

# PLEASE NOTE SPECIAL MEETING DATE

## CHEHALIS CITY COUNCIL AGENDA

CITY HALL

350 N MARKET BOULEVARD, CHEHALIS, WA 98532

Anthony E. Ketchum Sr., District 3

Mayor

Terry F. Harris, District 1, Mayor Pro Tem

Daryl J. Lund, District 2

Dr. Isaac S. Pope, District 4

Dennis Dawes, Position at Large

Chad E. Taylor, Position at Large

Bob Spahr, Position at Large

Monday, November 18, 2013

5:00 p.m.

### NEW BUSINESS

1. Ordinance No. 918-B, First and Final Reading – Amending Ordinance No. 908-B to Include the Retail Sale, Growing and Processing of Recreational Marijuana.  
(City Manager, Community Development Director, City Attorney)

SUSPEND RULES  
AND PASS  
ORDINANCE NO.  
918-B ON FIRST AND  
FINAL READING

1

THE CITY COUNCIL MAY ADD AND TAKE ACTION ON  
OTHER ITEMS NOT LISTED ON THIS AGENDA

NEXT REGULAR CITY COUNCIL MEETING WILL BE ON MONDAY, NOVEMBER 25, 2013

**CITY OF CHEHALIS  
AGENDA REPORT**

**DATE:** November 18, 2013  
**TO:** The Honorable Mayor and City Council  
**FROM:** Dennis Osborn, Community Development Director  
**SUBJECT:** Marijuana regulation options/moratorium-- Special Meeting

**ISSUE**

At the council meeting of October 14, 2013, the administration presented three options for council consideration for regulating recreational/commercial marijuana. At that meeting, council's preference was Option A; however, near the end of the discussion, council opted to keep a moratorium in place on the marijuana issue to see what happens with the city of Kent case. Kent has prohibited the use and, generally speaking, is challenging if the state can mandate the sale and production within a city.

As the administration reviewed the material while in discussion with potential applicants for a marijuana facility in the city, the administration discovered that the moratorium ordinance in place only applies to medical marijuana and not recreational marijuana facilities. Given this, the administration believes it was the Council's intent to have a moratorium on recreational and medical marijuana based on the discussion of the October 14 council meeting. In order for this to occur council needs to amend the existing moratorium that deals only with medical marijuana to include recreational marijuana use/facilities.

**RECOMMENDATION/COUNCIL ACTION DESIRED**

In reviewing the video of the council meeting of October 14, it is clear that council intent was to have a moratorium in place while the city of Kent issue moves forward through the legal process. Given this, the attached moratorium is presented for council consideration.

**SUGGESTED MOTION**

I move that the council suspend the rules and pass Ordinance No. 918-B on first and final reading, amending the medical marijuana moratorium to include recreational marijuana facilities.

Reviewed:  \_\_\_\_\_, City Manager

**ORDINANCE NO. 918-B**

**AN ORDINANCE OF THE CITY OF CHEHALIS, WASHINGTON, AMENDING ORDINANCE NO. 908-B EXTENDING THE SIX-MONTH MORATORIUM AS CREATED UNDER ORDINANCE NO. 877-B, DEALING WITH MEDICAL MARIJUANA COLLECTIVE GARDENS AND MEDICAL MARIJUANA DISPENSARIES, AND TO INCLUDE THE RETAIL SALE, GROWING AND PROCESSING OF RECREATIONAL MARIJUANA.**

**WHEREAS**, the city of Chehalis passed Ordinance No. 877-B on the 12th day of September, 2011, providing for a six-month moratorium on establishment or location of medical marijuana collective gardens or medical marijuana dispensaries within the city limits; and

**WHEREAS**, on February 12, 2012, it was the consensus of the City Council to pass Ordinance No. 890-B, extending the moratorium for an additional six months; and

**WHEREAS**, on September 13, 2012, the City Council passed Ordinance No 899-B, extending the moratorium for an additional six months; and

**WHEREAS**, the City Council has determined it appropriate that the six-month moratoriums established under Ordinance Nos. 877-B, 890-B and 899-B be extended for an additional one-year period; and

**WHEREAS**, it is in the best interests of the city and its citizens that the moratorium under Ordinance Nos. 877-B, 890-B, and 899-B be extended for an additional one year period; now, therefore,

**THE CITY COUNCIL OF THE CITY OF CHEHALIS, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1.** The City Council of the city of Chehalis, Washington, hereby agrees to extend the six-month moratorium from the 12th day of March, 2013, until the 12th day of March, 2014.

