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

January 30, 2014
Thursday

SPECIAL MEETING
6:30 p.m.

1. **CALL TO ORDER/PLEDGE OF ALLEGIANCE**

2. **ROLL CALL OF COUNCIL MEMBERS**

3. **AGENDA ITEMS**

   A. Ordinance 14-1855: First Reading of Ordinance 14-1855 relating to the recreational and medical use of marijuana, adopting an interim zoning ordinance prohibiting the siting, establishment and operation of any structures, property or uses relating to recreational or medical marijuana production, processing, cultivation, storage, sale, delivery, exchange or bartering, to be in effect until the city adopts permanent zoning regulations on the same subject, which includes a prohibition on the submission of business license applications for such uses, this interim ordinance to be effective immediately, setting six months as the effective period of the interim zoning ordinance, and establishing the date of a public hearing on the interim zoning ordinance.

4. **ADJOURN**

AGENDA ITEM NO. 3A

Agenda Bill No. 14-016

TO:	Mayor Guier and City Council Members
FROM:	Paula Wiech, Planner
MEETING DATE:	January 30, 2014
SUBJECT:	Marijuana and Recreational Marijuana Regulations

ATTACHMENTS:

Draft proposed Ordinance No. 14-1855, an interim zoning ordinance that allows Recreational Marijuana uses in a limited area;

Opinion of the Attorney General of Washington;

Proposed House Bills 2144 and 2322.

Previous Council Review Date: January 13, 2014, January 21, 2014

Summary: Medical Marijuana use has been legal in the State of Washington since 1998. Recreational Marijuana use was approved by voters in November 2012. Cities and counties are charged with regulating the use of both in their jurisdictions and there have been legal challenges to those that do not allow the processing, production and dispensing of marijuana. Since August 8, 2011, the City of Pacific has adopted four Moratoriums relating to Medical Marijuana. The Planning Commission reviewed draft zoning regulations for Medical and Recreational Marijuana at their December 30, 2012 Meeting.

The City of Pacific medical marijuana moratorium expires February 12, 2014. Marijuana use is still illegal on a federal level, and the City of Pacific will not issue business licenses for activities that are illegal on a city, state or federal level.

On January 16th, the State Attorney General issued an opinion regarding whether local governments are preempted from banning the location of a Washington State Liquor Control Board licensed producer, processor, or retailer within their jurisdictions; or from making it impractical for them to locate through land use regulations or business license requirements. His Opinion states that "cities, towns, and counties derive their police power from article XI, section 11 of the Washington Constitution, not from statute."

According to another attorney, proposed House Bill 2322 would prohibit any municipality from "preventing or impeding the establishment of a recreational marijuana business."

In other news: House Bill 2144, first read on January 13, 2014, is proposing that a share of the 25% marijuana excise taxes be passed along to local jurisdictions.

Recommendation/Action: Council adoption of an interim zoning ordinance regulating Recreational Marijuana and Medical Marijuana then, after six months, an ordinance banning Medical Marijuana processing, production and dispensing due to health and safety issues; among possible alternatives.

Motion for Consideration: "I move to accept this as the first reading of an ordinance relating to the recreational and medical use of marijuana, adopting an interim zoning ordinance prohibiting the siting, establishment and operation of any structures, property or uses relating to recreational or medical marijuana production, processing, cultivation, storage, sale, delivery, exchange or bartering, to be in effect until the city adopts permanent zoning regulations on the same subject, which includes a prohibition on the submission of business license applications for such uses, this interim ordinance to be effective immediately, setting six months as the effective period of the interim zoning ordinance, and establishing the date of a public hearing on the interim zoning ordinance."

Budget Impact:

Alternatives:

CITY OF PACIFIC, WASHINGTON
ORDINANCE NO. 14-1855

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

Medical Marijuana

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

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

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

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

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

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

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

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

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

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

RECREATIONAL MARIJUANA

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

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

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

WHEREAS, I-502 allows the Washington State Liquor Control Board to license a marijuana retailer to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (1-502, Sec. 4(3)); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. "Collective Garden" means those gardens authorized under RCW 69.51A.085, which allows Qualifying Patients to create and participate in Collective Gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use, subject to certain limited conditions, including:[1]

(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;

---

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

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

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

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

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

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

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

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

(1) Is eighteen years of age or older;

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

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

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

H. "Dispensary, Medical Marijuana" means: any location that does not meet the definition of a "Collective Garden" and does not have a license from the Liquor Control Board of the State of Washington for a marijuana producer, processer 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 processer" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GG. "Qualifying Patient" means a person who:

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

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

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

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

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

LL. "Terminal or debilitating medical condition" means:

1. Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

2. Intractable pain, limited for the purpose of this ordinance to mean pain unrelieved by standard medical treatments and medications; or

3. Glaucoma, either acute or chronic, limited for the purpose of this ordinance to mean increased intraocular pressure unrelieved by standard treatments and medications; or

4. Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

5. Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

6. Diseases, including anorexia, which result in nausea, vomiting, cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

7. Any other medical condition duly approved by the Washington State Medical Quality Assurance Commission in consultation with the Board of Osteopathic Medicine and Surgery as directed in chapter 69.51A RCW.

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

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

OO. "Valid documentation" means:

1. A statement signed and dated by a Qualifying Patient's Health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis/marijuana;

2. Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and

3. In the case of a Designated Provider, the signed and dated document valid for one year from the date of signature executed by the Qualifying Patient who has designated the Provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. Declaration of Emergency.[2] 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.[3] 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.

---

[2] If the City does not have sufficient votes to pass this ordinance on an emergency basis, this section should be deleted. Without a majority plus one of the full membership of the Council, the ordinance would go into effect at the usual time. *See*, RCW 35A.12.130 for code cities.

[3] RCW 35A.12.130 for code cities.

Section 10. Effective Date(without the vote of a majority plus one of the entire council). This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

(Alternative Effective Date provision if the Council desires immediate adoption and there is a vote of a majority plus one of the entire council: 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 ___nd day of _____, 2014.

_____

_____, Mayor

AUTHENTICATED:

_____

_____, City Clerk.

APPROVED AS TO FORM:
Office of the City Attorney

_____

City Attorney

PUBLISHED:
EFFECTIVE DATE: