#### ORDINANCE NO. 637

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON PERTAINING TO MARIJUANA, ALSO KNOWN AS CANNABIS; ADOPTING LOCAL REGULATIONS FOR RECREATIONAL MARIJUANA AS DEFINED IN STATE LAW AND MEDICAL CANNABIS AS DEFINED IN STATE LAW; REPEALING ORDINANCE NO. 631 WHICH ESTABLISHED A MORATORIUM ON MARIJUANA USES; ADOPTING A NEW CHAPTER IN THE UNIVERSITY PLACE MUNICIPAL CODE, "MARIJUANA/CANNABIS USES" WHICH ESTABLISHES LOCAL REGULATIONS FOR ALL MARIJUANA USES; RECOGNIZING THE CONFLICT WITH FEDERAL LAW; AND ADOPTING LEGISLATIVE FINDINGS

WHEREAS, the cultivation, possession or distribution of marijuana, also known as cannabis, and marijuana products is a criminal violation of federal law through the federal Controlled Substances Act ("CSA") which lists marijuana as a schedule one controlled substance defined as highly addictive with no known medical value; and

WHEREAS, the CSA is the supreme law of the land and supersedes any conflicting State enactments; and

WHEREAS, originating with Washington State Initiative 692, passed in 1998, state law (RCW 69.51A the "Medical Use of Cannabis Act") authorizes the "medical" use of cannabis by certain qualifying "patients" and allows up to ten (10) qualifying patients to join together to provide the in-kind resources to cultivate a "collective garden" of up to fifteen (15) plants per patient; and

WHEREAS, a portion of an amendment to the Medical Use of Cannabis Act (Engrossed Second Substitute Bill 5037, 2011), which would have allowed non-profit "dispensaries" was vetoed in its entirety by Governor Gregoire, and the Medical Use of Cannabis Act does not authorize "dispensaries," nor does it authorize "collective gardens" to sell cannabis to qualifying patients which can include minors, in any manner analogous to a retail sale; and

WHEREAS, Washington State Initiative 502, passed in 2012, contains two separate subjects: first, it purports to decriminalize the possession and consumption of certain amounts of marijuana within the State; and second, it directs State government to implement a marijuana production, processing and retail sale industry; and

WHEREAS, as a matter of law, no State initiative can change or supersede the federal CSA; and

WHEREAS, decriminalizing the possession and consumption of certain amounts of marijuana within the State does not require State government officials to violate federal law; however, Initiative 502's separate mandate to implement a marijuana production, processing and retail sale industry in Washington does purport to compel State elected and appointed officials and employees to engage in conduct which violates federal law and subjects them to criminal prosecution and forfeiture of property as well as violation of federal grant obligations, and their oaths of office; and

WHEREAS, acknowledging the fundamental conflict between I-502 and the marijuana-industry portion of the federal CSA, on August 29, 2013, the US Department of Justice (DOJ) issued a press release indicating that the federal administration would not seek to invalidate state marijuana legalization schemes "for now," and also issued prosecutorial guidance to US Attorneys regarding enforcement of marijuana laws which expressly reserved the right to invalidate the state legalization schemes altogether; and

WHEREAS, on February 14, 2014, the DOJ issued another press release and set of prosecutorial guidelines indicating that the federal administration was not "likely" to prosecute banks that banked marijuana money so long as the banks didn't get into any of the DOJ's eight 'areas of concern." DOJ made clear that banking marijuana money was still illegal and their guidelines did not confer immunity; and

WHEREAS, neither the DOJ press releases, nor the prosecutorial guidelines changed the law, the CSA and all related federal criminal statutes remain unaltered, and the DOJ position can change at any time, including with a change in the federal administration in 2017; and

WHEREAS, the DOJ has made clear that the guidance provided to federal prosecutors does not confer any immunity from prosecution on anyone participating in any way in the State marijuana industry; and

