



# CITY OF SEATAC

## PLANNING COMMISSION MEETING

Riverton Room, SeaTac City Hall, 4800 S. 188<sup>th</sup> Street  
May 6, 2014, 5:30 p.m.

### MEETING AGENDA

- 1) Call to Order/Roll Call – 5:30 p.m.
- 2) Approve Minutes of April 15, 2014 Planning Commission Meeting (Exhibit A)
- 3) Public Comment: Public comment will be accepted on items not scheduled for a public hearing
- 4) Briefing on Recreational Marijuana/I-502 (Exhibit B)
- 5) Community & Economic Development Director's Report
- 6) Planning Commission Comments (including suggestions for next meeting agenda)
- 7) Adjournment

*The Planning Commission consists of five members appointed by the Mayor and confirmed by the City Council. The Commission primarily considers plans and regulations relating to the physical development of the city, plus other matters as assigned. The Commission is an advisory body to the City Council.*

*All Commission meetings are open to the public and comments are welcome. Please be sure to be recognized by the Chair prior to speaking.*



# MEMORANDUM

## COMMUNITY & ECONOMIC DEVELOPMENT

Date: May 1, 2014  
To: Planning Commission  
From: Steve Pilcher, Planning Manager  
Subject: Recreational Marijuana/Medical Marijuana

### Introduction

In 2012, the voters of Washington State passed Initiative 502, which legalized the processing, production, sale and delivery of marijuana for recreational use. The Washington State Liquor Control Board (LCB) was charged with developing a regulatory system concerning the licensing and operation of the various facilities authorized under the law. The LCB promulgated rules in 2013 and began considering license applications. Retail marijuana sales are projected to begin in July of this year.

The City of SeaTac had previously enacted moratoriums regarding the use of medical marijuana within the city limits, in August 2011 and again in January and July 2012. After the passage of I-502, in January 2013, the City opted to amend the Zoning Code to prohibit any land use that would be in violation of any local, state or federal laws (SMC 15.05.060). That regulation remains in effect today. Since marijuana remains illegal under federal law, neither medical nor recreational marijuana use is currently legal within the City of SeaTac.

After promulgation of the LCB rules and procedures to implement I-502, City staff began to receive numerous inquiries from individuals interested in establishing businesses dealing with all aspects of recreational marijuana. The staff subsequently briefed the Commission on the status of the issue at its December 13, 2013 regular meeting.

Staff later briefed the City Council on issues concerning recreational marijuana on February 11, 2014. At the conclusion of that discussion, the Council directed staff to prepare a schedule for formally examining the issue, including Planning Commission review. A proposed schedule was accepted by the Council on March 25, 2014. This schedule calls for Planning Commission review during the month of May, with the staff presenting the Commission's recommended direction at the May 27, 2014 Council meeting.

The City Council did not provide specific direction as to whether the City's codes and regulations should be amended to allow recreational marijuana. Rather, it asked the Commission to review the issue and then recommend a direction for the City to take. The Council will then decide whether staff should draft amendments for formal Commission consideration this summer.

### **Medical marijuana**

Medical marijuana use is regulated separately from recreational marijuana in the Revised Code of Washington (RCW 69.51A, which codified Initiative 692, passed by the voters in 1998). Although the City Council did not specifically discuss this issue earlier this year, there are issues concerning the interface between medical marijuana and the newly-emerging recreational marijuana industry. (The State legislature did not amend medical marijuana laws during this past legislative session.) Therefore, the materials being provided to the Commission discuss both types of marijuana usage.

### **Background Information**

Staff has prepared a presentation to guide the Commission through its discussion of these issues at your meeting next week; a copy is attached. There have been significant contributions to this information by the Legal, Finance and Police Departments; attached are memorandums from each. These provide greater detail on various legal, financial and enforcement issues. Also attached is a fact sheet from the Washington State Liquor Control Board.

The memorandum from the Legal Department provides an excellent background of the legal issues concerning marijuana, in terms of both state and federal law. It also addresses non-legislative actions that have been taken by federal Justice Department and the state Attorney General's office.

The Finance Department memorandum identifies what potential revenues may accrue to the City were it to authorize recreational marijuana. The State is significantly taxing recreational marijuana. Although there has been discussion in the legislature about potential revenue sharing with local government, no action to do so has been taken at this time. Therefore, it appears that local tax revenues will not be significant.

Since there currently aren't any recreational marijuana facilities nearby to provide data (and no retail stores have yet to open in any jurisdiction), Police Chief Mulligan's memorandum addresses the issue in a more qualitative manner, based upon consultation with other area jurisdictions and issues they have noted with medical marijuana establishments.

Another good source of information concerning this issue is the Municipal Research and Services Center (MRSC). They maintain a recreational marijuana guide at:

<http://www.mrsc.org/subjects/legal/502/recmarijuana.aspx>.

