

Attachment A

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING VARIOUS ORDINANCES RELATING TO LAND USE AND ZONING AS CODIFIED AT TUKWILA MUNICIPAL CODE SECTIONS 18.06.552, 18.06.553, 18.06.554, 18.06.556, 18.41.020 AND 18.50.210; ADOPTING ZONING RESTRICTIONS ON THE PRODUCTION, PROCESSING, AND RETAILING OF MARIJUANA USES; DESCRIBING THE LAND USE IMPACTS TRIGGERING SUCH RESTRICTIONS; ADDING THE TUKWILA SOUTH OVERLAY AS A PERMITTED ZONE FOR MARIJUANA USES; ESTABLISHING PROCEDURES FOR ENFORCEMENT OF VIOLATIONS INCLUDING ABATEMENT OF MARIJUANA NUISANCES; REPEALING ORDINANCE NO. 2475, WHICH ESTABLISHED THE MORATORIUM ON MEDICAL CANNABIS COLLECTIVE GARDENS OR DISPENSARIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Initiative 502 directed the Washington State Liquor Control Board (WSLCB) to develop rules and regulations to:

1. Determine the number of producers, processors and retailers of marijuana by county;
2. Develop licensing and other regulatory measures;
3. Issue licenses to producers, processors, and retailers at locations which comply with the Initiative's distancing requirements prohibiting such uses within 1,000 feet of schools and other designated public facilities; and
4. Establish a process for the City to comment prior to the issuance of such licenses; and

WHEREAS, on April 24, 2015, 2SSB 5052 was approved revising the framework under which medical marijuana producers, processors, and retailers can operate and become licensed by the State of Washington; and

WHEREAS, the WSLCB has adopted regulations for recreational marijuana and begun issuance of marijuana producer, processor and retail licenses to qualified applicants; and

WHEREAS, 2SSB 5052 has established a medical marijuana endorsement to permit a licensed recreational marijuana retailer to also sell marijuana for medical use to qualifying patients and designated providers; and

WHEREAS, 2SSB 5052 has directed the now renamed Washington State Liquor and Cannabis Board to develop and maintain a secure and confidential medical marijuana authorization database of patients and designated providers; and

WHEREAS, 2SSB 5052 will repeal authorization for collective gardens on July 1, 2016; and

WHEREAS, 2SSB 5052 authorizes qualifying patients to grow a limited number of medical marijuana plants in their own domicile; and

WHEREAS, 2ESSHB 2136 allows cities to adopt locational restrictions and to fully prohibit medical marijuana cooperatives as described in 2SSB 5052 and 2ESSHB 2136; and

WHEREAS, the City Council wishes to clarify that the manufacture, production, processing, retailing, possession, transportation, delivery, dispensing, application, or administration of marijuana must comply with all applicable City laws, and that compliance with City laws does not constitute an exemption from compliance with applicable state and federal regulations; and

WHEREAS, the City of Tukwila believes that the health, safety, and welfare of the community is best served by excluding from certain zones any commercial production, processing, selling or delivery of marijuana; and

WHEREAS, the City of Tukwila adopted Ordinance No. 2475, imposing a moratorium on medical cannabis collective gardens or dispensaries while zoning for said uses is established; and

WHEREAS, Ordinance No. 2475 requires formal action by the City Council to terminate the moratorium; and

WHEREAS, the City Council studied the land use and other secondary impacts of recreational marijuana use, and adopted Ordinance No. 2407 authorizing recreational marijuana producers, processors and retailers within specific zoning districts to address these impacts; and

WHEREAS, the City Council finds that no additional land use or secondary impacts are expected due to the expansion of the recreational marijuana industry to include

medical marijuana, per regulations to be developed by the Washington State Liquor and Cannabis Board; and

WHEREAS, the State Environmental Policy Act (SEPA) Responsible Official issued an addendum for this draft ordinance to the environmental review conducted for Ordinance No. 2407 on June 25, 2015; and

WHEREAS, on July 23, 2015 (to be held), the Planning Commission held a public hearing on the draft zoning ordinance; and

WHEREAS, the Planning Commission recommended approval (to be determined) of the draft zoning ordinance to the City Council; and

WHEREAS, on August 10, 2015 (to be held), the City Council held a hearing on the draft zoning ordinance, after proper notice, during its regular meeting; and

WHEREAS, the City Council, after due consideration, believes that certain amendments to the City's Zoning Code are necessary; and

WHEREAS, the City Council decided to adopt a zoning ordinance and to formally repeal the moratorium on medical cannabis collective gardens or dispensaries (Ordinance No. 2475);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Formal Repeal of Moratorium. Ordinance No. 2475, a moratorium on the establishment of medical cannabis collective gardens or dispensaries, is hereby repealed.

Section 2. A new section is added to TMC Section 18.06 Definitions:

Marijuana Concentrates

"Marijuana concentrates" is as defined under RCW 69.50.101.

Section 3. TMC Section 18.06.552 Amended. Ordinance No. 2407 §3, as codified at Tukwila Municipal Code (TMC) Section 18.06.552, is hereby amended to read as follows:

Marijuana Processor

"Marijuana processor" means a person licensed by the state Liquor ~~control~~ and Cannabis Board to process marijuana, whether medical or recreational, into marijuana concentrates, useable marijuana and marijuana-infused products; package and label marijuana concentrates, useable marijuana and marijuana-infused products for sale in

retail outlets; and sell marijuana concentrates, useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

Section 4. TMC Section 18.06.553 Amended. Ordinance No. 2407 §4, as codified at TMC Section 18.06.553, is hereby amended to read as follows:

Marijuana Producer

"Marijuana producer" means a person licensed by the state Liquor and Cannabis~~control~~ Board to produce and sell marijuana, whether medical or recreational, at wholesale to marijuana processors and other marijuana producers.

Section 5. TMC Section 18.06.554 Amended. Ordinance No. 2407 §5, as codified at TMC Section 18.06.554, is hereby amended to read as follows:

Marijuana Retailer

"Marijuana retailer" means a person licensed by the state Liquor and Cannabis~~control~~ Board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet, for either recreational or medical use.

Section 6. TMC Section 18.06.556 Amended. Ordinance No. 2407 §6, as codified at TMC Section 18.06.556, is hereby amended to read as follows:

Marijuana-infused Products

"Marijuana-infused products" means products that contain marijuana or marijuana extracts; ~~and~~ are intended for human use, whether medical or recreational; and have a THC concentration no greater than 10 percent within the limits set forth in RCW 69.50.101. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

Section 7. TMC Section 18.41.020 Amended. Ordinance Nos. 2368 §45, 2287 §31, 2251 §57, and 2235 §10 (part), as codified at TMC Section 18.41.020, (Tukwila South Overlay District) "Permitted Uses," are hereby amended to read as follows:

18.41.020 Permitted Uses

The following uses are permitted outright within the Tukwila South Overlay District, subject to compliance with all other applicable requirements of the Tukwila Municipal Code:

1. Adult daycare.
2. Adult entertainment establishments are permitted, subject to the following location restrictions:

a. No adult entertainment establishment shall be allowed within the following distances from the following specified uses, areas or zones, whether such uses, areas or zones are located within or outside the City limits:

(1) In or within 1,000 feet of any LDR, MDR, HDR, MUO, O, NCC, RC, RCM or TUC zone districts or any other residentially-zoned property;

(2) In or within one-half mile of:

(a) Public or private school with curricula equivalent to elementary, junior or senior high schools, or any facility owned or operated by such schools; and

(b) Care centers, preschools, nursery schools or other child care facilities;

(3) In or within 1,000 feet of:

(a) public park, trail or public recreational facility; or

(b) church, temple, synagogue or chapel, or

(c) public library.

b. The distances specified in TMC Section 18.41.020.2.a. shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or land use district boundary line from which the proposed land use is to be separated.

c. No adult entertainment establishment shall be allowed to locate within 1,000 feet of an existing adult entertainment establishment. The distance specified in this section shall be measured by following a straight line between the nearest points of public entry into each establishment.

3. Amusement parks.

4. Automobile, recreational vehicles or travel trailer sales rooms and travel trailer or used car sales lots. No dismantling of cars or travel trailers or sale of used parts allowed.

5. Automotive services:

a. gas, outside pumps allowed

b. washing

c. body and engine repair shops (enclosed within a building)

