

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PACIFIC, WASHINGTON, RELATING TO BUSINESS LICENSES, ADOPTING BUSINESS LICENSE REQUIREMENTS FOR RECREATIONAL MARIJUANA USES, DESCRIBING THE REQUIREMENTS FOR LICENSE APPLICATIONS, FEES, INSPECTIONS, SIGNS, NECESSITY FOR REPORTING OF DISTURBANCES AND UNLAWFUL ACTIVITY, OPERATION AND LOCATION REQUIREMENTS, REQUIRING PAYMENT OF SALES TAX, ADDRESSING NONRENEWALS, SUSPENSIONS AND REVOCATION, INDEMNIFICATION AND ENFORCEMENT, ADOPTING A NEW CHAPTER 5.12 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 _____, the Planning Director issued a SEPA threshold decision of _____ on this draft Ordinance, which was/was not appealed (if appealed, describe the results of that appeal in a “whereas”); 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 PACIFIC CITY COUNCIL OF THE CITY OF _____ ORDAINS AS FOLLOWS:

Section 1. A new Chapter 5.12 is hereby added to the Pacific Municipal Code, which shall read as follows:

CHAPTER 5.12 RECREATIONAL MARIJUANA

Sections:

- | | |
|-----------------|---|
| 5.12.001 | Findings and Purpose. |
| 5.12.002 | Definitions. |
| 5.12.003 | License Required, Effective Date. |
| 5.12.004 | Relationship to Recreational Marijuana Laws and Other Laws |
| 5.12.005 | Designation of Licensing Authority. |

- 5.12.006 Requirements of Application for License.**
- 5.12.007 Inspection Fee.**
- 5.12.008 Denial of Application.**
- 5.12.009 Locational Criteria.**
- 5.12.010 Change of Location.**
- 5.12.011 Outdoor Signage and Advertising.**
- 5.12.012 Security Requirements.**
- 5.12.013 Report of Disturbances and Unlawful Activity.**
- 5.12.014 Visibility of Activity and Control of Emissions.**
- 5.12.015 Sales Tax**
- 5.12.016 Inspection of Licensed Premises.**
- 5.12.017 Nonrenewal, Suspension or Revocation of License.**
- 5.12.018 No City Liability – Indemnification.**
- 5.12.019 Other Laws Remain Applicable.**

5.12.001. Findings and Purpose.

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

B. The purpose of this chapter is to describe the application process, qualifications and requirements to obtain a recreational marijuana business license, terms of such licenses, renewals, violations and penalties.

C. No part of this chapter is intended to or shall be deemed to conflict with 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. Nothing in this Chapter 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 Chapter 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 Chapter be interpreted to be compatible with state enactments and in furtherance of the public purposes that those enactments encompass.

5.12.002. Definitions. The definitions in chapter 20.78.002 of the City Zoning Code apply to the administration, interpretation and enforcement of this Chapter 5.12 PMC.

5.12.003 License Required -- Effective Date.

A. It shall be unlawful for any person or entity to operate any recreational marijuana producer, processor or retail business without first having obtained a local license under this Chapter and a State license under Chapter 314-55 WAC, for each facility to be operated in connection with such business. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section.

B. No person shall be deemed to have any entitlement or vested right to licensing under this Chapter by virtue of having received any prior license or permit from the City, including, by way of example, any zoning permit, building permit for a medical marijuana use, wholesale food manufacturer's license, or any other license.

C. This Chapter is not intended to regulate the possession, cultivation or use of marijuana for medical use by anyone who may qualify as a Qualified Patient or Designated Care Provider, under chapter 69.51A RCW. This Chapter is not intended to license any medical marijuana use, collective garden, retailer or any other business associated with the use of marijuana for medical purposes, under chapter 69.51A RCW.

5.12.004 Relationship to Recreational Marijuana Laws and Other Laws.

Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in I-502, as codified in chapter 69.50 RCW and chapter 314-55 WAC. In the event of any conflict between the provisions of this chapter 5.09 and the provisions of chapter 69.50 RCW or chapter 314-55 WAC, the more restrictive provision shall control.

5.12.005 Designation of Licensing Authority.

In accordance with Section _____ of the _____ Municipal Code, the _____ is designated as the local Licensing Authority for the purpose of administering this Chapter. The Licensing Authority shall have the following responsibilities:

A. To grant or deny licenses under this Chapter, to grant or deny transfers of ownership or location of the license and impose penalties against licensees in the manner provided by law.

B. To promulgate rules and regulations regarding the procedures for hearings before the Licensing Authority, and to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records at any hearing which the Authority is authorized to conduct. Any such subpoena shall be served in the same manner as a subpoena issued by the Washington courts.

C. To require any applicant or licensee to furnish any relevant information required by this Chapter.

5.12.006 Requirements of Application for License; Payment of Application Fee.¹

A. A person or entity seeking a license pursuant to Washington State law under chapter 69.50 RCW and the provisions of this Chapter shall submit an application to the City on

¹ Keep in mind that the State will perform a criminal history background check, an investigation into the residency requirements, a financial investigation to verify the source of the funds used for the acquisition and start-up of the business, etc. WAC 314-55-020.

forms provided by the City. At the time of the application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the City for the processing of the application, as well as an inspection fee (as described in Section 5.12.007 below). In addition, the applicant shall present a suitable form of identification.