WHEREAS, all business, investments or other activities by private parties, including banks, and public officials purporting to implement I-502 and regulate marijuana and cannabis under the authority of the Medical Use of Cannabis Act, or I-502, remain subject to criminal prosecution and asset forfeiture; and

WHEREAS, on September 10, 2013, the City Attorney sent a letter to US Attorney for the Western District of Washington (attached hereto and incorporated herein as Exhibit A) requesting clarification regarding whether there was any legal basis to conclude that University Place elected and appointed officials and employees would not be subject to federal criminal sanctions for participating in the local permitting and regulation of recreational marijuana; and

WHEREAS, the City Attorney never received any response; and

WHEREAS, it is mid-2014, and the current federal administration which has expressed ambiguous tolerance for the violation of federal marijuana laws will end in 2016; and

WHEREAS, there has been no legislation advanced in the United States Congress to change federal marijuana laws; and

WHEREAS, the approach of the federal administration, which will take office in 2017, is unknown and unknowable at this time; and

WHEREAS, the City Council does not desire to subject itself, or attempt to subject, any other officer or employee of the City to federal criminal prosecution and asset forfeiture, regardless of the likelihood of such federal enforcement; and

WHEREAS, attempting to compel City officers or employees to subject themselves to federal criminal penalties could result in employer liability for the City; and

WHEREAS, neither the Medical Use of Cannabis Act, nor the state Uniform Controlled Substances Act, preempts the local regulatory authority, including the zoning authority, of the City; and

WHEREAS, in January 2014, in response to a request by the Washington State Liquor Control Board, the Washington State Attorney General issued a formal Attorney General Opinion ("AGO" 2014 No. 2) which affirmed that I-502 did not in any way impair the authority of Washington cities or counties to prohibit marijuana businesses, or to regulate marijuana businesses in a manner that imposed requirements and regulations greater than those in State law; and

WHEREAS, on November 4, 2013, by Ordinance 631 the City Council, after conducting a public hearing, extended a six (6) month moratorium on the establishment, location, operation, licensing, or maintenance of facilities, businesses or any other activities involving the production, sale and use of marijuana and marijuana products, which expires on May 4, 2014; and

WHEREAS, the Washington State Liquor Control Board has established a system for licensing marijuana producers, marijuana processors, and marijuana retailers and has announced its intent in 2014, to issue licenses for marijuana producers, marijuana processors, and retail recreational marijuana stores in defiance of and without regard for local moratoriums, prohibitions or requirements; and

WHEREAS, it is, therefore, necessary to establish appropriate regulations for state licensed recreational marijuana businesses and collective cannabis gardens proposing to operate within the City; and

WHEREAS, a public hearing was held on April 14, 2014, regarding the regulations set forth in this Ordinance and the City Council weighed the testimony and considered evidence received in enacting this Ordinance; and

WHEREAS, the Washington State Constitution and statutes authorize the City to make and enforce within its limits all such local regulations as are not in conflict with general laws, including the adoption of land use controls. Additionally, the City will advance the health, safety and welfare of its residents by regulating uses involving the production, processing, and retailing of marijuana within the City, and the City Council finds it to be in the best interests of public health, safety and welfare to adopt the regulations set forth in this Ordinance.

# NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE DOES HEREBY ORDAIN AS FOLLOWS:

- Section 1. <u>Legislative Findings</u>. The recitals and findings set forth above are hereby adopted as the City Council's legislative findings in support of the regulations adopted by this Ordinance.
  - Section 2. <u>Moratorium Repealed</u>. Ordinance No. 631 is hereby repealed.
- Section 3. <u>Regulations Enacted</u>. New Chapter 5.35 "Marijuana/Cannabis Uses" of the University Place Municipal Code, is hereby adopted as shown in Exhibit B, which is attached hereto and incorporated herein by reference.
- Section 4. <u>Severability</u>. 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 5. <u>Effective Date Emergency.</u> The City Council hereby finds and declares that an emergency exists because there is a potential that persons seeking to engage in marijuana-cannabis activities could receive licenses from the state for inappropriate locations within the City, and claim vesting before enactment of adequate and appropriate regulations, this Ordinance shall become effective immediately upon passage in order to preserve the public health, safety and welfare.