6. Beauty or barber shops.

7. Bed and breakfast lodging.

8. Bicycle repair shops.

9. Billiard or pool rooms.

10. Brew pubs.

11. Bus stations.

12. Cabinet shops or carpenter shops employing less than five people.

13. Colleges and universities.

14. Computer software development and similar uses.

15. Continuing care retirement facility.

16. Convalescent and nursing homes.

17. Convention facilities.

18. Daycare centers.

19. Dwelling (allowed after residential design manual with criteria for approval is adopted by ordinance):
 - a. one detached single-family unit per lot
 - b. multi-family
 - c. multi-family units above office and retail space
 - d. senior citizen housing
20. Electrical substation and distribution.
21. Extended-stay hotel/motel.
22. Farming and farm-related activities.
23. Financial:
 - a. banking
 - b. mortgage
 - c. other services
24. Fire and police stations.
25. Fix-it, radio or television repair shops/rental shops.
26. Fraternal organizations.
27. Frozen food lockers for individual or family use.
28. Greenhouses or nurseries (commercial).
29. Hospitals.
30. Hotels.
31. Industries involved with etching, film processing, lithography, printing and publishing.
32. Internet data/telecommunication centers.
33. Laundries:
 - a. self-serve
 - b. dry-cleaning
 - c. tailor, dyeing
 - d. commercial
34. Libraries, museums or art galleries (public).
35. Manufacturing and industrial uses that have little potential for creating off-site noise, smoke, dust, vibration or other external environmental impacts or pollution, including but not limited to, manufacturing, processing, assembling, packaging and/or repairing of:
 - a. Food, including, but not limited to, baked goods, beverages (including fermenting and distilling), candy, canned or preserved foods, dairy products and by products, frozen foods, instant foods and meats (provided that no slaughtering is permitted);
 - b. Pharmaceuticals and related products, such as cosmetics and drugs.
 - c. Previously prepared materials including, but not limited to, bags, brooms, brushes, canvas, clay, clothing, fur, furniture, glass, ink, paint, paper, plastics, rubber, tile and wood;
 - d. Electronic, mechanical or precision instruments such as medical and dental equipment, photographic goods, measurement and control devices, and recording equipment.
36. Marijuana processor where the underlying zoning is HI or TVS.
37. Marijuana producer where the underlying zoning is HI or TVS.

38. Marijuana retailer where the underlying zoning is HI or TVS.

- 3639. Medical and dental laboratories.
- 3740. Motels.
- 3841. Movie theaters with three or fewer screens.
- 3942. Neighborhood stormwater detention and treatment facilities.
- 4043. Offices, including:
 - a. outpatient medical clinic
 - b. dental
 - c. government – excluding fire and police stations
 - d. professional
 - e. administrative
 - f. business, such as travel, real estate
 - g. commercial
- 4144. Pawnbrokers.
- 4245. Planned shopping center (mall) up to 500,000 square feet.
- 4346. Plumbing shops (no tin work or outside storage).
- 4447. Parks, trails, picnic areas and playgrounds (public), but not including amusement parks, golf courses or commercial recreation.
- 4548. Private stable.
- 4649. Recreation facilities (commercial - indoor), athletic or health clubs.
- 4750. Recreation facilities (commercial - indoor), including bowling alleys, skating rinks, shooting ranges.
- 4851. Religious facility with an assembly area of less than 750 square feet.
- 4952. Rental of vehicles not requiring a commercial driver's license (including automobiles, sport utility vehicles, minivans, recreational vehicles, cargo vans and certain trucks).
- 5053. Rental of commercial trucks and fleet rentals requiring a commercial driver's license.
- 5154. Research and development facilities.
- 5255. Restaurants, including:
 - a. drive-through
 - b. sit down
 - c. cocktail lounges in conjunction with a restaurant
- 5356. Retail sales of health and beauty aids, prescription drugs, food, hardware, notions, crafts and craft supplies, housewares, consumer electronics, photo equipment and film processing, books, magazines, stationery, clothing, shoes, flowers, plants, pets, jewelry, gifts, recreation equipment and sporting goods, and similar items.
- 5457. Retail sales of furniture, appliances, automobile parts and accessories, liquor, lumber/building materials, lawn and garden supplies, farm supplies.
- 5558. Sales and rental of heavy machinery and equipment subject to landscaping requirements of the Landscape, Recreation, Recycling/Solid Waste Space Requirements chapter of this title.
- 5659. Schools and studios for education or self improvement.
- 5760. Self-storage facilities.
- 5861. Sewage lift stations.

5962. Storage (outdoor) of materials allowed to be manufactured or handled within facilities conforming to uses under this chapter, and screened pursuant to the Landscape, Recreation, Recycling/Solid Waste Space Requirements chapter of this title.

6063. Studios – art, photography, music, voice and dance.

6464. Taverns, nightclubs.

6265. Telephone exchanges.

6366. Theaters for live performances only, not including adult entertainment establishments.

6467. Tow truck operations, subject to all additional State and local regulations.

6568. Water pump station.

6669. Vehicle storage (no customers onsite, does not include park-and-fly operations).

6770. Other uses not specifically listed in this title, which the Director determines to be:

a. similar in nature to and compatible with other uses permitted outright within this district; and

b. consistent with the stated purpose of this district; and

c. consistent with the policies of the Tukwila Comprehensive Plan.