A table found at that location depicts which jurisdictions have taken actions to allow recreational marijuana, which maintain moratoria concerning the issue, and which have legislated prohibitions. Very few jurisdictions have prohibitions; many maintain moratoria while they study the issue; and a good number have adopted permanent zoning to allow the use. The latter includes the City's neighboring jurisdictions of Burien, Tukwila, Des Moines and Normandy Park.

MRSC has a separate portion of their website addressing medical marijuana:

<http://www.mrsc.org/subjects/legal/medmarireg.aspx>

**Schedule**

As noted above, time has been allotted on the City Council's May 27, 2014 agenda for a report on the recommendations of the Planning Commission. This timeline gives the Planning Commission the first three weeks in May to examine the issues and formulate a recommendation of how to proceed. Accordingly, CED staff is not anticipating introducing any new items to the Commission this month and, if necessary, will delay scheduled briefings on the Angle Lake Station Area Plan and the Major Comprehensive Plan update until your first meeting in June.

**Desired Commission Action**

Next week's meeting is anticipated to be for discussion purposes only, with no action anticipated. However, if there are other issues the Commission would like staff to explore, direction should be provided at that time so that information may be provided for the next meeting.

The Commission will need to formulate its recommendation(s) at its May 20<sup>th</sup> meeting.

Attachments:

1. PowerPoint presentation
2. Washington State Liquor Board fact sheet
3. Memorandum from Legal Department
4. Memorandum from Finance Department
5. Memorandum from Police Department

# Planning Commission

## Marijuana Briefing/Discussion

May 6, 2014



## BACKGROUND

- Initiative I-502 was approved by Washington voters in November 2012
- WA Liquor Control Board has established rules and procedures to implement I-502
- The City amended SeaTac Municipal Code (SMC) 15.05.060 as part of the work plan that extended the January 24, 2012 moratorium.

# Planning Commission

## Marijuana Briefing/Discussion

May 6, 2014



## BACKGROUND

- Initiative I-502 was approved by Washington voters in November 2012
- WA Liquor Control Board has established rules and procedures to implement I-502
- The City amended SeaTac Municipal Code (SMC) 15.05.060 as part of the work plan that extended the January 24, 2012 moratorium.

## BACKGROUND (Cont.)

- The amendment reads as follows:  
“This Title does not allow any use which is in violation of any local, State, or Federal laws, regulations, codes and/or ordinances.”
- Based on this section of the Municipal Code, **no permits** can be issued to allow marijuana retailers, producers or processors within the City.

## Liquor Control Board Rules Highlights

- A retailer can not be a producer or processor, and a producer and processor can not have a financial interest in a retail store.
- A limited amount of retail licenses will be granted. SeaTac is designated for one license.
- *Home grown marijuana for recreational use, as well as sale, is illegal. Recreational use marijuana must be purchased from a state-licensed retailer.*

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## Liquor Control Board Rules Highlights

- LCB Objectives:
  - Create a tightly controlled and regulated marijuana market;
  - Strict controls to prevent diversion, illegal sales, and sales to minors;
  - Provide reasonable access to products to mitigate the illicit market.
- Timeline: the 30 day window **closed** for producer, processor and retailer license applications on December 18, 2013.
- No applications have been received for any retail outlets.
- The City has received three producer/processor licenses and formally objected to all three licenses in writing to LCB.

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## Liquor Control Board Rules Highlights (Cont.)

- License limits:
  - Licensed entity or principals limited to one producer license;
  - Licensed entity or principals limited to three processor licenses; and
  - Licensed entity or principals limited to three retail licenses. Multiple-location licensees not allowed to hold more than 33 percent of the allowed licenses in any county or city.
- **1,000 foot measurement:**
  - Producers, processors and retailers cannot be located within 1,000 feet of an elementary school or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library.



## Liquor Control Board Rules Highlights (Cont.)

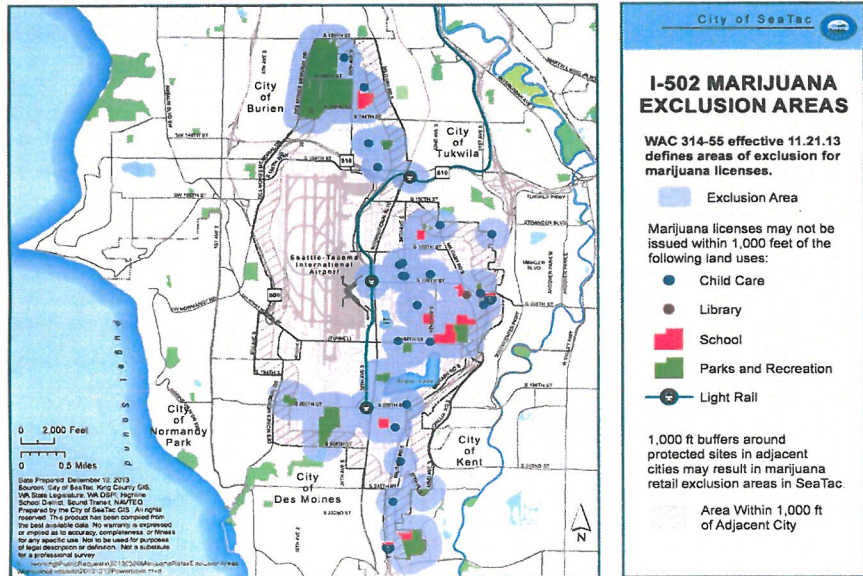
- Other Rule Inclusions:
  - Background checks;
  - State residency requirements;
  - Production limits;
  - Maximum amount of product allowed in licensed locations;
  - State Taxes;
  - Insurance;
  - Public safety requirements; and
  - Consumer safety requirements

