

# TOWN OF EATONVILLE

## Staff Report

Attention: \_\_\_\_\_  
Subject: Marijuana Moratorium  
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Date: October 24, 2016  
Prepared by: Kathy Linnemeyer  
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**Summary:** On November 23, 2016 Ordinance 2016-9 extending a 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 will expire.

The Mayor and Town Staff would like input from the Town Council as to whether or not they would like to extend the moratorium for an additional 6 months.

**ORDINANCE NO. 2016-9**

**AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, EXTENDING FOR SIX MONTHS A 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**

**WHEREAS**, in November of 2012, the Washington voters passed I-502, which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors, and retailers; and

**WHEREAS**, in November 2013, after notice and comment, the LCB adopted final rules to address: the methods for producing, processing, and packaging recreational marijuana; security requirements for retail outlets, retail outlet locations, and hours of operation; labeling requirements; methods of transport of product throughout the state; taxing of marijuana-related activities; and the creation of a dedicated fund consisting of marijuana excise taxes, license fees, penalties, and other income; and

**WHEREAS**, shortly after adopting the Final Rules, the LCB began accepting license applications and in March 2014 began issuing licenses for recreational marijuana businesses; and

**WHEREAS**, on December 9, 2013, the Town Council held a duly noticed public hearing and passed Ordinance No. 2013-15 extending interim regulations regarding recreational marijuana businesses in order to provide sufficient time for the Town to evaluate the State's implementation of regulations pursuant to Chapter 69.50 RCW and the siting and opening of marijuana businesses under I-502, as well as to provide basic guidance to prospective licensees; and

**WHEREAS**, on June 9, 2014, the Town Council adopted Ordinance No. 2014-3 extending the interim regulations for an additional six months, and those interim regulations expired on December 8, 2014; and

**WHEREAS**, on December 22, 2014, the Town Council adopted Ordinance No. 2014-19 extending the interim regulations for an additional six months, and those interim regulations expired on June 22, 2015; and

**WHEREAS**, on June 22, 2015, the Town Council adopted Ordinance No. 2015-4 extending the interim regulations for an additional six months, and those interim regulations expired on December 22, 2015; and

**WHEREAS**, in August and October 2014, Superior Courts in Pierce County and Chelan County ruled I-502 does not override local governments' preexisting authority to regulate local businesses, including recreational marijuana businesses, through zoning or otherwise, and at least one of these decisions has been appealed; and

**WHEREAS**, until the Washington State Supreme Court rules on the authority of local governments to prohibit recreational marijuana businesses there continues to be uncertainty and legal risk to the Town as to whether I-502 overrides local governments' preexisting authority to regulate local businesses, including recreational marijuana businesses, through zoning or otherwise; and

**WHEREAS**, in addition, the cultivation, possession, and distribution of marijuana has been and continues to be a violation of federal law through the Controlled Substances Act; and

**WHEREAS**, RCW 35.63.200 and RCW 36.70A.390 authorize a municipality to adopt, and subsequently extend, a moratorium for a specific purpose for up to six (6) months if a public hearing on the proposal is held within at least sixty (60) days of the moratorium's adoption; and

**WHEREAS**, moratoria enacted under RCW 35.63.200 and RCW 36.70A.390 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening developments; and

**WHEREAS**, the Eatonville Municipal Code does not currently have specific provisions addressing the production, processing, and retail sale of recreational marijuana; and

**WHEREAS**, on November 23, 2015, after holding a duly noticed public hearing, the Town Council adopted Ordinance No. 2015-15 establishing a six (6) month moratorium on the acceptance of any development permit application, business license application, or application for the siting, location, or operation of any producer, processor, or retail seller of recreational marijuana, which moratorium will expire on May 23, 2016; and

**WHEREAS**, the Town Council finds that extending the moratorium for an additional six (6) months concerning the acceptance of any development permit application, business license application, or application for the siting, location, or operation

of any producer, processor, or retail seller of recreational marijuana will protect the health, safety, and welfare of the citizens of Eatonville; and

**WHEREAS**, the Town Council finds the Town requires additional time to conduct appropriate research to understand the extent and validity of the changes provided in I-502, to analyze the impact of the Superior Court decisions and any future appellate court decisions, and the potential liabilities under federal law; and

**WHEREAS**, in addition to the legal issues, the Town must study further, without limitation, the zoning and land use implications of locating uses and facilities for the production, processing, and retail sale of recreational marijuana, and the associated impacts to the community; and

**WHEREAS**, based on the findings set forth above, the Town Council finds an extension of the moratorium is necessary to preserve the status quo; and

**WHEREAS**, the Town Council held a duly noticed public hearing at the regular Council meeting on November 23, 2015, to take public testimony regarding whether to extend the moratorium and to consider adopting further findings; now, therefore,

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

**Section 1. Findings.** The Town Council adopts all of the “Whereas” sections of this Ordinance as findings in support of this Ordinance. The Town Council, in its discretion, may adopt additional findings at the conclusion of the public hearing referenced above.

**Section 2. Moratorium Extended.** Pursuant to RCW 35.63.200 and RCW 36.70A.390, the previously adopted moratorium is hereby extended prohibiting within the Town of Eatonville 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 asserted to be authorized or actually authorized under Washington State Initiative 502.

**Section 3. Use Prohibited.** While this moratorium is in effect, the producing, processing, and retail sale of recreational marijuana or marijuana-infused products is hereby designated as prohibited in all zoning districts of the Town of Eatonville. No building permit, occupancy permit, or other development permit, and no business license application shall be accepted and no business license shall be issued for any of the purposes or activities listed herein.

**Section 4. Definitions.** As used in this Ordinance, all references to “marijuana,” “marijuana processing,” “marijuana producing,” “marijuana-infused products,” “marijuana

retailing,” “retail outlet,” and “useable marijuana” shall have the meaning set forth in RCW 69.50.101, as now or hereafter amended.

**Section 5. Duration.** This moratorium shall remain in effect until November 23, 2016 unless extended as provided in RCW 35.63.200 or unless earlier terminated by the Town Council.

**Section 6.** 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 7.** This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 05/23/2016  
2ND READING: Waived

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this \_\_\_\_ day of May 2016.

\_\_\_\_\_  
Mike Schaub  
Mayor

ATTEST:

\_\_\_\_\_  
Kathy Linnemeyer  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gregory A. Jacoby  
Town Attorney

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PUBLISHED ON FRIDAY, FEBRUARY 19, 2016

## Marijuana preemption bill fails to advance, others still alive

A few weeks ago we reported on a slew of marijuana bills making their way through the Legislature. Most did not directly affect cities, however, one caused significant concern as it would have preempted our ability to place bans and moratoriums on marijuana retailers, producers and processors. **HB 1438**, Rep. Dave Sawyer (D-Lakewood), did not make the cutoff deadline of February 17 and is presumed dead for the 2016 legislative session. Keep in mind, bills can be revived through various procedural moves, but for now we are quite confident it will not be advancing.

**HB 2494/SB 6486**, Rep. Gael Tarleton (D-Ballard) and Sen. Ann Rivers (R-La Center), would authorize the noncommercial delivery of marijuana and marijuana products in amounts equal to half of the current possession limits by a person 21 years of age or older to another person(s) 21 years of age or older. The bills reduce the penalties for possession and delivery of marijuana products in certain circumstances and require the marijuana concentrates to have been purchased from a marijuana retailer and be accompanied by packaging showing that the marijuana concentrates were purchased from a marijuana retailer.

AWC supports this legislation as a good middle ground. Currently, some jurisdictions are finding that it may be difficult for a county prosecutor to pursue a felony level case for some lower level possession crimes. This creates a misdemeanor level offense that a city could choose to prosecute.

**HB 2494** is still alive and has been referred to the Senate Law & Justice Committee. The Senate companion did not advance.

### Liquor and Cannabis Board (LCB) request legislation

**HB 2520/SB 6304**, Rep. Sharon Wylie (D-Vancouver) and Sen. Ann Rivers (R-La Center), deal with the sale of marijuana to regulated cooperatives.

These companion bills would provide a legal pathway for access to the starter plants that registered patients and cooperatives will need beginning in July 2016, by allowing licensed producers to sell directly to authorized patients. It is meant to address a technical oversight issue with cooperatives.

**HB 2520** is still alive. The Senate companion did not advance.

**HB 2521/SB 6303**, Rep. Sharon Wylie (D-Vancouver) and Sen. Ann Rivers (R-La Center), would allow for proper disposal of unsellable marijuana by a licensed marijuana retail outlet.

According to I-502, licensed marijuana retailers are statutorily restricted from destroying damaged, expired, or otherwise unsellable marijuana. They must return the product to the processor they purchased it from to be destroyed. However, in some circumstances retailers are unable to return the product. Either they've lost contact with the licensed processor, no longer conduct business together, or the processor has gone out of business.

These companion bills allow the LCB to provide a pathway to regulate and oversee the disposal of these unsellable products. The proposal would grant the LCB authority to develop rules for determining a procedure for retailers to properly dispose of this product.

