

PLANNING COMMISSION MEETING

August 6, 2014
AGENDA

I. CALL TO ORDER – 7:00 p.m., Council Chambers

II. ROLL CALL/ESTABLISHMENT OF QUORUM

III. APPROVAL OF MINUTES

A. July 8, 2014

IV. PUBLIC COMMENT

Comment from the audience on any item not listed on the agenda for discussion or public hearing.

V. PLANNING DEPARTMENT REPORT

Update on Planning and Development Department activities.

VI. PUBLIC HEARINGS

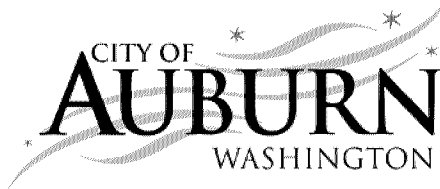
A. ZOA14-0003 – Proposed Amendment to Auburn City Code* (Jones)

Summary: Staff to provide two (2) proposed amendments to zoning code section 9.22.010 or ACC 1.04.060, 5.10.040, 9.22.010, 18.02.020, and 18.07.010 relating to recreational marijuana for consideration.

VII. ADJOURNMENT

The City of Auburn Planning Commission is an eight member advisory body that provides recommendations to the Auburn City Council on the preparation of and amendments to land use plans and related codes such as zoning. Planning Commissioners are appointed by the Mayor and confirmed by the City Council.

Actions taken by the Planning Commission are not final decisions; they are in the form of recommendations to the City Council who must ultimately make the final decision.



**DRAFT
PLANNING COMMISSION**

July 8, 2014

MINUTES

I. CALL TO ORDER

Chair Judi Roland called the meeting to order at 7:00 p.m. in the Council Chambers located on the first floor of Auburn City Hall, 25 West Main Street, Auburn, WA.

II. ROLL CALL/ESTABLISHMENT OF QUORUM

Planning Commission Members present were: Chair Judi Roland, Commissioner Couture, Commissioner Mason, and Commissioner Smith. Vice-Chair Copple and Commissioner Baggett are excused. Commissioner Pondelick is recused.

Staff present included: Planning and Design Services Manager Elizabeth Chamberlain, City Attorney Dan Heid, Senior Planner David Jones, and Planning Secretary Tina Kriss.

Members of the public present: COA Police Commander Mark Caillier, Dale Woolf and James Blankenship.

III. APPROVAL OF MINUTES

A. June 3, 2014

Commissioner Smith moved and Commissioner Mason seconded to approve the minutes from the June 3, 2014 meeting as written.

MOTION CARRIED UNANIMOUSLY 4-0

IV. PUBLIC COMMENT

There were no public comments on any item not listed on the agenda for discussion or public hear.

V. PLANNING DEPARTMENT REPORT

Planning and Design Services Manager Elizabeth Chamberlain provided an updated organizational chart for the Community Development Services division since merging with Public Works as the Community Development and Public Works Department.

The Imagine Auburn draft vision report has been issued and reviewed by City Council at the Committee of the Whole meeting June 30th, 2014. Staff will be providing a copy of the report as soon as it is finalized; the report will be used to guide the City through the Comprehensive Plan update.

The Hearing Examiner has approved CUP14-0001 and CUP14-0002, with specific conditions. The CUPs, regarding Communal Residences, went before the Hearing Examiner at the May 28, 2014 Public Hearing. The City Council has also enacted a one (1) year moratorium on communal residences; continued discussions will take place to review policy direction. The Communal Residence topic will be brought before the Planning Commission for further discussion.

The Commission asked staff for a copy of the Hearing Examiner decision on the CUPs, staff confirmed a copy will be provided to the Commission.

VI. OTHER BUSINESS

A. Comprehensive Plan Overview

Planning and Design Services Manager Elizabeth Chamberlain provided an overview of the comprehensive plan amendment process, including how the state requirements and regional documents relate to Auburn's Comprehensive Plan update and the required and optional elements.

Staff explained the timeline of the plan update, the goal will be to provide the Planning Commission with a draft in late fall.

B. Recreational Marijuana

Senior Planner Jones provided an overview regarding I-502 and reviewed the draft code language for Option 1, Prohibition of State Licensed Marijuana Uses, and Option 2, No City Permitting of Marijuana Uses but allowing for City enforcement of State Licensed Marijuana Requirements.

Staff reviewed the local jurisdictions actions on recreational marijuana to date. The Commission and staff discussed the proposed amended language in Auburn City Code (ACC) 9.22.010 regarding exceptions.

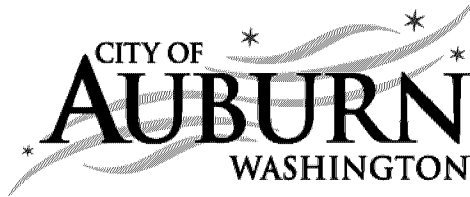
After reviewing the proposed draft code language the Commission determined that they would like to hold a Public Hearing on Recreational Marijuana to present the draft ordinances drawn up for Option 1 and Option 2.

Staff will draft the proposed ordinances and code language for Option 1 and Option 2 to present at a public hearing at the August 6th, 2014 meeting.

Due to the City holding their National Night Out August 5, 2016, the next Planning Commission meeting will be held Wednesday, August 6, 2014 at 7:00 p.m.

VII. ADJOURNMENT

There being no further business to come before the Planning Commission, Chair Roland adjourned the meeting at 8:23 p.m.



MEMORANDUM

TO: Judi Roland, Chair, Planning Commission
Ron Copple, Vice-Chair, Planning Commission
Planning Commission Members

CC: Nancy Backus, Mayor
Jeff Tate, Assistant Director, Community Development Services
Elizabeth Chamberlain, AICP, Planning Services Manager
David L. Jones, AICP, Senior Planner

FROM: Daniel B. Heid, City Attorney

DATE: August 1, 2014

RE: Marijuana – Public Hearing – Record Documents

A. Introduction.

On the 6th day of August, 2014, the Auburn Planning Commission is scheduled to conduct a public hearing to consider amendments to the Auburn City Code (ACC). Two draft proposals have been prepared - Option 1, a prohibition of State licensed marijuana uses (amending ACC 9.22.010) and Option 2, a proposal that would not have the City as the permitting agency of any marijuana activities but would put the City in the position of enforcing [prosecuting violations of] State licensed marijuana requirements (amending ACC 1.04.060, 5.10.040, 9.22.010, 18.02.020 and 18.07.010).

B. Procedural Background.

On September 16, 2013, the City Council passed its Resolution No. 4992 imposing an initial one-year moratorium on the acceptance of applications for, and issuance of licenses and permits for marijuana related activities, including, marijuana production, processing and retailing within the City of Auburn

C. Proposed Amendment to Auburn City Code.

In response to the direction of the City Council, staff, working with the Planning Commission, prepared two alternate proposed ordinances, as follows:, as follows:

Option 1, involving the Prohibition of Marijuana within the City, proposing to amend Section 9.22.010, as follows:

9.22.010 Marijuana prohibited.

A. Except as authorized under United States Code (USC) Title 21: Controlled Substances Act by the Revised Code of Washington, it is unlawful for any person or persons to grow, manufacture, process, deliver, grow, or possess sell marijuana.

B. Except as authorized by the Revised Code of Washington, it is unlawful for any person to possess marijuana.

C. "Marijuana," also known as "marihuana" means all parts of the plant of the genus cannabis Cannabis sativa L., whether growing or not; the seeds thereof; the resins extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the such plant, its seeds or resin, and includes all marijuana concentrates, useable marijuana, and marijuana-infused products. It Such term does not include the mature stalks of the such plant, fiber produced from the such stalks, oil or cake made from the seeds of the such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the such mature stalks (except the resins extracted therefrom), fiber, oil, or cake, or the sterilized seed of the such plant which is incapable of germination.

D. Violation of the provisions of this Section shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein. (Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

Option 2, authorizing the City to take enforcement action to assure that there is compliance with the state regulations involving Initiative 502, whereby the City would be an enforcing entity but not the permitting or licensing agent for marijuana related business. This Option proposes to amend Sections 1.04.060, 5.10.040, 9.22.010, 18.02.020 and 18.07.010 [Intent of Residential Zone] of the Auburn City Code, as follows:

1.04.060 Conflict of ordinances with state or federal law.

A. All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void. This The provisions of this Section does do not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances, and the city is not authorized to permit, or license such action, use or conduct.

B. Any action, use or conduct which is not permitted or allowed is prohibited. It is provided, however, that the provisions of this Subsection B do not apply to any person or persons who has/have a valid, lawful license issued by the State of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products and is acting in full conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. In such instances, the

State of Washington, not the city, is the permitting and licensing entity. It is provided, however, that this provision does not preclude the city from taking enforcement action in instances where conduct or activity that is licensed or permitted under Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC occurs within the City of Auburn but is not in compliance with or violates the requirements of such state licensing or permitting. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein. (Ord. 6416 § 3, 2012.)

5.10.040 General business license required - Exception.

A. Any person desiring to establish or conduct any business enterprise or undertaking as defined in ACC 5.10.020 within the corporate limits of the city, shall first apply to the business license clerk, as designated by the mayor, for a license to conduct such business and obtain such license as approved by the city. The application shall be upon a form furnished by the business license clerk on which the applicant shall state the business name, address, and telephone number; the nature of the business activity or activities in which the applicant desires to engage; the place where the business will be conducted; the number of employees, and the name of the contact person along with an address and telephone number, and the business identification number issued by the state of Washington; and the IRS letter testifying to nonprofit status or the copy of the application to the IRS.

B. It is unlawful for any person to operate or physically conduct any business within the city without having first obtained a general business license for the current business year or portion thereof. The applicant for a business license required under this title shall be over the age of 18 years. If any person required to pay a license fee, by the terms and provisions of this chapter, for any period fails or refuses to do so, they shall not be granted a license for the current period until such delinquent license fee, together with penalties, has been paid in full.

C. Specific businesses identified in Chapters 3.80, 3.84, 3.88, 5.20, 5.30, 5.84 ACC or elsewhere in this title or other titles of the Auburn City Code will be required to obtain an individual business license as otherwise indicated.

D. Any business within the city jurisdiction on any project requiring a permit must have a business license.

E. Exception to city business licensing requirement. A business license is not required by the city of any person or persons who has/have a valid, lawful license issued by the state of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products in conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. (Ord. 5897 § 3, 2005; Ord. 5814 § 2, 2004; Ord. 5754 § 1, 2003; Ord. 4012 § 2, 1984.)

9.22.010 Marijuana prohibited.

A. Except as authorized under United States Code (USC) Title 21: Controlled Substances Act by the Revised Code of Washington, it is unlawful for any person or persons to grow, manufacture, process, deliver, grow, or possess sell marijuana.

B. Except as authorized by the Revised Code of Washington, it is unlawful for any person to possess marijuana.

C. "Marijuana," also known as "marihuana" means all parts of the plant of the genus ~~cannabis~~ Cannabis sativa L., whether growing or not; the seeds thereof; the resins extracted from any part of the plant; and every compound, manufacture, salt,

derivative, mixture, or preparation of ~~the such~~ plant, its seeds or resin, and includes all marijuana concentrates, useable marijuana, and marijuana-infused products. ~~It~~ Such term does not include the mature stalks of ~~the such~~ plant, fiber produced from ~~the such~~ stalks, oil or cake made from the seeds of ~~the such~~ plant, any other compound, manufacture, salt, derivative, mixture, or preparation of ~~the such~~ mature stalks (except the resins extracted therefrom), fiber, oil, or cake, or the sterilized seed of ~~the such~~ plant which is incapable of germination.

D. It is unlawful for any person or persons who has/have a license issued by the state of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products to fail to comply with or violate any of the requirements of the state of Washington related to such license issued by the state of Washington, including, but not limited to the requirements of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein.

E. Violation of the provisions of this Section shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. (Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

18.02.020 Authority to adopt code.

A. The City of Auburn comprehensive zoning ordinance is adopted by City of Auburn ordinance, pursuant to Article XI, Section 11 of the Washington State Constitution, the State Growth Management Act, RCW Title 35A, Optional Municipal Code, and Chapter 36.70B RCW. In accordance with ACC 1.04.060, and

B. ~~notwithstanding~~ Notwithstanding any provisions otherwise, this title does not permit or allow any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any action, use or conduct which is prohibited by state or federal law is prohibited hereby. It is provided, however, that the provisions of this Subsection B do not apply to any person or persons who has/have a valid, lawful license issued by the State of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products and is acting in full conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. In such instances, the State of Washington, not the city, is the permitting and licensing entity. It is provided, however, that this provision does not preclude the city from taking enforcement action in instances where conduct or activity that is licensed or permitted under Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC occurs within the City of Auburn but is not in compliance with or violates the requirements of such state licensing or permitting. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein. (Ord. 6416 § 4, 2012; Ord. 6245 § 2, 2009.)

18.07.010 Intent.

A. General. This section describes the intent for each of the city's residential zones. These intent statements may be used to guide the interpretation of the regulations associated with each zone.

B. (RC) Residential Conservancy Zone – One Dwelling Unit per Four Acres. The RC residential conservancy zone is intended primarily to provide for low-intensity single-family residential uses with characteristics of an agricultural environment; provided, that the agricultural uses are secondary to the single-family uses. These areas allow for a lifestyle similar to that of rural areas that includes allowance of farm animals and streets without sidewalks. This zone is intended to protect areas with significant environmental constraints or values from impacts typically associated with urban levels of development while allowing low-intensity development designed to minimize impacts on the natural environmental features designated for conservation.

Public improvements required within the R-C zone will be less than is normally required for the higher intensity residential zones within the city.

This zone shall only be applied in areas designated as residential conservancy on the comprehensive plan. This zone shall allow one dwelling unit per four acres minimum lot area.

C. R-1 Residential Zone – One Dwelling Unit per Acre. The intent of the R-1 residential zone is to provide areas for estate-type residential development on large lots. This zone would normally be located in the areas particularly suited for such development.

Appropriate development standards required of other urban areas shall be required to serve this zone.

D. R-5 Residential Zone – Five Dwelling Units per Acre. The R-5 single-family residential zones are intended to create a living environment of optimum standards for single-family dwellings. It is further intended to achieve development densities of four to five dwelling units per net acre. This zone will provide for the development of single-family detached dwellings and for such accessory uses as are related, incidental and not detrimental to the single-family residential environment.

E. R-7 Residential Zone – Seven Dwelling Units per Acre.

The R-7 single-family residential zones are intended to create a living environment of optimum standards for single-family dwellings. It is further intended to achieve development densities of five to seven dwelling units per net acre. This zone will provide for the development of single-family detached dwellings and for such accessory uses as are related, incidental and not detrimental to the residential environment.

F. R-10 Residential Zone – 10 Dwelling Units per Acre. The R-10 residential zones are intended to permit some increase in population density in those areas to which this classification applies by permitting single-family dwellings and duplexes on a minimum size lot while at the same time, by means of the standards and requirements set forth in this chapter, maintaining a desirable family living environment by establishing minimum lot areas, yards and open spaces. A related consideration is to provide a transition between single-family areas and other intensive designations or activities which reduce the suitability for single-family uses.

G. R-16 Residential Zone – 16 Dwelling Units per Acre. The R-16 zone is intended to provide for medium density multiple-family residential

development as designated in the comprehensive plan, and is further intended as a residential zone of single, duplex and multiple-family residences, except as specifically provided elsewhere in this chapter.

H. R-20 Residential Zone – 20 Dwelling Units per Acre. The R-20 zone is intended to provide for multiple-family residential development and is further intended as a residential zone primarily of multiple-family residences, except as specifically provided elsewhere in this chapter. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use.

I. Except as specifically provided in the city code, no business or commercial use shall be allowed in a residential district of the city that does not have a city of Auburn business license. (Ord. 6245 § 5, 2009.)¹

Initially, three alternatives were identified, with the third alternative - Option 3 - being one involving the city of Auburn actually becoming the licensing and permitting agency, rather than just relying upon state regulations. In this instance, the city of Auburn would likely depart from the state regulations in some fashion or another, perhaps making the regulations more stringent or identifying more particularly zoning limitations. However, as noted below, there are disadvantages with the City being the licensing and permitting agency.

D. Reasons for Options.

The option of the City becoming the permitting agency was discarded by the planning commission and not recommended by city staff because it included liability exposures stemming from the fact that marijuana is (still) illegal under federal law, and even though state law may decriminalize marijuana related activities, city involvement in permitting or licensing marijuana related businesses could pose jeopardy for those city employees who would, in essence, be violating federal law.

The two options avoided city licensing and permitting activities of marijuana businesses, with Option 1 providing for a prohibition of marijuana activities within the city, though that does not mean that the city would be enforcing possession of marijuana consistent with what used to be the case prior to the passage of Initiative 502; and Option 2 allowing the city to take enforcement action to assure compliance with the state regulations for marijuana related businesses, though, still, keeping the city out of the actual permitting and licensing role. The rationale can be summarized as follows:

¹ NOTE: The inclusion of ACC Section 18.07.010 among the code sections being amended is to address the issue of placement of marijuana related businesses in residential zones, something that is not precluded or prohibited by state regulations. By prohibiting any business (except as specifically provided) from being located in a residential zone that does not have a City of Auburn business license, marijuana businesses would be precluded from being located in residential zones as they would not have a city of Auburn business license. Again, this is because neither the initiative nor the RCW or WAC provisions preclude placement of marijuana related businesses in residential zones. Ironically, the initiative and the state regulations do expressly prohibit locating a marijuana business in a residence (and occupied residence), but that is the only prohibition related to residential properties.

(1) Marijuana remains illegal under federal law. The 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.

(2) The City of Auburn has been granted constitutional authority to enact legislation regulating land uses within its jurisdiction so long as such local legislation is consistent with [not in conflict with] the general laws (Constitution Article 11, Section 11). Essentially, notwithstanding voter approval of initiative 502, action by the city in developing and promulgating regulations relating to marijuana related businesses would have the city taking action in conflict with the general laws, in this case federal law.

(3) Some have argued that city do not have the right to take action inconsistent with state law, even voter approved initiative state law, however, the law dictates when state law preempts local action, and that does not apply in this instance. Nothing in Initiative Measure No. 502 ("Initiative 502") decriminalizing possession, use and delivery of specified amounts of marijuana and authorizing the Washington State Liquor Control Board (WSLCB) to develop and implement regulations for the licensing of marijuana production, processing and retailing expressly or impliedly preempts the City of Auburn, or any city in the state, from exercising its land use regulatory authority, including the ban of marijuana production, processing and retailing within city limits. This is not only consistent with the language of the initiative, but it is the conclusion reached by the state attorney general in AGO 2014 No. 2.

(4) The prohibition of marijuana production, processing and retailing within the City of Auburn does not contravene the purposes of Initiative 502, and does not alter the provisions of Initiative 502 that authorize the WSLCB to designate the maximum number of marijuana retail outlets in each county. If a local ban is enacted by the City of Auburn, the number of retail outlets allocated by the WSLCB to the City of Auburn become "at large" retail locations. At large retail outlets can be located in the unincorporated county or any other city not allocated a number of retail outlets, all in accordance with the provisions of Initiative 502.

(5) While Initiative 502 contains restrictions prohibiting location of marijuana production, processing and retail outlets within 1,000 feet of public schools, public parks, public libraries and other protected uses, it does not contain restrictions prohibiting location of marijuana licensed facilities within residential districts, community recreational trails, or private parks, facilities and areas that serve the public.

(6) Studies reporting secondary effects associated with analogous medical marijuana dispensaries in other cities and counties include reports of murders, robberies, burglaries, drug dealing, sales to minors, loitering, heavy foot and vehicle traffic, increased noise, odors, health hazards such as proliferation of molds; See, "White Paper on Marijuana Dispensaries," California Police Chiefs Association's Task Force on Marijuana Dispensaries (April 22, 2009) was issued ("CAPCA White Paper"); City of Riverside v. Inland Empire Patients Health and Welfare Center, 56 Cal.4th 729, 756, 300 P.3d 494 (2013).

(7) Initiative 502 does not require that any city allow the location of any marijuana production, processing or retailing facility within its jurisdiction. Regulations adopted by the WSLCB implementing Initiative 502 specifically state that any license issued by the WSLCB does not constitute approval of the location of the licensed facility within any city. Such uses are subject to the land use regulations of the city.

(8) If the City of Auburn opted not to actually prohibit marijuana businesses within the city, it could rely upon the state regulations to address the concerns it has, and could, actually, preserved for itself the authority to enforce those regulations without it being the permitting and licensing agency. As an illustration, this is not that much different than the fact that local police officers and city prosecutors can prosecute violators who drive without a license even though the city does not issue driver's licenses. The state regulations do impose restrictions on marijuana businesses, including setbacks from certain sensitive uses, requirements of security and signage, among others. So long as the city can live with those restrictions, the city does not need to be the licensing and permitting agency, and that keeps the city out of the dilemma of fighting its employees essentially violating federal law in support of businesses licensed under the authority of state law.

E. Referenced Documents.

The following documents, many of which have been previously provided to the Planning Commission, or have been referenced in the materials or are the basis of opinions and positions taken in connection with and in preparation of the draft proposals for Options 1 and 2 [descriptions of which are provided for ease of reference]:

(1) Initiative Measure No. 502. [This is the voter approved initiative that such to decriminalize/legalize certain marijuana activities, providing for licensing and permitting under a state law scheme for producers, processors and retailers of marijuana. This initiative did not relate to medical marijuana, but to marijuana generally or as is often referred to, recreationally.]

(2) Sections 69.50.301 - 369 RCW. [These statutory provisions are the codification of Initiative Measure No. 502.]

(3) Chapter 314-55 WAC, regulations adopted by the Washington State Liquor Control Board implementing Initiative 502. [Consistent with the language of Initiative Measure No. 502, the Washington State Liquor Control Board was charged with developing regulations for the marijuana activities - production, processing and retailing - to be licensed and permitted in accordance with the initiative. These WAC provisions were the product of the Liquor Control Board's regulatory efforts.]

(4) City of Auburn Resolution No. 4992, enacting initial moratorium. [This Resolution was the initial resolution imposing a moratorium on marijuana related activities within the city of Auburn, initially for one year with a work plan, which moratorium is consistent with the authorization available to cities under RCW 35A.63.220.]

(5) Memorandum dated August 29, 2013 from U.S. Department of Justice, Office of the Deputy Attorney General, regarding marijuana enforcement in states of Colorado and Washington. [This memorandum identifies the proposition that even though the federal

government is willing to hold off on prosecution of marijuana violations related to marijuana activities licensed and permitted under state law, marijuana is still illegal under federal law and the federal government does not give up its right to pursue prosecution of marijuana cases as it deems fit.]

(6) Washington State Attorney General Opinion AGO 2014 No. 2. [This AGO gives the opinion of the state Attorney General that cities do have the authority to determine whether or not to permit marijuana activities within their jurisdictions notwithstanding state law - per the initiative - that makes marijuana activities legal.]

(7) "White Paper on Marijuana Dispensaries," submitted by California Police Chiefs Association Task Force on Marijuana Dispensaries (April 22, 2009). [Even though this white paper actually deals with medical marijuana - not an issue in connection with Initiative 502, this white paper does identify societal concerns regarding the use of marijuana.]

(8) Letter of April 29, 2011, from Governor Christine Gregoire to the Washington State Senate regarding partial veto of Engrossed Second Substitute Senate Bill 5073. [This letter explains the concern that Gov. Gregoire had, prompting her to veto portions of the medical marijuana legislation approved by the legislature because she did not want to expose state employees to possible prosecution for violation of federal law, since marijuana is still illegal under federal law.]

(9) *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 LEd. 2d 1 (2005). [This case is a United States Supreme Court case that upheld the authority of the federal government to regulate marijuana as an illegal substance.]

(10) *City of Riverside v. Inland Empire Patients Health and Welfare Center*, 56 Cal. 4th 729, 756, 300 P.3d 494 (2013). [This case, White Paper on Marijuana Dispensaries, identifies societal concerns regarding the use of marijuana.]

(11) Controlled Substances Act (part) - 21 USC § 812. [This is the federal law that provides that marijuana is illegal, and, further, finds that it has a potential for abuse, has no current accepted medical use in treatment in the United States, and that there is a lack of accepted safety for use of it under medical supervision.]

(12) *Cannabis Action Coalition v. City of Kent*, 322 P.3d 1246 (2014). [This is a recent State Court of Appeals case in which the Court held that (1) amendments to the Medical Use of Cannabis Act did not legalize medical marijuana or collective gardens; (2) the Governor's veto message was the sole source of relevant legislative history to be considered in interpreting the amendments that were enacted following her sectional veto; (3) cities were authorized to enact zoning requirements to regulate or exclude collective gardens; and (4) Kent's ordinance did not conflict with state law.]

If any of the commissioners wish to have copies or review any of these documents, please let us know and the documents will be provided for access will be arranged.

Note: As an aside, it should be recognized that even though it provided for significant tax revenue to be collected (25% each) from producers, processors and retailers, Initiative 502 did not provide any tax revenue to local governments, cities and counties, those entities that will be responsible for contending with the problems of marijuana abuse either in the business setting or in the potential for increased traffic impacts/impaired drivers.

F. Attachments

The following documents are attached hereto.