**Section 2.** In all other respects, the provisions of Ordinance No. 877-B passed the 12th day of September, 2011, shall remain in full force and effect, and any public hearings held thereunder shall be properly noted for public information and held in accordance with the mandates of Ordinance No. 877-B.

**Section 3.** The city council deems it to be in the public interest, to establish an emergency moratorium pending consideration of regulations, requirements and taxes to address recreational marijuana in order to preserve the public health, safety, and welfare.

**PASSED** by the City Council of the city of Chehalis, Washington, and **APPROVED** by its Mayor, at a regularly scheduled open public meeting thereof this 18<sup>th</sup> day of November, 2013.

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Mayor

Attest:

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City Clerk

Approved as to form and content:

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City Attorney

**CITY OF CHEHALIS  
AGENDA REPORT**

**DATE:** October 14, 2013  
**TO:** The Honorable Mayor and City Council  
**FROM:** Dennis Osborn, Community Development Dir.  
**SUBJECT:** Marijuana Regulation Options

**ISSUE**

In fall of 2012, the voters of the state passed I-502 making it legal to sell, grow and process marijuana. Subsequently the President has stated that the Federal Government (the Justice Dept.) will not prosecute cases where states had passed laws making marijuana use and production legal.

“Washington (CNN) -- The Justice Department said it won't challenge state laws that legalize marijuana and will focus federal enforcement on serious trafficking cases and keeping the drug away from children. Attorney General Eric Holder, in a conference call Thursday morning, notified the governors of Colorado and Washington that the department, for now, will not seek to pre-empt those states' laws, which followed voters' approval of ballot measures that legalized recreational marijuana use. Marijuana will remain illegal under the federal Controlled Substances Act. But a department memo to federal prosecutors tightened federal marijuana prosecution standards....”

It should be noted that this is a Presidential Administration decision as opposed to a new Federal law. Meaning a new President could change how the Presidential Administration will handle this issue.

This work session is to brief council on issues facing the city at the policy level. This memo looks at the issue from a land use perspective with legal review while recognizing state and federal laws/administration framing the city's options.

**FAQ**

At our state level, the Washington State Liquor Control Board set rules for licensing the sale and processing of marijuana. IT SHOULD BE NOTED THAT CHEHALIS IS PERMITTED ONLY 1 RETAIL FACILITY. A summary of FAQ's is presented below from the Washington State Liquor Control Board website:

**Retail Stores**

**Q:** Are there restrictions on where I can set up a store?

**A:** You cannot set up a store within 1000 feet of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or game arcade that allows minors to enter. Local authorities will also be notified and have an opportunity to object.

**Q:** Will the retail outlets be run by the state?

**A:** Stores will be licensed and regulated by the WSLCB but will be private-sector businesses.

**Q:** Can I incorporate marijuana sales into my existing business?

**A:** No. The initiative is clear that retail outlets may only sell marijuana, marijuana infused products and marijuana paraphernalia.

**Q:** Can customers smoke in a retail store?

**A:** No. On-premise consumption is not allowed under Initiative 502.

**Q:** Are there any restrictions on advertising?

**A:** Retailers are limited to one 1,600 square inch sign bearing their business/trade name. They cannot put products on display to the general public such as through window fronts. No licensee can advertise marijuana/infused product in any form or through any medium whatsoever within 1,000 ft. of school grounds, playgrounds, child care, public parks, libraries, or game arcades that allows minors to enter. Also, you can't advertise on public transit vehicles/shelters or on any publicly owned or operated property.

