallpaper;
 P. Public and quasi-public use and facility including, but not limited to, community center, court, fire station, governmental office, museum, parking facility, park, police station, pool, post office, public works facility, senior center, school, substation, utility and well facility;
 Q. Commercial parking lots and park and ride lots;
 R. Armored vehicle facility;
 S. Printing establishment (large-scale);
 T. Recycling collection site and recycling facilities (indoor) including glass, plastic, metal, cardboard and newspaper;
 U. Monopole or lattice WCF less than or equal to 150 feet in height. Located within WCF permitted use overlay and subject to Chapter 19.72 FMC;
 V. Electric vehicle infrastructure;
 W. Mobile food units subject to the requirements of FMC section 19.68.075;
X. Marijuana processing subject to the requirements in FMC section 19.68.085;
Y. Marijuana producing subject to the requirements in FMC section 19.68.085.

Section 4. The Fife Municipal Code is hereby amended to add a new section 19.68.085 entitled "Marijuana Land Uses" as follows:

19.68.085 Marijuana Land Uses

A. The production, processing, and retailing of marijuana are, and remain, illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the city of Fife is an authorization to circumvent federal law or to provide permission to any person or entity to violate federal law. Only Washington State Liquor Control Board licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the city of Fife.

B. Marijuana retailing is permitted in the Regional Commercial zone subject to all requirements applicable to the zoning district and all of the following:

1. Shall be State licensed by the Washington State Liquor Control Board and shall have a current City of Fife business license;
2. Shall be on a lot which has a lot line fronting on Pacific Highway East;
3. Shall not be located within 2,500 feet from another property with a marijuana retailer located within the city of Fife. The distance shall be measured as the shortest straight line distance from the property line of the lot of the marijuana retailer business to the nearest point of the property line of the lot on which the other marijuana retailer is located;
4. Shall not be located within 1,000 feet from a property zoned Public Use/Open Space District on the City of Fife zoning map. Utility sites, solely devoted to a utility use, that are zoned Public Use/Open Space are excluded from the required 1,000 foot buffer. The distance shall be measured as the shortest straight line distance from the property line of the lot of the marijuana retailer business to the nearest point of the property line of the lot zoned Public Use/Open Space District;
5. Shall be subject to all applicable requirements of Title 69 RCW and Chapter 314-55 WAC and other state statutes, as they now exist or may be amended; and
6. Marijuana retail businesses shall not be permitted as a home occupation.

C. Marijuana producing and Marijuana processing are permitted in the Industrial Zone subject to all requirements applicable to the zoning district and the following:

1. Shall be State licensed by the Washington State Liquor Control Board and shall have a current City of Fife business license;
2. Shall not be located within 1,000 feet from a property zoned Public Use/Open Space District on the City of Fife zoning map. Utility sites, solely devoted to a utility use, that are zoned Public Use/Open Space are excluded from the required 1,000 foot buffer. The distance shall be measured as the shortest straight line distance from the property line of the lot of the marijuana producing and/or marijuana processing business to the nearest point of the property line of the lot zoned Public Use/Open Space District;
3. Shall not be located contiguous to a lot zoned either: Single-Family Residential, Small Lot Residential, Medium Density Residential, High Density

Residential, Neighborhood Residential, Neighborhood Commercial, Community Commercial or Community Mixed Use;

4. Shall be subject to all applicable requirements of Title 69 RCW and Chapter 314-55 WAC and other state statutes, as they now exist or may be amended; and

5. Shall not be permitted as a home occupation.

D. The possibility of a variance to the restrictions described in FMC 19.68.085(B)(2) & (3) is allowed and shall follow the requirements of FMC Chapter 19.88. Variance applications will not be accepted or permitted for any other section of 19.68.085(B). Variance applications will not be accepted or permitted for 19.68.085(C).

E. Medical marijuana collective gardens shall be a prohibited use in all City of Fife zoning districts.

F. No use that purports to be a marijuana producer, processor, or retailer, as defined and regulated herein, the RCW and/or in WAC 314-55, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use or entitled to claim legal non-conforming status.

G. An existing non-conforming use located within a zoning district that would otherwise not permit marijuana uses, such as an old convenience store in a residential district, shall not be allowed to convert to a marijuana use.