Section 8. TMC Section 18.50.210 Amended. Ordinance No. 2407 §10, as codified at TMC Section 18.50.210, “Marijuana Related Uses,” is hereby amended to read as follows:

A. The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Tukwila is an authorization to circumvent federal law or provide permission to any person or entity to violate federal law. Only state-licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the City of Tukwila and then only pursuant to a license issued by the State of Washington. The purposes of these provisions is solely to acknowledge the enactment by the state Liquor and Cannabis Board of Washington voters of Initiative 502 and a state licensing procedure and to permit, but only to the extent required by state law, marijuana producers, processors, and retailers to operate in designated zones of the City.

B. The production, processing, selling, or delivery of marijuana, marijuana-infused products, or useable marijuana may not be conducted in association with any business establishment, dwelling unit, or home occupation located in any of the following areas:

Low Density Residential

Medium Density Residential

High Density Residential

Mixed Use Office

Office

Residential Commercial Center

Neighborhood Commercial Center

Regional Commercial
Regional Commercial Mixed Use
Tukwila Urban Center
Commercial/Light Industrial
Light Industrial
Manufacturing Industrial Center/Light
Manufacturing Industrial Center/Heavy

C. Growth of medical marijuana for the personal medical use of an individual qualifying patient as defined in RCW 69.51A.010 is subject to strict compliance with all state regulations, procedures and restrictions as set forth or hereafter adopted at RCW Chapter 69.51A.

D. The establishment, location, operation, licensing, maintenance or continuation of a cooperative, as described in Chapter 69.51 RCW, or medical cannabis collective gardens or dispensaries as described in RCW 69.51A.085, is prohibited in all zones of the City. Any person who violates this subsection (18.50.210.D) shall be guilty of a gross misdemeanor and shall be punished by a fine not to exceed \$5,000.00, or by imprisonment in jail for a term not exceeding one year, or by both such fine and imprisonment.

EG. Any violation of this section is declared to be a public nuisance per se, and, in addition to any other remedy provided by law or equity, may be abated by the City Attorney under the applicable provisions of this code or state law. Such violations shall be enforced and appealed with the procedures set forth in Tukwila Municipal Code Chapter 8.45. Each day any violation of this section occurs or continues shall constitute a separate offense.

F. **Penalties.**

1. **Civil Infraction.** Any person violating or failing to comply with this section of the Tukwila Municipal Code, may be issued a civil infraction citation pursuant to TMC Section 8.45.050.C. Each civil infraction shall carry with it a monetary penalty of \$200.00 for the first violation, \$350.00 for a second violation of the same nature or a continuing violation, and \$500.00 for a third or subsequent violation of the same nature or a continuing violation.

2. **Violation Notice and Order.**

a. In the alternative, any person violating or failing to comply with the provisions of this section of the Tukwila Municipal Code may be issued a Violation Notice and Order, as set forth in TMC Chapter 8.45, that shall carry with it a cumulative monetary penalty of \$1,000.00 per day for each violation from the date set for compliance until compliance with the Violation Notice and Order is achieved.

b. In addition to any penalty that may be imposed by the City, any person violating or failing to comply with this section shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

c. Any penalties imposed under this section may be doubled should the violation(s) occur within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade to which admission is not restricted to persons aged 21 years or older, as such terms are defined in WAC 314-55-010 as now enacted or hereafter amended.

d. The penalty imposed by this section under a Violation Notice and Order constitutes a personal obligation of the person(s) responsible for the violation, and may be collected by civil action brought in the name of the City. In addition, the monetary penalties or costs assessed pursuant to this chapter may be assessed against the property that is the subject of the enforcement action.

e. The Code Enforcement Officer shall have the discretion to impose penalties in an amount lower than those set forth above.

3. **Additional Relief.** The City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this section of the Tukwila Municipal Code. The remedies and penalties provided herein are cumulative and shall be in addition to any other remedy provided by law.

Section 9. No Non-conforming Uses. No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer, as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Tukwila Municipal Code and that use shall not be entitled to claim legal non-conforming status.

Section 10. Adoption of Findings of Fact. The City Council adopts as its preliminary findings the recitals set forth above. The City Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 11. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 12. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 13. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this _____ day of _____, 2015.

ATTEST/AUTHENTICATED:

Christy O'Flaherty, MMC, City Clerk

Jim Haggerton, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: _____

Passed by the City Council: _____

Published: _____

Effective Date: _____

Ordinance Number: _____

Rachel B. Turpin, City Attorney