- (1) (Proposed Draft) Findings of Fact, Conclusions of Law and Recommendation to City Council - Option 1: Prohibition of State Licensed Marijuana Uses. These are subject to the Planning Commission's review and revision.
- (2) (Proposed Draft) Findings of Fact, Conclusions of Law and Recommendation to City Council – Option 2: Allowing for City Enforcement of State Licensed Marijuana Requirements but without the City being the Permitting agency for Marijuana Uses. These are subject to the Planning Commission's review and revision.
- (3) (Proposed) Ordinance No. 6525, amending ACC 9.22.010 prohibiting marijuana production, processing and retailing – Option 1.
- (4) (Proposed) Ordinance No. 6525, amending ACC 1.04.060, 5.10.040, 9.22.010, 18.02.020, and 18.07.010 allowing the City to enforce compliance with state licensing of marijuana activities (production, processing and retailing) but without the City being the permitting agency – Option 2.
- (5) Affidavit of Publication for Notice of Public Hearing, and Notice of Public Hearing Posted on the City of Auburn Website
- (6) Preliminary I-502 Zoning Map

PROPOSED PLANNING COMMISSION FINDINGS AND CONCLUSIONS AND
RECOMMENDATION – Option 1 – Prohibition of Marijuana [Ordinance No. 6525]

1. The Planning Commission of the City of Auburn has held and conducted various public meetings and authorized a public workshop to address marijuana production, processing and retailing, as defined in Initiative 502 and its implementing regulations, and has held an open public hearing on the 6th day of August 2014; and

2. The City of Auburn has in its City Code a provision that precludes enactment of City ordinances that are in conflict with state or federal law, as follows:

1.04.060 Conflict of ordinances with state or federal law.

All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void. This provision does not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances. Any action, use or conduct which is not permitted or allowed is prohibited;

and

3. On November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 ("Initiative 502"), now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 of the Revised Code of Washington (RCW), which Initiative (a) decriminalized possession and use of certain amounts of marijuana and marijuana paraphernalia; (b) amended state laws pertaining to driving under the influence of intoxicants to include driving under the influence of marijuana; and (c) authorized promulgation of regulations and issuance of licenses by the Washington State Liquor Control Board ("WSLCB") for the production, processing and retailing of marijuana; and

4. The United States Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. No. 91-513, 84 Stat. 1236, creating a comprehensive drug enforcement regime called the Controlled Substances Act, codified

as 21 USC § 801-971, whereby controlled substances are placed in specific schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance; and

4. Under the Controlled Substances Act, marijuana is listed as a "Schedule I" controlled substance in 21 USC § 812(c), Schedule I(c)(10); and

5. Under the Controlled Substances Act, it is unlawful to possess a controlled substance, except as authorized under the Controlled Substances Act, and it is also unlawful to knowingly or intentionally "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance," except as otherwise provided in the [federal] statute; and

6. Under the Controlled Substances Act, in order for a substance to be designated a Schedule I controlled substance under the Controlled Substances Act, it must be found that the substance: (1) has a high potential for abuse, (2) has no currently accepted medical use in treatment in the United States; and (3) that there is a lack of accepted safety for use of the substance under medical supervision; and

7. In *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005), the United States Supreme Court held that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act, and that, under the Supremacy Clause of the U.S. Constitution, the federal Controlled Substances Act will prevail over any conflicting state law; and

8. Paragraph 11 of Section 314-55-020 of the Washington Administrative Code (WAC), promulgated by the WSCLB under the authority of Initiative 502, describes the license permit process and includes the following limitation:

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements;

and

9. Article 11, § 11 of the Constitution of the State of Washington, the general police powers granted to cities, empowers and authorizes the City of Auburn to adopt regulations, land use and otherwise, that are not to be in conflict with general laws; and

10. One of the primary purposes of the Growth Management Act is to empower cities planning under the Act to develop and adopt land use controls reflecting the local needs of the community, and as provided in RCW 36.70A.010: "[i]t is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning;" and

11. The Attorney General of the State of Washington and the City Attorney for the City of Auburn have concluded that Initiative 502 does not preempt the City of Auburn from exercising and administering its constitutional and statutory land use regulatory authority to either allow and regulate land uses within the corporate limits of the City, or to prohibit and ban such uses; and

12. The prohibition of marijuana production, processing and retailing as defined by Initiative 502 and regulations promulgated thereunder is consistent with federal law and not in conflict therewith; and

13. Documented secondary effects associated with analogous medical marijuana dispensaries in other cities and counties include murders, robberies, burglaries, drug dealing, sales to minors, loitering, heavy foot and vehicle traffic, increased noise, odors, health hazards such as proliferation of molds; and

14. The prohibition of marijuana production, processing and retail uses within the City of Auburn is the only effective means to protect residential districts, recreational facilities, families and children within the City of Auburn; and

15. The prohibition of marijuana production, processing and retailing is subject to the authority and general police power of the City to develop specific and appropriate land use controls regarding such uses, and such amendments would not constitute regulation of the individual use of marijuana as authorized by Initiative 502; and

16. Section 9.22.010 of the Auburn City Code should be amended, as set forth below, to prohibit within the City of Auburn marijuana production, processing and retailing, as defined in Initiative 502 and its implementing regulations:

9.22.010 Marijuana prohibited.

A. Except as authorized under United States Code (USC) Title 21: Controlled Substances Act by the Revised Code of Washington, it is unlawful for any person or persons to grow, manufacture, process, deliver, grow, or possess sell marijuana.

B. Except as authorized by the Revised Code of Washington, it is unlawful for any person to possess marijuana.

C. "Marijuana," also known as "marihuana" means all parts of the plant ~~of the genus cannabis~~ Cannabis sativa L., whether growing or not; the seeds thereof; the resins extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of ~~the such~~ plant, its seeds or resin, and includes all marijuana concentrates, useable marijuana, and marijuana-infused products. ~~It~~ Such term does not include the mature stalks of ~~the such~~ plant, fiber produced from ~~the such~~ stalks, oil or cake made from the seeds of ~~the such~~ plant, any other compound, manufacture, salt, derivative, mixture, or preparation of ~~the such~~ mature stalks (except the resins extracted therefrom), fiber, oil, or cake, or the sterilized seed of ~~the such~~ plant which is incapable of germination.

D. Violation of the provisions of this Section shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and incorporated herein. (Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

and

17. Such amendment is in the best interests of residents of the City of Auburn and will promote the general health, safety and welfare.

18. The Moratorium implemented pursuant to City of Auburn Resolution No. 4992, passed on September 16, 2013, and extended by Resolution No. _____, passed on _____, 2014, should terminate upon the date this Ordinance amending the above code section is effective.

PROPOSED PLANNING COMMISSION FINDINGS AND CONCLUSIONS AND
RECOMMENDATION – Option 2 – Enforcement of State Marijuana Regulations
Only[Ordinance No. 6525]

1. The Planning Commission of the City of Auburn has held and conducted various public meetings and authorized a public workshop to address marijuana production, processing and retailing, as defined in Initiative 502 and its implementing regulations, and has held an open public hearing on the 6th day of August, 2014; and

2. The City of Auburn has in its City Code a provision that precludes enactment of City ordinances that are in conflict with state or federal law, as follows:

1.04.060 Conflict of ordinances with state or federal law.

All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void. This provision does not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances. Any action, use or conduct which is not permitted or allowed is prohibited;

and

3. On November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 ("Initiative 502"), now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 of the Revised Code of Washington (RCW), which Initiative (a) decriminalized possession and use of certain amounts of marijuana and marijuana paraphernalia; (b) amended state laws pertaining to driving under the influence of intoxicants to include driving under the influence of marijuana; and (c) authorized promulgation of regulations and issuance of licenses by the Washington State Liquor Control Board ("WSLCB") for the production, processing and retailing of marijuana; and

4. The United States Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. No. 91-513, 84 Stat. 1236, creating a

comprehensive drug enforcement regime called the Controlled Substances Act, codified as 21 USC § 801-971, whereby controlled substances are placed in specific schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance; and

4. Under the Controlled Substances Act, marijuana is listed as a "Schedule I" controlled substance in 21 USC § 812(c), Schedule I(c)(10); and

5. Under the Controlled Substances Act, it is unlawful to possess a controlled substance, except as authorized under the Controlled Substances Act, and it is also unlawful to knowingly or intentionally "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance," except as otherwise provided in the [federal] statute; and

6. Under the Controlled Substances Act, in order for a substance to be designated a Schedule I controlled substance under the Controlled Substances Act, it must be found that the substance: (1) has a high potential for abuse, (2) has no currently accepted medical use in treatment in the United States; and (3) that there is a lack of accepted safety for use of the substance under medical supervision; and

7. In *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005), the United States Supreme Court held that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act, and that, under the Supremacy Clause of the U.S. Constitution, the federal Controlled Substances Act will prevail over any conflicting state law; and

8. Paragraph 11 of Section 314-55-020 of the Washington Administrative Code (WAC), promulgated by the WSCLB under the authority of Initiative 502, describes the license permit process and includes the following limitation:

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements;

and

9. Article 11, § 11 of the Constitution of the State of Washington, the general police powers granted to cities, empowers and authorizes the City of Auburn to adopt regulations, land use and otherwise, that are not to be in conflict with general laws; and

10. One of the primary purposes of the Growth Management Act is to empower cities planning under the Act to develop and adopt land use controls reflecting the local needs of the community, and as provided in RCW 36.70A.010: "[i]t is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning;" and

11. The Attorney General of the State of Washington and the City Attorney for the City of Auburn have concluded that Initiative 502 does not preempt the City of Auburn from exercising and administering its constitutional and statutory land use regulatory authority to either allow and regulate land uses within the corporate limits of the City, or to prohibit and ban such uses; and

12. City regulations licensing and permitting marijuana production, processing and retailing as defined by Initiative 502 and regulations promulgated thereunder is not consistent with federal law and is in conflict therewith; and

13. Documented secondary effects associated with analogous medical marijuana dispensaries in other cities and counties include murders, robberies, burglaries, drug dealing, sales to minors, loitering, heavy foot and vehicle traffic, increased noise, odors, health hazards such as proliferation of molds; and