## LCB Revision to Rules – 2/27/14

- **Producer License Reduction**
  - The WSLCB received 2,858 marijuana producer applications. The plant canopy of these applications far exceeds a manageable plant canopy set by the Board in its rules.
  - To make a manageable plant canopy for marijuana production, the Board filed an interim policy that limits any qualified entity or principals within any entity to one marijuana producer license.
  - Applicants will have the option of withdrawing their additional applications for a refund or having their additional applications held for up to one year or until the Board determines more marijuana producer licenses are needed.

## Potential Revenue to City

- \$35 for a business license
- \$.0085 for each \$1 of retail sale (Example \$5,000,000 of gross sales = \$42,500 in sales tax back to the City)
- The City **Does Not** have a Business & Occupation Tax
- The City **Does Not** have a utility tax
- **No increase** in the City's tax levy rate



## Medical Marijuana and Collective Gardens

- Medical Marijuana and Collective Gardens is regulated by RCW 69.51A – Medical Cannabis
- Recreational Marijuana is regulated by:
  - WAC 314-55 – Marijuana Licenses, Application Process, Requirements & Reporting AND
  - RCW 69.50 – Uniformed Controlled Substance Act
- The City's zoning code does not authorize collective gardens anywhere within city limits as the proposed land-use is illegal under federal and state laws.

## State Law Update

- During 2014 legislative session, legislation was proposed that attempted to regulate and reconcile medical marijuana and collective gardens within the state.
- The State legislature ended in 2014 without approving any legislation regarding medical marijuana.
- Other bills were proposed relating to recreational marijuana businesses, but none of these bills were approved.

## Unresolved Legal Issues

### ■ Federal Law vs. State Law

- At the federal level, marijuana remains classified as a Schedule I substance under the Controlled Substance Act of 1970, thus marijuana businesses could still be prosecuted under federal law.
- Can the State force local jurisdictions to comply with I-502 even though it violates Federal law?
  - *Unknown, no court with jurisdiction has ruled on the issue.*

## Next Steps

- **Additional research requested, if desired by PC**
- **Formulate PC recommendation at the May 20, 2014 meeting**
- **Present PC recommendation to the City Council on May 27, 2014**

# Questions & Discussion

Planning Commission  
May 6, 2014





## Adopted Rules Highlights

### LCB Rulemaking Objective

- Creating a tightly controlled and regulated marijuana market;
- Including strict controls to prevent diversion, illegal sales, and sales to minors; and
- Providing reasonable access to products to mitigate the illicit market.

### LCB Role and Responsibility

- Ensuring public safety is the top priority;
- Creating a three-tier regulatory system for marijuana;
- Creating licenses for producers, processors, and retailers;
- Enforcing laws and rules pertaining to licensees; and
- Collecting and distributing taxes.

### Timeline

December 6, 2012	Effective date of new law
September 4, 2013	File Supplemental CR 102 with revised proposed rules
October 9, 2013	Public hearing(s) on proposed rules (time and location TBD)
October 16, 2013	Board adopts or rejects proposed rules
November 18, 2013	BLS begins accepting applications for all three licenses
November 20, 2013	WSLCB begins processing applications (30-day window)
December 1, 2013	Deadline for rules to be complete (as mandated by law)
December 20, 2013	30-day window closes for producer, processor and retailer license applications

## Proposed Rules Highlights

### License Requirements

- **30-day Window**
  - The LCB will open registration for all license types for a 30-calendar-day window (November 20, 2013)
  - LCB may extend the time or reopen application window at its discretion
- **State Residency Requirement**
  - I-502 requires a three month state residency requirement (all license structure types)
- **Background Checks**
  - Personal criminal history completed by applicant. Risk of license forfeiture if incomplete or incorrect.
  - Fingerprinting of all potential licensees
  - Background checks of license applicants and financiers
- **Point System**
  - The LCB will apply a disqualifying point system similar to liquor
  - All applicants must disclose all arrests and/or convictions
  - Non-disclosure of arrests regardless of conviction will result in point accumulation

- **License Limits**

- Licensed entity or principals limited to ~~three~~ one producer licenses
- Licensed entity or principals limited to three processor licenses
- Licensed entity or principals limited to three retail licenses. Multiple-location licensees not allowed to hold more than 33 percent of the allowed licenses in any county or city.