**Q:** Will non-Washington residents be able to purchase marijuana?

**A:** Yes, but the marijuana products are to be consumed in Washington.

## **Federal Government**

**Q:** What is the federal government going to do?

**A:** On August 29, 2013 Attorney General Eric Holder called both Governors Jay Inslee and John Hickenlooper (Colorado) to outline the federal government's guidance on legalized marijuana. That guidance was also outlined in a memo which focuses on eight points of federal emphasis such as youth access and public safety which the LCB's proposed rules address. While the memo does not change federal law it does state that marijuana businesses that abide by all state regulations will not be subject to federal prosecution. The Governor's office is maintaining an open dialogue with the federal government and the WSLCB is moving forward to carry out the expectations of the agency under the new law.

**Q: Since marijuana is legal in Washington can the federal government still prosecute me?**

**A:** Yes. I-502 does not preempt federal law. Presently Washington State residents involved in marijuana production /retailing could still be subject to prosecution if the federal government chooses to do so.

**Q: Can the federal government confiscate my assets?**

**A:** Yes. Confiscation of assets is one of the enforcement tactics available to federal authorities.

**Q: What about industrial hemp? Does this create a new market for hemp products?**

**A:** No. I-502 is focused on legalizing the recreational use of marijuana. I-502 modifies the definition of "marijuana" to include only cannabis greater than 0.3 percent THC concentration. Cannabis under this limit – industrial hemp – is not treated as recreational "marijuana."

## **PRODUCTION**

- The rules for location of retail apply to production ( per phone conversation with WSLCB 9/23/2013)
- State regulates license and fees
- Number of permits (no more that 3 facilities per license)
- All applicants have a background check
- Facility alarmed, and security cameras
- Product has to be traceable
- Mandatory signage and labeling on transported product

## **Medical Marijuana**

*Note: I-502 does not address medical marijuana. The state does not currently license or regulate medical marijuana outlets. I-502 does not change how or where they operate.*

## **Options**

- A. Do nothing (allow under current rules – the licensing would be by state, we changed no laws to allow or deny)
- B. Ban sale, growing and processing (since the federal position is based on Presidential direction as opposed to Federal law, a new president could change the Federal direction)
- C. Ban growing and processing but allow sale (allow sales per state law, but ban growing and production as it may conflict with another state law)

**Option A:** Under this option retail sales for marijuana would fall under the allowed use of Retail Sales in the zoning code and be allowed in the GC zone subject to the state rules of 1,000 feet from places where kids are and the state sign requirements. Production and processing would be allowed under the current code that allows for hemp production and manufacturing in the Light Industrial zone.

Under this option, the city would neither be in violation of state law by prohibiting sales production and processing of marijuana, nor would the city be in violation of Federal law by passing laws that allow sales and production. Note in the question section above the answer to the question: "Q: Since marijuana is legal in Washington can the federal government still prosecute me?"

A: Yes. I-502 does not preempt federal law. Presently Washington State residents involved in marijuana production /retailing could still be subject to prosecution if the federal government chooses to do so. "

Under option A, The City would just be interpreting the municipal code that already exists and allows retail shops in the GC and hemp production in the IL zone.

Below is the use chart from the zoning code that shows permitted retail use within the General Commercial zone.

Zone		GC											
(large merchandise)	5/1,000 GSF	X	X	X	X	X	A	X	P	P	P	A	A
M011	Other retail store over 5,000 square feet	5/1,000 GSF	X	X	X	X	X	X	P	P	P	P	X
M041	Paint store over 5,000 square feet	5/1,000 GSF	X	X	X	X	X	X	P	P	P	P	X
M081	Pawnshop	5/1,000 GSF	X	X	X	X	X	X	X	P	C	X	X
M078	Retail store 1,000 square feet or less	5/1,000 GSF	X	X	X	X	A	P	P	P	P	P	A
M073	Retail store 1,001 to 5,000 square feet	5/1,000 GSF	X	X	X	X	A	C	C	P	P	P	A