14. Consistent with the concerns the City could face if it were the agency involved in licensing and permitting marijuana production, processing and retailing as defined by Initiative 502 and regulations promulgated thereunder, when the Washington state legislatures passed Engrossed Second Substitute Senate Bill 5073, then Governor Christine Gregoire vetoed portions of the bill that would have legalized use of marijuana for medical purposes out of concern that the vetoed portions of the bill would authorize state employees to issue licenses for marijuana related activities and would thus open public employees to federal prosecution as the United States attorneys have made it clear that state law would not provide an automatic safe harbor from federal

prosecution, and because of her concern that no state employee should be required to violate federal criminal law in order to fulfill the duties under state law; and

15. Because a majority of the voters of the City of Auburn voted in support of Initiative 502, expressing support for legalization/decriminalization of marijuana activities, the City of Auburn faces a dilemma of potentially having to choose between supporting a citizen-approved state law that legalize/decriminalize marijuana related activities or supporting the federal law under which marijuana is illegal; and

16. That dilemma would be exacerbated if the City of Auburn were to be the governmental entity responsible for the licensing and permitting of those marijuana related activities that are illegal under federal law; and

17. However, these concerns would be mitigated if the state of Washington were the licensing and permitting agency, and if the state law and the accompanying regulations promulgated by the WSLCB were fully enforced, thereby addressing the issues and impacts that would be involved by licensing and permitting activities, with the City of Auburn restricting its activity in connection with marijuana businesses to enforcing and ensuring compliance with state law, without the City having to be the licensing and permitting agency; and

18. Sections 1.04.060, 5.10.040, 9.22.010, 18.02.020 and 18.07.010 of the Auburn City Code should be amended, as set forth below, to address marijuana production, processing and retailing, within the City of Auburn:

1.04.060 Conflict of ordinances with state or federal law.

A. All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void. This The provisions of this Section does do not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances, and the city is not authorized to permit, or license such action, use or conduct.

B. Any action, use or conduct which is not permitted or allowed is prohibited. It is provided, however, that the provisions of this Subsection B do not apply to any person or persons who has/have a valid, lawful license issued by the State of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products and is acting in full conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. In such instances, the State of Washington, not the city, is the permitting and licensing entity. It is provided, however, that this provision does not preclude the city from taking enforcement action in instances where conduct or activity that is licensed or permitted under Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC occurs within the City of Auburn but is not in compliance with or violates the requirements of such state licensing or permitting. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and incorporated herein. (Ord. 6416 § 3, 2012.)

5.10.040 General business license required - Exception.

A. Any person desiring to establish or conduct any business enterprise or undertaking as defined in ACC 5.10.020 within the corporate limits of the city, shall first apply to the business license clerk, as designated by the mayor, for a license to conduct such business and obtain such license as approved by the city. The application shall be upon a form furnished by the business license clerk on which the applicant shall state the business name, address, and telephone number; the nature of the business activity or activities in which the applicant desires to engage; the place where the business will be conducted; the number of employees, and the name of the contact person along with an address and telephone number, and the business identification number issued by the state of Washington; and the IRS letter testifying to nonprofit status or the copy of the application to the IRS.

B. It is unlawful for any person to operate or physically conduct any business within the city without having first obtained a general business license for the current business year or portion thereof. The applicant for a business license required under this title shall be over the age of 18 years. If any person required to pay a license fee, by the terms and provisions of this chapter, for any period fails or refuses to do so, they shall not be granted a license for the current period until such delinquent license fee, together with penalties, has been paid in full.

C. Specific businesses identified in Chapters 3.80, 3.84, 3.88, 5.20, 5.30, 5.84 ACC or elsewhere in this title or other titles of the Auburn City Code will be required to obtain an individual business license as otherwise indicated.

D. Any business within the city jurisdiction on any project requiring a permit must have a business license.

E. Exception to city business licensing requirement. A business license is not required by the city of any person or persons who has/have a valid, lawful license issued by the state of Washington to produce, process or sell marijuana,

marijuana concentrates, usable marijuana and/or marijuana-infused products in conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. (Ord. 5897 § 3, 2005; Ord. 5814 § 2, 2004; Ord. 5754 § 1, 2003; Ord. 4012 § 2, 1984.)

9.22.010 Marijuana prohibited.

A. Except as authorized under United States Code (USC) Title 21: Controlled Substances Act by the Revised Code of Washington, it is unlawful for any person or persons to grow, manufacture, process, deliver, grow, or possess sell marijuana.

B. Except as authorized by the Revised Code of Washington, it is unlawful for any person to possess marijuana.

C. “Marijuana,” also known as “marihuana” means all parts of the plant of the genus *cannabis* *Cannabis sativa* L., whether growing or not; the seeds thereof; the resins extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the such plant, its seeds or resin, and includes all marijuana concentrates, useable marijuana, and marijuana-infused products. ~~It~~ Such term does not include the mature stalks of the such plant, fiber produced from the such stalks, oil or cake made from the seeds of the such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the such mature stalks (except the resins extracted therefrom), fiber, oil, or cake, or the sterilized seed of the such plant which is incapable of germination.

D. It is unlawful for any person or persons who has/have a license issued by the state of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products to fail to comply with or violate any of the requirements of the state of Washington related to such license issued by the state of Washington, including, but not limited to the requirements of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein.

E. Violation of the provisions of this Section shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. (Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

18.02.020 Authority to adopt code.

A. The City of Auburn comprehensive zoning ordinance is adopted by City of Auburn ordinance, pursuant to Article XI, Section 11 of the Washington State Constitution, the State Growth Management Act, RCW Title 35A, Optional Municipal Code, and Chapter 36.70B RCW. In accordance with ACC 1.04.060₂₇ and

B. ~~notwithstanding~~ Notwithstanding any provisions otherwise, this title does not permit or allow any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any action, use or conduct which is prohibited by state or federal law is prohibited hereby. It is provided, however, that the provisions of this Subsection B do not apply to any person or persons who has/have a valid, lawful license issued by the State of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products and is acting in full conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. In such instances, the State of Washington, not the city, is the permitting and licensing entity. It is provided, however, that this provision does not preclude the city from taking enforcement action in instances where conduct or activity that is licensed or permitted under Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC occurs within the City of Auburn but is not in compliance with or violates the requirements of such state licensing or permitting. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein. (Ord. 6416 § 4, 2012; Ord. 6245 § 2, 2009.)

18.07.010 Intent.

A. General. This section describes the intent for each of the city's residential zones. These intent statements may be used to guide the interpretation of the regulations associated with each zone.

B. (RC) Residential Conservancy Zone – One Dwelling Unit per Four Acres. The RC residential conservancy zone is intended primarily to provide for low-intensity single-family residential uses with characteristics of an agricultural environment; provided, that the agricultural uses are secondary to the single-family uses. These areas allow for a lifestyle similar to that of rural areas that includes allowance of farm animals and streets without sidewalks. This zone is intended to protect areas with significant environmental constraints or values from impacts typically associated with urban levels of development while allowing low-intensity development designed to minimize impacts on the natural environmental features designated for conservation.

Public improvements required within the R-C zone will be less than is normally required for the higher intensity residential zones within the city.

This zone shall only be applied in areas designated as residential conservancy on the comprehensive plan. This zone shall allow one dwelling unit per four acres minimum lot area.

C. R-1 Residential Zone – One Dwelling Unit per Acre. The intent of the R-1 residential zone is to provide areas for estate-type residential development on large lots. This zone would normally be located in the areas particularly suited for such development.

Appropriate development standards required of other urban areas shall be required to serve this zone.

D. R-5 Residential Zone – Five Dwelling Units per Acre. The R-5 single-family residential zones are intended to create a living environment of optimum standards for single-family dwellings. It is further intended to achieve development densities of four to five dwelling units per net acre. This zone will provide for the development of single-family detached dwellings and for such accessory uses as are related, incidental and not detrimental to the single-family residential environment.

E. R-7 Residential Zone – Seven Dwelling Units per Acre.

The R-7 single-family residential zones are intended to create a living environment of optimum standards for single-family dwellings. It is further intended to achieve development densities of five to seven dwelling units per net acre. This zone will provide for the development of single-family detached dwellings and for such accessory uses as are related, incidental and not detrimental to the residential environment.

F. R-10 Residential Zone – 10 Dwelling Units per Acre. The R-10 residential zones are intended to permit some increase in population density in those areas to which this classification applies by permitting single-family dwellings and duplexes on a minimum size lot while at the same time, by means of the standards and requirements set forth in this chapter, maintaining a desirable family living environment by establishing minimum lot areas, yards and open spaces. A related consideration is to provide a transition between single-family areas and other intensive designations or activities which reduce the suitability for single-family uses.

G. R-16 Residential Zone – 16 Dwelling Units per Acre. The R-16 zone is intended to provide for medium density multiple-family residential development as designated in the comprehensive plan, and is further intended as a residential zone of single, duplex and multiple-family residences, except as specifically provided elsewhere in this chapter.

