

# CITY OF YAKIMA

## LEGAL

## DEPARTMENT

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### **MEMORANDUM**

December 18, 2013

TO: City of Yakima Planning Commission  
Steve Osguthorpe, AICP, Director, Community Development Department

FROM: Mark Kunkler, Senior Assistant City Attorney

SUBJECT: Marijuana – Public Hearing – Record Documents

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#### **A. Introduction.**

On January 8, 2014, the Planning Commission is scheduled to conduct a public hearing to consider a proposed amendment to the Yakima Municipal Code. The proposed amendment would prohibit the production, processing and retailing of marijuana within the City of Yakima.

#### **B. Procedural Background.**

On October 8, 2013, the City Council adopted Ordinance No. 2013-048 imposing a six-month moratorium on the acceptance of applications for, and issuance of licenses and permits for, marijuana production, processing and retailing within the City of Yakima. At a public hearing on November 5, 2013 concerning the adoption and scope of the moratorium, the City Council approved the moratorium as originally enacted and adopted findings of fact supporting such enactment (Resolution No. 2013-142). Under the terms of the moratorium ordinance, the moratorium will expire on midnight, May 6, 2014 or upon adoption of municipal code provisions pertaining to the regulation of marijuana production, processing and retailing within the City of Yakima.

The City Council vote to adopt the moratorium on October 8, 2013 was approved by a 4 – 3 vote. Those voting in favor expressed a preference to develop zoning and land use regulations to allow marijuana production, processing and/or retailing within the city. Those voting against expressed a preference that the City of Yakima prohibit the production, processing and retailing of marijuana within the city.

On or about November 5, 2013, following a public hearing on the moratorium, the City Council took another vote on the issue. At this meeting the vote was 4 – 3 to develop code amendments to ban marijuana production, processing and retailing within the City of Yakima.

### **C. Proposed Amendment to Yakima Municipal Code.**

In response to the direction of the City Council, staff has prepared a proposed ordinance. The proposed ordinance amends YMC 15.01.035 to read as follows (shown in legislative format):

#### **15.01.035 Illegal Uses Prohibited.**

A. General. No use that is illegal under local, state or federal law shall be allowed in any zone within the city.

B. Specific Application – Medical Marijuana Dispensaries and Collective Gardens. Until such time that this code is amended to provide specific provisions and land use controls allowing and regulating dispensaries of cannabis and/or collective gardens for the production, distribution and dispensing of cannabis for medical uses, all as further defined and set forth in Chapter 69.51A RCW and E2SSB 5073, Laws of 2011 of the State of Washington, such uses are not allowed in any zone within the city. For purposes of this section, “dispensary” means any person, entity, site, location, facility, business, cooperative, collective, whether for profit or not for profit, that distributes, sells, dispenses, transmits, packages, measures, labels, selects, processes, delivers, exchanges or gives away cannabis for medicinal or other purposes.

C. Production, Processing and Retailing of Marijuana Prohibited. Production, processing, retail sale and retail outlets for the sale of marijuana and marijuana-infused products, all as defined in Initiative Measure No. 502, as codified in the Revised Code of Washington, and implementing regulations in Chapter 314-55 of the Washington Administrative Code, as now existing or hereafter amended, are each prohibited and not allowed in any zone within the city.

The preexisting portion of the code language was added in 2012 to address medical marijuana dispensaries and collective gardens. The effect of the code provisions was to prohibit medical marijuana dispensaries and collective gardens within the City of Yakima. The proposed amendment keeps the prior language but adds a specific subsection prohibiting marijuana production, processing and retailing within the City of Yakima.

**D. Reasons for Amendment.**

The rationale supporting the proposed amendment is stated within the preamble to the proposed ordinance, the proposed findings of fact and conclusions of law in support of the proposed ordinance, and in the briefs and letters included within the record. The rationale can be summarized as follows:

(a) Marijuana remains illegal under federal law. The memorandum issued by the U.S. Attorney General's office on August 29, 2013 did not change the law, but only announced the decision of the U.S. Attorney's Office to exercise prosecutorial discretion with regard to enforcement of the federal law within the States of Colorado and Washington. The U.S. Attorney's Office reserved the power to prosecute in any instance where it felt the efforts of the states fell short of "robust regulation," where a threat exists for the illegal distribution to minors, or where a threat of interstate distribution of marijuana was encountered.

