

**CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 14-0384**

AN ORDINANCE OF THE CITY OF KENMORE, WASHINGTON, REGULATING MARIJUANA BUSINESSES; REPEALING THE MORATORIUM ON MARIJUANA BUSINESSES; REPEALING THE INTERIM ZONING REGULATIONS FOR MARIJUANA BUSINESSES IN RESIDENTIAL ZONES; AMENDING THE KENMORE MUNICIPAL CODE TO ADD DEFINITIONS; PROHIBITING MARIJUANA BUSINESSES IN CERTAIN ZONING DISTRICTS; PERMITTING MARIJUANA BUSINESSES IN A ZONING DISTRICT; AMENDING THE KENMORE MUNICIPAL CODE TO ADD ZONING CODE STANDARDS; AMENDING THE KENMORE MUNICIPAL CODE TO ADD BUSINESS LICENSE REQUIREMENTS FOR MARIJUANA BUSINESSES; DENYING NONCONFORMING USE STATUS FOR MARIJUANA BUSINESSES; PROVIDING FOR INDEMNIFICATION OF CITY COUNCILMEMBERS AND CITY EMPLOYEES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 (“Initiative 502”), which became effective on December 6, 2012; and

WHEREAS, Initiative 502 authorizes adult recreational use of small amounts of marijuana, and authorizes and directs the Washington State Liquor Control Board (“LCB”) to establish and administer rules for the licensing of marijuana producers (growers), marijuana processors, and marijuana retailers (collectively, “marijuana businesses”) and for the operation of such marijuana businesses; and

WHEREAS, on August 29, 2013, while the LCB was considering such rules, the United States Department of Justice issued a memorandum to all United States Attorneys, entitled “Guidance Regarding Marijuana Enforcement” (“Department of Justice Memorandum”), in which the Department advised that as long as states adopting laws governing marijuana have “sufficiently robust” regulatory and enforcement systems” (on paper and in practice) to address the federal government’s eight identified enforcement priorities (such as preventing the distribution of marijuana to minors, preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels, and preventing the diversion of marijuana from states where it is legal under state law in some form to other states, regardless of state law), then “enforcement of state laws by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity;” and

WHEREAS, on October 16, 2013, the LCB issued rules for marijuana businesses, which become effective on November 16, 2013; and

WHEREAS, the LCB currently is reviewing applications for, and issuing, marijuana business licenses under its adopted rules; and

WHEREAS, pursuant to WAC 314-55-020(11), approval of a marijuana license application by the LCB “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, the establishment of land use and zoning regulations is an exercise of the police power, and is specifically authorized by RCW 35.A.63.100; and

WHEREAS, the regulation of marijuana businesses is a valid exercise of city police powers under Article XI, Section 11 of the State Constitution; and

WHEREAS, on January 16, 2014, the Attorney General of Washington issued AGO 2014 No. 2, which concluded that Initiative 502 does not preempt local governments from licensing and regulating marijuana businesses; and

WHEREAS, in recognition of Initiative 502, the City Council desires to establish local regulations concerning marijuana businesses in order to ensure that only State-licensed marijuana businesses may locate within the City's jurisdiction and then only within designated zoning districts and meeting certain standards; and

WHEREAS, the City Council finds that the regulatory requirements established by this Ordinance are necessary for the preservation of the public safety, health, and welfare, and are consistent with goals, objectives and policies of the Kenmore Comprehensive Plan; and

WHEREAS, once local regulations concerning marijuana businesses are in place, the City Council desires to repeal the existing moratorium and existing interim regulations related to marijuana businesses; and

WHEREAS, the SEPA responsible official issued a determination of nonsignificance on July 11, 2014; and

WHEREAS, the City provided this Ordinance to the Washington State Department of Commerce as required by chapter 36.70A RCW; and

WHEREAS, on July 28, 2014, the City Council held a public hearing on this Ordinance, addressing the acceptance and filing of applications for, and the licensing, establishment, location, operation, maintenance and continuation of marijuana businesses, at which time City staff and members of the public had the opportunity to present testimony and other evidence in support of or against the amendments; now, therefore,

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby adopted as the City Council's findings in support of this Ordinance.

Section 2. Repealer. Ordinance Nos. 13-0362, 13-0370 and 14-0380, which establish a moratorium on marijuana businesses, are hereby repealed.

Section 3. Repealer. Ordinance Nos. 13-0369 and 14-0381, which establish an interim zoning regulation on marijuana businesses in residential zones, are hereby repealed.

