



PACIFIC CITY COUNCIL AGENDA
Council Chambers - City Hall. 100 3rd Ave. SE

January 20, 2015
Tuesday

Workshop
6:30 p.m.

1. **CALL TO ORDER/PLEDGE OF ALLEGIANCE**
2. **ROLL CALL OF COUNCIL MEMBERS**
3. **ADDITIONS TO/APPROVAL OF AGENDA**
- (2) 4. **PUBLIC HEARING – Marijuana Regulations**
5. **DISCUSSION ITEMS**
- (2) A. **AB 15-010: Marijuana Regulations Ordinances** (30 min.)
 - Ordinance No. 2014-1876:** Conditional approval of marijuana producers, processors and retail sales;
 - Ordinance No. 2014-1872:** Prohibit medical marijuana dispensaries and collective gardens;
 - Ordinance No. 2015-1888:** Conditionally approving marijuana producers & processors in the LI zone and prohibits recreational sales;
 - Ordinance No. 2015-1891:** Prohibiting marijuana producers, processors, and recreational marijuana sales.
 - Ordinance No. 2015-1890:** Extending the interim zoning regulations prohibiting medical and recreational sales.
(Carol Morris)
- (65) B. **AB 15-004: Discussion regarding surplus of the Police truck** (10 min.)
(John Calkins)
- (70) C. **AB 15-011: Ordinance No. 2015-1892:** An ordinance amending Pacific Municipal Code section 2.68.250 discontinuing exchange time for exempt employees and establishing management days off and converting existing exchange time to vacation. (15 min.)
(Richard Gould)
- (73) D. **AB 15-012: Discussion regarding employee leave policies** (10 min.)
(Amy Stevenson-Ness)
6. **ADJOURN**



Agenda Bill No. 15-010

TO: Mayor Guier and City Council Members

FROM: Jack Dodge, Community Development Manager

MEETING DATE: January 20, 2015

SUBJECT: Marijuana Regulations – Council Action

ATTACHMENTS:

1. **Ord. 2015-1890** – Extension of the Interim Zoning Regulations
2. **Ord. 2015-1891** – Prohibits the Producing, Processing and Recreational Marijuana Sales
3. **Ord. 2014-1876** – Conditional Approval of Marijuana Producers, Processors and Retail Sales
4. **Ord. 2014-1872** – Prohibit Medical Marijuana Dispensaries and Collective Gardens
5. **Ord. 2015-1888** – Conditionally Approves Marijuana Producers & Processors in LI zone. Prohibits Recreational Sales.
6. **Matrix** – Summary of Ordinances Under Consideration
7. **Matrix** – Summarizes Where Council Must Conduct a Public Hearing

Previous Council Review Date/s: 8/8/11, 2/13/12, 2/25/13, 2/3/14, 7/16/14, 7/21/14, 7/28/14, 1/5/15
(PC Review Dates: 1/29/13, 2/26/13, 3/26/13, 4/23/13, 11/26/13, 2/25/14, 3/18/14, 4/22/14, 5/27/14, 6/24/14, 8/6/14)

Summary: Staff at the January 5th Council Study Session requested direction from Council pertaining to eight different ordinances regarding medical and recreational marijuana. After consideration, the Council requested that the following ordinances be brought forward for further discussion at the Council's Public Hearing at the Council Study Session on January 20th.

1. **Ord. 2014-1876** – Conditional Approval of Marijuana Producers, Processors and Retail Sales
2. **Ord. 2014-1872** – Prohibit Medical Marijuana Dispensaries and Collective Gardens
3. **Ord. 2015-1888** – Conditionally Approves Marijuana Producers & Processors in LI zone. Prohibits Recreational Sales.
4. **Ord. 2015-1891** – Prohibits marijuana producers, processors and recreational marijuana sales (New Ordinance)
5. **Ord. 2015-1890** (*Extend Interim zoning regulations prohibiting medical and recreational sales*)

All ordinances are attached to this Agenda Bill including the two new ordinances, Ordinance Nos. 2015-1890 and 1891.

A public hearing regarding medical and recreational marijuana is scheduled at the January 20, 2015 meeting. At the January 20th hearing, the Council will need to consider public testimony regarding the above ordinances and determine which ordinances to adopt at the next regular meeting on January 26, 2015. Because the Council cannot make a final decision at a Study Session, the Council must defer their decision to the January 26, 2015 meeting.

The City's interim zoning ordinance on marijuana expires on January 28, 2015. Therefore, even if the Council chooses to adopt permanent regulations, the Council will still have to renew the interim zoning ordinance to cover the gap between the date that the interim zoning ordinance expires and the new marijuana ordinance becomes effective (which is five days after publication). The renewal of the interim zoning ordinance will need to be adopted on January 26, on an emergency basis, in order to be effective on January 28th. The Council needs to consider it during the January 20, 2015 hearing to satisfy the requirements of RCW 36.70A.390 for the public hearing within sixty days of adoption.

A matrix providing a summary of the ordinances to be considered and the Council action to be taken regarding the ordinances is provided in Attachments 3 and 4.

Recommended Actions:

1. Open the public hearing and obtain public input on Ordinances 2014-1876, 2014-1872, 2015-1888, 2015-1891 and 2015-1890.
2. Close the public hearing and consider the public input regarding Ordinances 2014-1876, 2014-1872, 2015-1888, 2015-1890 and 2015-1891.
3. Move the final decision regarding the ordinances to the January 26, 2015 meeting.

Motion for Consideration: I move that the Council take final action on Ordinances 2014-1872, 2014-1876, 2015-1888 and the ordinances attached to Agenda Bill 15-010 at the January 26, 2015 meeting.

Budget Impact: N/A

Alternatives:

1. Hold the public hearing open and continue it to the January 26, 2015 meeting.

**CITY OF PACIFIC, WASHINGTON
ORDINANCE NO. 2015-1891**

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, in this Memo, the DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms”; and

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

WHEREAS, in this Memo, the DOJ advised that “in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department’s enforcement priorities [listed above]” and that federal prosecutors “should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong but effective state regulatory system”; and

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

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

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

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

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

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

WHEREAS, the City passed Ordinances 1804, 1823, 1843, 1848, 1855 and 2015-1866, all of which adopted moratoria or interim zoning on medical and recreational marijuana uses and activities, which acknowledged marijuana’s uncertain legal status and the lack of information available to the City; and

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

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

WHEREAS, the City SEPA Responsible Official issued a Determination of Nonsignificance for this Ordinance on December 12, 2014; and

WHEREAS, on August 6, 2014, the Planning Commission held a public hearing on various medical and recreational marijuana draft ordinances and provided a recommendation on this subject to the City Council; and

WHEREAS, on January 9, 2015, the City Council considered the Planning Commission's recommendation and asked City staff to draft an ordinance that was within the range of alternatives considered by the Planning Commission during its public hearing (prohibition on just recreational marijuana instead of a prohibition on both recreational and medical marijuana); and

WHEREAS, the City Council held a public hearing on this Ordinance on January 20, 2015; NOW, THEREFORE,

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

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

**CHAPTER 20.08
RECREATIONAL MARIJUANA**

Sections.

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

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

A. The purpose of this Chapter is to enact a ban on recreational marijuana delivery, production, processing and retailing, which includes a prohibition on the siting of any recreational marijuana businesses licensed by the State of Washington Liquor Control Board. The City Council also

acknowledges that the State of Washington has not performed any environmental analyses that will assist cities, towns and counties in the adoption of local regulations addressing marijuana uses, or the environmental impacts associated with the individual recreational marijuana businesses. As a result, municipalities must therefore either develop their own analyses or observe these impacts after-the-fact (in other words, after the recreational marijuana uses locate and begin operations in cities, towns and counties throughout Washington). Then, the municipalities will be required to “fix” the problems stemming from these uses with their already scarce resources.

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

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

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

A. "Cannabis" or marijuana, means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted

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

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

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

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

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

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

G. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government,

governmental subdivision of agency or any other legal or commercial entity.

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

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

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

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

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

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

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

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

20.08.030. Prohibited Activities.

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

business, regardless of whether it has a license from the State of Washington.

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

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

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

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

20.08.060. Violations.

Any violations of this Ordinance may be enforced as set forth in Chapter 20.82 (Enforcement of Zoning Code Violations), or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this Ordinance may be deemed to be a public nuisance and may be abated by the City under the procedures set forth in state law for the abatement of public nuisances.

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

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

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

PASSED by the City Council of Pacific this ____nd day of _____, 2015.

Leanne Guier, Mayor

AUTHENTICATED:

Amy Stevenson-Ness, City Clerk.

APPROVED AS TO FORM:
Office of the City Attorney

Carol Morris, City Attorney

PUBLISHED:
EFFECTIVE DATE:

**CITY OF PACIFIC, WASHINGTON
ORDINANCE NO. 2015-1890**

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO THE RECREATIONAL AND MEDICAL USE OF MARIJUANA, EXTENDING THE INTERIM ZONING ORDINANCE ADOPTED ON JULY 28, 2014, UNDER ORDINANCE NO. 2014-1866, PROHIBITING THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES, PROPERTY OR USES RELATING TO RECREATIONAL OR MEDICAL MARIJUANA PRODUCTION, PROCESSING, CULTIVATION, STORAGE, SALE, DELIVERY, EXCHANGE OR BARTERING, FOR ANOTHER SIX MONTHS, EFFECTIVE IMMEDIATELY, TO BE ADDRESSED IN THE PUBLIC HEARING ON JANUARY 20, 2015 BY THE PACIFIC CITY COUNCIL.

MEDICAL MARIJUANA

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

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

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

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

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

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

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

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

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

RECREATIONAL MARIJUANA

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

WHEREAS, on the LCB adopted regulations (chapter 314-55 WAC) which: prohibit the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, describes the manner in which marijuana growing may take place,¹ limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers

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

and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

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

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

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

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

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

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

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

preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (h) preventing marijuana possession or use on federal property; and

WHEREAS, in this Memo, the DOJ warned that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms”; and

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

WHEREAS, in this Memo, the DOJ advised that “in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department’s enforcement priorities [listed above]” and that federal prosecutors “should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong but effective state regulatory system”; and

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

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

WHEREAS, the City adopted Ordinances 1804, 1823, 1848, 1855 and 1866, adopting moratoria or interim zoning on marijuana uses; and

WHEREAS, on January 20, 2015, the Council considered this ordinance during a public hearing advertised for this purpose; NOW, THEREFORE,

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

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

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

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

C. "Child Care Center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

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

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

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

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

H. "Dispense" means the interpretation of a prescription or order for medical cannabis, and pursuant to that prescription or order, the proper selection, measuring,

compounding, labeling, or packaging necessary to prepare the prescription or order for delivery.

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

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

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

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

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

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

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

P. "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.

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

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

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

T. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

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

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

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

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

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

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

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

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

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

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

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

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

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

D. No part of this interim ordinance is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21

U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under either Act, or any other local, state or federal law, statute, rule or regulation. This interim ordinance is not intended to address or invite litigation over the question whether the State of Washington's medical or recreational marijuana laws (or this City's laws) satisfy the federal government's enforcement priorities. Nothing in this interim ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this interim ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this interim ordinance be interpreted to be compatible with federal and state enactments and in furtherance of the public purposes that those enactments encompass.

Section 3. Interim Ordinance Adopted. This interim ordinance is immediately adopted for a period of six months in order to provide the City adequate time to hold a public hearing on the secondary land use impacts associated with the location and siting of structures and uses in which medical and recreational marijuana production, marijuana processing or marijuana retailing may take place and adopt a "permanent" zoning ordinance. The City Council's current plan is to hold this public hearing on January 20, 2015 and to adopt a "permanent" zoning ordinance within thirty (30) days thereafter.

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

Section 5. Duration of Interim Zoning Ordinance. This interim zoning ordinance shall commence on the effective date set forth in Section 10 herein. The City Council plans to hold a public hearing on this interim zoning ordinance on January 20, 2015. This interim zoning ordinance shall not terminate until six (6) months after the date of adoption, or at the time all of the events described in Section 3 have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 6. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this interim zoning ordinance on January 20, 2015. During the next Council meeting immediately following, the City Council shall either adopt findings of fact on the subject of this interim zoning

ordinance and either justify its continued imposition or adopt “permanent” zoning ordinance(s) relating to medical and recreational marijuana.

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

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

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

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

PASSED by the City Council of Pacific this ~~20th~~ 26th day of January, 2015.

Leanne Guier, Mayor

AUTHENTICATED:

Amy Stevenson-Ness, City Clerk.

APPROVED AS TO FORM:
Office of the City Attorney

² RCW 35A.12.130 for code cities.

Carol Morris, City Attorney

PUBLISHED:
EFFECTIVE DATE:

ORDINANCE NO. 2014-1872

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO MEDICAL MARIJUANA (CANNABIS), IMPOSING A COMPLETE PROHIBITION ON MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA COLLECTIVE GARDENS, IMPOSING SUCH BAN BASED ON THE AUGUST 29, 2013 MEMO FROM THE U.S. DEPARTMENT OF JUSTICE, IDENTIFYING THE FEDERAL GOVERNMENT’S ENFORCEMENT PRIORITIES REGARDING MARIJUANA, AND EXPRESSING THE COUNCIL’S INTENT TO MAINTAIN SUCH BAN UNTIL THE WASHINGTON STATE LEGISLATURE ADOPTS A REGULATORY SYSTEM FOR MEDICAL MARIJUANA CONSISTENT WITH THE FEDERAL GOVERNMENT’S ENFORCEMENT PRIORITIES, AND DECLARING AN EMERGENCY.

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

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

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

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

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

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

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

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

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

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

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt rules before December of 2013 to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, on the LCB has now issued the new regulations (which appear in chapter 314-55 WAC), and which: prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, describes the manner in which marijuana growing may take place,¹ limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of

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

violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

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

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

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

WHEREAS, in this Memo, the DOJ warned that "[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms"; and

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

WHEREAS, in this Memo, the DOJ advised that "in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities [listed above]" and that federal prosecutors "should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong but effective state regulatory system"; and

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

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

WHEREAS, the SEPA Responsible Official issued a threshold decision of non-significance for this ordinance; and

WHEREAS, on _____, the Planning Commission held a public hearing on this draft ordinance; and

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

WHEREAS, on _____, the Council considered this draft ordinance during its regular meeting; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC ORDAINS AS FOLLOWS:

Section A. The City Council adopts the following ban on medical marijuana/medical cannabis and adopts the following related enforcement procedures:

MEDICAL CANNABIS

- Section 1 Findings.**
- Section 2 Definitions.**
- Section 3 Prohibited Activities.**
- Section 4 Uses Not Permitted in Any Zone.**
- Section 5 Violations.**
- Section 6 Enforcement.**

Section 1. Findings. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this ban on medical marijuana, as well as the following:

A. The purpose of this Ordinance is to enact a ban medical cannabis or medical marijuana, which (1) explicitly prohibits medical marijuana dispensaries and prohibits medical marijuana collective gardens (including those defined in RCW 69.51A.085). This prohibition

will be enforced until such time as the Washington State Legislature acts to adopt a regulatory and enforcement system for medical marijuana uses that satisfies the enforcement priorities established by the federal government. Once the Washington State Legislature acts, the City shall evaluate the new medical marijuana laws to determine whether any local regulation of medical marijuana collective gardens is necessary, and if so, whether the City has the desire or the resources to adopt and enforce such local regulations. This ban may only be lifted by the City Council in an ordinance specifically adopted for this purpose.

B. It is also the purpose of this Ordinance to stem the negative impacts and secondary effects associated with the marijuana uses (on-going or predicted) in the City, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to medical marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using medical marijuana prescriptions and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes. The State of Washington has adopted a strict regulatory and enforcement system for the cultivation, processing and sale of recreational marijuana, but there is no state-wide regulatory scheme for medical marijuana. The City acknowledges the federal government's recently medical marijuana enforcement efforts involving individuals/entities who/that attempted to avoid compliance with the more onerous recreational marijuana system by illegally operating medical marijuana collective gardens. Until new laws are adopted to bridge the gap between recreational and medical marijuana uses, and there is strict enforcement of these laws, the negative impacts and secondary effects described above are likely to occur/continue.

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

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

A. "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this ordinance, "cannabis" does not include the mature stalks of the plant, fiber produced from the

stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

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

C. "Child Care Center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

D. "Collective Garden" means those gardens authorized under RCW 69.51A.085, which allows Qualifying Patients to create and participate in Collective Gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use, subject to certain limited conditions, including:²

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

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

(3) A Collective Garden may contain no more than twenty-four ounces of usable cannabis per patient up to a total of seventy-two ounces of usable cannabis; and

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

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

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

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

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

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

(1) Is eighteen years of age or older;

² Additional definition appears in RCW 69.51A.085(2).

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

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

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

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

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

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

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

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

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

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

O. “Manager” means any person to whom a medical marijuana collective garden has delegated discretionary powers to organize, direct and carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that

such a person is a manager of the business: (a) to hire, select, or supervise employees or staff, including volunteers; (b) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (c) to disburse funds of the business other than for the receipt of regularly replaced items of stock; or (d) to make, or participate in making, policy decisions relative to operations of the business.

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

Q. "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.

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

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

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

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

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

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

X. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

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

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

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

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

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

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

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

FF. "Qualifying Patient" means a person who:

1. Is a patient of a health care professional;
2. Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;

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

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

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

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

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

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

LL. "Terminal or debilitating medical condition" means:

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

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

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

OO. "Valid documentation" means:

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

Section 3. Prohibited Activities.

A. It is unlawful to own, establish, operate, use or permit the establishment or operation of a medical marijuana dispensary, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any marijuana business that does not have a license from the Liquor Control Board of the State of Washington.

B. It is unlawful to own, establish, operate, use, participate in or permit the establishment or operation of a medical marijuana collective garden, or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity in any collective garden.

C. It is unlawful to lease, rent or otherwise allow any medical marijuana dispensary, or any medical marijuana collective garden outdoors, indoors, in any building, structure, premises, location or land in the City.

Section 4. Use Not Permitted In Any Zone. The use of any building, structure, location, premises or land for a medical marijuana dispensary or a collective garden is not currently allowed in the City, and medical marijuana dispensaries and collective gardens are not permitted use(s) in any zone. So long as this Ordinance remains in effect, the City shall not, determine either through interpretation or otherwise, that the use of any building, structure, location, premises or land as a medical marijuana dispensary or collective garden may be permitted in any zone.

Section 5. No Vested or Nonconforming Rights. This Ordinance prohibits medical marijuana dispensaries and collective gardens. Neither this Ordinance nor any other City Ordinance, City action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees,

attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana business, marijuana business or collective garden.

Section 6. Violations.

Any violations of this Ordinance may be enforced as set forth in Ordinance No. ____ (Enforcement of Zoning Code Violations) or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this Ordinance may be deemed to be a public nuisance and may be abated by the City under the procedures set forth in state law for the abatement of public nuisances.

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

Section C. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

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

MAYOR

ATTEST/AUTHENTICATED:

City Clerk.

APPROVED AS TO FORM:
Office of the City Attorney

City Attorney

PUBLISHED:
EFFECTIVE DATE:

ORDINANCE NO. 2014-1876

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS AS A CONDITIONALLY PERMITTED USE IN THE LIGHT INDUSTRIAL (LI) ZONE; ALLOWING RECREATIONAL MARIJUANA RETAIL OUTLETS AS A CONDITIONALLY PERMITTED USE IN THE COMMERCIAL (C) ZONE; REQUIRING THAT SUCH USES OBTAIN A LICENSE FROM THE LIQUOR CONTROL BOARD AND CITY BUSINESS LICENSE, PROHIBITING SUCH USES FROM LOCATING WITHIN 1,000 FEET OF CERTAIN SENSITIVE USES, IDENTIFIED IN RCW 69.50.331; ESTABLISHING THE PROCEDURES TO OBTAIN A CONDITIONAL USE PERMIT, DESCRIBING THE CRITERIA FOR ISSUANCE, ISSUES FOR THE DECISION-MAKER TO CONSIDER IN FASHIONING CONDITIONS ON THE PERMIT, ADDRESSING SIGNS, SECURITY, REPORTING OF DISTURBANCES AND CITY INDEMNIFICATION; ADOPTING A NEW CHAPTER 20.78 TO THE PACIFIC MUNICIPAL CODE.

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

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt administrative rules to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, the LCB issued new administrative regulations (adopted in chapter 314-55 WAC), which, among other things, prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, allows marijuana to take place indoors in a fully enclosed, secure facility or outdoors enclosed by a physical barrier with an 8 foot high fence, limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed

premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

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

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

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

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

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

WHEREAS, on July 25, 2014, the City Council directed the Planning Commission to hold a public hearing on a draft ordinance that allowed recreational marijuana processors and producers as a conditionally permitted use in the light industrial zone, and recreational marijuana retailers and retail outlets as a conditionally permitted use in the commercial zone (among other draft ordinances); and

WHEREAS, on December 12, 2014, the Planning Director issued a SEPA threshold decision of nonsignificance on this draft Ordinance, which was/was not appealed (if appealed, describe the results of that appeal in a “whereas”); and

WHEREAS, on September 23, 2014, the Planning Director sent a copy of this draft Ordinance to the Washington State Department of Commerce, pursuant to RCW 36.70A.106; and

WHEREAS, on August 6, 2014, the Planning Commission held a public hearing on this draft Ordinance, and on August 6, 2014, transmitted its recommendation to the City Council; and

WHEREAS, on _____, the Council considered this draft ordinance during its regular meeting;

WHEREAS, on _____, the Council decided to adopt this ordinance _____; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC ORDAINS AS FOLLOWS:

Section 1. Ordinance No. _____, adopted on _____, is hereby repealed.

Section 2. A new chapter 20.78 is hereby added to the Pacific Municipal Code, which shall read as follows:

**CHAPTER 20.78
RECREATIONAL MARIJUANA**

- 20.78.001 Findings and Purpose.**
- 20.78.002 Definitions.**
- 20.78.003 Locational Criteria for Recreational Marijuana Uses.**
- 20.78.004 Business License Required.**
- 20.78.005 Recreational Marijuana Uses Conditionally Allowed In LI Zone.**
- 20.78.006 Signs and Advertising.**
- 20.78.007 Security Requirements.**
- 20.78.008 Report of Disturbances and Unlawful Activity.**
- 20.78.009 Visibility of Activities; Control of Emissions and Odor.**
- 20.78.010 No City Liability – Indemnification.**

20.78.001 Findings and Purpose.

A. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this Ordinance.

B. The purpose of this Ordinance is to establish where recreational marijuana producers, processors and retail businesses may locate in the City, and to describe the restrictions upon such uses. In addition to compliance with this Ordinance, every recreational marijuana processor, producer and retail outlet shall obtain a City business license under chapter 5.02 of the Pacific Municipal Code.

C. No part of this Ordinance is intended to conflict with the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under chapter 69.50 RCW, or any other local or state law, statute, rule or regulation. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of

the City Council that this Ordinance be interpreted to be compatible with city and state enactments and in furtherance of the public purposes that those enactments encompass.

20.78.002 Definitions. The definitions in this section apply throughout this Chapter, and the City also adopts the definitions in WAC 314-55-010 by reference.