PASSED BY THE CITY COUNCIL ON APRIL 14, 2014.

Denise McCluskey, Mayor

ATTEST:

Emelta Genetia, City Clerk

APPROVED AS TO FORM:

Steve Victor, City Attorney

Published: 04/16/14 Effective Date: 04/14/14

#### **EXHIBIT A**



September 10, 2013

Ms. Jenny A. Durkan United States Attorney Western District of Washington U.S. Attorney's Office 700 Stewart Street, Suite 5220 Seattle, WA 98101

Re: Washington State Initiative 502

Dear Ms. Durkan:

I am the City Attorney of the City of University Place, Washington. Since the passage of Washington State Initiative 502 which purports to legalize marijuana in our state, and also to create a licensed marijuana industry, the City of University Place, along with many other local jurisdictions, has been awaiting formal action by the State or federal government to address the legal validity of I- 502, in light of the prohibition on marijuana in the federal Controlled Substances Act.

The current State administration will not subject I-502 to a legal test, and with the statement by Attorney General Eric Holder on August 29, and the prosecutorial guidance from Deputy Attorney General James Cole, it appears no further action is forthcoming from the current federal administration prior to the State's implementation of I-502. This leaves local jurisdictions in our State with the unprecedented and very difficult decision of whether to participate in violating federal law, or to defy those portions of Initiative 502 that would necessitate the local zoning, licensing and regulation of the new marijuana industry.

Unfortunately, neither the U.S. Attorney General's recent statement, nor the prosecutorial guidance to U.S. Attorneys address the pressing concerns of local governments in Washington who are faced with the prospect of participating in the regulatory zoning and licensing of production, processing, distribution and retail sale of marijuana. While those portions of I-502 that purport to legalize the possession and consumption of marijuana can be accommodated through police and prosecutorial guidelines, the portions that necessitate the active and ongoing authorization and regulation of the new marijuana industry by government raise grave concerns. In advising my clients on this difficult issue, I have carefully researched the relevant law and the decisions of state and federal courts of record. As a last step in my due diligence, I am consulting you as the chief federal law enforcement official for the Western District of Washington.

Ms. Jenny Durkan U.S. Attorney General Western District of Washington September 10, 2013 Page 2

Based on various prior statements by federal authorities and my own research, the question of whether a state law may legalize marijuana in defiance of the federal Controlled Substances Act has been completely and conclusively answered in the negative by the US Supreme Court in *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), and *Gonzales v Raich* 545 U.S. 1 (2005). I have found no countervailing authority. I also understand from prior statements by federal authorities and my research that Washington State government officials and employees, including local elected and appointed officials, who participate in the zoning, licensing and regulation of the new Washington marijuana industry, are subject to federal criminal prosecution for violating federal law. While the main motivator for our City is a desire to obey the law in accordance with our oaths of office, even the possibility of criminal prosecution is a tremendous concern.

In addition to our substantial concerns about violating federal law, and the attendant criminal penalties, our City is also concerned about breaching our federal grant agreements. University Place, as with every city and county in the State of Washington, is the recipient or sub-recipient of federal grant funds for purposes including transportation projects and law enforcement. Each of those grant agreements requires that the City "assure and certify" compliance with all federal statutes, regulations, policies, guidelines and requirements. I have not located any federal law, rule or judicial decision that would exempt compliance with all of, or with the marijuana portion of, the Controlled Substances Act. As a consequence, by participating in the implementation and regulation of Washington's new marijuana industry, the City of University Place would be in breach of all of our federal grant agreements, and would be subject to the penalties associated with the breach of those agreements.