- **Producer License Reduction**

- The WSLCB received 2,858 marijuana producer applications. The plant canopy of these applications far exceeds a manageable plant canopy set by the Board in its rules.
- To make a manageable plant canopy for marijuana production, the Board filed an interim policy that limits any qualified entity or principals within any entity to one marijuana producer license.
- Applicants will have the option of withdrawing their additional applications for a refund or having their additional applications held up to one year or until the Board determines more marijuana producer licenses are needed.

- **Production Limits**

- The maximum amount of space for marijuana production is limited to two million square feet.
- Applicants must designate on their operating plan the size category of the production premises and the actual square footage in their premises that will be designated as plant canopy. There are three categories:
  - Tier 1: Less than 2,000 square feet;
  - Tier 2: 2,000 square feet to 10,000 square feet;
  - Tier 3: 10,000 square feet to 30,000 square feet.
- The LCB may reduce a licensee's or applicants' square footage designated to plant canopy for the following reasons:
  - If the total amount of square feet for production of all licensees exceeds the two million square feet maximum, the LCB will reduce the allowed square footage by the same percentage.
  - If 50 percent production space used for plant canopy in the licensee's operating plan is not met in the first year of operation, the board may reduce the tier of licensure.
  - If the total amount of square feet of marijuana production exceeds two million square feet, the LCB may reduce all licensees' production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

*Note: The Board reduced the production capacity of all tiers by 30 percent to establish the market on February 19, 2014.*

- **Maximum Allowable Amount on Licensed Location**

- Producer license
  - Outdoor or greenhouse: 125 percent of its year's harvest
  - Indoor: six months of its annual harvest
- Processor license
  - Six months of their average useable marijuana (plant material); and
  - Six months average of their total production (finished product).
- Retailer license
  - Four months of their average inventory

- **Licensed Location: 1'000 foot Measurement**

- Important Note Regarding the 1,000 foot Measurement: The LCB will file an emergency rule on November 6, 2013, that will revise the current language regarding the 1,000' buffer. The language in the emergency rule will state: "The distance shall be measured as the shortest straight line distance

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from the property line of the licensed premises to the property line of an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library or arcade where admission is not restricted to those age 21 and older.”

- **Costs and Fees**
  - \$250 application fee
  - \$1,000 annual renewal fee
  - Additional fees for background check and filing for local business license
- **Taxes**
  - License applicants must submit a signed attestation that they are current on taxes owed to the Washington State Department of Revenue
- **Insurance**
  - Licensees are required to carry commercial liability insurance.

## **Public Safety**

- **Producer Structures**
  - Rules allow producer operations in secure: indoor and outdoor grows as well as greenhouses
- **Traceability**
  - LCB will employ a robust and comprehensive traceability system (software) that will trace product from seed/clone to sale.
  - LCB enforcement can match records to actual product on hand
- **Background Checks**
  - Personal criminal history form
  - Fingerprinting of all potential licensees
  - Background checks of licensees and financiers
- **Point System**
  - LCB will apply a disqualifying point system similar to liquor (exceptions for possession)
- **Violation Guidelines / Standard Administrative Procedures Act Guidelines**
  - \$1,000 criminal penalty for sales to a minor
  - Sets strict tiered system of violation record over a three year period
    - Group 1 public safety:
      - First violation: 10 day suspension or \$2,500
      - Second violation: 30 day suspension
      - Third violation: license cancellation
- **Local Authority Objections**
  - Substantial weight will be given to a local authority during the renewal process based upon chronic illegal activity associated with the licensee's operation of the premises.
- **Child Resistant Packaging**
  - Specific requirements for marijuana and marijuana-infused products in solid and liquid forms

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- **Security and Safeguards**
  - Alarm and surveillance video camera requirements (including minimum pixels and lockbox encasement)
  - Strict transportation and record keeping requirements (no third party transport of product)
  - Hours of operation limited to 8:00 a.m. to 12:00 a.m.
  
- **Advertising Restrictions**
  - Law restricts advertising within 1,000 feet of schools, public parks, transit centers, arcades, and other areas where children are present.
  - May not contain statements or illustrations that are false or misleading, promotes overconsumption, represents that it has curative or therapeutic effects, depicts a child or may be appealing to children
  - All advertising must contain two statements: a: "This product has intoxicating effects and may be habit forming." And, b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug."
  
