

TOWN OF EATONVILLE

Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	<u>January 8, 2018</u>
Subject:	<u>Ordinance No. 2018-1 Prohibiting</u>	Prepared by:	<u>Gregory A. Jacoby</u>
	<u>Land Uses and Business Licenses</u>		<u>Town Attorney</u>
	<u>Relating to Marijuana Production,</u>	Atty Routing No:	<u>024-17</u>
	<u>Processing and Sale</u>	Atty Review Date:	<u>December 29, 2018</u>

Summary: At the Council's December 11, 2017 meeting, the Council passed a motion to ban the production, processing, or retail sale of recreational marijuana pending the results of a citizen's advisory vote. The attached Ordinance does two things. First, it adds a new chapter 8.12 "Recreational Marijuana Land Uses Prohibited" to the Eatonville Municipal Code (see Exhibit A to the Ordinance). The new chapter prohibits the use of any building, location, or land for the production, processing, or retail sale of recreational marijuana in any zone within town limits. Second, the Ordinance amends chapter 5.04 "Business Licenses" by deleting text that previously authorized the town to issue business licenses to marijuana-related businesses.

Recommendation: Staff recommends adoption of Ordinance No. 2018-1

Motion for consideration: I move to approve the first reading of Ordinance No. 2018-1 which would prohibit land uses relating to the production, processing, or sale of recreational marijuana and would further prohibit the issuance of business license for the same activities.

Fiscal Impact: None

Attachments: Ordinance No. 2018-1, together with Exhibit A

ORDINANCE NO. 2018-1

AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, ADOPTING A NEW CHAPTER 18.12 OF THE EATONVILLE MUNICIPAL CODE TO PROHIBIT THE SITING, ESTABLISHMENT, AND OPERATION OF ANY STRUCTURES, PROPERTY, OR LAND USES RELATING TO RECREATIONAL MARIJUANA PRODUCTION, PROCESSING, OR SALE; AND AMENDING CHAPTER 5.04 OF THE EATONVILLE MUNICIPAL CODE TO PROHIBIT THE ISSUANCE OF A TOWN BUSINESS LICENSE FOR USES RELATING TO RECREATIONAL MARIJUANA PRODUCTION, PROCESSING, OR SALE

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which authorized the Washington State Liquor Control Board to regulate and tax marijuana for persons twenty-one years of age and older, and added a new threshold for driving under the influence of marijuana; and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, the Liquor Control Board also adopted rules, promulgated at chapter 314-55 of the Washington Administrative Code, to implement I-502, which include, among other things: state licensing of premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by which licensees may transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, the Washington State Attorney General issued an opinion in January 2014 that determined municipalities have authority to prohibit state-licensed

marijuana businesses within a city's boundaries or to impose zoning and other land use regulations pertaining to such businesses; and

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; and

WHEREAS, on December 22, 2014, the Town Council adopted Ordinance No. 2014-19, which imposed a six-month moratorium on the establishment, location, operation, licensing, or maintenance of facilities, businesses, or any other activities involving the production, processing, or retail sale of recreational marijuana or marijuana-infused products; and

WHEREAS, on June 22, 2015, the Town Council adopted Ordinance No. 2015-4, which extended the moratorium for an additional six months; and

WHEREAS, on December 14, 2015, the Town Council adopted Ordinance No. 2015-15 extending the moratorium for an additional six months; and

WHEREAS, on May 23, 2016, the Town Council adopted Ordinance No. 2016-9 extending the moratorium for an additional six months; and

WHEREAS, on November 28, 2016, the Town Council adopted Ordinance No. 2016-25 extending the moratorium for an additional six months; and

WHEREAS, in May 2017, the Town Council chose not to extend the moratorium for an additional six months and therefore, at present, the moratorium has expired and the Town has no regulations regarding the establishment, location, operation, licensing, or maintenance of facilities, businesses, or any other activities involving the production, processing, or retail sale of recreational marijuana or marijuana-infused products; and

WHEREAS, on December 11, 2017, the Town Council adopted a motion to begin the process of banning marijuana production, processing, or retail sale within Town limits, pending an advisory vote of the Town's citizens; and

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

WHEREAS, adoption of this ordinance is in the best interests of the Town of Eatonville and is necessary to preserve the public health, safety, and welfare of the Town's residents; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE
AS FOLLOWS:**