We may infer from the President and Attorney General's statements that, at the moment, it is not the current federal administration's intent to prosecute Washington State government officials, or deem Washington recipients of federal grants in breach of their obligations for participating in Washington's new marijuana industry. However, to competently advise my clients on this issue I am bound to pose two essential questions. First, is there any legal basis which I have not discovered to conclude that the marijuana industry portions of I-502 are not violations federal law? Second, is there any legal basis which I have not discovered to conclude that Washington local governments who participate in the zoning, licensing and regulation of the new Washington marijuana industry are not subject to federal criminal prosecution, and are not in breach of their federal grant agreements? My own research answered both questions in the negative, but as my final piece of due diligence I am seeking your input.

Ms. Jenny Durkan U.S. Attorney General Western District of Washington September 10, 2013 Page 3

I am fully aware that a response to this inquiry is not mandatory, and that the politics surrounding this legal issue renders a response difficult. Nevertheless, I would greatly appreciate the courtesy of a reply.

Respectfully,

Steve Victor City Attorney

# Chapter 5.35

## MARIJUANA/CANNABIS USES

Sections: 5.35.010 Definitions. 5.35.020 State-Licensed Facilities. 5.35.030 Dispensaries 5.35.040 Severability

5.35.010 Definitions.

"Cannabis" also known as 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.

"Cannabis Dispensary" means any cannabis (marijuana) use that is not licensed by the State, which operates in a manner analogous to a retail store by having qualifying patient customers who wish to purchase cannabis (marijuana) for money, execute paperwork to join an RCW 69.51A "collective garden" make their purchase for money, and after completion of the purchase, execute paperwork to resign from the collective.

"Marijuana" also known as Cannabis 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-Infused Products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include usable marijuana.

"Marijuana Processor" means a person licensed by the 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 licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

"Marijuana Retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

"Retail Outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

"THC Concentration" means the percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant cannabis, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant cannabis regardless of moisture content.

"Useable Marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

5.35.020 State-Licensed Marijuana Businesses.

The following provisions apply to marijuana businesses licensed by Washington State.

- A. State-licensed marijuana businesses shall be subject to all standards and other requirements of the University Place Development Regulations.
- B. As a condition of licensure, all applicants for a University Place marijuana related business license shall execute in a form prescribed by the City, an acknowledgement that they are aware that marijuana remains a controlled substance under federal law, and that they are subject to criminal prosecution, and forfeiture of their business and personal assets under federal law; that they indemnify, defend, hold harmless and release the City and its officers and employees from any all claims arising in any manner from federal enforcement against them or their business.
- C. State-licensed marijuana businesses shall not be permitted within 1,000 feet of the perimeter grounds of the following entities:
- 1. Elementary or secondary schools;
- 2. Playground;
- 3. Recreation center or facility:
- 4. Child-care center:
- 5. Public Park;
- 6. Public transit center;
- 7. Library;
- 8. Game arcade (where admission is not restricted to persons age 21 or older); University Place shall rely upon the definitions set forth in the Washington Administrative Code when identifying the entities listed above.
- D. All applications by State-licensed marijuana businesses for Conditional Use Permits in University Place shall include written federal certification of compliance by the applicant with all requirements of federal law.
  - E. Compliance with Federal Law.

No application for a State-licensed marijuana business shall be accepted by University Place until such time as the federal law is amended to allow marijuana production, processing, and retail sale for recreational use in the State of Washington.

- F. Marijuana-Licensed Retail Outlets.
- 1. State licensed marijuana retail outlets shall only be permitted through a Conditional Use Permit in a Mixed Use District (MUD).