Section 5. Fife Municipal Code section 19.56.040 entitled "Parking space requirements per activity" is hereby amended as follows,

19.56.040 Parking space requirements per activity.

The following tables identify the minimum required number of parking spaces for each activity. The director shall determine the actual required spaces for a proposed activity based on the tables below, the requirements of this chapter and on actual field experience. Accessible parking space requirements are the responsibility of the building official.

A. Table Abbreviations. The following abbreviations are utilized in the tables below:
square feet of gross floor area = sf
dwelling unit = du

B. Residential and Lodging Activities.

Use	Required Spaces
Single-family	2 per du.

Duplex	2 per du.
Multifamily development, < 49 du	1.5 per du.
Multifamily development, ≥ 50 du	1.5 per du + 1 recreational vehicle space per 15 du.
Retirement apartment	.5 per du.
Accessory du (ADU)	1 per ADU in addition to required parking for primary residence.
Home occupation with on-site customers	1 per business use in addition to residential use.
Manufactured home park	2 per mobile home + 1 recreational vehicle space per 15 mobile homes.
Hotel (bed and breakfast, excluded from truck parking requirement)	1 per guest room + 2 per 3 employees. 5% of total spaces for truck parking.

C. Educational Activities.

Use	Required Spaces
College, university, business or vocational school	1.5 per employee + 1 per 3 students residing on campus + 1 per full-time equivalent student residing off-campus. 1 bus space per each bus parked on-site.
High school with student commuters	1.5 per employee + 2 per 5 students enrolled. 1 bus space per bus parked on-site.
Elementary, junior high and high schools (no student commuters)	1.5 per employee. 1 bus space per each bus parked on-site.
Nursery school or day-care center	1 per employee + 2 visitor spaces + sufficient drop-off/pick-up space to be determined by the director.

D. Commercial Activities.

Use	Required Spaces
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Bank	1 per 200 sf.
Drive-thru business	See FMC 19.56.050.
Professional office or business	1 per 300 sf.
Shopping center	2 per 1,000 sf.
Restaurant, night club, gambling premises or tavern	1 per 100 sf.
High intensity retail or service shop (excluding drive-in business). See subsection K of this section	1 per 200 sf.
Low intensity retail or service shop. See subsection K of this section	1 per 500 sf.
Bulk retail sales/wholesale sales	1 per 350 sf.
Uncovered commercial area, including vehicle lots and plant nursery	1 per 5,000 sf of retail sales area + any parking requirements for building.
Motor vehicle repair and services	1 per 400 sf (indoor maintenance bays shall not be considered parking spaces).
Mortuary or funeral home	1 per 100 sf of use area.

E. Industrial Activities.

Use	Required Spaces
<u>Manufacturing, including marijuana processing and marijuana producing</u>	1 per 1,000 sf (less office and display space). 1 per 300 sf of office space + 1 per 500 sf of display space.
Technological or biotechnological laboratory or testing facility	1 per 1,000 sf (less office space) + 1 per 300 sf of office space.
Warehouse, storage or distribution facility	1 per 1,000 sf, for the first 20,000 sf; 1 per 2,000 sf for the second 20,000 sf; 1 per

	4,000 sf for areas in excess of the initial 40,000 sf; less office space. 1 per 300 sf of office space.
Speculative industrial building with multiple use or tenant potential NOTE: For each new use or tenant, the property owner shall submit a scaled parking plan indicating the assigned parking for the applicable building.	1 per 1,500 sf for initial 100,000 sf + 1 per 2,000 sf for remainder of building (less office space). 1 per 300 sf of office space. NOTE: This is a minimum requirement valid for construction purposes only. Parking requirements shall be based upon actual occupancy.
Uncovered storage area	1 per 5,000 sf of storage area.
Parcel delivery service	1 per 600 sf, less office space + 1 per 300 sf of office.

F. Recreational, Amusement and Assembly Activities.

Use	Required Spaces
Auditorium, theater, place of public assembly, stadium or outdoor sports arena	1 per 4 fixed seats or 1 per 175 sf of main auditorium or of principal place of assembly not containing fixed seats + 1 per 300 sf of office.
Bowling alley	4 per lane.
Skating rink	1 per 200 sf.
Golf driving range	1 per driving station.
Miniature golf course	1 per hole.