Section 4. Definitions. Chapter 18.20 KMC shall be amended to add the following definitions:

- “Marijuana” means marijuana as defined in RCW 69.50.101.
- “Marijuana producer” means a marijuana producer as defined in RCW 69.50.101.
- “Marijuana processor” means a marijuana processor as defined in RCW 69.50.101.
- “Marijuana retailer” means a marijuana retailer as defined in RCW 69.50.101.
- “Marijuana business” means a marijuana producer, marijuana processor or marijuana retailer. Marijuana business does not include a medical marijuana collective garden as defined in Chapter 69.51A RCW.

Section 5. Prohibited Use. Sections 18.21.020, 18.21.040, 18.22.010, 18.23.020, 18.24.020, 18.25.020, 18.27.020, 18.28.020, and 18.28A.020 KMC shall be amended to add “marijuana business” to the “Prohibited” column.

Section 6. Permitted Use. Section 18.26.020 KMC shall be amended to add “marijuana business” to the “Permitted Use” column.

Section 7. Zoning Code Standards. A new section shall be added to Chapter 18.30 KMC as follows:

KMC 18.30.112 – Marijuana Businesses - Standards

Nothing in this Code or the ordinances of the City shall be construed as an authorization to violate any federal law. Affirmative terminology used in this section regarding permitting, licensing, authorization, and similar terms, shall not be construed as approval, support, endorsement, or encouragement of the activities addressed in this Code or City ordinances with regard to marijuana businesses. Such terms shall instead be construed only to describe circumstances under which there is conditional absence of local prohibition. The City does not intend to aid, abet, counsel, command, induce or procure any offense against the United States. The City also does not intend to conspire with any marijuana producer, processor, or retailer to commit any offense against the United States. The purpose of all regulations relating to marijuana businesses is to establish local laws which protect public safety, health and welfare to the greatest extent allowed by a Washington State law that cannot be reconciled with federal law. Nothing herein shall be construed to supersede federal law prohibiting the possession, use, manufacture, or sale of marijuana.

The following standards shall apply to marijuana businesses:

A. No person or entity may apply for, receive or maintain a permit to locate a marijuana business in the City unless that person or entity holds a valid marijuana business license from the Washington State Liquor Control Board, verifying that the business complies with Chapter 314-55 WAC and all State laws relating to marijuana businesses. A marijuana business with an active administrative violation notice from the Washington State Liquor Control Board and/or a suspended license shall not be permitted to locate in the City until

the violation is resolved and/or any associated fines have been paid or suspensions concluded.

B. Marijuana businesses shall maintain a one-thousand foot (1000') separation from the perimeter of the grounds of any of the following entities:

- (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;
- (8) Any game arcade (where admission is not restricted to persons age twenty-one or older);
- (9) Properties owned or under contract by a public entity such as a school district of the City where a future elementary or secondary school or public park is planned when such plans have been approved or adopted by the public entities' governing authority; or
- (10) Another marijuana business.

Definitions of (1) through (8) above, and the methodology for measuring the buffers outlined above, shall be as provided in Chapter 314-55 WAC.

C. Marijuana businesses shall not be located on a parcel any portion of which is within two hundred feet (200') of a residential zone (R1, R4, R6, R12, R18, R24, or R48).

D. Marijuana producers or marijuana processors shall not be located in a building that includes residential uses.

E. Outdoor marijuana production shall be prohibited.

F. Drive-through marijuana retail sales shall be prohibited.

G. Signage for marijuana businesses shall comply with Chapter 18.42 KMC and Chapter 314.55 WAC. In the event of a conflict between these regulations, the more restrictive regulation shall apply.

H. A marijuana business shall have a valid City business license.

I. By accepting a permit issued pursuant to this Section, the licensee, its owners, officers, operators, and employees, waives and releases the City, its officers, officials, employees, volunteers and agents from any and all liability for injuries, damages, suits or liabilities, including attorneys' fees that result from any arrest or prosecution of licensees' owners, officers, operators, employees, clients or customers for a violation of federal, State or local laws and regulations.

J. By accepting a permit issued pursuant to this Chapter, the licensee, its owners, officers, operators, and employees, indemnifies, defends and holds harmless the City, its officers, officials, employees, volunteers, agents, insurers and self-insurance pool, against any and all liability, claims, injuries, damages, losses or suits, including attorneys' fees, arising out of or in any manner connected with the marijuana business that is the subject of the license.