A. “Child Care Center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

B. “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

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

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

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

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

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

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

I. "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.

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

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

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

M. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

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

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

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

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

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

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

unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

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

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

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

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

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

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

20.78.003. Locational Criteria for Recreational Marijuana Uses.

A. No recreational marijuana producer or processor may locate or operate in any zoning district in the City, other than the Light Industrial (LI) zone, as the same exists within the Pierce County area of the City. A conditional use permit is required for such use.

B. No recreational marijuana retail business or retail outlet may locate or operate in any zoning district in the City, other than the Commercial (C) zone. A conditional use permit is required for such use.

B. No recreational marijuana producer, processor or retail business may locate or operate within one thousand (1,000) feet of any of the following:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Child care center;

5. Public park;
6. Public transit center;
7. Library; or
8. Any game arcade (where admission is not restricted to persons age twenty-one or older).¹

20.78.004. Business License.

A. A valid, current license is required from the Washington State Liquor Control Board for operation of any recreational marijuana, producer, processor or retail business. A copy of this license shall be submitted to the City as part of the complete application for a conditional use permit required by Section 20.78.005 below.

B. A business license is required from the City for operation of any recreational marijuana producer, processor or retail business. No conditional use permit may issue unless the City also issues a business license for the recreational marijuana use.

20.78.005 Recreational Marijuana Uses Conditionally Allowed. In order to operate a recreational marijuana producer, processor or retail business, a conditional use permit under this Section is required.

A. Procedure for Conditional Use Permit Approval. A conditional use permit is a Type IV Permit and is processed under Chapter 16.30 PMC.

B. Requirements for Complete Application. The following materials shall be submitted to the City for a complete application for a conditional use permit:

1. Application form. ____ copies of a completed application form;
2. Date, name, address, telephone number and e-mail of the applicant;
3. Name, address, telephone number and e-mail of the owner of the property identified in the application;
4. Legal description of the subject property;
5. Description and photographs of existing site conditions;
6. Architectural drawings of all structures proposed to be developed on the subject property;
7. Complete application for a site plan, showing the proposed placement of structures on the property, together with access and circulation on the site;
8. Complete application for a grading plan;
9. Complete application for a landscaping plan;
10. Drawings of all proposed signs;
11. A SEPA Checklist;
12. Concurrency determination (water, sewer and traffic?)

¹ This requirement is in RCW 69.50.331, and is a pre-requisite for the issuance of any recreational marijuana license. I am including this so that you can use it to review all of the land uses adjacent to and within the Light Industrial zone. If none of these uses are in or adjacent to the Light Industrial zone, you might want to delete this subsection.

13. A copy of all existing and proposed restrictions and covenants;
14. A narrative report or letter describing compliance with all applicable approval criteria in subsection C below.
15. The application fee established by the City.

C. Criteria for Approval. The City shall approve, approve with conditions or deny an application for a conditional use permit (or to enlarge or alter a conditional use permit) for a recreational marijuana business after making findings based on each of the criteria set forth below:

1. Generally.

a. That the conditional use is consistent with the objectives of the Zoning Code and the purpose of the zoning district in which the subject site/property is located;

b. That granting the conditional use will not be detrimental to the public health, safety or welfare. The factors to be considered in making this finding shall include, but not be limited to an evaluation whether:

c. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, and aesthetic considerations;

d. The proposed use raises no concerns regarding property damage or nuisance arising from noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust or visibility;

e. The proposed use presents no hazard to persons or property from possible explosion, contamination, fire or flood; and

f. There will not be an impact on surrounding areas arising from an unusual volume or character of traffic.

g. The characteristics of the conditional use as proposed and as it may be conditioned are reasonably compatible with the types of uses permitted in the surrounding area.

h. All required public facilities have adequate capacity to serve the proposal.

2. Site Design Standards.

a. The application complies with all of the applicable provisions of the underlying zone, including, but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;

b. The applicant shall be required to upgrade any existing development that does not comply with the applicable zoning provisions in conformance with chapter 16.12 PMC (Non-Conforming Development);

c. The application complies with all of the design standards in the Zoning Code applicable to: (a) access and circulation; (b) landscaping, vegetation, street trees, fences and walls; (c) parking and loading; (d) public facilities; (e) surface water management; (f) critical areas and any other applicable standards.

d. Existing conditions of approval required as part of a prior land division or permit shall be met.

3. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to:

- a. Limiting the hours, days, place and/or manner of operation;
- b. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
- c. Requiring larger setback areas, lot area, and/or lot depth or width;
- d. Limiting the building or structure height, size or lot coverage, and/or location on the site;
- e. Designating the size, number, location and/or design of vehicle access points or parking areas;
- f. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways or trails to be improved;
- g. Requiring landscaping, screening, drainage, water quality features and/or improvement of parking and loading areas;
- h. Limiting the number, size, location, height and/or lighting of signs;
- i. Limiting or setting standards for the location, design and/or intensity of outdoor lighting;
- k. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
- l. Requiring and designating the size, height, location and/or materials for fences; and
- m. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.

D. Denial. The Director may recommend conditioning or denial of the conditional use permit application based on RCW 43.21C.060 (SEPA).² In addition, the City may deny the conditional use permit if it determines that the proposed use is materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

E. Deadline for Final Decision. A conditional use permit application shall be approved, approved with conditions or denied within one hundred-twenty (120) days after the application has been determined complete, unless the applicant consents in writing to a longer processing time period.

F. Effect of Approval.

1. Applies to authorized use only. Issuance of a conditional use permit shall be deemed to authorize only the particular use for which it is issued.

2. Binding on subsequent owners. All conditions of approval shall be binding upon the applicant, their successors and assigns, shall run with the land; shall limit and control the issuance and validity of certificates of occupancy; and shall restrict and limit the construction, location, use and maintenance of all land and structures within the development.

G. Expiration, Extensions and Permit Implementation.

1. A conditional use permit shall become null and void one year after the effective date, unless one of the following has occurred:

a. A building permit has issued and construction begun and diligently pursued;

b. An occupancy permit has issued and the approved use has been established;

c. An extension has been granted by the Planning Director. Such extension shall be for a maximum of ___ days, and no extension may be granted which would extend the validity of the permit more than 18 months beyond the effective date of the permit. No extension will be granted if it necessitates modification of any condition of approval; or

d. The decision on the Conditional Use Permit has established a different expiration date.

2. Development of the Conditional Use shall not be carried out until the applicant has secured all other permits and approvals required by the City, or any applicable regional, state and federal agencies.

² In order to deny an application under SEPA, the City must find that: (1) the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under chapter 43.21C RCW; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. RCW 43.21C.060.

3. Any Conditional Use that has been initiated and then discontinued may not be re-established or recommenced except pursuant to a new conditional use permit. The following will constitute conclusive evidence that the conditional use has been discontinued:

a. A new permit has been issued to change the use of the lot and the new use has been established; or

b. The lot has not been used for the purpose authorized by the conditional use permit for more than 24 consecutive months. Lots that are vacant, or that are used only for storage of materials and equipment, will not be considered as being used for the purpose authorized by the conditional use. The expiration or revocation of a business or other license necessary for the conditional use to operate will suffice as evidence that the lot is not being used for as authorized by the conditional use permit.

20.78.006 Signs and Advertising.³

A. All signage and advertising for a recreational marijuana processor, producer or retail outlet shall comply with the applicable provisions of this Code, the Sign Code, Zoning Code and WAC 314-55-155 (and all applicable rules and regulations promulgated thereunder).

B. Violations of this Section relating to the Sign Code or Zoning Code shall result in a _____ fine. The City may enforce this section pursuant to chapter 16.14 of the Municipal Code. For violations of WAC 314-55-155 and 314-55-525, the City may report the violation to the State Liquor Control Board.

20.78.007. Security Requirements.⁴ Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules and regulations promulgated thereunder).

20.78.008. Report of Disturbances and Unlawful Activity.⁵

A. All licensees and any agent, manager or employee thereof shall immediately report to the City Police Department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed and permitted premises, including, but not limited to, any unlawful resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

B. Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

³ This has been duplicated from the business license sample ordinance because not all cities and towns may decide to adopt a business license ordinance. If your city decides to use both, you may want to just cross reference the requirements, rather than duplicate the requirements in each chapter.

⁴ See, footnote No. 1 above.

⁵ See, footnote No. 1 above.

WARNING:

The City of Pacific Police Department must be notified of all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed establishment.

C. It shall not be a defense to a prosecution of a code enforcement action under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

D. Failure to comply with the requirements of this Section shall be considered by the City in any action relating to the issuance or revocation of a permit.

20.78.009. Visibility of Activities; Control of Emissions.⁶

A. All activities of the recreational marijuana business, including, but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted out of the public view.

B. No recreational marijuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the recreational marijuana business must be in effect at all times. In the event that any odors, dust, fluids or other substances exit a recreational marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for the immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

20.78.010. No City Liability – Indemnification.

A. By accepting a permit issued pursuant to this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.

⁶ See, footnote No. 1 above.
1/5/15 SS

B. By accepting a permit issued pursuant to this Chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational marijuana business that is the subject of the license.

Section 3. Adoption by Reference. The City hereby adopts WAC 314-55-010 through WAC 314-55-540 by reference, as well as RCW 69.50.101. Pursuant to RCW 35A.12.140 (for code cities), a copy of these rules and the statute adopted by reference has been on file in the office of the city clerk for use and examination by the public. A copy of these rules and statutes has also been on file while this ordinance has been under consideration by the council and after adoption.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

PASSED by the City Council of _____ this ____ day of _____, 2015.

MAYOR LEANNE GUIER

ATTEST/AUTHENTICATED:

AMY STEVENSON-NESS, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

CAROL A. MORRIS, City Attorney

PUBLISHED:

1/5/15 SS

Page 13 of 14

Attachment
3

EFFECTIVE DATE:

DRAFT

ORDINANCE NO. 2015-1888

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS AS A CONDITIONALLY PERMITTED USE IN THE LIGHT INDUSTRIAL (LI) ZONE; PROHIBITING RECREATIONAL MARIJUANA RETAIL OUTLETS IN ALL ZONES IN THE CITY; REQUIRING THAT RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS OBTAIN A LICENSE FROM THE LIQUOR CONTROL BOARD AND A CITY BUSINESS LICENSE, PROHIBITING SUCH USES FROM LOCATING WITHIN 1,000 FEET OF CERTAIN SENSITIVE USES, IDENTIFIED IN RCW 69.50.331; ESTABLISHING THE PROCEDURES FOR THESE USES TO OBTAIN A CONDITIONAL USE PERMIT, DESCRIBING THE CRITERIA FOR ISSUANCE OF A CUP, INCLUDING THE ISSUES FOR THE DECISION-MAKER TO CONSIDER IN FASHIONING CONDITIONS ON THE CUP, ADDRESSING SIGNS, SECURITY, REPORTING OF DISTURBANCES AND CITY INDEMNIFICATION; ADOPTING A NEW CHAPTER 20.78 TO THE PACIFIC MUNICIPAL CODE.