(b) The City of Yakima has been granted constitutional authority to enact legislation regulating land uses within its jurisdiction so long as such local legislation is consistent with the general laws (Constitution Article 11, Section 11).

(c) Nothing in Initiative Measure No. 502 ("Initiative 502") decriminalizing possession, use and delivery of specified amounts of marijuana and authorizing the Washington State Liquor Control Board (WSLCB) to develop and implement regulations for the licensing of marijuana production, processing and retailing expressly or impliedly preempts the City of Yakima from exercising its land use regulatory authority, including the ban of marijuana production, processing and retailing within city limits.

(d) The prohibition of marijuana production, processing and retailing within the City of Yakima does not contravene the purposes of Initiative 502, and does not alter the provisions of Initiative 502 that authorize the WSLCB to designate the maximum number of marijuana retail outlets in each county. If a local ban is enacted by the City of Yakima, the number of retail outlets allocated by the WSLCB to the City of Yakima become "at large" retail locations. At large retail outlets can be located in the unincorporated county or any other city not allocated a number of retail outlets, all in accordance with the provisions of Initiative 502.

(e) While Initiative 502 contains restrictions prohibiting location of marijuana production, processing and retail outlets within 1,000 feet of public schools,

public parks, public libraries and other protected uses, it does not contain restrictions prohibiting location of marijuana licensed facilities within residential districts, community recreational trails, or private parks, facilities and areas that serve the public.

(f) Studies reporting secondary effects associated with analogous medical marijuana dispensaries in other cities and counties include reports of murders, robberies, burglaries, drug dealing, sales to minors, loitering, heavy foot and vehicle traffic, increased noise, odors, health hazards such as proliferation of molds; *See*, "White Paper on Marijuana Dispensaries," California Police Chiefs Association's Task Force on Marijuana Dispensaries (April 22, 2009) was issued ("CAPCA White Paper"); *City of Riverside v. Inland Empire Patients Health and Welfare Center*, 56 Cal.4<sup>th</sup> 729, 756, 300 P.3d 494 (2013).

(g) Initiative 502 does not *require* that any city allow the location of any marijuana production, processing or retailing facility within its jurisdiction. Regulations adopted by the WSLCB implementing Initiative 502 specifically state that any license issued by the WSLCB does not constitute approval of the location of the licensed facility within any city. Such uses are subject to the land use regulations of the city.

#### **E. Record Documents.**

The following documents are presented as part of the record in this matter:

- (a) (Proposed Draft) Findings of Fact, Conclusions of Law and Recommendation to City Council. These are subject to the Planning Commission's review and revision.
- (b) (Proposed) Ordinance amending YMC 15.01.035 regarding marijuana production, processing and retailing.
- (c) Initiative Measure No. 502.
- (d) Chapter 314-55 WAC, regulations adopted by the Washington State Liquor Control Board implementing Initiative 502.
- (e) City of Yakima Ordinance No. 2013-148, enacting moratorium.
- (f) Resolution No. 2013-142, adopting Findings of Fact in support of moratorium enacted per Ordinance No. 2013-148.

(g) Memorandum to City Council dated October 2, 2013 regarding Initiative 502.

(h) Memorandum dated August 29, 2013 from U.S. Department of Justice, Office of the Deputy Attorney General, regarding marijuana enforcement in states of Colorado and Washington.

(i) Letter from City Attorney dated December 10, 2013 to Washington State Attorney General's Office.

(j) "White Paper on Marijuana Dispensaries," submitted by California Police Chiefs Association Task Force on Marijuana Dispensaries (April 22, 2009).

(k) Materials dated November 4, 2013 in support of medical marijuana facilities, submitted to City Council by MCS of Central Washington. (Omitting copy of City of Spokane Ordinance No. C-35037 creating new and amended municipal code provisions regulating medical marijuana collective gardens and land uses for production, processing and retailing of recreational marijuana. Reference is made to Spokane Municipal Code Chapters 10.49 and 10.50, which are available for view on the City of Spokane's web site.)