K. In addition to any other applicable remedy and/or penalty, any violation by a licensee, and persons associated with licensee as described in subsections I and J above, of this Code or City ordinances is declared to be a public nuisance per se, and may be abated by the City under the applicable provisions of this Code or State law including, but not limited to, Chapter 1.20 KMC.

Section 8. Business License Requirements. A new chapter 5.43 shall be added to Title 5 KMC as follows:

KMC 5.43 – Marijuana Businesses

5.43.010 Definitions

As used in this chapter, the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

- A. "Applicant" means any person or business entity who is considered by the Washington State Liquor Control Board as a true party of interest in a marijuana license, as set forth in WAC 314-55-035.
- B. "Marijuana" means marijuana as defined in RCW 69.50.101.
- C. "Marijuana producer" means a marijuana producer as defined in RCW 69.50.101.
- D. "Marijuana processor" means a marijuana processor as defined in RCW 69.50.101.
- E. "Marijuana retailer" means a marijuana retailer as defined in RCW 69.50.101.
- F. "Marijuana business" means a marijuana producer, marijuana processor or marijuana retailer. Marijuana business does not include a medical marijuana collective garden as defined in Chapter 69.51A RCW.
- G. "Marijuana license" means a license issued by the Liquor Control Board for a marijuana producer, marijuana processor or marijuana retailer.
- H. "Marijuana business license" means a business license issued by the city pursuant to this chapter.
- I. "Person" has the same meaning as the definition of "person," "firm," or "corporation" in KMC 5.105.020.
- J. "Liquor Control Board" means the Washington State Liquor Control Board.

5.43.020 License required.

A. It shall be unlawful for any person to conduct, manage or operate a marijuana business unless such person is the holder of a valid and subsisting license from the City to do so, obtained in the manner provided in this chapter.

B. It shall be unlawful for any employee or manager to knowingly work in or about, or to knowingly perform any service directly related to the operation of, an unlicensed marijuana business.

5.43.030 Liquor Control Board License—Condition Precedent.

The City shall process an application for a marijuana business license in accordance with the chapter after the applicant receives a marijuana business license from the Liquor Control Board. No license shall be issued to any person who does not hold a valid marijuana license from the Liquor Control Board.

5.43.040 Marijuana business license.

A. After receiving a license from the Liquor Control Board, an applicant may file a written application with the city clerk, on a form provided by the city clerk for that purpose, in the name of the person or entity that was issued the license. A failure to provide all information required on the form will constitute an incomplete application and the application will not be processed. The application form shall require the following information of the applicant:

1. The name of the applicant; business, mailing, and residential addresses; and business telephone number.
2. The type of applicant, as described in WAC 314-55-035.
3. Whether the applicant, or any partner, corporate officer, or director of the applicant, holds any other licenses under this chapter from the City or another city, county or state, and if so, the names and addresses of each other licensed business.
4. A summary of the business history of the applicant in owning or operating marijuana businesses, providing names, addresses and dates of operation for such businesses, and whether any Liquor Control Board license or other business license has been revoked or suspended, and the reason therefor.
5. A copy of the completed personal/criminal history form and fingerprints submitted to the Liquor Control Board for the Liquor Control Board license application, together with the results of the Liquor Control Board's criminal history check on the applicant.
6. A copy of the operating plan submitted to the Liquor Control Board in connection with the license application, and any amendments thereto, and the license issued by the Liquor Control Board.
7. Authorization for the City, its officers, employees and agents, to seek information to confirm any information and documents in the application.
8. The location and "doing-business-as" name of the marijuana business, including a legal description of the property, street address, and telephone number, together with the name and address of each owner and lessee of the property, if not the applicant.
9. Two two-inch by two-inch color photographs of the applicant and applicant control persons, taken within six months of the date of application showing only the full face.

B. An application shall be deemed complete upon the applicant's submittal of all information and documents described above, including identification of "none" where that is the correct response, and the applicant's verification that the application is complete. The

city clerk may request other information or clarification in addition to that provided in a complete application where necessary to determine compliance with this chapter.

C. A nonrefundable application fee (see Section 5.43.050) must be paid at the time of filing an application.

D. All applications shall be signed by the applicant and notarized or certified as true under penalty of perjury.

E. If any person or entity acquires, subsequent to the issuance of a marijuana business license, a significant interest based on responsibility for management or operation of the licensed premises or the licensed business, notice of such acquisition shall be provided in writing to the city clerk, no later than 21 days following such acquisition. The notice required shall include the information required for the original marijuana business license application.

F. The marijuana business license, if granted, shall state on its face the name of the person or entity, or persons or entities, to whom it is issued, the expiration date, the “doing-business-as” name, and the address of the licensed marijuana business. The permit shall be posted in a conspicuous place at or near the entrance to the marijuana business so that it can be easily read at any time the business is open.

G. No person granted a marijuana business license pursuant to this chapter shall operate the marijuana business under a name not specified on the license, nor shall any person operate a marijuana business under any designation or at any location not specified on the license.

H. Upon receipt of the complete application and fee, the clerk shall provide copies to the appropriate city departments for their investigation and review to determine compliance of the proposed marijuana business with the laws and regulations which each department administers. Each department shall, within twenty (20) days of the date of such application, inspect the application and premises and shall make a written report to the city clerk regarding compliance of such application and premises with the laws administered by each department. A department shall recommend denial of a license under this subsection if it finds that the proposed marijuana business is not in conformance with the requirements of this chapter or other law in effect in the City. A recommendation for denial shall cite the specific reason therefor, including reference to applicable laws. The city clerk shall not issue a marijuana business license unless and until each department reports that the application and premises comply with the relevant laws, unless the 20-day period has lapsed. If the premises is not yet constructed, the departments shall base their recommendation as to premises compliance on their review of the drawings submitted in the application. Any marijuana business license approved prior to premises construction shall contain a condition that the premises may not open for business until the premises have been inspected and determined to be in substantial conformance with the drawings submitted with the application.

I. A marijuana business license shall be issued by the city clerk within thirty (30) days of the filing of a complete license application and the application fee, unless the city clerk determines that the applicant has failed to meet any of the requirements of this chapter, that the applicant has failed to provide any information required under this subsection, or that the

applicant has made a false, misleading or fraudulent statement of material fact on the application. The city clerk shall grant an extension of time in which to provide all information required for a complete license application upon the request of the applicant. If the city clerk finds that the applicant has failed to meet any of the requirements for issuance of a marijuana business license, the clerk shall deny the application in writing and shall cite the specific reasons therefor, including applicable law. If the city clerk fails to issue or deny the license within thirty (30) days of the date of filing of a complete application and the application fee, the applicant shall be permitted, subject to all other applicable law, to operate the business for which the license was sought until notification by the city clerk that the license has been denied, but in no event may the city clerk extend the application review time for more than an additional twenty (20) days.

5.43.050 Marijuana business license fee.

Any person desiring to obtain a marijuana business license shall pay, at the time of application, a license fee pursuant to the City's adopted fee schedule.

5.43.060 Effect of license denial.

If the City denies a marijuana business license, the City shall not issue a marijuana business license to that applicant or the applicant's successor on the marijuana license, for a period of one year from the date of such denial.

5.43.070 Appeal.

A. Any person aggrieved by the action of the city clerk in refusing to issue or renew any license issued under this chapter shall have the right to appeal such action to the hearing examiner, by filing a notice of appeal with the city clerk within twenty-one (21) days of notice of the refusal to issue or renew. The decision of the city clerk shall be stayed pending the final outcome of any such timely appeal. The appeal shall be processed under KMC 5.05.150 and Chapter 19.30 KMC.

B. Any person aggrieved by the decision of the hearing examiner may appeal to the superior court for a writ of certiorari, prohibition or mandamus. The decision of the hearing examiner shall be stayed pending the final outcome of any such timely appeal.

5.43.080 License term, assignment and renewals.

A. The marijuana business license is valid for one year and shall be renewed annually. The city clerk shall have the authority to adjust the expiration date and to prorate the license fee of the license in order to coincide with marijuana license expiration dates. Marijuana business licenses issued under this chapter shall not be assignable.

B. Application for renewal of marijuana business licenses issued hereunder shall be made to the city clerk no later than thirty (30) days prior to the expiration of marijuana business licenses. The renewal license shall be issued in the same manner and on payment of the same fees as for an original application under this chapter. There shall be assessed and collected by the city clerk an additional charge, computed as a percentage of the marijuana business license fee, on applications not made on or before said date, as follows:

Days Past Due	Percent of License Fee
7 – 30	25%
31 – 60	50%
61 and over	75%

C. The city clerk shall renew a license upon application if it complies with all provisions of this chapter, as now enacted or as the same may hereafter be amended; provided, that the city clerk may deny a renewal where the city clerk is aware of facts that would disqualify the applicant from being issued a marijuana business license.