G. Public Activities.

Use	Required Spaces
Library or museum	1 per 250 sf of floor area of public and office space.
Post office	1 per 350 sf.

H. Medical Activities.

Use	Required Spaces
Medical or dental office	1 per 300 sf.
Convalescent, nursing or rest homes	1 per 3 beds + .5 per employee.
Hospital	1 per 3 beds + 1 per doctor + 1 per 3 employees.

I. Religious Activities.

Use	Required Spaces
Religious institution	1 per 8 seats in the main sanctuary, minimum of 8. Other use areas shall be calculated based on above requirements and shared use and use hours.

J. Other Uses. For uses not specifically identified in this chapter, the amount of parking required shall be based on the requirements for similar uses as determined by the director.

K. Retail Sales and Service Uses.

1. High intensity retail sales and service use include, but are not limited to, barber/beauty shop, laundromat, mini-mart, drug store, marijuana retailing, gasoline station with retail sales and supermarkets.

2. Low intensity retail sales and service use include, but are not limited to, antique store, appliance sales, auto sales (building only), equipment repair shop, furniture store, hardware store, photography sales and shoe repair.

L. Joint Use. In the case of two or more uses in the same building or on the same lot, the total requirements for off-street parking facilities shall be 75 percent of the sum of the requirements for the various uses computed separately, except for newly constructed shopping centers. Off-street parking facilities for one use shall not be considered as providing required parking facilities for any other use. The director shall be responsible for determining the various uses within a building or on a lot and the resulting parking requirements for each use.

M. Joint Use Reduction for Dissimilar Hours. The joint use of parking facilities may be authorized for those uses which have dissimilar peak-hour parking demands if:

1. The joint use facility has a quantity of parking spaces greater than or equal to the quantity of spaces necessary for the use with the highest parking requirement; or
2. The quantity of parking spaces of one user is in excess of parking requirements for that use. The excess parking spaces within the facility may be leased to another user. To qualify as a joint use parking facility, the facility must be located within a radius of 500 feet from the structure or use it is intended to serve;
3. The joint users shall enter into a contract for joint use parking facilities. The contract shall be for a minimum of five years and shall be approved by the city attorney prior to business license issuance. A joint use parking contract is not required within a planned development;
4. Uses are not within a shopping center.

N. Maximum Spaces. For multifamily, commercial and industrial uses where a minimum parking requirement is in place, a property owner may submit a waiver request to allow for parking spaces up to 20 percent above the maximum allowable number. If the waiver is granted, the increased parking spaces shall require an increase of .05 to the green area factor requirement for the site.

Section 6. FMC Section 19.64.120 entitled "Buffering requirements", is hereby amended as follows,

19.64.120 Buffering requirements.

Buffers are intended to lessen the impacts between uses which are incompatible or somewhat incompatible. The required buffer yard plantings take the place of the required landscaping plantings within a buffer yard. The buffer yard plantings are subject to the same requirements and review as the landscaping requirements.

In order to determine the required buffer yard, if any, please follow the instructions in this section. If a buffer yard is required, refer to Table D for specific buffer yard requirements.

A. Buffer Requirements Between Zoning Districts. In order to determine the appropriate buffer requirement between zoning districts, see adjacent zoning district buffer requirements in Table A or the text in this subsection. After determining the applicable buffer yard type, use Table D to determine the associated buffer yard elements.

1. Commercial/Business Park District to Residential District. If a commercial or business park zoning district is adjacent to a residential zoning district, then a minimum of a buffer yard C is required.
2. Industrial District to Residential District. If an industrial zoning district is adjacent to a residential zoning district, then a buffer yard E is required.
3. Industrial District to Commercial District. If an industrial zoning district is adjacent to a commercial zoning district, then a minimum of a buffer yard C is required.

B. Land Use Buffer Requirements within a Zoning District. In order to determine the appropriate buffer requirement within a zoning district, the intensity of abutting land uses shall be determined using Table E. Table B or C is then used to determine the applicable buffer yard type based on the intensity of land uses. After determining the applicable buffer yard type, use Table D to determine the associated buffer yard elements.