H. R-20 Residential Zone – 20 Dwelling Units per Acre. The R-20 zone is intended to provide for multiple-family residential development and is further intended as a residential zone primarily of multiple-family residences, except as specifically provided elsewhere in this chapter. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use.

I. Except as specifically provided in the city code, no business or commercial use shall be allowed in a residential district of the city that does not have a city of Auburn business license. (Ord. 6245 § 5, 2009.)

and

19. Such amendment is in the best interests of residents of the City of Auburn and will promote the general health, safety and welfare.

20. The Moratorium implemented pursuant to City of Auburn Resolution No. 4992, passed on September 16, 2013, and extended by Resolution No. _____, passed on _____, 2014, should terminate upon the date this Ordinance amending the above code sections is effective.

ORDINANCE NO. 6 5 2 5

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTION 9.22.010 OF THE AUBURN CITY CODE, PROHIBITING PRODUCTION, PROCESSING AND/OR RETAIL OUTLETS AND SALES OF MARIJUANA IN ALL ZONES OF THE CITY, AND TERMINATING THE MORATORIUM IMPLEMENTED PURSUANT TO RESOLUTION NO. 4992, PASSED ON SEPTEMBER 16, 2013, AND EXTENDED BY RESOLUTION NO. _____, PASSED ON _____, 2014

WHEREAS, the City of Auburn has in its City Code a provision that precludes enactment of City ordinances that are in conflict with state or federal law, as follows:

1.04.060 Conflict of ordinances with state or federal law.

All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void. This provision does not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances. Any action, use or conduct which is not permitted or allowed is prohibited;

and

WHEREAS, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 ("Initiative 502"), now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 of the Revised Code of Washington (RCW), which Initiative (a) decriminalized possession and use of certain amounts of marijuana and marijuana paraphernalia; (b) amended state laws pertaining to driving under the influence of intoxicants to include driving under the influence of marijuana; and (c) authorized promulgation of regulations and issuance of licenses by the Washington State Liquor Control Board ("WSLCB") for the production, processing and retailing of marijuana; and

WHEREAS, the United States Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. No. 91-513, 84 Stat. 1236, creating a comprehensive drug enforcement regime called the Controlled Substances Act, codified as 21 USC § 801-971; and

WHEREAS, under the Controlled Substances Act, Congress established five "schedules" of controlled substances whereby controlled substances are placed in specific schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance [See 21 USC § 812(b)]; and

WHEREAS, marijuana is currently listed as a "Schedule I" controlled substance in 21 USC § 812(c), Schedule I(c)(10); and

WHEREAS, for a substance to be designated a Schedule I controlled substance under the Controlled Substances Act, it must be found that the substance: (1) has a high potential for abuse, (2) has no currently accepted medical use in treatment in the United States; and (3) that there is a lack of accepted safety for use of the substance under medical supervision [See 21 USC § 812(b)(1)]; and

WHEREAS, the Controlled Substances Act sets forth procedures by which the schedules may be modified [See 21 USC § 811(a)]; and

WHEREAS, under the Controlled Substances Act, it is unlawful to knowingly or intentionally "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance," except as otherwise provided in the statute [21 USC § 841(a)(1)]; and

WHEREAS, possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful; and

WHEREAS, the United States Supreme Court held in *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005), that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act, and that, under the Supremacy

Clause of the U.S. Constitution, the federal Controlled Substances Act will prevail over any conflicting state law; and

WHEREAS, Paragraph 11 of Section 314-55-020 of the Washington Administrative Code (WAC), promulgated by the WSCLB under the authority of Initiative 502, describes the license permit process and includes the following limitation:

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements;

and

WHEREAS, pursuant to Article 11, § 11 of the Constitution of the State of Washington, the general police powers granted to cities, the City of Auburn is empowered and authorized to adopt land use controls to provide for the regulation of land uses within the City, which regulations are not to be in conflict with general laws.; and

WHEREAS, one of the primary purposes of the Growth Management Act is to empower cities planning under the Act to develop and adopt land use controls reflecting the local needs of the community, and as provided in RCW 36.70A.010: "[i]t is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning;" and

WHEREAS, the City Council finds and determines that Initiative 502 does not preempt the City of Auburn from exercising and administering its constitutional and statutory land use regulatory authority to either allow and regulate land uses within the corporate limits of the City, or to prohibit and ban such uses; and

WHEREAS, the City Council finds and determines that the prohibition of marijuana production, processing and retailing as defined by Initiative 502 and regulations promulgated thereunder is consistent with federal law and not in conflict therewith; and

WHEREAS, the City Council finds and determines that documented secondary effects associated with analogous medical marijuana dispensaries in other cities and counties include murders, robberies, burglaries, drug dealing, sales to minors, loitering, heavy foot and vehicle traffic, increased noise, odors, health hazards such as proliferation of molds [See, "White Paper on Marijuana Dispensaries," issued by the California Police Chiefs Association's Task Force on Marijuana Dispensaries on April 22, 2009, ("CAPCA White Paper"); *City of Riverside v. Inland Empire Patients Health and Welfare Center*, 56 Cal. 4th 729, 756, 300 P.3d 494 (2013)]; and

WHEREAS, the City Council finds and determines that the prohibition of marijuana production, processing and retail uses within the City of Auburn is the only effective means to protect residential districts, recreational facilities, families and children within the City of Auburn; and

WHEREAS, the City Council of the City of Auburn finds and determines that Section 9.22.010 of the Auburn City Code should be amended to prohibit marijuana production, processing and retailing, as defined in Initiative 502 and its implementing regulations, within the City of Auburn; and

WHEREAS, the City Council finds and determines that the prohibition of marijuana production, processing and retailing is subject to the authority and general police power of the City to develop specific and appropriate land use controls regarding such uses, and the City Council reserves its powers and authority to appropriately amend, modify and revise such prohibition to implement such land use controls in accordance with applicable law; and

WHEREAS, the City Council finds and determines that such amendments authorized herein are not intended to regulate the individual use of marijuana as authorized by Initiative 502 ; and

WHEREAS, the Planning Commission of the City of Auburn has held and conducted various public meetings and authorized a public workshop to address marijuana production, processing and retailing, as defined in Initiative 502 and its

implementing regulations, and has held an open public hearing on the 6th day of August, 2014, all pursuant to required notice and applicable procedures of the City of Auburn, and has adopted findings of fact and conclusions of law in support of its recommendation for adoption of the above-described amendments, which Findings of Fact and Conclusions of Law are of record and incorporated herein by this reference; and

WHEREAS, the City Council has considered the recommendation of the Planning Commission, the record herein, and all evidence and testimony presented; and

WHEREAS, the City Council finds and determines that approval of such amendments is in the best interests of residents of the City of Auburn and will promote the general health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows

Section 1. Recitals Adopted. The City Council hereby adopts the recital clauses contained in this Ordinance as Findings of Fact or Conclusions, as may be appropriate given the context of each recital.

Section 2. Amendment To City Code. That Section 9.22.010 of the Auburn City Code be, and the same hereby is, amended to read as follows:

9.22.010 Marijuana prohibited.

A. Except as authorized under United States Code (USC) Title 21: Controlled Substances Act by the Revised Code of Washington, it is unlawful for any person or persons to grow, manufacture, process, deliver, ~~grow~~, or ~~possess~~ sell marijuana.

B. Except as authorized by the Revised Code of Washington, it is unlawful for any person to possess marijuana.

C. "Marijuana," also known as "marihuana" means all parts of the plant ~~of the genus cannabis~~ Cannabis sativa L., whether growing or not; the seeds thereof; the resins extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of ~~the~~ such plant, its seeds

or resin, and includes all marijuana concentrates, useable marijuana, and marijuana-infused products. ~~It~~ Such term does not include the mature stalks of ~~the such~~ plant, fiber produced from ~~the such~~ stalks, oil or cake made from the seeds of ~~the such~~ plant, any other compound, manufacture, salt, derivative, mixture, or preparation of ~~the such~~ mature stalks (except the resins extracted therefrom), fiber, oil, or cake, or the sterilized seed of ~~the such~~ plant which is incapable of germination.

D. Violation of the provisions of this Section shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein. (Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

Section 3. Termination of Moratorium. The Moratorium implemented pursuant to City of Auburn Resolution No. 4992, passed on September 16, 2013, and extended by Resolution No. _____, passed on _____, 2014, shall terminate upon the date this Ordinance becomes effective in accordance with the provisions of Section 6 below.