- **Limits on Retail Stores**
  - Total number of retail outlets limited to 334 statewide
  - LCB to provide advance notice to local authority
  - Per I-502, LCB to determine number of retail outlets per county
    - BOTEK Analysis Corporation provided initial county consumption levels
    - Retail stores allocation proportionate to population and consumption

## **Consumer Safety**

- **Behind the Counter Storage**
  - No open containers or handling of product
  - Sniff jars with sealed, screened-top lids allowed
  
- **Strict Packaging and Label Requirements**
  - Limited servings and concentration per package
  - Lot number
  - Warning label
  - Net weight
  - Concentration of THC
  - Usage warnings (specific warning for ingestible foods/liquids about effect delays)
  - Upon request
    - Third party lab that tested lot and results
    - All pesticides, herbicides, fungicides found in product
  
- **Defined Serving Size**
  - Defined serving sizes on marijuana-infused product label
    - 10 mg of THC per serving
    - 100 mg of THC per product
    - A single unit of marijuana-infused extract for inhalation cannot exceed one gram
  
- **Transaction Limits on Concentrates (extracts)**
  - A single transaction is limited to seven grams of marijuana-infused extract for inhalation

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- **Lab Tested and Approved (monograph)**
  - All lots will be tested by independent accredited labs
  - Established and uniform testing standards
  - Quality assurance testing
  
- **Store Signage and Product Warnings**
  - No minors allowed in stores
  - Required product and usage signs within stores

For more information regarding Initiative 502, please visit the Liquor Control Board website at [www.liq.wa.gov](http://www.liq.wa.gov).

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## INTERDEPARTMENTAL MEMORANDUM

TO: City Manager's Office; Community and Economic Development; Finance; Police  
FROM: Legal  
DATE: April 24, 2014  
RE: Legal Update of Medical Marijuana/Collective Gardens and Recreational  
Marijuana Businesses

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The purpose of this memorandum is to provide the Planning Commission with a legal update on the issues of medical marijuana/collective gardens and recreational marijuana businesses.

### BACKGROUND:

#### **Medical Marijuana - Collective Gardens in Washington**

In 1998, I-692 (codified under RCW 69.51A) was adopted by state voters. This state law provides an affirmative defense (for prosecution purposes) under certain circumstances for qualifying patients and providers to possess medical marijuana, but does not "legalize" or "decriminalize" marijuana. With the exception of a few amendments in 2007 and 2010, this state law remained relatively unchanged until 2011.

In 2011, the state legislature passed ESSSB 5073, which amended RCW 69.51A. This bill proposed a state registry for qualifying patients and would have protected qualifying patients from criminal or civil sanctions under certain circumstances. This bill would have also created a licensing and registration system that allowed marijuana production, processing and dispensing.

On April 14, 2011, the United States Attorneys for the Eastern and Western Districts of Washington wrote an advisory letter to then-Governor Gregoire regarding ESSSB 5073. The letter warned the Governor that the proposed bill "*would authorize conduct contrary to federal law, and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances... In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA.*" After receiving the letter, the Governor vetoed several sections of ESSSB 5073. Within her April 29, 2011 letter to the Washington State Senate notifying them of her veto and approval of various provisions of the proposed bill, she stated, "*No state employee should be required to violate federal criminal law in order to fulfill duties under state law. For these reasons, I have vetoed Sections. . . of Engrossed Second Substitute Senate Bill 5073.*"

The state law that ultimately was adopted in 2011 was the creation of collective gardens for medical marijuana. It is important to note that the 2011 law did not exempt collective gardens from criminal liability. Rather, medical marijuana remains an affirmative defense to prosecution for qualified patients and providers.

## **Recreational Marijuana Businesses in Washington**

In 2012, I-502 (codified under RCW 69.50) was adopted by state voters. I-502 legalized the processing, production, sale and delivery of recreational marijuana in accordance with the provisions of state law and the rules adopted by the Washington State Liquor Control Board (LCB). This law did not change the existing law on medical marijuana or collective gardens. It is generally viewed as creating a separate regulatory and licensing system for recreational marijuana businesses. I-502 directed the LCB to regulate recreational marijuana by licensing and taxing producers, processors and retailers.

Based on numbers staff calculated from the King County Elections Department for the various precincts that are located within city limits, the following show the approximate number of SeaTac voters that voted in favor of the passage of I-502 during the November 2012 election.

Yes = 4,658 (56.27%)  
No = 3,620 (43.73%)  
Total Votes = 8,278 (72.72% turnout)  
Total Registered voters = 11,384

In accordance with state law, the LCB may issue three types of state marijuana licenses: a producer license, a processor license and a retail license. A producer license allows the licensee to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. The producer licenses are further distinguished by tier size. A Tier 1 producer may have up to 2,000 square feet of plant canopy. A Tier 2 producer may have 2,001 to 10,000 square feet of plant canopy. Finally, a Tier 3 producer may have 10,001 to 30,000 square feet of plant canopy. A processor allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. A retail license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia in retail outlets to persons twenty-one years of age and older.

In August 2013, the U.S. Department of Justice (DOJ) released a memorandum titled "Guidance Regarding Marijuana Enforcement." This memo did not change federal law or change DOJ's authority to enforce federal law, but only announced the decision by the U.S. Attorney's Office to exercise federal prosecutorial discretion with regard to enforcement of federal law within states that have legalized marijuana. The DOJ indicated that for states and local governments that enact strong and robust regulatory and enforcement systems that address public safety, health, and welfare issues, enforcement of state law by state and local law enforcement agencies should remain the primary means of addressing marijuana-related activity. At this time, the federal government is not challenging state marijuana laws as long as they do not conflict with eight federal enforcement priorities:

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property.