1. Within a Residential District. Within a residential zoning district, use Table B to determine the buffer yard requirement between two adjacent uses.
2. Within a Commercial, Business Park or Industrial District. Within a commercial, business park or industrial district, use Table C to determine the buffer yard requirement between two adjacent uses.

C. Buffer Yard Exemptions.

1. Residential/Business Park/Commercial District. A buffer yard within a residential, commercial or business park zoning district shall not be required when there is an intervening feature such as a public street, a railroad, a river, a major topographic variation or other similar feature between two uses.
2. Industrial District. A buffer yard within an industrial zoning district shall not be required when there is an intervening feature such as a freeway, a railroad, a river, a major topographic variation, or other similar feature between two uses.

D. Buffer Yard Tables.

Table A: Minimum Buffer Yard Requirements Between Zoning Districts		
Zoning District	Adjacent Zoning District	
	Residential	Commercial
Business Park/Commercial	C	N/A
Industrial	E	C

Table B: Minimum Residential District Land Use Buffer Yard Requirements				
Proposed Land Use Intensity	Adjacent Existing Land Use Intensity			
	I	II	III	IV
II	A	NONE	NONE	NONE
III	C	NONE	NONE	NONE
IV	D	C	NONE	NONE

Table C: Minimum Commercial/Business Park/Industrial District Land Use Buffer Yard Requirements				
Proposed Land Use Intensity	Adjacent Existing Land Use Classification			
	I	II	III	IV
II	A	NONE	NONE	NONE
III	C	NONE	NONE	NONE
IV	C	B	NONE	NONE
V	C	C	C	C

Table D: Minimum Buffer Yard Standards					
	A	B	C	D	E
Width	10'	15'	20'	35'	50'
Structure required	None	None	F2	B2 & F4	B5 & F6 or BW1
Plant units per 100 linear feet of buffer yard:					
Deciduous trees, 2" caliper, 6' min. height	4 or	5 or	5	8	12
Evergreen trees, 6' min. height	8	10	6	9	13
Evergreen or evergreen/deciduous tree row* along berm or fence	N/A	YES	YES	YES	YES
Shrubs, minimum 5 gallons	20	25	25	32	40

Groundcover	Yes	Yes	Yes	Yes	Yes
Note: Caliper and centers may be altered by the director based on tree type.					
*Trees for required row may count toward evergreen/deciduous tree requirement above.					

Table E: Land Use Intensity Classification Chart

<p>Land Use Intensity I</p> <ul style="list-style-type: none"> • Duplex dwelling • Single-family dwelling <p>Land Use Intensity II</p> <ul style="list-style-type: none"> • Library, museum, gallery • Low-intensity retail and services • Mini-storage • Multifamily structure containing 3 or 4 dwelling units • Office building ≤ 3,000 square feet • Park • Religious institution <p>Land Use Intensity-III</p> <ul style="list-style-type: none"> • <u>Agricultural crops, excluding marijuana producing.</u> • Entertainment, indoor • General retail and services • Hotel • Manufactured home park • <u>Marijuana retailing</u> • Mixed use • Multifamily structures, containing between 5 and 8 dwelling units • Office building > 3,000 square feet • Police station/court • School • Vehicle repair shop 	<p>Land Use Intensity IV</p> <ul style="list-style-type: none"> • Bakery, wholesale • Commercial livestock • Entertainment, outdoor • Gasoline station • Hospital • Kennel • Lumber yard • Multifamily structure containing 9 or more units • Recreational vehicle park • Restaurant with drive-thru • Sales, outdoor • Shopping center • Supermarket <p>Land Use Intensity V</p> <ul style="list-style-type: none"> • Airport • Auction, outdoor • Correctional facility • Distribution facility • Hazardous waste, off-site facility • Impound yard, motor vehicle • Industrial, including flex-retail • Manufacturing • <u>Marijuana producing</u> • <u>Marijuana processing</u> • Ocean cargo container storage yard • Recycling, collection and/or processing facility • Regional transit center • Sale of products manufactured on-site • Solid waste handling facility • Storage yard, general • Tire (re)manufacturing • Truck transfer facility • Towing facility • Warehousing facility
The director shall determine the land use intensity classification for uses not listed	

above.

BUFFER STRUCTURES

B1 = 4'
B2 = 5'
B3 = 6'
B4 = 7'
B5 = 8'

EXAMPLE OF BERM
& FENCE
REQUIREMENT

BERM HEIGHT MEASURED FROM AVERAGE
FINISHED GRADE OF DEVELOPED SITE

BW1 - CONSISTS OF B5 HALF
W/ 2:1 SLOPE TO F7. F6 ON
TOP OF BERM

PROPOSED USE ON THIS
SIDE

WOOD FENCE

F1 = 4'
F2 = 6'
F3 = 8'

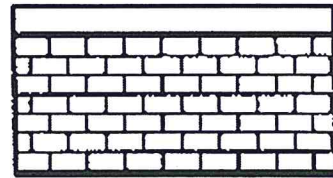
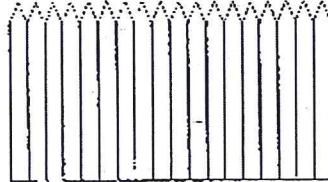
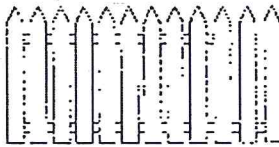
WOOD STOCKADE
FENCE

NOTE: MINIMUM 2 LVS/SQ FT
DENSITY

F4 = 4'
F5 = 6'
F6 = 8'

MASONRY
OR CEMENT
FENCE/WALL

F7 = 4'
F8 = 6'
F9 = 8'
F10 = 10'



Section 7. Ordinance Publication and Effective Date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Section 8. Severability. Each and every provision of this Ordinance shall be deemed severable. If any provision of this Ordinance should be deemed to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, then it shall not affect the validity of the remaining sections so long as the intent of the Ordinance can be fulfilled without the illegal section.

Introduced the ____ day of _____, 2014.

Passed by the City Council on the ____ day of _____, 2014.

David K. Zabell, City Manager

ATTEST:

Carol Etgen, City Clerk

APPROVED AS TO FORM:

Loren D. Combs, City Attorney

Published: _____

Effective Date: _____, 2014

ORDINANCE NO. 1872

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AMENDING FIFE MUNICIPAL CODE CHAPTER 19.06 TO ADD NINE NEW DEFINITIONS AND RENUMBER EXISTING SECTIONS WITHIN THAT CHAPTER AND ADDING SECTIONS 19.14.045, 19.20.045, 19.24.045, 19.28.045, 19.32.045, 19.36.045, 19.40.045, 19.42.045, 19.44.045, 19.46.045, 19.48.045, 19.50.045 PROHIBITING ALL BUSINESS USES INVOLVING MARIJUANA, INCLUDING RETAIL, PRODUCTION, AND PROCESSING, AND PROHIBITING MEDICAL MARIJUANA COLLECTIVE GARDENS IN THE CITY

WHEREAS, on August 13, 2013 the City of Fife City Council passed Ordinance No. 1841 imposing a one year moratorium on the establishment, location, permitting, licensing or operation of medical marijuana collective gardens and marijuana production, processing and retailing; and

WHEREAS, in 2011, the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073, codified in RCW Chapter 69.51A, which authorizes qualifying patients to create and participate in "collective gardens" for the purpose of producing, processing, transporting, and delivering marijuana for medical use, subject to certain conditions contained therein; and

WHEREAS, RCW 69.51A.170 authorizes cities to adopt and enforce zoning regulations, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana within their jurisdictions; and

WHEREAS, in November 2012, Washington State voters approved Initiative 502 (I-502), codified in RCW Chapter 69.50, which "authorizes the Washington State Liquor Control Board to regulate and tax marijuana for persons twenty-one years of age and older," and license marijuana producers, processors, and retailers; and

WHEREAS, Article XI, Section 11 of the Washington Constitution provides that "[a]ny county, city, town, or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws", which grants local governments jurisdiction over land use issues like zoning; and

WHEREAS, Ordinance No. 1841 includes a one year work program for the City's development of regulations for marijuana related land uses; and

WHEREAS, the City having completed its one year work program; and

WHEREAS, the City Council finds it would not be in the best interest of the City of Fife to allow any business uses involving marijuana, including retail, production, and/or processing within any zoning designation within the City at this time; and

WHEREAS, the City Council also finds it would not be in the best interest of the City of Fife to allow medical marijuana collective gardens within any zoning designation with the City at this time; and

