

ORDINANCE NO. 2014-

AN ORDINANCE amending Section 15.01.035 of the Yakima Municipal Code prohibiting production, processing and/or retail outlets and sales of marijuana in all zones of the city; and terminating moratorium implemented pursuant to Ordinance No. 2013-048.

WHEREAS, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 (“Initiative 502”), now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 RCW, which provisions (a) decriminalized possession and use of certain amounts of marijuana and marijuana paraphernalia; (b) amended state laws pertaining to driving under the influence of intoxicants to include driving under the influence of marijuana; and (c) authorized promulgation of regulations and issuance of licenses by the Washington State Liquor Control Board (“WSLCB”) for the production, processing and retailing of marijuana; and

WHEREAS, Congress passed the *Comprehensive Drug Abuse Prevention and Control Act of 1970*, Pub.L. No. 91-513, 84 Stat. 1236, to create a comprehensive drug enforcement regime it called the *Controlled Substances Act*, 21 U.S.C. § 801-971. Under the Controlled Substances Act (also “CSA”), Congress established five “schedules” of controlled substances. Controlled substances are placed in specific schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance. See 21 U.S.C. § 812(b); and

WHEREAS, marijuana is currently listed as a “Schedule I” controlled substance, 21 U.S.C. § 812(c), Schedule I(c)(10). For a substance to be designated a Schedule I controlled substance, it must be found: (1) that the substance “has a high potential for abuse”; (2) that the substance “has no currently accepted medical use in treatment in the United States”; and (3) that “[t]here is a lack of accepted safety for use of the drug or other substance under medical supervision.” 21 U.S.C. § 812(b)(1). The Controlled Substances Act sets forth procedures by which the schedules may be modified. See 21 U.S.C. § 811(a); and

WHEREAS, under the Controlled Substances Act, it is unlawful to knowingly or intentionally “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance,” except as otherwise provided in the statute. 21 U.S.C. § 841(a)(1). Possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful; and

WHEREAS, the United States Supreme Court has held in *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005). that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act, and that, under the Supremacy Clause of the U.S. Constitution, the federal Controlled Substances Act will prevail over any conflicting state law; and

WHEREAS, WAC 314-55-020(11) promulgated by the WSCLB under the authority of Initiative 502 describes the license permit process and includes the following limitation:

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements;

and

WHEREAS, pursuant to Article 11, § 11 of the state Constitution, the general police powers granted to cities empower and authorize the City of Yakima to adopt land use controls to provide for the regulation of land uses within the city and to provide that such uses shall be consistent with applicable law; and

WHEREAS, one of the primary purposes of the Growth Management Act is to empower cities planning under the Act to develop and adopt land use controls reflecting the local needs of the community. As provided in RCW 36.70A.010: “It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning;” and

WHEREAS, the City Council finds and determines that Initiative 502 does not preempt the City of Yakima from exercising and administering its constitutional and statutory land use regulatory authority to either allow and regulate land uses within the city limits, or to prohibit and ban such uses; and

WHEREAS, the City Council finds and determines that the prohibition of marijuana production, processing and retailing as defined by Initiative 502 and regulations promulgated thereunder is consistent with federal law and not in conflict therewith; and

WHEREAS, the City Council finds and determines that prohibiting within the City of Yakima the production, processing and retailing of marijuana, as set forth in Initiative 502 and its implementing regulations, will maintain adequate access in areas in the vicinity of the city for marijuana production, processing and retailing for residents within the City of Yakima, and is consistent with the provisions of Initiative 502 and its implementing regulations; and

WHEREAS, the City Council finds and determines that documented secondary effects associated with analogous medical marijuana dispensaries in other cities and counties include 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.4th 729, 756, 300 P.3d 494 (2013); and

WHEREAS, the City Council finds and determines that the prohibition of marijuana production, processing and retail uses within the City of Yakima is the only

effective means to protect residential districts, recreational facilities, families and children within the City of Yakima; and

WHEREAS, the City Council of the City of Yakima finds and determines that Section 15.01.035 of the Yakima Municipal Code should be amended to prohibit marijuana production, processing and retailing, as defined in Initiative 502 and its implementing regulations, within the City of Yakima; and

WHEREAS, the City Council finds and determines that the prohibition of marijuana production, processing and retailing is subject to the authority and general police power of the city to develop specific and appropriate land use controls regarding such uses, and the City Council reserves its powers and authority to appropriately amend, modify and revise such prohibition to implement such land use controls in accordance with applicable law; and

WHEREAS, the City Council finds and determines that such amendments authorized herein are not intended to regulate the individual use of marijuana as authorized by Initiative 502 ; and

WHEREAS, the Planning Commission has held and conducted an open record public hearing on January 8, 2014, with special meeting on January 15, 2014, all pursuant to required notice and applicable procedures of the City of Yakima, and has adopted findings of fact and conclusions of law in support of its recommendation for adoption of the above-described amendments, which Findings of Fact and Conclusions of Law are of record and incorporated herein by this reference; and

WHEREAS, the City Council has held and conducted a public hearing on January 21, 2014 and considered the recommendation of the Planning Commission, the record herein, and all evidence and testimony presented; and

WHEREAS, the City Council finds and determines that approval of such amendments is in the best interests of residents of the City of Yakima and will promote the general health, safety and welfare; now, therefore

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. The City Council hereby adopts as its own, and approves, the Findings of Fact, Conclusions of Law and Recommendation of the Planning Commission adopted by the Planning Commission following its special meeting on January 15, 2014, of record herein.

Section 2. Section 15.01.035 of the Yakima Municipal Code is hereby amended to provide as follows:

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.

Section 3. Except as amended herein, Title 15 of the Yakima Municipal Code shall remain unchanged.

Section 4. The moratorium adopted and imposed on October 8, 2013 pursuant to Ordinance No. 2013-048 shall terminate upon the date this ordinance becomes effective in accordance with the provisions of Section 5 below.

Section 5. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 21st day of January, 2014.

Mayor

ATTEST:

City Clerk

Publication Date: _____

Effective Date: _____