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

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt administrative rules to address the methods for producing, processing and packaging of recreational marijuana, to establish security requirements for retail outlets, retail outlet locations and hours of operation, labeling requirements and method of transport of product throughout the state, taxing of marijuana-related activities, creation of a dedicated fund is created, consisting of marijuana excise taxes, license fees, penalties and other income: and

WHEREAS, the LCB issued new administrative regulations (adopted in chapter 314-55 WAC), which, among other things, prohibits the establishment of recreational marijuana businesses within 1,000 feet of certain identified sensitive uses, require criminal history background checks for licensees, establish qualifications for licensees, limits the amount of space available for recreational marijuana production, allows marijuana to take place indoors in a fully enclosed, secure facility or outdoors enclosed by a physical barrier with an 8 foot high fence, limits the average inventory on the licensed premises at any time, limits the number of retailers within counties and cities within the counties based on estimated consumption and population data, establishes insurance requirements for licensees, describes the security requirements, requires employees to wear badges, requiring alarm and surveillance systems on the licensed

premises, requires that licensees track marijuana from seed to sale, establishes the manner in which free samples of marijuana may be provided, prohibits the sale of soil amendments, fertilizers and other crop production aids, identifies transportation requirements, sign requirements, recordkeeping requirements, identifies a mechanism for enforcement of violations, including the failure to pay taxes, specifies marijuana infused product serving sizes, maximum number of servings and limitations on transactions, identifies marijuana waste disposal restrictions, describes the process for quality assurance testing, extraction and the requirements for packaging and labeling, describes advertising limitations, explains the process for licensing suspension, revocation and penalties for violations; and

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

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

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

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

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

WHEREAS, on July 25, 2014, the City Council directed the Planning Commission to hold a public hearing on a draft ordinance that allowed recreational marijuana processors and producers as a conditionally permitted use in the light industrial zone, and recreational marijuana retailers and retail outlets as a conditionally permitted use in the commercial zone (among other draft ordinances); and

WHEREAS, on December 12, 2014, the Planning Director issued a SEPA threshold decision of nonsignificance on this draft Ordinance, which was/was not appealed (if appealed, describe the results of that appeal in a “whereas”); and

WHEREAS, on _____, the Planning Director sent a copy of this draft Ordinance to the Washington State Department of Commerce, pursuant to RCW 36.70A.106; and

WHEREAS, on _____, the Planning Commission held a public hearing on this draft Ordinance, and on _____, transmitted its recommendation to the City Council; and

WHEREAS, on September 2, 2014, the Council considered the Planning Commission's recommendation during its regular meeting and rejected such recommendation;

WHEREAS, on January 20, 2015, the Council held a public hearing on this ordinance;
NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PACIFIC ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2014-1866, adopted on July 28, 2014, is hereby repealed.

Section 2. A new chapter 20.78 is hereby added to the Pacific Municipal Code, which shall read as follows:

**CHAPTER 20.78
RECREATIONAL MARIJUANA**

- 20.78.001 Findings and Purpose.**
- 20.78.002 Definitions.**
- 20.78.003 Locational Criteria for Recreational Marijuana Uses.**
- 20.78.004 Business License Required.**
- 20.78.005 Recreational Marijuana Uses Conditionally Allowed In LI Zone.**
- 20.78.006 Signs and Advertising.**
- 20.78.007 Security Requirements.**
- 20.78.008 Report of Disturbances and Unlawful Activity.**
- 20.78.009 Visibility of Activities; Control of Emissions and Odor.**
- 20.78.010 No City Liability – Indemnification.**

20.78.001 Findings and Purpose.

A. The Council adopts all of the “whereas” sections of this Ordinance as findings to support this Ordinance.

B. The purpose of this Ordinance is to prohibit recreational marijuana retail outlets, to establish where recreational marijuana producers and processors may locate in the City, and to describe the restrictions upon such uses. In addition to compliance with this Ordinance, every recreational marijuana processor or producer shall obtain a City business license under chapter 5.02 of the Pacific Municipal Code.

C. No part of this Ordinance is intended to conflict with the Uniform Controlled Substances Act (chapter 69.50 RCW) nor to otherwise permit any activity that is prohibited under chapter 69.50 RCW, or any other local or state law, statute, rule or regulation. Nothing in this Ordinance shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of medical cannabis or recreational marijuana in any manner not authorized by chapter 69.51A RCW or chapter 69.50 RCW. Nothing in this Ordinance shall be construed to supersede legislation prohibiting persons from engaging in

conduct that endangers others, or that creates a nuisance, as defined herein. It is the intention of the City Council that this Ordinance be interpreted to be compatible with city and state enactments and in furtherance of the public purposes that those enactments encompass.

20.78.002 Definitions. The definitions in this section apply throughout this Chapter, and the City also adopts the definitions in WAC 314-55-010 by reference.

A. “Child Care Center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington State Department of Early Learning, under chapter 170-295 WAC.

B. “Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

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

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

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

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

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

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

I. "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.

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

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

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

M. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides and other playground equipment, owned and/or managed by a city, county, state or federal government.

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

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

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

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

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

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

unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

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

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

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

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

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

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

20.78.003. Locational Criteria for Recreational Marijuana Uses.

A. No recreational marijuana producer or processor may locate or operate in any zoning district in the City, other than the Light Industrial (LI) zone, as the same exists within the Pierce County area of the City. A conditional use permit is required for such use.

B. No recreational marijuana retail business or retail outlet may locate or operate in any zoning district in the City, in any location.

B. No recreational marijuana producer or processor may locate or operate within one thousand (1,000) feet of any of the following:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Child care center;
5. Public park;

6. Public transit center;
7. Library; or
8. Any game arcade (where admission is not restricted to persons age twenty-one or older).¹

20.78.004. Business License.

A. A valid, current license is required from the Washington State Liquor Control Board for operation of any recreational marijuana, producer or processor. A copy of this license shall be submitted to the City as part of the complete application for a conditional use permit required by Section 20.78.005 below.

B. A business license is required from the City for operation of any recreational marijuana producer or processor. No conditional use permit may issue unless the City also issues a business license for the recreational marijuana use.

20.78.005 Recreational Marijuana Uses Conditionally Allowed. In order to operate a recreational marijuana producer or processor, a conditional use permit under this Section is required.

A. Procedure for Conditional Use Permit Approval. A conditional use permit is a Type IV Permit and is processed under Chapter 16.30 PMC.

B. Requirements for Complete Application. The following materials shall be submitted to the City for a complete application for a conditional use permit:

1. Application form. _____ copies of a completed application form;
2. Date, name, address, telephone number and e-mail of the applicant;
3. Name, address, telephone number and e-mail of the owner of the property identified in the application;
4. Legal description of the subject property;
5. Description and photographs of existing site conditions;
6. Architectural drawings of all structures proposed to be developed on the subject property;
7. Complete application for a site plan, showing the proposed placement of structures on the property, together with access and circulation on the site;
8. Complete application for a grading plan;
9. Complete application for a landscaping plan;
10. Drawings of all proposed signs;
11. A SEPA Checklist;
12. Concurrency determination (water, sewer and traffic?);
13. A copy of all existing and proposed restrictions and covenants;

¹ This requirement is in RCW 69.50.331, and is a pre-requisite for the issuance of any recreational marijuana license. I am including this so that you can use it to review all of the land uses adjacent to and within the Light Industrial zone. If none of these uses are in or adjacent to the Light Industrial zone, you might want to delete this subsection.

14. A narrative report or letter describing compliance with all applicable approval criteria in subsection C below.

15. The application fee established by the City.

C. Criteria for Approval. The City shall approve, approve with conditions or deny an application for a conditional use permit (or to enlarge or alter a conditional use permit) for a recreational marijuana business after making findings based on each of the criteria set forth below:

1. Generally.

a. That the conditional use is consistent with the objectives of the Zoning Code and the purpose of the zoning district in which the subject site/property is located;

b. That granting the conditional use will not be detrimental to the public health, safety or welfare. The factors to be considered in making this finding shall include, but not be limited to an evaluation whether:

c. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, and aesthetic considerations;

d. The proposed use raises no concerns regarding property damage or nuisance arising from noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust or visibility;

e. The proposed use presents no hazard to persons or property from possible explosion, contamination, fire or flood; and

f. There will not be an impact on surrounding areas arising from an unusual volume or character of traffic.

g. The characteristics of the conditional use as proposed and as it may be conditioned are reasonably compatible with the types of uses permitted in the surrounding area.

h. All required public facilities have adequate capacity to serve the proposal.

2. Site Design Standards.

a. The application complies with all of the applicable provisions of the underlying zone, including, but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;

b. The applicant shall be required to upgrade any existing development that does not comply with the applicable zoning provisions in conformance with chapter 16.12 PMC (Non-Conforming Development);

c. The application complies with all of the design standards in the Zoning Code applicable to: (a) access and circulation; (b) landscaping, vegetation, street trees, fences and walls; (c) parking and loading; (d) public facilities; (e) surface water management; (f) critical areas and any other applicable standards.

d. Existing conditions of approval required as part of a prior land division or permit shall be met.

3. Conditions of Approval. The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to:

- a. Limiting the hours, days, place and/or manner of operation;
- b. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
- c. Requiring larger setback areas, lot area, and/or lot depth or width;
- d. Limiting the building or structure height, size or lot coverage, and/or location on the site;
- e. Designating the size, number, location and/or design of vehicle access points or parking areas;
- f. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways or trails to be improved;
- g. Requiring landscaping, screening, drainage, water quality features and/or improvement of parking and loading areas;
- h. Limiting the number, size, location, height and/or lighting of signs;
- i. Limiting or setting standards for the location, design and/or intensity of outdoor lighting;
- k. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
- l. Requiring and designating the size, height, location and/or materials for fences; and
- m. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands.

D. Denial. The Director may recommend conditioning or denial of the conditional use permit application based on RCW 43.21C.060 (SEPA).² In addition, the City may deny the

² In order to deny an application under SEPA, the City must find that: (1) the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under chapter 43.21C RCW; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact. RCW 43.21C.060.

conditional use permit if it determines that the proposed use is materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

E. Deadline for Final Decision. A conditional use permit application shall be approved, approved with conditions or denied within one hundred-twenty (120) days after the application has been determined complete, unless the applicant consents in writing to a longer processing time period.

F. Effect of Approval.

1. Applies to authorized use only. Issuance of a conditional use permit shall be deemed to authorize only the particular use for which it is issued.

2. Binding on subsequent owners. All conditions of approval shall be binding upon the applicant, their successors and assigns, shall run with the land; shall limit and control the issuance and validity of certificates of occupancy; and shall restrict and limit the construction, location, use and maintenance of all land and structures within the development.

G Expiration, Extensions and Permit Implementation.

1. A conditional use permit shall become null and void one year after the effective date, unless one of the following has occurred:

a. A building permit has issued and construction begun and diligently pursued;

b. An occupancy permit has issued and the approved use has been established;

c. An extension has been granted by the Planning Director. Such extension shall be for a maximum of ___ days, and no extension may be granted which would extend the validity of the permit more than 18 months beyond the effective date of the permit. No extension will be granted if it necessitates modification of any condition of approval; or

d. The decision on the Conditional Use Permit has established a different expiration date.

2. Development of the Conditional Use shall not be carried out until the applicant has secured all other permits and approvals required by the City, or any applicable regional, state and federal agencies.

3. Any Conditional Use that has been initiated and then discontinued may not be re-established or recommenced except pursuant to a new conditional use permit. The following will constitute conclusive evidence that the conditional use has been discontinued:

a. A new permit has been issued to change the use of the lot and the new use has been established; or

b. The lot has not been used for the purpose authorized by the conditional use permit for more than 24 consecutive months. Lots that are vacant, or that are used only for storage of materials and equipment, will not be considered as being used for the purpose authorized by the conditional use. The expiration or revocation of a business or other license necessary for the conditional use to operate will suffice as evidence that the lot is not being used for as authorized by the conditional use permit.

20.78.006 Signs and Advertising.³

A. All signage and advertising for a recreational marijuana processor or producer shall comply with the applicable provisions of this Code, the Sign Code, Zoning Code and WAC 314-55-155 (and all applicable rules and regulations promulgated thereunder).

B. Violations of this Section relating to the Sign Code or Zoning Code shall result in a fine. The City may enforce this section pursuant to chapter 16.14 of the Municipal Code. For violations of WAC 314-55-155 and 314-55-525, the City may report the violation to the State Liquor Control Board.