Section 4. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 5. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 6. Effective Date. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

PUBLISHED: _____

ORDINANCE NO. 6 5 2 5

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTIONS 1.04.060, 5.10.040, 9.22.010, 18.02.020 AND 18.07.010 OF THE AUBURN CITY CODE, RELATING TO ENFORCEMENT OF STATE REGULATIONS REGARDING PRODUCTION, PROCESSING AND/OR RETAIL OUTLETS AND SALES OF MARIJUANA, AND TERMINATING THE MORATORIUM IMPLEMENTED PURSUANT TO RESOLUTION NO. 4992, PASSED ON SEPTEMBER 16, 2013, AND EXTENDED BY RESOLUTION NO. _____, PASSED ON _____, 2014

WHEREAS, the City of Auburn has in its City Code a provision that precludes enactment of City ordinances that are in conflict with state or federal law, as follows:

1.04.060 Conflict of ordinances with state or federal law.

All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void. This provision does not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances. Any action, use or conduct which is not permitted or allowed is prohibited;

and

WHEREAS, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 ("Initiative 502"), now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 of the Revised Code of Washington (RCW), which Initiative (a) decriminalized possession and use of certain amounts of marijuana and marijuana paraphernalia; (b) amended state laws pertaining to driving under the influence of intoxicants to include driving under the influence of marijuana; and (c) authorized promulgation of regulations and issuance of licenses by the Washington

State Liquor Control Board ("WSLCB") for the production, processing and retailing of marijuana; and

Whereas, the Attorney General of Washington issued an opinion, AGO 2014 No. 2, concluding that under Washington law there is a strong presumption against finding that state law preempts local ordinances, and although Initiative 502 established a licensing and regulatory system for marijuana producers, processors and retailers in Washington state, it includes no clear indication that it was intended to preempt local authority to regulate such businesses, and the Attorney General, therefore, concluded that Initiative 502 left in place the normal powers of local government to regulate within their jurisdictions; and the Attorney General also concluded that local governments have broad authority to regulate within their local jurisdictions and nothing in the initiative limits that authority with respect to licensed marijuana businesses; and

WHEREAS, the United States Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970 [Pub.L. No. 91-513, 84 Stat. 1236], creating a comprehensive drug enforcement regime called the Controlled Substances Act, codified as 21 USC § 801-971; and

WHEREAS, under the Controlled Substances Act, Congress established five "schedules" of controlled substances whereby controlled substances are placed in specific schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance [See 21 USC § 812(b)]; and

WHEREAS, marijuana is currently listed as a "Schedule I" controlled substance in 21 USC § 812(c), Schedule I(c)(10); and

WHEREAS, for a substance to be designated a Schedule I controlled substance under the Controlled Substances Act, it must be found that the substance: (1) has a high potential for abuse, (2) has no currently accepted medical use in treatment in the United States; and (3) that there is a lack of accepted safety for use of the substance under medical supervision [See 21 USC § 812(b)(1)]; and

WHEREAS, the Controlled Substances Act sets forth procedures by which the schedules may be modified [See 21 USC § 811(a)]; and

WHEREAS, under the Controlled Substances Act, it is unlawful to knowingly or intentionally "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance," except as otherwise provided in the statute [21 U.S.C. § 841(a)(1)]; and

WHEREAS, possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful; and

WHEREAS, the United States Supreme Court held in *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005), that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act, and that, under the Supremacy Clause of the U.S. Constitution, the federal Controlled Substances Act will prevail over any conflicting state law; and

WHEREAS, Paragraph 11 of Section 314-55-020 of the Washington Administrative Code (WAC), promulgated by the WSCLB under the authority of Initiative 502, describes the license permit process and includes the following limitation:

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements;

and

WHEREAS, pursuant to Article 11, § 11 of the Constitution of the State of Washington, the general police powers granted to cities empower and authorize the City of Auburn to adopt land use controls to provide for the regulation of land uses within the city and to provide that such uses shall be consistent with applicable law; and

WHEREAS, the City Council finds and determines that documented secondary effects associated with analogous medical marijuana dispensaries in other cities and counties include murders, robberies, burglaries, drug dealing, sales to minors, loitering,

heavy foot and vehicle traffic, increased noise, odors, health hazards such as proliferation of molds [See, "White Paper on Marijuana Dispensaries," issued by the California Police Chiefs Association's Task Force on Marijuana Dispensaries on April 22, 2009, ("CAPCA White Paper"); *City of Riverside v. Inland Empire Patients Health and Welfare Center*, 56 Cal.4th 729, 756, 300 P.3d 494 (2013)], however, the City Council finds that the State licensing and regulatory scheme, if enforced by the City and the State, may adequately mitigate these secondary effects; and

WHEREAS, the Planning Commission of the City of Auburn has held and conducted various public meetings and authorized a public workshop to address marijuana production, processing and retailing, as defined in Initiative 502 and its implementing regulations, and has held an open public hearing on the 6th day of August, 2014, all pursuant to required notice and applicable procedures of the City of Auburn, and has adopted findings of fact and conclusions of law in support of its recommendation for adoption of the above-described amendments, which Findings of Fact and Conclusions of Law are of record and incorporated herein by this reference; and

Whereas, illustrative of an area of concern is the fact that in relationship to the Washington state legislatures passage of Engrossed Second Substitute Senate Bill 5073, then Governor Christine Gregoire vetoed portions of the bill that would have legalized use of marijuana for medical purposes out of concern that the vetoed portions of the bill would authorize state employees to issue licenses for marijuana related activities and would thus open public employees to federal prosecution as the United States attorneys have made it clear that state law would not provide an automatic safe harbor from federal prosecution, and because of her concern that no state employee should be required to violate federal criminal law in order to fulfill the duties under state law [See Governor Gregoire's letter of April 29, 2011 to the Washington state legislature/Senate]; and

WHEREAS, because a majority of the voters of the City of Auburn voted in support of Initiative 502, expressing support for legalization/decriminalization of

marijuana activities, the City Council of the City of Auburn faces a dilemma of potentially having to choose between supporting a citizen-approved state law that legalize/decriminalize marijuana related activities or supporting the federal law under which marijuana is illegal; and

WHEREAS, the dilemma would be exacerbated if the City of Auburn were to be the governmental entity responsible for the licensing and permitting of those marijuana related activities that are illegal under federal law; and

WHEREAS, the City Council finds that the state law and the accompanying regulations promulgated by the WSLCB essentially, adequately address the issues and impacts that would be involved by licensing and permitting activities if handled by the City, so that the City of Auburn could restrict its activity in connection with such businesses to enforcing and ensuring compliance with state law without the City having to be the licensing and permitting agency; and

WHEREAS, the City Council has considered the recommendation of the Planning Commission, the record herein, and all evidence and testimony presented; and

WHEREAS, the City Council finds and determines that approval of such amendments is in the best interests of the City of Auburn.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows

Section 1. Recitals Adopted. The City Council hereby adopts the recital clauses contained in this Ordinance as Findings of Fact or Conclusions, as may be appropriate given the context of each recital.

Section 2. Amendment To City Code. That Section 1.04.060 of the Auburn City Code be, and the same hereby is, amended to read as follows:

1.04.060 Conflict of ordinances with state or federal law.

A. All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void. This The provisions of this Section does do not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances, and the city is not authorized to permit, or license such action, use or conduct.

B. Any action, use or conduct which is not permitted or allowed is prohibited. It is provided, however, that the provisions of this Subsection B do not apply to any person or persons who has/have a valid, lawful license issued by the State of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products and is acting in full conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. In such instances, the State of Washington, not the city, is the permitting and licensing entity. It is provided, however, that this provision does not preclude the city from taking enforcement action in instances where conduct or activity that is licensed or permitted under Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC occurs within the City of Auburn but is not in compliance with or violates the requirements of such state licensing or permitting. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein. (Ord. 6416 § 3, 2012.)

Section 3. Amendment To City Code. That Section 5.10.040 of the Auburn City Code be, and the same hereby is, amended to read as follows:

5.10.040 General business license required - Exception.

A. Any person desiring to establish or conduct any business enterprise or undertaking as defined in ACC 5.10.020 within the corporate limits of the city, shall first apply to the business license clerk, as designated by the mayor, for a license to conduct such business and obtain such license as approved by the city. The application shall be upon a form furnished by the business license clerk on which the applicant shall state the business name, address, and telephone number; the nature of the business activity or activities in which the applicant desires to engage; the place where the business will be conducted; the number of employees, and the name of the contact person along with an address and

telephone number, and the business identification number issued by the state of Washington; and the IRS letter testifying to nonprofit status or the copy of the application to the IRS.

B. It is unlawful for any person to operate or physically conduct any business within the city without having first obtained a general business license for the current business year or portion thereof. The applicant for a business license required under this title shall be over the age of 18 years. If any person required to pay a license fee, by the terms and provisions of this chapter, for any period fails or refuses to do so, they shall not be granted a license for the current period until such delinquent license fee, together with penalties, has been paid in full.

C. Specific businesses identified in Chapters 3.80, 3.84, 3.88, 5.20, 5.30, 5.84 ACC or elsewhere in this title or other titles of the Auburn City Code will be required to obtain an individual business license as otherwise indicated.

D. Any business within the city jurisdiction on any project requiring a permit must have a business license.

E. Exception to city business licensing requirement. A business license is not required by the city of any person or persons who has/have a valid, lawful license issued by the state of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products in conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. (Ord. 5897 § 3, 2005; Ord. 5814 § 2, 2004; Ord. 5754 § 1, 2003; Ord. 4012 § 2, 1984.)