WHEREAS, the City Council finds the proposed amendments will promote the public health, safety, morals, and general welfare and is consistent with the goals and policies of the Comprehensive Plan; and

WHEREAS, the City Council recognizes this is a dynamic issue that will have more data developed as time progresses; now therefore

THE CITY COUNCIL OF THE CITY OF FIFE, WASHINGTON DO ORDAIN

Section 1. Fife Municipal Code Chapter 19.06 entitled "Definitions", is hereby amended to add new sections and amend existing sections as follows,

19.06.471 Marijuana or marihuana

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

19.06.472 Marijuana concentrates

"Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than sixty (60) percent. The term "marijuana concentrates" does not include useable marijuana or marijuana infused products.

19.06.473 Marijuana processing

"Marijuana processing" means a business, licensed by the Washington State Liquor Control Board, processing marijuana into useable marijuana and/or marijuana-infused products, and/or packaging and labeling useable marijuana and/or marijuana-infused products for sale in retail outlets, and/or selling useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

19.06.474 Marijuana producing

"Marijuana producing" means a business, licensed by the Washington State Liquor Control Board, producing and/or selling marijuana at wholesale to marijuana processors and other marijuana producers.

19.06.475 Marijuana-infused products

"Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration greater than 0.3 percent and no greater than sixty (60) percent. The term "marijuana-infused products" does not include useable marijuana or marijuana concentrates.

19.06.476 Marijuana retailing or Marijuana retailer

"Marijuana retailing" or "Marijuana retailer" means a business, licensed by the Washington State Liquor Control Board, selling useable marijuana, marijuana concentrates, and/or marijuana-infused products in a retail outlet.

19.06.477 Marijuana, useable

"Marijuana, useable" (or "useable marijuana") means dried marijuana flowers. The term "Marijuana, useable" does not include either marijuana concentrates or marijuana-infused products.

19.06.475-8 Medical or dental clinic.

"Medical or dental clinic" means a building or complex occupied and used by physicians and dentists and other medical practitioners recognized by the state of Washington, for outpatients only; and including accessory uses including, but not limited to, therapeutic room and x-ray room, medical and dental laboratories, the dispensing of medicine and medical aides to outpatients of the clinic.

19.06.479 Medical marijuana collective garden

"Medical marijuana collective garden" shall mean the growing of medical cannabis by qualifying patients as provided in Chapter 69.51A RCW, now or hereafter amended, and subject to the provisions of this section. A collective garden may also include ancillary processing and distribution of medical cannabis to support the collective garden. Medical marijuana collective gardens are a prohibited land use in the City. In addition, a location used solely for processing or distributing medical cannabis, or not meeting the requirements of this section, shall not be considered a collective garden and is also prohibited.

19.06.47980 Medium-speed electric vehicle.

"Medium-speed electric vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than 25 miles per hour but not more than 35 miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Section 571.500. (Ord. 1780 § 2, 2012).

19.06.4803 Metal products, nonprecious.

"Nonprecious metal products" include ferrous, nonferrous or alloyed metals formed into bar stock sheets, tubes, wire and other extrusions. (Ord. 1317 § 3, 1998).

19.06.637 Prohibited Use.

"Prohibited Use" means any use of land or a building upon the land in a particular zoning classification that is: 1) listed as a prohibited use for that zoning classification; or 2) is not a use qualifying as a conditional use, either by listing or administrative interpretation, and is not otherwise listed as a permitted use or an accessory use in the particular zoning classification.

Section 2. The Fife Municipal Code is hereby amended to add a new section 19.14.045 as follows:

19.14.045 Prohibited Uses.

The following are Prohibited Uses for the Single-Family Residential (SFR) District:

- A. Marijuana Producing.
- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.
- D. Medical Marijuana Collective Gardens.

Section 3. The Fife Municipal Code is hereby amended to add a new section 19.20.045 as follows:

19.20.045 Prohibited Uses.

The following are Prohibited Uses for the Small Lot Residential (SLR) District:

- A. Marijuana Producing.
- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.
- D. Medical Marijuana Collective Gardens.