B. The applicant shall also provide the following information on a form approved by, or acceptable to, the Licensing Authority, which information may be required for the applicant, the proposed manager of the recreational marijuana business (production, processing or retail outlet) and all persons having a financial interest in such business that is the subject of the application, or, if the applicant is an entity, having a financial interest in the entity:

1. Name, address and date of birth;
2. An acknowledgement and consent that the City may conduct a background investigation, including a criminal history check, and that the City will be entitled to full and complete disclosure of all financial records of the recreational marijuana business, including records of deposit, withdrawals, balances and loans;
3. If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Washington Secretary of State, as applicable;
4. If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for the recreational marijuana use (production, processing or retail outlet);
5. A copy of any deed reflecting the applicant's ownership of, or lease reflecting the right of the applicant to process, the proposed licensed premises;
6. Evidence of a valid State license for the recreational marijuana business;
7. A "to scale" diagram of the proposed licensed premises, no larger than eleven (11) inches by seventeen (17) inches, showing, without limitation, building layout, all entryways and exits to the proposed licensed premises, loading zones and all areas in which recreational marijuana will be stored, grown, manufactured or sold;
8. A comprehensive business operation plan for the recreational marijuana business which shall contain, at a minimum, the following:
 - (a) A security plan meeting the requirements of State law;
 - (b) A description of all products to be processed, produced, cultivated or sold;
 - (c) A plan for exterior signage that is in compliance with State law, this Chapter and the City's sign code, including photographs and/or illustrations of the proposed signage; and
9. Any additional information that the Licensing Authority reasonably determines to be necessary in connection with the investigation and review of the application.²

C. All recreational marijuana businesses shall obtain other required permits or licenses related to the operation of the business, including, without limitation, any development

² See, chapter 314-55 WAC to determine what factors will be considered by the State of Washington in order to issue a license.

approvals or building permits required by this Code, the Building Code or the Zoning Code (chapter 20.78 PMC).

D. Upon receipt of a completed application, the Licensing Authority may circulate the application to all affected service areas and departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.

E. The City may, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this Article or other provisions of this Code, the Building Code or the Zoning Code.

5.12.007. Inspection Fee. In order for the license to issue, and upon renewal thereafter, the licensee shall pay to the City a non-refundable fee in an amount determined by the Licensing Authority to cover the costs associated with the individual inspection conducted pursuant to this Chapter.

5.12.008. Denial of Application. The Licensing Authority may deny any application for a license or license renewal that does not meet the requirements of Washington State Law or this Chapter. The Licensing Authority may deny any application that contains any false, misleading or incomplete information.

5.12.009. Location Criteria.

A. No license shall be issued to a recreational marijuana producer, processor or retail outlet if the proposed licensed business is within one thousand 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.

B. No license shall be issued to a recreational marijuana producers, processor or retail outlet unless the proposed business is located within the boundaries of the Light Industrial (LI) zone, within the Pierce County portion of the City, as required by PMC Section 20.78.003(A).

5.12.010. Change of Location.

A change in the location of a recreational marijuana business occurs any time a move by the licensee results in any change to the physical location address. A change in the location of such business requires the submission of a new application under Section 5.12.006 above.

5.12.011. Outdoor Signage and Advertising.

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 ___ 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.

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

5.12.013. Report of Disturbances and Unlawful Activity.

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 licenses 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
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 licensee 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 Licensing Authority in any action relating to the issuance, revocation, suspension or nonrenewal of a license.

5.12.014. Visibility of Activities; Control of Emissions.

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.

5.12.015. Sales Tax.

Each recreational marijuana business shall collect and remit City sales tax on all recreational marijuana paraphernalia and other tangible personal property used or sold at the licensed premises.

5.12.016. Inspection of Licensed Premises.

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Police Department and all other City departments, as designated by the Licensing Authority, for the purpose of investigating and determining compliance with the provisions of this Chapter and any other applicable state and local laws and regulations.

5.12.017. Nonrenewal, Suspension or Revocation of License.³

A. The Licensing Authority, may, after notice and a hearing (using the procedures set forth in chapter ___ of this title), suspend, revoke or refuse to renew a license for any of the following reasons: (does the City have such procedures in the business licensing code?)

1. The applicant or licensee, or his or her agent, manager or employee, has violated, does not meet or has failed to comply with, any of the terms, requirements, conditions or provisions of this Chapter or with any applicable state or local law or regulation; or

2. The applicant or licensee, or his or her agent, manager or employee, has failed to comply with any special terms or conditions of its license pursuant to an order of the

³ The City's Business Licensing Title should include procedures for enforcement, including notice to the licensee/applicant of hearing, the procedures for a hearing, issuance of a decision, etc. This chapter should be referenced here.

state or local licensing authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of the issuance of the license.

B. Evidence to support a finding under Subsection (A) above may include, without limitation, a continuing pattern of disorderly conduct, a continuing pattern of drug-related criminal conduct within the premises of the business or in the immediate area surrounding such business, or an ongoing nuisance condition emanating from or caused by the recreational marijuana business. Criminal conduct shall be limited to the violation of state or City law.

5.12.018. No City Liability – Indemnification.

A. By accepting a license 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 license 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.

5.12.019. Other Laws Remain Applicable.

A. To the extent the State or the City adopts in the future any additional or stricter law or regulation governing the production, processing or sale of recreational marijuana, the additional or stricter regulation shall control the establishment or operation of any recreational marijuana business in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

B. If the State prohibits the production, processing, sale or other distribution of marijuana through the premises licensed under this Chapter, any license issued hereunder shall be deemed immediately revoked by operation of law.

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. 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 Pacific this ___ day of _____, 2014.

MAYOR LEANNE GUIER

ATTEST/AUTHENTICATED:

City Clerk, Amy Stevenson-Ness

APPROVED AS TO FORM:
Office of the City Attorney

City Attorney, Carol Morris

PUBLISHED:
EFFECTIVE DATE: