

ORDINANCE NO. 3080

AN ORDINANCE of the City Council of the City of Puyallup, Washington, adding new sections 5.04.071 and 20.05.060, to the Puyallup Municipal Code and amending section 20.15.005 of the Puyallup Municipal Code pertaining to business licensing and zoning regulations for marijuana producers, processors, and retailers.

Whereas, Washington voters approved Initiative 502 (I-502) in 2012, by a 55.7% to 44.3% margin which, among other provisions, removes all criminal penalties for persons twenty-one (21) years old and older to possess up to one-ounce of useable marijuana;

Whereas, City of Puyallup voters approved I-502 by a 50.5% to 49.5% margin;

Whereas, I-502 created a licensing and regulatory system for the production, processing, and retail sales of marijuana and directs the Washington State Liquor Control Board (WSLCB) to promulgate rules for the issuance of licenses by the WSLCB to such producers, processors, and retailers;

Whereas, under I-502, a “producer” is one who produces marijuana at the wholesale level for sale to processors, a “processor” is one who processes, packages, and labels marijuana for sale to marijuana retailers, and a “retailer” is one who sells useable marijuana and marijuana-infused products at a retail outlet;

Whereas, the WSLCB finalized licensing rules and has started issuing licenses to producers, processors and retailers;

Whereas, on January 16, 2014, Washington State Attorney General Robert Ferguson issued a formal opinion which states that I-502 does not preempt a city from prohibiting marijuana retailers, producers, and processors from within a city’s jurisdiction;

Whereas, further Attorney General Ferguson opined that local ordinances that do expressly ban state-licensed marijuana licensees from operating within the jurisdiction, but make such operation impractical, are valid if they properly exercise the local jurisdiction's police powers;

Whereas, on August 29, 2014 in Pierce County Superior Court Cause No. 14-2-10485-1, Judge Ronald E. Culpepper held that I-502 does not preempt the City of Fife from adopting an ordinance that prohibits marijuana-related businesses from operating within Fife;

Whereas, marijuana is a controlled substance listed within 21 U.S.C § 812(c) and, with limited exceptions, is illegal to possess under federal law;

Whereas, I-502 is separate from the state law pertaining to medicinal marijuana found at Chapter 69.51A RCW;

Whereas, there is no state or local regulatory system that addresses medicinal marijuana;

Whereas, numerous marijuana dispensaries have operated claiming to be “collective gardens” authorized under state law and, as such, persons have usurped the licensing and taxing system authorized by I-502 and created an unstable and inconsistent regulatory structure for marijuana-related businesses;

Whereas, Article IX, Section 11 of the Washington State Constitution allows the City to make or enforce within its limits all such local police, sanitary and other regulations deemed to be in the public interest;

Whereas, adoption of this ordinance is in the best interests of the City and is needed to preserve the public health, safety and welfare of the residents of the City; and

NOW THEREFORE, the City Council of the City of Puyallup ordains as follows:

Section 1. The City Council adopts in their entirety the foregoing recitals as Findings of Fact in support of this ordinance.

Section 2. A new section entitled “5.04.071 Marijuana producer, processor, and retailer” is added to Chapter 5.04 of the Puyallup Municipal Code as follows:

The City shall not issue a City business license to a person who will operate as a marijuana processor, marijuana producer, or marijuana retailer, as such terms are defined in Section 20.15.005 of the Puyallup Municipal Code.

Section 3. Section 20.15.005 “Definitions” of the Puyallup Municipal Code is amended as follows:

“Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds

of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“Marijuana processor” means a person or entity that complies with Chapter 69.50 RCW, WAC 314-55, and is issued a license by the Washington State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

“Marijuana producer” means a person or entity that complies with Chapter 69.50 RCW, WAC 314-55, and is issued a license by the Washington State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

“Marijuana retailer” means a person or entity that complies with Chapter 69.50 RCW, WAC 314-55, and is issued a license by the Washington State Liquor Control Board to sell useable marijuana and marijuana-infused products in a retail outlet.

Section 4. A new section entitled “20.05.060 Prohibited use – Marijuana producer, processor, and retailer” is added to Chapter 20.05 of the Puyallup Municipal Code as follows:

Marijuana processors, marijuana producers, and marijuana retailers are prohibited in all zoning districts within the City of Puyallup.

Section 5. Change in state or federal law. This City Council adopts this ordinance based on the need to reconcile various provisions in state law pertaining to marijuana regulations and to gain further clarity on the inconsistency between state and federal law relative to marijuana use. Thus, the City Council may review this ordinance again if any of the following conditions occur:

- 1) The Washington State Legislature reconciles incongruities in state law between marijuana-related businesses authorized by Initiative 502 (Chapter 69.50 RCW) and collective gardens (Chapter 69.51A RCW);
- 2) The Washington State Legislature recognizes the impacts marijuana-related businesses have on local governments and thereby changes the revenue structure to allow

for local governments to directly receive a greater share of taxes and fees from marijuana-related businesses;

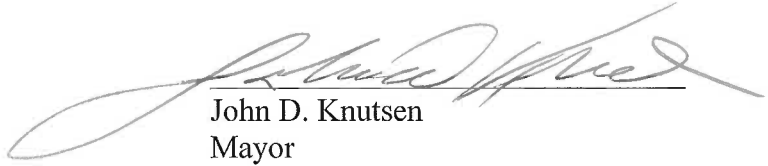
3) The Washington State Legislature enacts laws or courts determine that local government jurisdictions can prohibit I-502 licensees from operating in local jurisdictions, or whether local jurisdictions are preempted by state law from prohibiting I-502 licensees from operating in local jurisdictions; or

4) The federal government removes marijuana from the schedule of controlled substances listed in 21 U.S.C § 812(c).

Section 6. Effective Date. This Ordinance shall take effect and be in force five (5) days after final passage and publication, as provided by law.

Section 7. Severability – Construction. If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance unless the invalidity destroys the purpose and intent of this ordinance. If the provisions of this ordinance are found to be inconsistent with other provisions of the Puyallup Municipal Code, this ordinance is deemed to control.


Passed and approved by City Council of the City of Puyallup via a 5 – 2 vote (Deputy Mayor Hopkins and Councilmember Door opposing) at a regularly scheduled open public meeting on the 9th day of December, 2014.



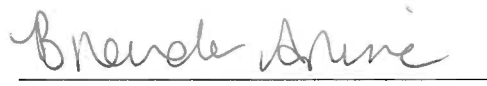
John D. Knutsen
Mayor

Approved as to form:

Attest:



Steve Kirkelie
Deputy City Attorney



Brenda Arline
City Clerk

Published: 12/12/2014

Effective: 12/17/2014