20.78.007. Security Requirements.⁴ Security measures at all licensed premises shall comply with the requirements of WAC 314-55-083 (and all applicable rules and regulations promulgated thereunder).

20.78.008. Report of Disturbances and Unlawful Activity.⁵

A. All licensees and any agent, manager or employee thereof shall immediately report to the City Police Department any disorderly act, conduct or disturbance and any unlawful activity committed in or on the licensed and permitted premises, including, but not limited to, any unlawful resale of marijuana, and shall also immediately report any such activity in the immediate vicinity of the business.

B. Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of fourteen (14) inches and a minimum width of eleven (11) inches with each letter to be a minimum of one-half (1/2) inch in height, which shall read as follows:

WARNING:
The City of Pacific Police Department must be notified of all
disorderly acts, conduct or disturbances and

³ This has been duplicated from the business license sample ordinance because not all cities and towns may decide to adopt a business license ordinance. If your city decides to use both, you may want to just cross reference the requirements, rather than duplicate the requirements in each chapter.

⁴ See, footnote No. 1 above.

⁵ See, footnote No. 1 above.

all unlawful activities which occur on or within the premises
of this licensed establishment.

C. It shall not be a defense to a prosecution of a code enforcement action under this Section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act, conduct or disturbance was committed; however, no agent or employee of the licensee shall be personally responsible for failing to report any disorderly act, conduct or disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity was committed.

D. Failure to comply with the requirements of this Section shall be considered by the City in any action relating to the issuance or revocation of a permit.

20.78.009. Visibility of Activities; Control of Emissions.⁶

A. All activities of the recreational marijuana business, including, but not limited to, cultivating, growing, processing, displaying, manufacturing, selling and storage, shall be conducted out of the public view.

B. No recreational marijuana or paraphernalia shall be displayed or kept in a business so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the recreational marijuana business must be in effect at all times. In the event that any odors, dust, fluids or other substances exit a recreational marijuana business, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for the immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

20.78.010. No City Liability – Indemnification.

A. By accepting a permit issued pursuant to this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations.

B. By accepting a permit issued pursuant to this Chapter, all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner

⁶ See, footnote No. 1 above.

connected with the operation of the recreational marijuana business that is the subject of the license.

Section 3. Adoption by Reference. The City hereby adopts WAC 314-55-010 through WAC 314-55-540 by reference, as well as RCW 69.50.101. Pursuant to RCW 35A.12.140 (for code cities), a copy of these rules and the statute adopted by reference has been on file in the office of the city clerk for use and examination by the public. A copy of these rules and statutes has also been on file while this ordinance has been under consideration by the council and after adoption.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This ordinance shall be effective five days after publication of an approved summary, which shall consist of the title.

PASSED by the City Council of _____ this ____ day of _____, 2014.

MAYOR LEANNE GUIER

ATTEST/AUTHENTICATED:

AMY STEVENSON-NESS, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

CAROL A. MORRIS, City Attorney

PUBLISHED:
EFFECTIVE DATE:

Recreational and Medical Marijuana Ordinances

Summary

Ordinance	Conditionally allows producers (CUP) LI zone	Conditionally allows Processors (CUP) LI zone	Conditionally allows Retail Sales (CUP) C zone	Allows Medical Marijuana Dispensaries	Allows Medical Marijuana Collective Gardens
Ord. 2014-1876 (<i>Conditionally allows producers & processors in LI zone and recreational sales in C zone.</i>)	Yes	Yes	Yes	<i>Does not address medical marijuana</i>	<i>Does not address medical marijuana</i>
Ord. 2014-1872 (<i>Prohibits medical marijuana dispensaries and collective gardens</i>)	<i>Does not address recreational sales</i>	<i>Does not address recreational sales</i>	<i>Does not address recreational sales</i>	No	No
Ord 2015-1888 (<i>Prohibits recreational marijuana sales. Conditionally allows producers & processors in LI zone</i>)	Yes	Yes	No	<i>Does not address medical marijuana</i>	<i>Does not address medical marijuana</i>
Ord. 2015-1891 (<i>Prohibits recreational marijuana sales, producers and processors</i>)	No	No	No	<i>Does not address medical marijuana</i>	<i>Does not address medical marijuana</i>
Ord. 2015-1890 (<i>Extend Interim zoning regulations prohibiting medical and recreational sales</i>)	No	No	No	No	No

Recreational and Medical Marijuana Ordinances

Council Actions

Ordinance	Planning Commission Rec.	Council Action	CC Public Hearing Required	Staff Recommendation
Ord. 2014-1876 (<i>Conditionally allows producers & processors in LI zone and recreational sales in C zone.</i>)	<i>Adopt Ord. 2014-1876</i>	<i>Adopt PC Rec.</i>	<i>No</i>	If the Council should approve recreational marijuana, it should only be allowed conditionally (Conditional Use Permit (CUP)) in specific zones. The CUP process requires a public hearing and allows review and approval on a case by case basis.
		Does not adopt PC Rec & adopts different Ord.	Yes	
Ord. 2014-1872 (<i>Prohibits medical marijuana dispensaries and collective gardens</i>)	<u>Do Not</u> adopt Ord. 2014-1872	<i>Adopt PC Rec.</i>	<i>No</i>	Recommend a ban on all medical marijuana uses. The City does not have the funding to provide the enforcement of regulatory controls regarding medical marijuana operations.
		Does not adopt PC Rec. and adopts Ord.	Yes	
Ord 2015-1888 (<i>Prohibits recreational marijuana sales. Conditionally allows producers & processors in LI zone</i>)	Not Reviewed by PC	Adopt Proposed Ord.	Yes	Alternative to Ord. 2014-1876. Council would need to justify allowing producers & processors and not allowing recreational sales.
Ord. 2015-1891 (<i>Prohibits marijuana producers, processors and recreational sales</i>)	Not Reviewed by PC	Adopt Proposed Ord.	Yes	If Council bans recreational marijuana sales, producers and processors, it should be done by separate ordinance from the ban on medical marijuana dispensaries and collective gardens.
Ord. 2015-1890 (<i>Extend Interim zoning regulations prohibiting medical and recreational sales</i>)	Not Reviewed by PC	Adopt Extension of Interim Zoning Regulations	Yes	If Council approves a total ban on medical and recreational marijuana sales, the Council will still have to renew the interim zoning ordinance to cover the gap between the date that the interim zoning ordinance expires and the new marijuana ordinance becomes effective. The renewal of the interim zoning ordinance will need to be adopted on January 26, on an emergency basis, in order to be effective on January 28th. The Council needs to consider it during the January 20, 2015 hearing to satisfy the requirements of RCW 36.70A.390 for the public hearing within sixty days of adoption.



TO: Mayor Guier and City Council Members
FROM: John Calkins
MEETING DATE: January 20, 2015
SUBJECT: Surplus of 2000 Chevrolet Pick Up

ATTACHMENTS:

- Estimate for repairs
 - Resolution No. 2015-224
 - Exhibit A
-

Previous Council Review Date: January 5, 2015

Summary: The vehicle was purchased in 2002 and after 12 years in service, 150,000 miles, the vehicle is not safe and in need of serious repairs. At Council's request, an estimate for repairs was obtained and is included in the packet.

Recommendation/Action: Allow Police to surplus the vehicle.

Motion for Consideration: Make a motion to surplus the 2000 Chevrolet pickup.

Budget Impact: The budget impact will be positive after we surplus the vehicle.

Alternatives: Keep the vehicle in the police inventory and don't use it.

AUBURN CHEVROLET

1600 Auburn Way North
 Auburn, WA 98002
 (253) 833-2000
 www.auburnchevrolet.com



SERVICE DEPARTMENT HOURS 7:00 a.m. to 6:00 p.m. Monday - Friday
PARTS DEPARTMENT HOURS 7:30 a.m. to 5:30 p.m. Monday - Friday 9:00 a.m. - 3:00 p.m. Saturday
BODY SHOP HOURS 8:00 a.m. to 5:30 p.m. Monday - Friday

R/O Open Date	R/O Number
1/07/15	6049197/
R/O Close Date	Status
1/09/15	Pre-Invoice
Mileage In	Mileage Out
158719	158720
Service Advisor / Tag #	
Matt Carreno/2463	

CITY OF PACIFIC 100 3RD AVE SE PACIFIC, WA 98047			Work Phone	Vehicle Identification Number	
			Home Phone	1GCGK29U0YE263761	
			253-261-9693	Delivery Date	In-Service Date
			Body	7/26/09	
Year	Make	Model	Color	License Number	
2000	CHEVROLET	TRU	SILVERADO	A43908U	

DESCRIPTION OF SERVICE AND PARTS	AMOUNT
<p>CONSOLE.CK AND ADVISE. Caused by FOUND LEAK FROM AFTERMARKET ANTENNA SEALS ON ROOF OF TRUCK Work performed by MIKE ANDERSON (MA) OWNER DECLINED REPAIRS. Sub Total: .00</p>	

<p><small>TERMS: STRICTLY CASH UNLESS ARRANGEMENTS ARE MADE. *I hereby authorize the repair work hereinafter to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto.</small></p> <p><small>DISCLAIMER OF WARRANTIES. Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. Any limitation contained herein does not apply where prohibited by law.</small></p>	<table border="1"> <tr> <td>LABOR</td> <td>416.50</td> </tr> <tr> <td>PARTS</td> <td>120.00</td> </tr> <tr> <td>DEDUCTIBLE</td> <td>.00</td> </tr> <tr> <td>SUBLET</td> <td>.00</td> </tr> <tr> <td>SHOP SUPPLIES</td> <td>33.30</td> </tr> <tr> <td>HAZARDOUS MATERIALS</td> <td>.00</td> </tr> <tr> <td>SALES TAX OR TAX I.D.</td> <td>54.10</td> </tr> <tr> <td>SPECIAL ORDER DEPOSIT</td> <td>.00</td> </tr> <tr> <td>DISCOUNTS</td> <td>.00</td> </tr> <tr> <td>TOTAL DUE</td> <td>623.90</td> </tr> </table>	LABOR	416.50	PARTS	120.00	DEDUCTIBLE	.00	SUBLET	.00	SHOP SUPPLIES	33.30	HAZARDOUS MATERIALS	.00	SALES TAX OR TAX I.D.	54.10	SPECIAL ORDER DEPOSIT	.00	DISCOUNTS	.00	TOTAL DUE	623.90
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HAZARDOUS MATERIALS	.00																				
SALES TAX OR TAX I.D.	54.10																				
SPECIAL ORDER DEPOSIT	.00																				
DISCOUNTS	.00																				
TOTAL DUE	623.90																				

NO RETURN ON ELECTRICAL OR SAFETY ITEMS OR SPECIAL ORDERS.

X

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Auburn Way North
 Auburn, WA 98002
 (360) 833-2000
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CITY OF PACIFIC 100 3RD AVE SE PACIFIC, WA 98047		
Year	Make	Model
2000	CHEVROLET	TRU

Work Phone	Home Phone
	253-261-9693
Body	SILVERADO

DESCRIPTION OF SERVICE AND PARTS	AMOUNT
AR#: 145926	
#1 - 10CVZ: DRIVEABILITY CUSTOMER STATES VEHICLE WILL NOT START AT TIMES. CRANKS BUT NO FIRE. Caused by VERIFIED CONCERN AND FOUND FUEL PRESSURE DROPPING TO ZERO POUNDS OF PRESSURE IMMEDIATELY AFTER SHUTTING ENGINE OFF. ALSO FOUND WEAK BATTERIES. RECOMMEND FUEL PRESSURE REGULATOR AND FUEL PUMP WITH NEW BATTERIES. Work performed by MIKE ANDERSON (MA) Installed 78PG :BATTERY 1@120.00 REPLACED MAIN ENGINE BATTERY AND OWNER DECLINED AD DITIONAL REPAIRS. Sub Total: 453.20	333.20 120.00
#2 - 10CVZ: DRIVEABILITY CUSTOMER STATES TO INSPECT FOR OIL LEAKS. Caused by FOUND MULTIPLE OIL LEAK FROM TRANS COOLER LINES, OIL COOLER LINES, OIL PAN GASKET AND LEAK FROM BRAKE BOOSTER. Work performed by MIKE ANDERSON (MA) OWNER DECLINED REPAIRS. Sub Total: 83.30	83.30
#3 - 16: INTERIOR/EXTERIOR CUSTOMER STATES WATER LEAKING INTO CAB BY OVERHEAD	

TERMS: STRICTLY CASH UNLESS ARRANGEMENTS ARE MADE. *I hereby authorize the repair work hereinafter to be done along with the necessary material and agree that you are not responsible for loss or damage to vehicle or articles left in the vehicle in case of fire, theft, or any other cause beyond your control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you or your employees permission to operate the vehicle herein described on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto.*

DISCLAIMER OF WARRANTIES. Any warranties on the products sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of said products. Any limitation contained herein does not apply where prohibited by law.