The memo explicitly states “*Neither the guidance herein nor any state or law local provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA (Controlled Substances Act).*”

In October 2013, in accordance with I-502, the LCB adopted rules outlining the process to obtain and maintain a state marijuana license. These rules do not address or take into consideration any local jurisdictions’ codes. Pursuant to these rules, the LCB will notify local jurisdictions of any pending license issuance or renewal applications and allow the local jurisdictions and the public to submit written comments related to the application. When deciding whether to issue or deny a marijuana license application, the LCB will not consider any local codes or regulations related to marijuana. Rather, the LCB will give substantial weight to input from governmental jurisdictions based upon chronic illegal activity associated with the applicant's operations of the proposed location or the applicant's operation of any other licensed premises. The LCB determined they will issue one license for a marijuana retail store within the City of SeaTac. Currently, there is no limit to the number of state licenses the LCB will issue for production and processing establishments within any local jurisdiction.

On January 16, 2014, the Washington State Attorney General issued a formal advisory opinion regarding local ordinances affecting new marijuana businesses in response to a request from the LCB’s Chairperson. The AG’s Office concluded that the current form of RCW 69.50 allows local governments to ban or regulate recreational marijuana businesses in their jurisdictions.

## **CURRENT LAW:**

### **Federal Law**

At the federal level, marijuana remains classified as a Schedule I substance under the Controlled Substances Act of 1970. Thus, both medical and recreational marijuana remain illegal under federal law. People and businesses involved in the production, processing, sales, and possession of marijuana could still be subject to prosecution under federal law. Local zoning and other regulations are not a defense against a violation of federal law. Currently, the federal government has stated it will not challenge state marijuana laws as long as they do not conflict with eight federal enforcement priorities listed above.

### **Update on State Law – Collective Gardens**

Recently, legislation was proposed in attempts to regulate and reconcile medical marijuana and recreational marijuana within the state. However, in March 2014, the State legislature ended its 2014 session without approving any legislation regarding medical marijuana. Thus, Washington’s medical marijuana collective gardens are not licensed or regulated by the state.

On March 31, 2014, the Washington Court of Appeals issued an opinion regarding the City of Kent’s zoning ordinance banning collective gardens. The Appeals Court ruled in the

City's favor and upheld the ordinance banning collective gardens. The Court held that state law expressly authorizes cities to enact zoning requirements to regulate or exclude collective gardens. The Court went on to reiterate that collective gardens are illegal under state law. Plaintiffs are considering whether to file an appeal to the state Supreme Court.

### **Update on State Law – Recreational Marijuana Businesses**

Early this year, legislation was proposed related to recreational marijuana businesses. Although the proposed bills were not approved, staff anticipates similar bills may be introduced in the next legislative session. One bill proposed to create a local jurisdiction marijuana fund which would consist of marijuana excise taxes that would be disbursed every three months by the LCB to the local jurisdiction where the retail sale originated.

Although the Washington State Attorney General issued an opinion stating local governments are currently allowed to ban recreational marijuana businesses within their jurisdictions, it is important to note that no Washington court has made a decision on this issue. The AG's Office merely provided an advisory opinion.

### **STATUS UPDATE FOR SEATAC:**

The City's zoning code does not authorize any land use that violates federal or state laws. SeaTac Municipal Code 15.05.060(G) reads:

*G. This title does not allow any use which is in violation of any local, State, or Federal laws, regulations, codes and/or ordinances.*

### **Collective Gardens**

Consequently, the City's zoning code does not authorize collective gardens anywhere within city limits as the proposed land-use is illegal under federal and state laws. Although the state Court of Appeals recently upheld Kent's ban on collective gardens, this ruling will likely be appealed to the state Supreme Court.

### **Recreational Marijuana Businesses**

Similarly, the City's zoning code does not authorize recreational marijuana businesses anywhere within city limits as the proposed land-use is illegal under federal law.

To date, the City has received three (3) Notices of Application for State Marijuana Licenses from the LCB. All Notices of Application were for Tier 2 producer and processor licenses. The proposed locations for these businesses are: 19014 Des Moines Memorial Drive, Suite A; 19102 Des Moines Memorial Drive; and 18441 Des Moines Memorial Drive. After staff reviewed the Notices of Application under current city code, relevant statutes, Washington Administrative Codes and LCB rules, staff submitted written objections to the Notices of Application. A few prospective licensees have contacted the City and indicated they have already expended money and resources to secure property for their prospective businesses. The City is awaiting final determination from the LCB whether or not they will issue state licenses to the applicants over the City's objections. The LCB continues to process applications for SeaTac. Staff anticipates the City will receive additional Notices of Application in the near future for producers, processors and retail.

In the event the LCB issues state licenses for proposed locations within SeaTac, the City may face legal claims or challenges from state licensees.