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- 2. Subject to any more specific conditions in the CUP, a City-permitted, State-licensed marijuana retail outlet may sell usable marijuana, marijuana-infused products, and marijuana paraphernalia between the hours of 8:00 AM and 9:00 PM.
- 3. Subject to any more specific conditions in the CUP, a City-permitted, State-licensed marijuana retail outlet may only sell usable marijuana, marijuana-infused products, and marijuana paraphernalia in a detached building containing no additional business activities.
  - G. State-Licensed Marijuana Processors.
- 1. State-licensed marijuana processors shall be permitted through a Conditional Use Permit in a Light-Industrial-Business Park Zone.
  - H. State-Licensed Marijuana Producers.
- 1. State-licensed marijuana indoor producers shall be permitted through a Conditional Use Permit in a Light-Industrial-Business Park Zone.
- 2. Marijuana outdoor producers are prohibited.
- 3. Subject to any more specific conditions in the CUP, a City-permitted, State-licensed marijuana production shall take place within a fully enclosed secure indoor facility or greenhouse.
- 4. Subject to any more specific conditions in the CUP, a City-permitted, State-licensed marijuana indoor production facility shall be limited to 10,000 square feet of production space.
- I. Nuisance Abatement. In addition to any other available remedy or penalty, any violation of this Section, or any continued business operation after any state or federal directive to cease operations is declared to be a public nuisance per se, and may be abated under the applicable provisions of this Code or state law.
- 5.35.030 Cannabis Dispensaries

Cannabis Dispensaries as defined in this Chapter are prohibited in University Place, and are declared to be a public nuisance per se.

5.35.040 Severability.

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances shall not be affected.

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# Chapter 4.75

## MARIJUANA/CANNABIS EXCISE TAX

## Sections:

- 4.75.010 Imposed.
- 4.75.020 Administration of tax.
- 4.75.030 Tax due date Delinquency.
- 4.75.040 Financial records
- 4.75.050 Definitions.
- 4.75.060 Unlawful acts
- 4.75.070 Penalty.

## 4.75.010 Imposed.

There is levied upon all persons, associations or organizations an excise tax of ten percent (10%) upon the recipient, of the wholesale value of all marijuana (cannabis) delivered within the City for processing, and ten percent (10%) upon the recipient of the retail value of all marijuana (cannabis) delivered within the City for retail sale.

#### 4.75.020 Administration of tax.

The administration and collection of the tax imposed by UPMC 4.75.010 shall be by the City manager or designee. The City Manager or designee may adopt appropriate administrative regulations, including reporting requirements, to ensure the effective administration of the provisions of this Chapter.

## 4.75.030 Tax due date - Delinquency.

- A. The tax imposed by this Chapter shall be due and payable in monthly installments, and remittance therefor shall accompany such return and be made on or before the fifteenth day of the month following the month in which the tax accrued.
- B. For each payment due, if such payment is not made by the due date thereof, there shall be added a penalty and interest as follows:
  - 1. If paid one to ten days late, there shall be a penalty of 10 percent added to the amount of tax due.
  - 2. If paid 11 to 20 days late, there shall be a penalty of 15 percent added to the amount of tax due.
  - 3. If paid 21 to 30 days late, there shall be a penalty of 20 percent added to the amount of tax due.
  - 4. If paid 31 to 60 days late, there shall be a penalty of 25 percent added to the amount of tax due.
  - 5. In addition to the above penalty, the City will charge the taxpayer interest on all taxes due at the rate of one percent per month or portion thereof that said amounts are past due.

## 4.75.040 Financial records.

It shall be the responsibility of the taxpayer or taxpaying entity subject to taxation under this Chapter to make available at all reasonable times, such financial records as the City Manager or designee may require, in order to determine full compliance with this Chapter.

## 4.75.050 Definitions.

For the purposes of this Chapter, the terms used herein shall have the same meanings as defined in Chapter 5.35 UPMC, as the same now exists or may hereafter be amended.

## 4.75.060 Unlawful acts.

It is unlawful for any individual person or entity liable for the tax imposed by this Chapter to fail to pay the tax when due or to make any false or fraudulent return or any false statement in connection with the return.

## 4.75.070 Penalty.

Any person violating any provision of this Chapter shall be guilty of a misdemeanor and upon conviction thereof punished pursuant to state law or City ordinance.