LABOR	
PARTS	
DEDUCTIBLE	
SUBLET	
SHOP SUPPLIES	
HAZARDOUS MATERIALS	
SALES TAX OR TAX I.D.	
SPECIAL ORDER DEPOSIT	
DISCOUNTS	
TOTAL DUE	

*1/9/15 - MATT QUOTES ME VERBALLY
 THAT REPAIRS WOULD BE CLOSED
 TO \$3800. JC*

NO RETURN ON ELECTRICAL OR SAFETY ITEMS OR SPECIAL ORDERS.

X

**CITY OF PACIFIC
WASHINGTON**

RESOLUTION NO. 2015-224

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC,
WASHINGTON AUTHORIZING THE PACIFIC POLICE DEPARTMENT TO
SURPLUS 2000 CHEVROLET PICK UP.**

WHEREAS, the City of Pacific purchased the truck used in 2002 for police purposes, and

WHEREAS, the Police Department utilized the vehicle for twelve years, and

WHEREAS, the truck is in need of extreme repair, and

WHEREAS, the truck is unsafe to operate and has over 150,000 miles of service.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
PACIFIC, WASHINGTON**

Section 1. The City Council hereby authorizes the Pacific Police Department to surplus the vehicle, marked as Exhibit A.

Section 2. This Resolution shall take effect and be in full force upon passage and signatures hereon.

**PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON
THE 26TH DAY OF JANUARY, 2015.**

Leanne Guier, Mayor

Amy Stevenson-Ness, City Clerk

Carol Morris, City Attorney

EXHIBIT A

2000 Chevrolet Pick Up

VIN 1GCGK29UOYE26376



Agenda Bill No. 15-011

TO: Mayor Guier and City Council Members

FROM: Richard A. Gould, City Administrator

MEETING DATE: January 20, 2015

SUBJECT: Ordinance discontinuing exchange time and establishing management days.

ATTACHMENTS: Ordinance No. 15-1892

Previous Council Review Date:

Summary: In Pacific Municipal Code Section 2.68.250, the City Council of the City of Pacific previously authorized up to 300 hours of exchange time per year for overtime-exempt management employees who work more than 45 hours in a seven-day period. This is counterproductive as it increases these employees workload by forcing them to keep track of all hours over 45. This also recognizes the extra time that these employees work up to 45 hours per week without financially impacting the City.

The Mayor desires to establish 12 management days off per year for overtime-exempt employees and convert existing exchange time to vacation. This is less labor intensive as all overtime-exempt employees have to track is vacation and sick time taken. It also clears up any misunderstanding about the city code relevant to this regarding the non-cash value.

At this time staff has 220 hours of Exchange time accrued.

Recommendation/Action: Accept this as the first reading of Ordinance No. 15-1892 Adopting an ordinance discontinuing exchange time and establishing management days.

Motion for Consideration: move to accept this as the first reading of Ordinance No. 15-1892 Adopting an ordinance discontinuing exchange time and establishing management days.

Budget Impact:

Alternatives:

CITY OF PACIFIC,
WASHINGTON ORDINANCE
NO. 15-1892

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON,
DISCONTINUING EXCHANGE TIME FOR EXEMPT
EMPLOYEES AND ESTABLISHING MANAGEMENT DAYS OFF,
CONVERTING EXISTING EXCHANGE TIME TO VACATION,
AND REVISING PACIFIC MUNICIPAL CODE SECTION
2.68.250.

WHEREAS, in Pacific Municipal Code Section 2.68.250, the City Council of the City of Pacific previously authorized up to 300 hours of exchange time per year for overtime-exempt management employees who work more than 45 hours in a seven-day period; and

WHEREAS, the City Council desires to discontinue exchange time and replace it with a fixed number of management days off; and

WHEREAS, the City Council desires to establish 12 management days off per year for overtime-exempt employees and convert existing exchange time to vacation; Now, Therefore,

IT IS HEREBY ORDAINED BY THE PACIFIC CITY COUNCIL AS FOLLOWS:

Section 1. Subsection 2.68.250 of the Pacific Municipal Code is hereby repealed and replaced with the following new section:

2.28.250 Management Days Off.

All full-time Fair Labor Standards exempt employees of the city shall receive twelve management days off per year, prorated if the employee works less than twelve months. Management days off may be taken with the approval of the Mayor or City Administrator. Management days off have no cash value upon termination of employment and do not rollover from one year to the next.

Section 2. On the effective date of this Ordinance, any exchange time accrued under prior Section 2.68.250 shall be converted to vacation time on an hour for hour basis.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 5. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of Pacific this ____nd day of _____, 2015.

Leanne Guier, Mayor

AUTHENTICATED:

Amy Stevenson-Ness, City Clerk.

APPROVED AS TO FORM:

Sophia Mabee, City Attorney

PUBLISHED:

EFFECTIVE DATE:



Agenda Bill No. 15-012

TO: Mayor Guier and City Council Members
FROM: Amy Stevenson-Ness, City Clerk/Personnel Manager
MEETING DATE: January 20, 2015
SUBJECT: Employee Leave Policies

ATTACHMENTS:

- **City of Pacific Personnel Policy 100-016 Leaves**
- **Excerpt from Public Works/Clerical Collective Bargaining Agreement**
- **Excerpt from Uniformed Employees Collective Bargaining Agreement**

Previous Council Review Date: N/A

Summary: At the City Council workshop on January 5, 2015, Council Member Steiger requested a discussion regarding employee leave policies. Attached to this agenda bill are the city's employee leave policy, 100-016 Leaves, as well as excerpts from the Public Works/Clerical and Uniformed Employees collective bargaining agreements.

These policies have recently been reviewed by our personnel attorney.

Recommended Action:

Motion for Consideration: "I move to"

Budget Impact: None

Alternatives:



Administrative Policy and Procedure		
Index: 100-016	Title: Leaves	Effective Date:

LEAVES

Sick Leave

Sick leave is hereby established to be used in cases of illness, accident or other conditions which require medical treatment or supervision and require an employee to be absent from work. Sick leave may be used to care for an employee's own health condition, or to care for a child, spouse, domestic partner, parent, parent-in-law, grandparent, foster child, or legally adopted child of the employee who has a serious health condition or an emergency condition as established in Chapter 296-130 of the Washington Administrative Code (WAC). Sick leave may also be used for the care, treatment and preventative health care of the employee and dependants.

Sick leave has been established for the benefit of both the employee and the employer, but no vested right to sick leave is guaranteed by the City. In the event that abuse of sick leave is suspected or excessive absenteeism or tardiness occurs, or after three (3) consecutive days of sick leave, an employee may be required to provide medical certification from his or her health care provider. Abuse of sick leave or excessive absenteeism or tardiness may be grounds for disciplinary action, up to and including termination.

Once an employee returns from an illness, the time off must be approved. Employees shall submit a Leave Form signed by the department manager or supervisor.

Accrual

Sick leave shall be accrued by regular full-time employees at the rate of eight (8) hours per month.

Regular part-time employees shall accrue sick leave on a pro-rated basis in the same percentage as the employee's average weekly scheduled hours relate to a forty (40) hour week.

No employee may accrue more than **nine hundred sixty (960)** total hours. When this maximum is reached, an employee shall no longer accrue sick leave.

Family Leave

Pursuant to the provisions of the federal Family and Medical Leave Act of 1993 (FMLA) an employee who has been employed by the City for twelve (12) months and has worked at least 1250 hours in the past twelve (12) months is entitled to up to twelve (12) work-weeks of unpaid leave per year to care for a child, spouse, domestic partner or parent with a serious medical condition, or for serious personal illness. The twelve (12) weeks may be scheduled intermittently or used through part-time leave, when the basis for leave is medical difficulties. For purposes of

calculating leave availability, the 12 month period is a rolling 12 month period measured backwards from the date you use any FMLA leave.

Leave may be taken to care for a new child by birth, adoption, or foster care or for a child, spouse, domestic partner, or parent with a serious illness, or for personal serious illness requiring inpatient or continuing treatment. Except in emergencies, an employee must give at least thirty (30) days notice when planning to take the leave. The City will continue to contribute its portion of the medical insurance premiums during the leave. If the employee does not return to work, the City may recover the premiums paid during the leave unless the failure to return is beyond the employee's control.

The employee will be required by the City to use accrued and unused sick leave, vacation leave and /or compensatory time in accordance with the City policy to offset loss of pay during the leave.

Vacation and sick leave accruals will not continue during any unpaid leave. Employees who return to work at the end of the twelve (12) weeks of leave will be returned to the same or an equivalent job at the same pay, however, employees remain subject to legitimate job changes or layoffs that would have occurred even if they had not been on leave.

Under Washington State law, employees are entitled to twelve (12) weeks of unpaid leave to care for a newborn child, in addition to time off for any period of actual disability with pregnancy or childbirth. The City is not required to continue to pay its portion of medical insurance beyond the twelve (12) week FMLA leave entitlement.

Vacations

Vacation leave is hereby established for the mutual benefit of the employer and the employee. The purpose of vacation leave is to provide employees with adequate time away from work, and to provide the City with well-rested and efficient employees. Employees shall submit a Leave Request form for each anticipated absence to be approved by the Department Head or Supervisor.

Accrual Time

Full-time employees shall accrue vacation at the following rate:

- Initial hire through three (3) complete years of continuous employment – eight (8) hours per month.
- Four (4) years continuous employment and continuing through nine (9) full years of continuous employment – ten (10) hours per month.
- Ten (10) full years of continuous employment and continuing through fourteen (14) years continuous employment – twelve and one half (12.5) hours per month.
- Fifteen (15) full years of continuous employment and continuing through all remaining years of continuous employment – fifteen (15) hours per month.

Regular part-time employees shall accrue vacation leave on a pro-rated basis in the same percentage as the employee's average weekly scheduled hours relate to a forty (40) hour week.

Vacation leave may be used as soon as it is accrued.

Maximum Accrual

The maximum vacation accrual that will be paid upon termination or carried forward at year end will be two times (2x) the employees allowed paid vacation accrual per year of service.

Holidays

The following eleven (11) holidays are hereby established:

- **New Years Day**
- **Martin Luther King Jr. Day**
- **Presidents Day**
- **Memorial Day**
- **Independence Day**
- **Labor Day**
- **Veterans Day**
- **Columbus Day**
- **Thanksgiving Day**
- **The day after Thanksgiving**
- **Christmas Eve (Union only) and Christmas Day**
- **Floating Holiday(non-union only)**

The floating holiday must be used during the current calendar year. No unpaid holiday will be carried over to the following year, and no unpaid floating holiday will be paid out upon termination of employment. These holidays are established on the dates set by state law. The City council reserves the right to amend its holidays as provided for by state law.