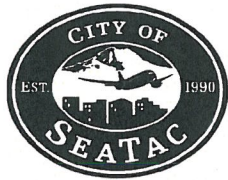
## **LEGAL ISSUES YET TO BE RESOLVED:**

Notwithstanding the overarching issue of state law conflicting with federal law, which staff continues to research and monitor, below are a few other legal issues that remain unresolved or require further research by staff.

First, under current state law, the LCB has the discretion to consider an applicant's prior criminal conduct or criminal history. (emphasis added). The discretionary language of the statute has raised some concern for staff from a consistency and public safety standpoint. For example, if the LCB chooses to forego criminal background checks on applicants for any reason (for example, due to policy change or lack of resources), the LCB is well within the law to do so. These concerns were highlighted in a recent newspaper article. *See, FBI Balks at Background Checks for Pot Businesses, by Gene Johnson, Associated Press, published March 14, 2014.* The article indicated the FBI was refusing to run nationwide background checks on people applying for a Washington state marijuana business license even though the FBI had conducted similar checks in Colorado. Washington has been asking for nearly a year if the FBI would conduct background checks on its applicants, to no avail. The FBI's refusal raises the possibility that people with troublesome criminal histories could wind up with pot licenses in the state, undermining the federal government's own priorities in ensuring that states keep a tight rein on the marijuana industry. In Washington, three people so far have received licenses to grow marijuana without going through a national background check. If the City adopts an ordinance allowing marijuana businesses, further research is required to determine the impact on the City to conduct all necessary background checks.

Second, although the City has statutory authority to license and regulate businesses, this authority is reserved for businesses that are lawful. If the City adopts an ordinance allowing marijuana businesses, further research is required to determine whether the City should require such businesses to obtain city business licenses. Several neighboring jurisdictions have taken different approaches to this issue. Burien, Des Moines, and Normandy Park require recreational marijuana businesses to acquire city business licenses. Tukwila does not request or require recreational marijuana businesses to obtain a city business license as they take the position that licensing of recreational marijuana businesses is preempted by the state.

Third, if the City adopts an ordinance allowing marijuana businesses, then later repeals the ordinance, the existing use becomes a legal nonconforming use since it was legal under city code at the time it was established. It would then be treated the same as any other nonconforming use and the City would be required to provide a reasonable amortization period. Further research is required to assess the impact on the City of the nonconforming use in the event of repeal.



## MEMORANDUM

To: Joe Scorcio, Community & Economic Development Director  
From: Aaron Antin, Finance & Systems Director  
Date: April, 2014  
Re: Council Request to Review Marijuana revenue projections

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City Council requested Finance to review what potential revenue would be received from a prospective marijuana business, after gaining a State and City business license to operate within city limits, regardless of the Federal law currently prohibiting this activity and the recent State law that is in conflict with the Federal law. Upon performing an assessment of a potential retail business in the city, the following are the 2014 major revenue sources related to retail sales that the City Council has authorized the City to use to pay for city provided services as appropriated in the City Council's authorized 2013-2014 Biennial Budget:

- + \$35 Chapter and Section 5.05.070 of the SeaTac Municipal code authorizes staff to collect a business license fee per year in an amount of \$35.
- + \$.0085 for each \$1 of retail sale is allocated by the State to the City for each retail sale that is properly recorded as occurring within the SeaTac city limits (Destination Based).

As an example, for a business with retail sales of \$100,000; the city receives \$850 from the State to offset the costs of city provided services to the community (Such as Police, Fire, Streets, Parks, Planning, Code Compliance, etc). If no retail sales occur, the city does not receive any resources from retail sales taxes, but is still responsible for provision of city services.

If other sales & use tax related transactions occur (such as one-time facility construction) the same rate (\$.0085) would apply to the cost of that particular eligible transaction.

\$0 The City does not have a Business & Occupation Tax.

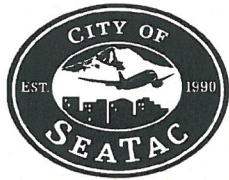
\$0 The City does not have a Utility Tax.

\$0 Increase in the City's Property Tax Levy Rate:

The City currently levies at the \$3.10 levy rate per \$1,000 of Assessed Valuation.

Existing State property tax legislation does not provide for a levy rate change based on the amount of retail sales occurring, so regardless of how much retail sales occur, the city is only authorized to collect the current rate of \$3.10/\$1000 assessed value.





# INTERDEPARTMENTAL MEMORANDUM

TO: City Manager's Office; Community and Economic Development; Finance; Police  
FROM: Lisa Mulligan, Chief of Police  
DATE: April 25, 2014  
RE: Police Input – Recreational Marijuana

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The following information is being provided to assist the City with decisions related to Recreational Marijuana in the City of SeaTac.

Although a number of neighboring jurisdictions have been contacted to glean information for this report, there is little data from which to draw conclusions or pros/ cons of recreational marijuana in the City of SeaTac. Because none of us have ever done this before, the summarized considerations listed below are either speculation, best bets or loose comparisons to various experiences with medical marijuana facilities. Recreational marijuana will be more highly regulated than medical marijuana, so some differences can be expected.