Section 4. The Fife Municipal Code is hereby amended to add a new section 19.24.045 as follows:

19.24.045 Prohibited Uses.

The following are Prohibited Uses for the Medium Density Residential (MDR) District:

- A. Marijuana Producing.
- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.
- D. Medical Marijuana Collective Gardens.

Section 5. The Fife Municipal Code is hereby amended to add a new section 19.28.045 as follows:

19.28.045 Prohibited Uses.

The following are Prohibited Uses for the High Density Residential (HDR) District:

- A. Marijuana Producing.
- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.
- D. Medical Marijuana Collective Gardens.

Section 6. The Fife Municipal Code is hereby amended to add a new section 19.32.045 as follows:

19.32.045 Prohibited Uses.

The following are Prohibited Uses for the Neighborhood Residential (NR) District:

- A. Marijuana Producing.
- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.

D. Medical Marijuana Collective Gardens.

Section 7. The Fife Municipal Code is hereby amended to add a new section 19.36.045 as follows:

19.36.045 Prohibited Uses.

The following are Prohibited Uses for the Neighborhood Commercial (NC) District:

- A. Marijuana Producing.
- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.
- D. Medical Marijuana Collective Gardens.

Section 8. The Fife Municipal Code is hereby amended to add a new section 19.40.045 as follows:

19.40.045 Prohibited Uses.

The following are Prohibited Uses for the Community Commercial (CC) District:

- A. Marijuana Producing.
- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.
- D. Medical Marijuana Collective Gardens.

Section 9. The Fife Municipal Code is hereby amended to add a new section 19.42.045 as follows:

19.42.045 Prohibited Uses.

The following are Prohibited Uses for the Community Mixed Use (CMU) District:

- A. Marijuana Producing.
- B. Marijuana Processing.

C. Marijuana Retailing or Marijuana Retailers.

D. Medical Marijuana Collective Gardens.

Section 10. The Fife Municipal Code is hereby amended to add a new section 19.44.045 as follows:

19.44.045 Prohibited Uses.

The following are Prohibited Uses for the Regional Commercial (RC) District:

A. Marijuana Producing.

B. Marijuana Processing.

C. Marijuana Retailing or Marijuana Retailers.

D. Medical Marijuana Collective Gardens.

Section 11. The Fife Municipal Code is hereby amended to add a new section 19.46.045 as follows:

19.46.045 Prohibited Uses.

The following are Prohibited Uses for the Business Park (BP) District:

A. Marijuana Producing.

B. Marijuana Processing.

C. Marijuana Retailing or Marijuana Retailers.

D. Medical Marijuana Collective Gardens.

Section 12. The Fife Municipal Code is hereby amended to add a new section 19.48.045 as follows:

19.48.045 Prohibited Uses.

The following are Prohibited Uses for the Industrial (I) District:

A. Marijuana Producing.

- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.
- D. Medical Marijuana Collective Gardens.

Section 13. The Fife Municipal Code is hereby amended to add a new section 19.50.045 as follows:

19.50.045 Prohibited Uses.

The following are Prohibited Uses for the Public Use/Open Space District:

- A. Marijuana Producing.
- B. Marijuana Processing.
- C. Marijuana Retailing or Marijuana Retailers.
- D. Medical Marijuana Collective Gardens.

Section 14. The City Council directs the City Manager to report back to the Council at such time as statistically significant data on impacts upon jurisdictions who have legalized marijuana production, processing, and retailing has been established and/or when significant legal changes have occurred.

Section 15. Ordinance Publication and Effective Date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Section 16. Severability. Each and every provision of this Ordinance shall be deemed severable. If any provision of this Ordinance should be deemed to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, then it shall not affect the validity of the remaining sections so long as the intent of the Ordinance can be fulfilled without the illegal section.

Introduced the 24th day of June, 2014.

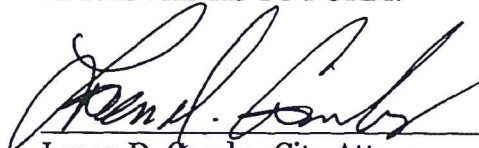
Passed by the City Council on the 8th day of July, 2014.


David K. Zabel, City Manager

ATTEST:


Carol Etgen, City Clerk

APPROVED AS TO FORM:


Loren D. Combs, City Attorney

Published: July 10, 2014

Effective Date: July 15, 2014