Religious Holidays

If an employee's religious beliefs require observance of a holiday not included in the holiday schedule, the employee may, with his or her department director's approval, take a day off using vacation, compensatory time, a floating holiday, or leave without pay.

Jury Duty and Witness Leave

The City acknowledges that its employees have obligations as citizens to serve on juries and jury panels, and to appear in court as subpoenaed witnesses. Regular full-time and regular part-time employees will be provided leave with pay when summoned to serve as jurors or subpoenaed witnesses, unless appearing as a plaintiff or defendant in legal action against the City. Regular full-time and part-time employees will be provided leave with pay when summoned to serve on a jury without loss of pay for the duration of a trial per jury duty summons. Compensation received by the employee, with the exception of mileage reimbursements, shall be reimbursed to the City to the end that the employee shall not receive more total compensation in the form of regular pay and compensation for jury duty than the employee would normally receive as wages from the City.

The City shall have the right, at the City's expense, to request the court to excuse the employee from any or all jury duty if there are circumstances that would make the absence of the employee an undue hardship on the City or other personnel.

Funeral Leave

A regular full-time employee may take up to twenty-four (24) hours of funeral leave for a death in the employee's immediate family (see definitions 100-003). With department director approval, up to fifty-six (56) additional hours of sick leave may be utilized in these situations, for a total absence of eighty (80) hours (two (2) regular work weeks).

Under usual circumstances, the Mayor or his/her designee may construe more broadly this definition to other persons living within the employee's household, to others related to the employee by blood or marriage, or to established relationships having attributes to familial ties.

With department director approval, a regular employee may use sick leave, not to exceed eight (8) hours, to attend the funeral of close friends or other relatives.

Funeral leave is provided for regular part-time employees on a pro-rated basis in the same percentage as the employee's average weekly scheduled hours related to a forty (40) hour week.

Leave of Absence – General

A personal leave of absence is a privilege the City may extend to qualified regular full-time and regular part-time employees for specific periods of time under certain circumstances. It allows an employee to take time off from work for personal reasons, or to fulfill a military obligation in excess of fifteen (15) calendar days per year. All such leaves are taken without pay.

A leave of absence must be requested in writing and submitted to the employee's immediate supervisor and department director for a recommendation as soon as the need for such a leave is known. The department director shall then forward the request to the **Personnel Director** for review. Only the Mayor may grant or deny any leave requested. All leaves granted are without pay. The employee may request or may be requested by the City to use accrued vacation or compensatory time to offset loss of pay during the leave. No benefits such as vacation or sick leave are earned while on unpaid leave. Employees on leave may return early from leave if they notify the supervisor one week in advance. Failure to return from leave on or before the agreed upon date will result in termination.

An unpaid leave of more than thirty (30) calendar days will affect an employee's performance and salary review dates. These days will be adjusted forward until the employee has completed as many days of continuous employment as the length of the leave of absence.

An employee will normally be assured of returning to his or her position for a leave of absence of one hundred eighty (180) days. In this event, efforts will be made to place the employee in a vacant comparable position.

During any unpaid leave ninety (90) days or less, an employee may continue his or her group insurance coverage by paying on a monthly basis the premium due if not covered by the union contract.

Sick leave accrual shall not be used for non-medical leaves of absence.

Leave of Absence- Medical

Medical leaves of absence may be granted for regular full-time and regular part-time employees who are unable to perform their job duties due to an illness or an accident and who are ineligible for or have exhausted FMLA leave. This medical leave of absence requires a doctor's certification and cannot exceed one hundred eighty (180) days total, including any FMLA leave. During medical leave, the employee may receive previously earned sick pay and earned but unused vacation benefits. A written request for a medical leave of absence must be returned to the department director along with a doctor's certification indicating the nature of the medical problem and the anticipated length of absence. A medical leave of absence may be extended, by

submitting a written request, accompanied by an explanation from the employee's doctor of the need for extension. A medical leave cannot exceed one hundred eighty (180) days total, including FMLA and extension.

Employees returning from a medical leave of absence must provide a doctor's written certification of the employee's ability to return to work. The City reserves the right to require an examination by a doctor of the City's choice. Employees returning from a medical leave of one hundred eighty (180) days or less return to the same position or a similar position of equal pay or status, subject to job changes or layoffs that would have occurred even if they had not been on leave. **During a paid medical leave of absence, the City will pay its portion of the employee's medical insurance premiums for up to six (6) months total, including during paid or unpaid FMLA leave.**

An unpaid leave of more than thirty (30) calendar days will affect an employee's performance and salary review dates. These days will be adjusted forward until the employee has completed as many days of continuous employment as the length of the leave of absence.

Military Duty

An employee who is a member of the Washington National Guard or a federal military unit is entitled to leave from his or her duties for up to fifteen (15) work days each calendar year (using an October 1 to September 30 year) for official military duty in accordance with RCW 38.40.060. Day for purposes of the section shall be defined as a twenty-four hour period, beginning and ending at midnight. Such leaves are in addition to any other leave or vacation benefits. During the fifteen (15) work day period of military duty, the employee shall continue to receive his or her normal rate of pay.

An employee who is called to or volunteers for service with the armed forces of the US or the Washington National Guard, may be entitled to reinstatement in his or her position upon completion of service, pursuant to state and federal laws.

An employee promoted or hired to fill a vacancy created by a person on military leave is appointed to the position subject to the return of the absent employee. Upon such return a promoted employee is restored to his or her original position or an equivalent position subject to the provisions of state and federal law. Any person hired to fill such a vacancy shall be hired as a temporary part-time employee.

Active Military Duty Shared Leave

The intent of this shared leave provision is to provide short-term financial stability to allow an employee to adjust to a different income and benefit level under military pay.

Any employee who is ordered to report for active military duty for a significant military event as determined by the Mayor and is unable to perform the duties of his or her City position may be eligible to receive donated hours. This may include an employee who is a member of all branches of military service and their reserves, The Army and Air National Guards, the Public Health Service commissioned corps, and other categories designated by the President in a time of emergency.

Any regular full-time or part-time City employee may donate accrued vacation leave hours to provide financial assistance to employees who are called to active military duty and who are unable to perform the duties of their position with the City.

Donation of leave shall be in hourly increments. Vacation leave shall be transferred on a dollar for dollar basis. The value of the leave shall be determined at the current hourly wage of the donor and the leave available to the receiving employee shall be calculated at the receiving employee's wage.

An eligible employee may receive up to 50% of their regular pay per pay period as shared leave to supplement military pay for a total not to exceed 100% of their regular pay. The employee must turn over military paycheck stubs to the City so the City can determine the correct supplemental pay and donated leave amounts. An employee can receive shared leave for active military duty for up to six (6) consecutive pay periods.

While receiving shared leave, the City will continue to pay its portion of the employee and family health insurance benefits, and the employee will pay his or her portion. Employees will not accrue vacation, sick leave or other leave benefits while receiving shared leave. Other regular benefit deductions, such as retirement, will continue and will be based on the amount of pay received or number of hours of shared leave paid as appropriate. Continuation of optional benefits deductions is at the discretion of the employee receiving active military duty shared leave.

Any donated leave of less than \$100 value which is unused because an employee returns to work will be forfeited and used to cover the costs of administering the shared leave program. If the value of unused donated leave exceeds \$100, the unused leave will be returned to the donors on a pro rata basis, proportional to the donation, to the extent administratively feasible.

Shared Leave

The purpose of shared leaves is to permit regular full and regular part-time employees of the City to come to the aid of a fellow City employee. A department director, with the Mayor's approval, may permit an employee to receive shared leave if all of the following conditions are met:

- The employee or a person in the employee's immediate family (see definitions) suffers from an illness, injury, impairment, physical or mental condition which is of an extraordinary or severe nature and which has caused or is likely to cause the employee to go on leave without pay status or to terminate his or her employment with the City.**
- The employee has completed one year of employment with the City.**
- The employee has depleted or will shortly deplete his or her total of accrued vacation, sick leave, compensatory time, holiday time and/or other paid leave.**
- The employee has abided by the City's sick leave policy.**
- The employee has diligently pursued and is ineligible for other disability benefits including workers comp time loss.**
- The use of shared leave will not significantly increase the City's costs, except for those costs which would otherwise be incurred in the administration of the program or which would otherwise be incurred by the employee's department.**

The employee shall be required to provide appropriate medical justification and documentation of the necessity for the leave and the time which the employee can reasonably be expected to be absent due to the condition. Unless otherwise approved by the department director and the Mayor an employee's eligibility to receive shared leave will be limited to the highest total number of hours of their own sick leave balance in the twelve (12) months prior to the shared leave request, so that the employee is eligible to receive a match to their own accrued sick leave bank. An employee shall not receive more than the equivalent of one half of the number of hours in their

typical work year as shared leave throughout his or her employment. Shared leave should be used on a consecutive basis, when it is feasible.

Employees may request their department director to approve the transfer of a specified amount of accrued vacation leave, comp. time or sick leave to an employee who is authorized to receive shared leave. In order to be eligible to donate accrued vacation leave an employee must have taken at least eighty (80) hours of vacation leave within the calendar year, and have eighty (80) or more hours of accrued leave remaining. There is no limit to the number of hours of comp. time an employee can donate.

To be eligible to donate sick leave, an employee must have at least one hundred (100) hours of accrued sick leave after the donation of leave, and may only donate a maximum of eight (8) hours of sick leave per incident unless otherwise approved by the department director and Mayor.

Donations of leave shall be in hourly increments. The department director shall only transfer vacation or sick leave in the amount specified in the request. All donations of leave are voluntary.

While an employee is on shared leave he or she will continue to be classified as a City employee and receive the same salary and benefits as the employee would otherwise receive if using other paid leave. All salary and benefit payments made to the employee on shared leave shall be made by the department employing the person using the shared leave.

The employee's salary rate shall not change as a result of being on shared leave and the total of the employee's salary and other benefits including State Industrial Insurance or any other benefit received as a result of payments by the City to an insurer, health care provider, or pension system shall not exceed the total of salary and benefits which the employee would have received had he or she been in a regular pay status.

Vacation leave and comp. time shall be transferred on a dollar for dollar basis; sick leave shall be transferred on an hour for hour basis. The value of the leave shall be determined at the current hourly wage of the transferor and the leave available to the receiving employee shall be calculated at the receiving employee's wage.

Personnel Director shall be responsible for computing the values of donated leave and shared leave. Payroll shall be responsible for adjusting the accrued leave balances to show the transferred leave. Records of all leave time transferred shall be maintained in the event any unused time is returned at a later date. The department director shall determine when shared leave is no longer needed based on a medical certification. The value of any leave transferred which remains unused shall be returned at its original value to the employee or employees who donated the leave. **The unused leave shall be returned on a pro rata basis proportional to the donation, but in no case will exceed the original number of hours donated.**

Personnel Director shall monitor the use of shared leave to insure equivalent treatment for all employees of the City. Inappropriate use or treatment of the shared leave provision may result in the cancellation of the donated leave or use of shared leave. No employee who has been receiving shared leave shall be paid any unused shared leave in the event they leave City employment.

The City of Pacific, at its sole discretion, may amend or cancel this program at any time.

Administrative Leave

In certain circumstances, the City may choose to place an employee on paid administrative leave pending City investigation, for a period of time determined by the City.

When an employee is placed on paid administrative leave, the employee's work station is his or her residence. The employee is required to be at home and available for contact by phone from 8:00 a.m. to 4:00 p.m. Monday-Friday unless leave has been requested by the employee's supervisor.

Sabbatical Leave

The purpose of sabbatical leave is to promote renewal and rest for longer term service for management level employees of the City. After completion of each ten (10) year period of regular employment with the City, designated employees are eligible for four (4) weeks of sabbatical leave, using two (2) weeks of accrued vacation and two (2) weeks of paid sabbatical leave.