**HB 2521** is still alive. The Senate companion did not advance.

**HB 2522/SB 6302**, Rep. Sharon Wylie (D-Vancouver) and Sen. Ann Rivers (R-La Center), would establish crimes related to minors entering, remaining in, or being served by a marijuana retail outlet.

Initiative 502 established the selling of marijuana by a licensed retailer (the owner or the employee) to a minor below the age of 21 as a felony. However, criminal penalties were not identified for minors attempting to enter and purchase marijuana at a licensed store.

This clarifies and strengthens the law, providing a misdemeanor penalty to the minor (who does not carry a

qualified medical authorization card) who enters a marijuana retail outlet, or misrepresents themselves as 21 or older. It makes it a gross misdemeanor for a store owner or employee to serve or allow a minor to enter a licensed retail outlet.

**HB 2522** is still alive. The Senate companion did not advance.

#### Other marijuana legislation

**HB 2369/SB 6305**, Rep. Chris Hurst (D-Enumclaw) and Sen. Ann Rivers (R-La Center), would expand Liquor and Cannabis Board officer enforcement authority.

These companion bills would give liquor enforcement officers the power and authority to enforce laws related to marijuana regulation and to serve and execute warrants under additional statutory codes. The officers may only exercise this authority while conducting their enforcement duties related to alcohol, tobacco and marijuana, or by working in partnership with state or local law enforcement officers.

Both bills failed to advance and are considered dead.

**SB 6207**, Sen. Ann Rivers (R-La Center), deal with public disclosure of information submitted to the Liquor and Cannabis Board regarding marijuana product traceability and operations.

Two exemptions are added to the Public Records Act concerning the disclosure of certain marijuana business records:

- Financial, commercial operations and security-related information supplied to the LCB for the purpose of obtaining, maintaining, or renewing a license; and information submitted to the LCB for marijuana product traceability purposes. This information includes marijuana product ownership, locations, contact information, movements of product, financial information, purchase and sale of marijuana, account numbers or unique identifiers and related information that would identify a person or location.
- Disclosure of these records is allowed for local, state and federal purposes.

**SB 6207** is still alive and has been referred to the House Commerce & Gaming Committee.

## New report out on Washington's marijuana legalization experience; not all findings are positive

The Northwest High Intensity Drug Trafficking Area has released its first report on the impact of marijuana legalization in the State of Washington. Similar reports have been published in Colorado by the Rocky Mountain High Intensity Drug Trafficking Area.

The detailed report, a federally funded endeavor, covers the history of marijuana in Washington since voters approved it for medical use in 1998. Findings include a still-thriving black market, hundreds of millions of dollars in revenue generated for the state in recreational sales, and a steady stream of marijuana diversion across state lines. Additionally, the study finds:

- There were seventeen THC extraction lab explosions in 2014. THC is the component of marijuana that produces the "high," and is used to make products like high-THC concentrates and oils. Extraction processes typically includes using highly flammable butane gas, which can be ignited by static electricity from clothing or even a refrigerator cycling.
- The incidents of marijuana-impaired driving are increasing. Drivers with active THC in their blood who were in a fatal driving accident rose 122 percent from 2010 (16) to 2014 (23) according to the Washington State Traffic Safety Commission.
- Washington State young adults (between 18 and 25) and use by adults older than 26 was five percent higher overall than the national average in 2012-2013.
- Phone calls related to marijuana edibles and other products infused with marijuana have taken a big leap at the Washington Poison Center since legalization, especially related to youth. The center has logged 312 percent more calls related to infused products, and calls related to marijuana oil jumped 350 percent over three years. A report published by the center in 2014 states that children under the age of 18 account for 50 percent of their intoxication calls related to chocolate and candy, with 25 percent of the reports related to goods baked with marijuana.
- Legal marijuana production is balanced fairly equally between counties in western Washington and eastern Washington, although the number of retail stores in western Washington far exceeds stores east of the Cascades. The counties with the highest total number of licenses issued (including producer, processor and retailer) are King, Snohomish, Spokane, and Okanogan, with Spokane County the highest at 189, of which, 97 are licensed growers. Okanogan has the second highest number of licensed growers at 42.

The full report can be downloaded [here](#). New reports are scheduled to be produced yearly to track long-term impacts of marijuana legalization in Washington State.

## Few changes to marijuana law passed in 2016, big changes ahead in July

After passing significant changes in 2015 to the medical and recreational marijuana industry, little action occurred in 2016. The Legislature passed two Liquor and Cannabis Board (LCB) request bills clarifying some aspects of what was adopted in 2015.

Cities and counties continue to strongly oppose attempts to preempt local regulatory authority. We opposed two different bills that would have prohibited cities from banning marijuana related businesses, **HB 1438** and **HB 2998**. We expect that there will still be interest in preempting cities in 2017, so it is imperative that you talk about the importance of local authority with your legislators leading up to January.