So, Retail in the GC zone is allowed

Zone		IL IH											
manufacturing facility	3/1,000 GSF	X	X	X	X	X	X	X	X	X	X	X	C
F122	Hemp fiber processing/fabrication facility	3/1,000 GSF	X	X	X	X	X	X	X	X	X	X	P

So in the IL and IH zone Hemp Fiber processing and fabrication is permitted

**Option B:** Under this option the City would not permit production, processing or sale of marijuana. This would place the city in a position of taking the opposite stand than the state and a voter approved initiative. The flip side is the City would not be exposed in violation of Federal law. Although the Justice Dept. has stated they will not prosecute, again the Federal position is by this Presidential Administration and does not change the Federal laws since Congress did not vote and change law. A new President may take a different approach.

**Option C:** Under this option the City would allow retail sales the same as in option A, but prohibit production and processing by taking the position that this falls under Agricultural land of long term significance. Washington States Growth Management Act only allows Agricultural lands of long term significance within rural areas and not within cities.



**RCW 36.70A.060(4)**

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights

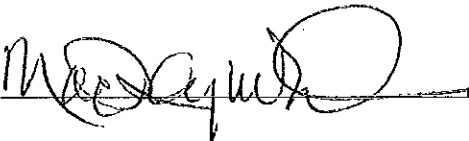
(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by \*RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

**RECOMMENDATION**

The administration is recommending option A. This option does not place the City in conflict with either Federal or State Laws and the State regulates the activity. With this option, Council would simply need to repeal the existing moratorium.

**SUGGESTED MOTION**

I move that the council follow Option A and do nothing as outlined in the agenda report, and repeal the existing moratorium approved on March 11, 2013.

Reviewed by:  \_\_\_\_\_, City Manager



# Washington State Liquor Control Board

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## Proposed Rules Highlights

Revised: September 16, 2013

### LCB Rulemaking Objective

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

### LCB Role and Responsibility

- o Ensuring public safety is the top priority;
- o Creating a three-tier regulatory system for marijuana;
- o Creating licenses for producers, processors, and retailers;
- o Enforcing laws and rules pertaining to licensees; and
- o 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 (CR 103)
November 16, 2013	Rules become effective
November 18, 2013	Begin accepting applications for all three licenses (30-day window)
December 1, 2013	Deadline for rules to be complete (as mandated by law)
December 18, 2013	30-day window closes for producer, processor and retailer license applications

## Proposed Rules Highlights

### License Requirements

- **30-day Window**
  - o The LCB will open registration for all license types for a 30-calendar-day window (November 18, 2013)
  - o LCB may extend the time or reopen application window at its discretion
- **State Residency Requirement**
  - o I-502 requires a three month state residency requirement (all license structure types)
- **Background Checks**
  - o Personal criminal history completed by applicant. Risk of license forfeiture if incomplete or incorrect.
  - o Fingerprinting of all potential licensees
  - o Background checks of license applicants and financiers
- **Point System**
  - o The LCB will apply a disqualifying point system similar to liquor
  - o All applicants must disclose all arrests and/or convictions
  - o Non-disclosure of arrests regardless of conviction will result in point accumulation

September 16, 2013

- **License Limits**

- Licensed entity or principals limited to three 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.

- **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.

- **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\***

- Distance will be measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds 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.

**\*Important Note Regarding the 1,000 foot Measurement:** The LCB will file an emergency rule on October 16, 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 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."

September 16, 2013

- **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
- **Security and Safeguards**
  - Alarm and surveillance video camera requirements (including minimum pixels and lockbox encasement)

September 16, 2013

- 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

September 16, 2013

- **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).

###

September 16, 2013

1,000 ft Boundary Around school, Parks, Library  
As required by State Law

Approx. Scale  
1" = 500'

+ 1000 ft  
boundary