Section 1. **Findings.** In support of the actions taken by this ordinance, the Eatonville Town Council hereby adopts as findings and conclusions both the recitals set forth above and the following:

- A. Marijuana remains illegal under federal law. A memorandum issued by the U.S. Attorney General's office on August 29, 2013 did not change the law, but only announced the decision of the U.S. Attorney's Office to exercise prosecutorial discretion with regard to enforcement of the federal law within the States of Colorado and Washington. The U.S. Attorney's Office reserved the power to prosecute in any instance where it felt the efforts of the states fell short of "robust regulation," where a threat exists for the illegal distribution to minors, or where a threat of interstate distribution of marijuana was encountered.
- B. Nothing in Initiative 502 decriminalizing certain possession, use and delivery of specified amounts of marijuana and authorizing the Washington State Liquor Cannabis Board to develop and implement regulations for the licensing of marijuana production, processing and retailing expressly or impliedly preempts the Town of Eatonville from exercising its land use regulatory authority, including the ban of marijuana cultivation, production, processing and retailing within Town limits.
- C. Initiative 502 (codified in chapter 69.50 RCW), does not require any city or town to allow the location of any marijuana production, processing or retailing facility within its jurisdiction. The Town retains jurisdiction under the state constitution and state law to adopt and enforce land use regulations intended to preserve and promote the general health, safety and welfare of its community.
- D. Prohibiting the cultivation, production, processing and retailing of marijuana as set forth in Initiative 502, is not intended to regulate the individual use of marijuana as authorized by Initiative 502 and chapter 69.51A RCW.

Section 2. Title 18 of the Eatonville Municipal Code is hereby amended by adding a new Chapter 18.12 "Recreational Marijuana Land Uses Prohibited," as set forth in the attached Exhibit "A."

Section 3. Eatonville Municipal Code section 5.04.020 "Definitions" is hereby amended to read as follows:

5.04.020 Definitions.

In construing provisions of this chapter, the following words and terms shall have the meanings defined in this section, unless from the context a more limited or different meaning is clearly defined or apparent:

A. "Business" includes all activities, occupations, farmers deriving 60 percent or more of their income from farming pursuits or professions located and/or engaged in within the town, with the object of gain, benefit or advantage to the licensee or to another person or class, directly or indirectly. Each business location shall be deemed a separate business. This term shall not include peddlers and hawkers as defined in Chapter 5.08 EMC.

~~1. For purposes of this chapter, "business" also includes medical marijuana dispensaries and collective gardens as defined under Chapter 69.51A RCW and marijuana producers, marijuana processors and marijuana retailers as defined in Chapter 69.50 RCW and Chapter 314-55 WAC.~~

B. "Engaging in business" means commencing, conducting or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators hold themselves out to the public as conducting such a business.

C. "Licensee" includes any person who is engaged in business or who is required to have a business license under this chapter or who performs any act for which a license fee is imposed by this chapter.

D. "License officer" means the employee of the town of Eatonville who is designated to administer this chapter.

E. "Year" means the calendar year.

Section 4. Eatonville Municipal Code section 5.04.080 "Issuance of license" is hereby amended to read as follows:

5.04.080 Issuance of license.

A. No license shall be issued until the application has been fully completed and all applicable ordinances have been fully complied with. In addition, any business requiring a state or federal license shall obtain the licenses and provide the town with proof of their issuance prior to the issuance of a town license or any renewal thereof.

B. A business license will not be issued for any activity that is known to violate local, state, and/or federal law, ~~except as otherwise specifically allowed pursuant to Chapter 69.50 RCW, Chapter 314-55 WAC, and Chapter 18.12 EMC, Recreational Marijuana.~~

C. The town shall not issue a town business license to a person who will operate as a marijuana or marijuana-infused producer, processor, researcher, or retailer, as such terms are defined in EMC section 8.12.020

Section 5. Eatonville Municipal Code section 5.04.125 “Disclaimer of town liability – Indemnification” is hereby amended to read as follows:

5.04.125 Disclaimer of town liability – Indemnification.

A. Issuance of a license pursuant to this chapter does not constitute the creation of a duty by the town to indemnify the licensee for any wrongful acts against the public, or to guarantee the quality of goods, services or expertise of a licensee. The issuance of a license does not shift responsibility from the licensee to the town for proper training, conduct or equipment of the licensee or his agents, employees or representatives, even if specific regulations require standards of training, conduct or inspection. Issuance of the license does not exempt the licensee from other required permits or licenses.