Regular full-time and regular part-time management level employees paid at range 46 or above are eligible if they have completed ten (10) years of service, and if job performance has been satisfactory, as indicated on their most recent performance review.

The four (4) weeks must be taken at one time and may be combined with additional vacation leave. Prior approval by the City is required and is subject to the staffing needs of the City. Sabbatical leave must be taken within two (2) years of eligibility or the leave is forfeited. Regular pay and benefits continue during sabbatical leaves, however employees do not receive an extra day off if a holiday falls during the paid sabbatical leave. No sabbatical leave will be paid to an employee at termination.

Requests for sabbatical leave should be received at least ninety (90) days in advance. Employees must provide a written request for sabbatical leave and obtain approval of the department director and Mayor. Scheduling will be administered by each department. It is the employee's responsibility to develop a plan, subject to department director approval, to provide coverage for the position during a sabbatical leave. This should be done well in advance (6-12 months, if possible) of the leave date. For record keeping purposes, and to ensure consistent administration, the employee should coordinate with the Personnel Director prior to the leave.

ARTICLE 14 – HOLIDAYS

14.01 Each full time employee (including employees on a 4/10 or other non-standard work schedule) shall be entitled to eight (8) hours holiday pay on each of the following days declared as official holidays:

New Year’s Day	Columbus Day
Martin Luther King Jr. Day	Thanksgiving Day
Presidents’ Day	Day after Thanksgiving
Memorial Day	Veterans’ Day
Independence Day	Day before Christmas
Labor Day	Christmas Day

14.02 HOLIDAY PAY (5 on 2 off Shift) - Whenever any legal holiday falls on a Sunday the following Monday shall be a legal holiday. Whenever any legal holiday falls on a Saturday the preceding Friday shall be a legal holiday. If a holiday falls on an employee’s day off, that employee shall receive eight (8) hours of compensatory time off. If an employee is assigned to work on any holiday he/she shall receive, in addition to his/her regular monthly rate of pay, one and one-half (1½) times his/her regular rate of pay for all time worked on the holiday.

14.03 In order to be eligible for holiday pay an employee must be in a paid status on both the regular work day immediately preceding and immediately succeeding the scheduled holiday.

ARTICLE 15 – VACATION

15.01 VACATION EARNINGS - Vacation shall be earned according to the following schedule:

1 through 3 years	8.0 hrs/month
4 through 9 years	10.0 hrs/month
10 through 14 years	12.5 hrs/month
15 or more years	15.0 hrs/month

15.02 Vacation pay shall be calculated in the following manner:

$$\text{Annual wage}/2080 = \text{hourly rate}$$
$$\text{Hourly rate} \times \text{hours of vacation requested} = \text{vacation pay.}$$

15.03 Employees shall be allowed to accumulate vacation hours up to a maximum of twice (2x) their allowed vacation earnings per year of service. Vacation hours earned after maximum accumulation shall be forfeited; however, they shall not be forfeited if the

accumulation exceeds the maximum through no fault of the employee.

15.04 The manager of each department shall establish a vacation schedule for the department. If two (2) or more employees request vacation for the same day(s), the employee with the greatest seniority in service to the City shall have first choice. Department managers shall submit vacation schedules to the Mayor for approval. Mayoral approval must be granted before a vacation schedule becomes effective. Vacation periods may be granted in a manner causing the least interference with the performance of the regular work within the City. Vacation leave may not be taken without the prior approval of the appointing authority and may not be taken in the pay period in which it was earned. Vacation leave shall be scheduled so as to meet the operating requirements of the City, and, as far as practicable, the preferences of the employees. If two (2) or more employees request vacation for the same day(s) the employee with the greatest seniority in service to the City shall have first choice.

ARTICLE 16 – BEREAVEMENT LEAVE

16.01 In the event of a death in the immediate family, full time employees shall be granted up to three (3) days bereavement leave with pay. This leave shall not be accumulated.

16.02 Additional time off may be requested by the employee and granted by the Departmental Director. Time off for the additional bereavement leave shall be charged against an employee's vacation or compensatory time leave balance at the option of the employee.

16.03 Immediate family is defined to be persons related by blood, domestic partner, or marriage to an employee as follows: grandmother, grandfather, mother, father, husband, wife, son, daughter, legally adopted child, brother, sister, grandchild, and any persons for whose financial or physical care the employee is principally responsible.

ARTICLE 17 – JURY DUTY

Employees who are required by due process of law to render jury service shall receive their pay during such period. If any other payment, besides mileage reimbursement for use of a personal vehicle, is received for jury duty such pay will be reimbursed to the City or deducted from the employee's paycheck.

ARTICLE 18 – SICK LEAVE

18.01 Full time employees shall earn sick leave at the rate of eight (8) hours per month to a maximum of 960 hours. Upon the retirement of an employee hired prior to

October 5, 1995, one-third (1/3) of the accumulated sick leave shall be paid. For all employees hired after October 5, 1995, one-fourth (1/4) of the accumulated sick leave shall be paid.

18.02 Regular employees shall become eligible to use sick leave after they have completed six (6) months of continuous employment as a regular employee with the City. Eligible employees shall be granted sick leave pay for the following reasons:

18.02.1 Personal illness or physical or mental incapacity resulting from cause beyond employee's control.

18.02.2 Forced quarantine of the employee in accordance with community health requirements.

18.02.3 Illness of a member of the employee's immediate family. It shall be the responsibility of the employee, with the assistance of the Employer, to file the appropriate paperwork.

18.03 In such event, the employee shall make all reasonable efforts to notify their immediate supervisor, (or in their immediate supervisor's absence, the one shift supervisory) of absence due to illness or injury, the nature and expected length thereof, as soon as possible and in no event later than thirty (30) minutes prior to his/her first regular work shift. A sick slip shall be filled out upon the return of an employee to work. After three (3) consecutive days of sick leave, a doctor's certificate may be required to return to work. Any employee found to have abused the sick leave privilege by falsification or misrepresentation may be subject to corrective action up to and including termination.

18.04 Shared Leave – Regular benefited employees shall be eligible to participate in the City's Shared Leave Plan.

18.05 Sick leave may not be taken in the pay period in which it was earned.

18.06 Leave of Absence – All regular full-time employees who have one (1) year of service with the City are eligible for an un-paid Leave of Absence upon written request to their Personnel Manager and/or Department Director and only with the approval by the Mayor. The Leave of Absence request must be made as far in advance as possible.

Approval of a Leave of Absence is at the City's sole discretion. All terms and conditions of an unpaid leave of absence shall be established in writing by the appointing authority prior to the commencement of the leave. If granted a leave of absence, the employee is required to use all accrued paid time off before the unpaid portion of the leave begins.

Leaves of Absence shall be limited to a maximum of twelve (12) continuous months. Extensions may be granted with approval of the Mayor under extraordinary circumstances.

No vacation or sick leave benefits or any other supplemental benefits shall accrue while an employee is on a leave of absence without pay. The employee shall be allowed to continue insurance coverage through the City's plan by paying the premium, provided such coverage is permitted by the insurance carrier.

An employee must return to work on the date mutually agreed upon, prior to the commencement of the leave. Failure to return to work on the agreed date without prior approval by the Mayor will be treated as a voluntary quit.

ARTICLE 19 – WAGES

19.01 Effective January 1, 2012, employees shall be placed on the appropriate step in the appropriate pay range as provided in Appendix A that reflects their length of service.

19.02 Effective January 1, 2012, employees shall be placed on the appropriate step in the appropriate pay range as provided in Appendix A that reflects an increase of two percent (2%) to the pay range.

19.03 Effective January 1, 2013, employees shall be placed on the appropriate step in the appropriate pay range as provided in Appendix A that reflects an increase of two percent (2%) to the pay ranges.

19.04 Effective January 1, 2014, employees shall be placed on the appropriate step in the appropriate pay range as provided in Appendix A that reflects an increase of one percent (1%) to the pay ranges above.

19.05 The City and the Union agree to meet no later than September 1st, 2013 for an economic opener, to negotiate over wages and benefits for the years 2014 and 2015 of this Agreement. It is agreed that no reductions to any hourly rates will be implemented during the term of this Agreement as a result of the process described in this paragraph.

ARTICLE 20 – LONGEVITY

20.01 Full time employees covered by this Agreement shall receive the following longevity compensation in addition to their base rate of pay:

20.01.1 Three (3) years of service through four (4) years of service: Thirty five dollars (\$35) per month.

ARTICLE 15 – VACATION

15.01 Vacation Earnings - Vacation shall be earned according to the following schedule:

1 through 3 years	8.0	hours/month
4 through 9 years	12	hours/month
10 through 14 years	14	hours/month
15 or more years	16	hours/month

15.02 Vacation pay shall be calculated in the following manner:

Annual wage/2080 = hourly rate
Hourly rate X hours of vacation requested = vacation pay.

15.03 Employees shall be allowed to accumulate vacation hours up to a maximum of twice their allowed vacation earnings per year of service. Vacation hours earned after maximum accumulation shall be forfeited, however, they shall not be forfeited if the accumulation exceeds the maximum through no fault of the employee. Prior to any action to consider forfeiture of vacation hours in excess of the maximum, the City shall provide thirty (30) days grace period for the employee to potentially utilize vacation hours to reduce their bank to under the maximum.

15.04 The Chief of Police/Public Safety Director shall establish a vacation schedule for the department. If two (2) or more employees request vacation for the same day(s), the employee with the greatest seniority in service to the City shall have first choice. The Chief of Police/Public Safety Director shall submit vacation schedules with the Mayor for approval. Mayoral approval must be granted before a vacation schedule becomes effective. Vacation periods may be granted in a manner causing the least interference with the performance of the regular work within the City.

15.05 Two (2) days notice is required prior to requesting one (1) day of vacation. Two (2) weeks notice is required prior to requesting two (2) days or more of vacation.

ARTICLE 16 – BEREAVEMENT LEAVE

16.01 In the event of a death in the immediate family, full time employees shall be granted up to three (3) days bereavement leave with pay. This leave shall not be accumulated.

16.02 Immediate family is defined to be persons related by blood, domestic partner relationship or marriage to an employee as follows: grandmother, grandfather, mother, father, husband, wife, son, daughter, legal parent/guardian, legally adopted child, brother,

sister, grandchild, in-laws and any persons for whose financial or physical care the employee is principally responsible for.

ARTICLE 17 – JURY DUTY

Employees who are required by due process of law to render jury service shall receive their pay during such period. If any other payment, besides mileage reimbursement for use of a personal vehicle is received for jury duty, such pay will be reimbursed to the City or deducted from the employee's paycheck.

ARTICLE 18 – SICK LEAVE

18.01 Full time employees shall earn sick leave at the rate of eight (8) hours per month to a maximum of nine hundred sixty (960) hours. Upon the retirement of an employee one-third (1/3) of the accumulated sick leave shall be paid.

18.02 Any employee eligible for sick leave with pay shall be granted such leave for the following reasons:

18.02.1 Personal illness or physical or mental incapacity resulting from causes beyond employee's control.

18.02.2 Forced quarantine of the employee in accordance with community health requirements.

18.02.3 Illness of a member of the employee's immediate family. It shall be the responsibility of the employee, with the assistance of the Employer, to file the appropriate paperwork.

18.03 A sick slip shall be filled out upon the return of an employee to work. After three (3) consecutive days of sick leave, a doctor's certificate may be required to return to work. Any employee found to have abused the sick leave privilege by falsification or misrepresentation may be subject to corrective action up to and including termination.

ARTICLE 19 – WAGES

19.01 The wage schedule shall be as listed in Appendix A, Section A.1, of this Agreement.

19.02 The wage schedule of Section A.1, shall be amended, effective July 1, 2011 by an increase of one percent (1%).