The primary changes to the marijuana industry for 2016 are the result of legislation from 2015 that become effective later this year. Effective July 1, 2016 the only marijuana businesses that are authorized in state law are those with state-issued licenses. The LCB is currently processing licenses for the new applicants. The LCB, consistent with existing rules, is providing cities with notice of license applications and giving them 20 days to comment. There are still questions about what will happen to businesses that do not have state licenses as of July 1, but it appears that it will be up to the local jurisdiction to insist that they cease operations. If you have questions about these changes, we encourage you to contact the LCB, [www.lcb.wa.gov](http://www.lcb.wa.gov).

## New marijuana law changes take effect July 1

Changes to marijuana laws adopted in 2015 will be taking effect on July 1. The primary changes that we are tracking involve the medical marijuana industry. Effective July 1, only state-licensed marijuana businesses may operate. Therefore, all unlicensed medical collectives and or dispensaries must close on that date. Additionally, July 1 is when four-person medical cooperatives that have a permit from the Liquor and Cannabis Board (LCB) may begin growing for their own use, but they may not sell their products. It is also when patients will be able to register with the patient database.

AWC recently hosted a webinar on the upcoming changes with LCB and MRSC staff to address the changes and how they will impact cities. You can watch the one hour webinar [here](#).

AWC also participated in a press conference call hosted by LCB on June 15. The purpose of the call was to provide the news media with an update of the changes on July 1. Here is the press release issued by the LCB.

The closure of the unlicensed medical marijuana collectives and dispensaries is a primary focus for many cities. The burden of making sure that unlicensed businesses actually close will fall to local jurisdictions. The LCB and other state agencies are looking to cities and counties to enforce that change. The LCB would like to work with cities to provide assistance where and when they can. One of the tools the LCB will have is an administrative seizure process for seizing and destroying unregistered marijuana and marijuana products. They can help by partnering with cities to seize unregistered product, essentially forcing the business to close.

For more information about the law changes and the resources of the LCB, you can visit their [new medical marijuana transition webpage](#)

On June 13, the LCB also updated the House Commerce & Gaming Committee on the state of the marijuana industry and the progress on licensing marijuana businesses. Here is a [link to their presentation materials](#).

### **LCB answers some common questions about recreational marijuana licensing**

Check out this video featuring Liquor and Cannabis Board Director Rick Garza and Licensing Director Becky Smith answering some cities' most common questions about licensing recreational marijuana businesses.

Categories: Marijuana, Public safety & criminal justice

## New medical marijuana database up and running

Effective July 1, the state medical marijuana authorization database went live for input at medically endorsed retail stores throughout Washington. However, some stores may not be ready to begin to input data and create recognition cards. Here is a link to the Department of Health map of where the medical stores are located (indicated by the blue pin).

Medical marijuana patients who sign up for the authorization database are eligible to:

- Purchase marijuana products sales-tax free.
- Purchase up to three times the current legal limit for recreational users.
- Purchase high-THC infused products.
- Grow more than four plants in their residence.
- Have full protection from arrest, prosecution, and legal penalties, although patients will still have an affirmative defense.

The establishment of the medical marijuana database is part of a number of changes that took effect on July 1 that were part of legislation adopted in 2015. The other major change is that all marijuana businesses must have a state license to continue operating after July 1.

For more information about the medical marijuana database visit the Department of Health website.

Categories: Marijuana

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PUBLISHED ON FRIDAY, JULY 22, 2016

## Marijuana revenue sharing begins second year

Next month eligible cities will begin receiving the second year of marijuana excise tax revenue distributions. Marijuana excise tax revenue sharing was adopted in 2015 and quarterly distributions began in September 2015. The state's fiscal year 2017 began in July, and the distributions will again occur quarterly (September, December, March, and June). As spelled out in the 2015 legislation, cities and counties will share \$6 million, with distribution amounts based on the taxable retail sales within each jurisdiction. Overall, counties will receive 60 percent and cities 40 percent. For cities, only jurisdictions containing retail sales outlets will receive funding.

Because revenue distributions are based on the taxable retail sales generated during the prior fiscal year, it is likely that revenue distributions for the coming fiscal year will be very different than last year. That is due to a number of new retailers opening up in different communities around the state, which changed the landscape for retail sales dramatically.

According to the Liquor and Cannabis Board (LCB), total marijuana sales in FY 2016 were \$972,729,675 and the total tax obligation was \$185,786,493. The LCB has issued 405 retail licenses. For more information on current retail locations and revenues, visit the LCB's website.