5.43.090 License suspension and revocation.

A. The city clerk may, upon the recommendation of the chief of police or designee, and as provided in subsection (B) of this section, suspend or revoke any marijuana business license issued under the provisions of this chapter:

1. Where the license was procured by fraud or false representation of fact;
2. For violation of, or failure to comply with, this chapter, this Code, or similar local or State law by the licensee, or by any of the licensee’s servants, agents or employees, when the licensee knew or should have known of the violations committed by such servants, agents or employees;
3. For conviction of the licensee of any crime or offense involving transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the premises, or the conviction of any of licensee’s servants, agents or employees of any crime or offense involving transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the premises in which the marijuana business is conducted when the licensee knew or should have known of the violations committed by such servants, agents or employees.

B. A license procured by fraud or misrepresentation shall be revoked permanently for the licensee and licensee’s successors on the marijuana license. Where other violations of this chapter or other applicable ordinances, statutes or regulations are found, the license shall be suspended for a period of thirty (30) days upon the first such violation, ninety (90) days upon the second violation within a 24-month period, and revoked for third and subsequent violations within a 24-month period, not including periods of suspension.

C. The city clerk shall provide at least ten (10) days’ prior written notice to the licensee of the decision to suspend or revoke the license. Such notice shall inform the licensee of the right to appeal the decision to the hearing examiner or other designated hearing body and shall state the effective date of such revocation or suspension and the grounds for revocation or suspension. Such appeals shall be processed under KMC 5.05.150 and Chapter 19.30 KMC. The decision of the city clerk shall be stayed during the pendency of any appeal except as provided in subsection (D) of this section.

D. Where the city building official or fire marshal, or their designees or the King County health department, find that any condition exists upon the premises of a marijuana business

which constitutes a threat of immediate serious injury or damage to persons or property, the official may immediately suspend any license issued under this chapter pending a hearing in accordance with subsection (C) of this section. The official shall issue a notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to persons or property, and informing the licensee of the right to appeal the suspension to the hearing examiner or other designated hearing body under the same appeal provisions set forth in subsection (C) of this section; provided that a suspension based on threat of immediate serious injury or damage shall not be stayed during the pendency of the appeal.

5.43.100 Standards of conduct for marijuana businesses.

Marijuana businesses shall conform to the rules of Chapter 314-55 WAC, applicable State laws relating to marijuana businesses, and Title 18 KMC.

5.43.110 Hours of operation for marijuana retailers.

A marijuana retailer may be open for business only between the hours of 8 a.m. and 10 p.m.

5.43.120 Insurance.

The licensee shall maintain the insurance coverage of WAC 314-55-082 during the term of the marijuana business license, and shall name the City as an additional insured on the insurance policies. The policies shall be primary to any City insurance policies and the licensee's insurance policies shall state this requirement.

Section 9. No Nonconforming Uses. No use that constitutes or purports to be a marijuana business as that term is defined in this Ordinance, shall be deemed to have been a legally established use under the provisions of the Kenmore Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 10. Indemnification.

- A. The City shall provide to a City Councilmember or City employee, subject to the conditions and requirements of this section and notwithstanding the fact that such City Councilmember or City employee may have concluded service or employment with the City, such legal representation and indemnification as may be reasonably necessary to defend a claim or charge brought against such City Councilmember or City employee by the Federal Government, resulting from the passage, implementation, administration or enforcement of this Ordinance.
- B. The legal representation shall be provided by the City Attorney unless any provision of any applicable policy of insurance provides otherwise, or the City Manager, upon consultation with the City Attorney, appoints alternate legal counsel.
- C. As soon as practicable after receiving written notice of the claim or charge, the City Councilmember or City employee shall give the City Manager written notice thereof.

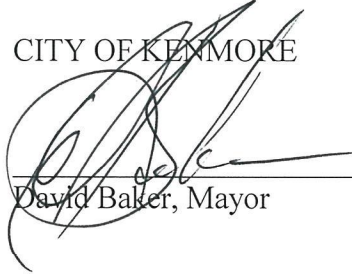
D. If the claim or charge is civil in nature, the provisions of KMC 2.50.060, 2.50.070, 2.50.080, 2.50.100 and 2.50.120 shall apply.

Section 11. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance, or the application of the provision to other persons or circumstances, is not affected.

Section 12. Effective Date. This Ordinance shall be published in the official newspaper of the City and shall take effect and be in force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 28th DAY OF JULY, 2014.

CITY OF KENMORE




David Baker, Mayor

ATTEST/AUTHENTICATED:



Patty Saffin, City Clerk

Approved as to form:



Rod P. Kaseguma, City Attorney

Filed with the City Clerk: July 18, 2014
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