~~B. For all town business licenses issued to businesses operating under Chapter 69.50 RCW, Chapter 314 55 WAC, and Chapter 18.12 EMC, Recreational Marijuana:*~~

~~1. All licensees waive and release the town, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations; and~~

~~2. All licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the town, its officers, elected officials, employees, volunteers and agents, insurers and self insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational marijuana business that is the subject of the license.~~

Section 6. The Town Council adopts this ordinance pending additional input from the citizens of Eatonville on the issue of marijuana businesses operating within town limits. Thus, the Town Council may review this ordinance again if the following condition occurs:

1. An advisory vote is held in which a majority of the voting citizens of Eatonville vote in favor of allowing marijuana processors, producers, and/or retailers to conduct business within town limits.

Section 7. Pursuant to RCW 36.70A.106, this Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 8. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 9. This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 01/08/2018

2ND READING: 01/22/2018

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this ____ day of January 2018.

Mike Schaub
Mayor

ATTEST:

Kathy Linnemeyer
Town Clerk

APPROVED AS TO FORM:

Gregory A. Jacoby
Town Attorney

EXHIBIT A

Chapter 18.12

RECREATIONAL MARIJUANA LAND USES PROHIBITED

Sections:

- 18.12.010 Purpose.
- 18.12.020 Definitions.
- 18.12.030 Prohibited activities.
- 18.12.040 Uses not permitted in any zone.
- 18.12.050 Violations.
- 18.12.060 Enforcement.

18.12.010 Purpose.

A. The purpose of this chapter is to enact a prohibition of all recreational marijuana production, processing, and retailing, including those marijuana businesses licensed by the Washington State Liquor and Cannabis Board.

B. It is also the purpose of this chapter to stem the negative impacts and secondary effects associated with all marijuana uses, whether medical or recreational, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors; the exposure of school-age children and other sensitive residents to marijuana, and the potential for increased illegal sales to minors.

C. No part of this chapter is intended to or shall be deemed to conflict with federal or state law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, and the Uniform Controlled Substances Act, chapter 69.50 RCW.

18.12.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

“Marijuana” shall mean 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. For the purposes of this Ordinance, “cannabis” or “marijuana” 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; or industrial hemp as defined in RCW 15.120.010.

“Marijuana-infused products” shall mean products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration no greater than ten percent. The term “marijuana-infused products” does not include useable marijuana.

“Marijuana processor” shall mean a person licensed by the State Liquor and Cannabis Board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, usable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, usable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

“Marijuana producer” shall mean a person licensed by the State Liquor and Cannabis Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Marijuana retailer” shall mean a person licensed by the State Liquor and Cannabis Board to sell marijuana concentrates, usable marijuana, and marijuana-infused products in a retail outlet.

18.12.030 Prohibited activities.

A. It is unlawful to own, establish, site, operate, use or permit the establishment, siting, operation, or use of marijuana or marijuana-infused production, processing, or retail facility, regardless of whether it has a license from the Washington State Liquor and Cannabis Board.

B. It is unlawful to lease to, rent to, or otherwise allow the operation of any marijuana or marijuana-infused production, processing, or retailing business, whether it is located outdoors, indoors, in any building, structure, premises, location or on land in the Town and regardless of whether the activity has been licensed by the Washington State Liquor and Cannabis Board.

C. The town shall not issue any business license for any marijuana or marijuana-infused product businesses regardless of whether the business has been licensed by the Washington State Liquor and Cannabis Board. Any business license obtained in error or through misrepresentation of the activities conducted by the individual business shall be invalid and of no force and effect.

18.12.040 Uses not permitted in any zone.

The use of any building, structure, premises, location or land for marijuana or marijuana-infused production, processing, or retailing is not allowed in the Town, and such uses and activities are not permitted uses in any zone.

18.12.050 No vested or nonconforming rights.

Neither this chapter nor any other town ordinance, town action or failure to act, statement, representation, certificate, approval, or permit issued by the town or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any marijuana or marijuana-infused producer, processor, or retailer, even if licensed by the Washington State Liquor and Cannabis Board.

18.12.060 Violations.

Any violations of this chapter may be enforced as set forth in EMC chapter 18.10 or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this chapter may be deemed to be a public nuisance and may be abated by the town under the procedures set forth in EMC chapter 8.10 for the abatement of land use nuisances.