Some of the considerations listed below are based in real experiences with Medical Marijuana, largely gleaned from White Center which has up to (10) medical marijuana dispensaries and at least one manufacturing location (collective garden) in the commercial area.

### **Considerations – Crime**

We may see an increase in loitering around the exterior and/or parking lots of retail outlets. Loitering could happen for various reasons that don't automatically equal crime or criminal intent, however loitering often creates the fear of crime which is not beneficial to our communities. The town of White Center has experienced the following related to loitering around medical marijuana outlets:

Under-aged people hoping to convince adults to buy marijuana or products for them;

*Common scenario: Several adults arrive to a medical marijuana outlet in one vehicle; everyone waits in the car except one. That one goes inside, purchases marijuana, returns to the vehicle and distributes some or all of the marijuana to those in the vehicle. This scenario includes one potentially legal purchase and several additional illegal hand-to-hand transactions. Most people see this as "drug activity" which they equate to crime without differentiation of the kind of drug that's being distributed. Ultimate outcome could be overall complacency to it; continued fear of what appears to be criminal behavior; lack of initiative to call police to report it, etc.*

While likely not a common occurrence, we may see disturbances similar to those seen in/around alcohol establishments from time to time. Last week in White Center, two adults walked into a medical marijuana outlet, described as "already high". They argued with the employees and a fight broke out. Police were required to intervene..

We may see an increase in robberies-from-persons. While many robberies take place with the suspect using little or no force to grab property from the victim and run; other robberies include physical force, weapons or implied weapons to force property from the victim. White Center deputies have been told that there has been an increase in this kind of street robbery – most often not reported because of the lingering culture of secrecy around the use of narcotics. The most likely scenario involves the victim leaving a medical marijuana outlet with a purchase and being robbed of it a short time later.

We may see an increase in the number of burglaries and attempted burglaries at retail and manufacturing locations.

We will likely see the use or attempted use of altered identification cards or possession of false identification by minors attempting to purchase marijuana.

There is speculation that an “underground market” will exist because unregulated marijuana will be cheaper than regulated marijuana. Violence could be associated with it in some circumstances. The speculation continues that personal, illegal marijuana grow operations will remain the way that many people access their marijuana. While this doesn’t necessary equal crime and violence in the City of SeaTac, it should be noted that we have had significant violence related to residential marijuana grow operation in the City - About 2 years ago two people were shot (one died) in a residence when suspects broke in to steal their marijuana which was rumored to be very potent. I do not believe that we will be exempt from the underground market or from potential violence created by friction between legal manufacture/sales and illegal manufacture/sales.

We can expect varying levels of cooperation with owners/managers. Some will be completely uninterested in working with city staff. Some will be advocates who are working to develop best practices that will help pave the way for the other legitimate business in the future.

### **Considerations - Smell of Marijuana**

The smell of marijuana is noxious and/or unpleasant to many people. It is not uncommon for residents of SeaTac to call the police to complain of this smell. Our typical and most consistently viable response is to take the information and cross reference it to other potential information we’ve gathered about the complaint location. There is rarely any action that can be taken.

Many hotels and motels in the City of SeaTac are moving toward 100% no-smoking facilities. One of the reasons stated is that they don’t want to have to deal with complaints related to the smell of marijuana.

*One SeaTac motel employee relayed that a guest complained about the strong smell of marijuana coming from the room next door. When management approached the room, they learned that the renter of the room wasn’t smoking but instead had a potent quantity of marijuana, which was permeating into the next room. As in this case, the complaints about the smell are related to packaged marijuana, not the smoking of marijuana. This reality may force hoteliers to develop policies related to the presence of marijuana in any form on hotel properties, in order to ensure the comfort of all of their guests.*

Disputes among neighboring business, generating from complaints about the smell of marijuana should be expected. As with any situation related to disputed activities, actions or causes, some of these disputes will require police intervention, most will not. *The town of White Center has experienced this problem related to medical marijuana facilities.*

The immediate proximity of a manufacturing site or retail outlet (outside air) should be expected to smell of marijuana from time to time, depending on weather conditions and activities related to the location (deliveries, venting, etc). *I am told that there are days when the entire downtown area of White Center*

*smells like marijuana. It is not uncommon for visitors to the White Center Police Storefront to smell marijuana, presumably coming from the Collective Gardens which are located in the basement of a business, doors away.*

**Considerations– Location of manufacturing/production/sales facilities**

In addition to those comments noted under “Smell of Marijuana”, we should make every effort to keep recreational marijuana facilities away from schools, day care centers, parks, community centers, medical facilities, etc.

A large percentage of marijuana use is through the use of edible products (butters, oils, infusions). Because the process used to extract the active ingredient from the plant can be dangerous, it must be adequately regulated.

**General Info:** In developing this report, I have consulted the following police agencies: Tukwila, Renton, Burien, White Center and Des Moines.