Section 4. Amendment To City Code. That Section 9.22.010 of the Auburn City Code be, and the same hereby is, amended to read as follows:

9.22.010 Marijuana prohibited.

A. Except as authorized under United States Code (USC) Title 21: Controlled Substances Act by the Revised Code of Washington, it is unlawful for any person or persons to grow, manufacture, process, deliver, grow, or possess sell marijuana.

B. Except as authorized by the Revised Code of Washington, it is unlawful for any person to possess marijuana.

C. “Marijuana,” also known as “marihuana” means all parts of the plant of the genus cannabis—Cannabis sativa L., whether growing or not; the seeds thereof; the resins extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the such plant, its seeds or resin, and includes all marijuana concentrates, useable marijuana, and marijuana-infused products. It—Such term does not include the mature stalks of the such plant, fiber produced from the such stalks, oil or cake made from the seeds of the such plant, any other compound, manufacture, salt, derivative,

mixture, or preparation of ~~the~~ such mature stalks (except the resins extracted therefrom), fiber, oil, or cake, or the sterilized seed of ~~the~~ such plant which is incapable of germination.

D. It is unlawful for any person or persons who has/have a license issued by the state of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products to fail to comply with or violate any of the requirements of the state of Washington related to such license issued by the state of Washington, including, but not limited to the requirements of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and Incorporated herein.

E. Violation of the provisions of this Section shall constitute a misdemeanor, punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine. (Ord. 6300 § 1, 2010; Ord. 5682 § 1, 2002.)

Section 5. Amendment To City Code. That Section 18.02.020 of the Auburn

City Code be, and the same hereby is, amended to read as follows:

18.02.020 Authority to adopt code.

A. The City of Auburn comprehensive zoning ordinance is adopted by City of Auburn ordinance, pursuant to Article XI, Section 11 of the Washington State Constitution, the State Growth Management Act, RCW Title 35A, Optional Municipal Code, and Chapter 36.70B RCW. In accordance with ACC 1.04.060,⁵⁷ and

B. ~~notwithstanding~~ Notwithstanding any provisions otherwise, this title does not permit or allow any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any action, use or conduct which is prohibited by state or federal law is prohibited hereby. It is provided, however, that the provisions of this Subsection B do not apply to any person or persons who has/have a valid, lawful license issued by the State of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products and is acting in full conformity with the requirements of the state of Washington related to such license pursuant to Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC. In such instances, the State of Washington, not the city, is the permitting and licensing entity. It is provided, however, that this provision does not preclude the city from taking enforcement action in instances where conduct or activity that is licensed or permitted under Sections 69.50.301 – 369 RCW, and Sections 314-55-005 – 540 WAC occurs within the City of Auburn but is not in compliance with or violates the requirements of such state licensing or

permitting. For the purposes of this Section only, the provisions of Sections 69.50.325 – 369 RCW, and Sections 314-55-515 – 535 WAC are hereby adopted by reference and incorporated herein. (Ord. 6416 § 4, 2012; Ord. 6245 § 2, 2009.)

Section 6. Amendment To City Code. That Section 18.07.010 of the Auburn City Code be, and the same hereby is, amended to read as follows:

18.07.010 Intent.

A. General. This section describes the intent for each of the city's residential zones. These intent statements may be used to guide the interpretation of the regulations associated with each zone.

B. (RC) Residential Conservancy Zone – One Dwelling Unit per Four Acres. The RC residential conservancy zone is intended primarily to provide for low-intensity single-family residential uses with characteristics of an agricultural environment; provided, that the agricultural uses are secondary to the single-family uses. These areas allow for a lifestyle similar to that of rural areas that includes allowance of farm animals and streets without sidewalks. This zone is intended to protect areas with significant environmental constraints or values from impacts typically associated with urban levels of development while allowing low-intensity development designed to minimize impacts on the natural environmental features designated for conservation.

Public improvements required within the R-C zone will be less than is normally required for the higher intensity residential zones within the city.

This zone shall only be applied in areas designated as residential conservancy on the comprehensive plan. This zone shall allow one dwelling unit per four acres minimum lot area.

C. R-1 Residential Zone – One Dwelling Unit per Acre. The intent of the R-1 residential zone is to provide areas for estate-type residential development on large lots. This zone would normally be located in the areas particularly suited for such development.

Appropriate development standards required of other urban areas shall be required to serve this zone.

D. R-5 Residential Zone – Five Dwelling Units per Acre. The R-5 single-family residential zones are intended to create a living environment of optimum standards for single-family dwellings. It is further intended to achieve development densities of four to five dwelling units per net acre. This zone will provide for the development of single-family detached dwellings and for such accessory uses as are related, incidental and not detrimental to the single-family residential environment.

E. R-7 Residential Zone – Seven Dwelling Units per Acre.

The R-7 single-family residential zones are intended to create a living environment of optimum standards for single-family dwellings. It is further

intended to achieve development densities of five to seven dwelling units per net acre. This zone will provide for the development of single-family detached dwellings and for such accessory uses as are related, incidental and not detrimental to the residential environment.

F. R-10 Residential Zone – 10 Dwelling Units per Acre. The R-10 residential zones are intended to permit some increase in population density in those areas to which this classification applies by permitting single-family dwellings and duplexes on a minimum size lot while at the same time, by means of the standards and requirements set forth in this chapter, maintaining a desirable family living environment by establishing minimum lot areas, yards and open spaces. A related consideration is to provide a transition between single-family areas and other intensive designations or activities which reduce the suitability for single-family uses.

G. R-16 Residential Zone – 16 Dwelling Units per Acre. The R-16 zone is intended to provide for medium density multiple-family residential development as designated in the comprehensive plan, and is further intended as a residential zone of single, duplex and multiple-family residences, except as specifically provided elsewhere in this chapter.

H. R-20 Residential Zone – 20 Dwelling Units per Acre. The R-20 zone is intended to provide for multiple-family residential development and is further intended as a residential zone primarily of multiple-family residences, except as specifically provided elsewhere in this chapter. A related consideration is to make it possible to more efficiently and economically design and install all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use.

I. Except as specifically provided in the city code, no business or commercial use shall be allowed in a residential district of the city that does not have a city of Auburn business license. (Ord. 6245 § 5, 2009.)

Section 7. Termination of Moratorium. The Moratorium implemented pursuant to City of Auburn Resolution No. 4992, passed on September 16, 2013, and extended by Resolution No. ____, passed on _____, 2014, shall terminate upon the date this Ordinance becomes effective in accordance with the provisions of Section 9 below.

Section 8. Implementation. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 9. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 10. Effective Date. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

PUBLISHED: _____

The Seattle Times

City of Auburn, Finance Dept
City Clerk
25 W Main St

Auburn, WA 98001

Re: Advertiser Account # 107302

Agency Account #: 0

Ad #: 455499

Agency Name:

Affidavit of Publication

STATE OF WASHINGTON

Counties of King and Snohomish

The undersigned, on oath states that he/she is an authorized representative of The Seattle Times Company, publisher of The Seattle Times of general circulation published daily in King and Snohomish Counties, State of Washington. The Seattle Times has been approved as a legal newspaper by others of the Superior Court of King and Snohomish Counties.

The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

Newspaper and Publication Date(s)

Seattle Times

07/24/14

Agent

Sharon Seligman

Signature

Sharon Seligman

Subscribed and sworn to before me on

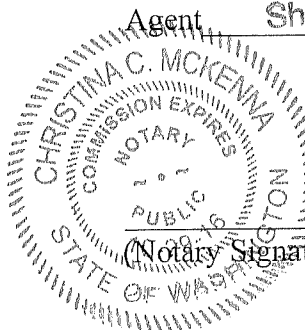
July 24, 2014

DATE

Christina C. McKenna

Christina C. McKenna

(Notary Signature) Notary Public in and for the State of Washington, residing at Seattle



The Seattle Times

Re: Advertiser Account # 107302

Ad #: 455499

Agency Account #: 0

Agency Name:

AD TEXT

City of Auburn Notice of Public Hearing

The Planning Commission of the CITY OF AUBURN, Washington, will conduct a public hearing on August 6, 2014, at 7:00 P.M. in the Council Chambers of the Auburn City Hall located at 25 West Main Street on the following matter: Case Number: ZOA14-0003 - Review proposed draft language amendments to the following Auburn City Code (ACC) sections: 9.22.010, 1.04.060, 5.10.040, and 18.02.020, as part of the continued review of options for regulating I-502 state licensed Recreational Marijuana uses in the City. The public hearing will be held in the Council Chambers, Auburn City Hall, located at 25 West Main Street. The public is invited to attend to express comments or opinions. Written comments may be submitted up until and at the public hearing. If you have further comments or questions, please contact David Jones, Senior Planner at djones@auburnwa.gov or 253-804-5031. For citizens with speech, sight or hearing disabilities wishing to review documents pertaining to this hearing, should contact the City of Auburn within 10 calendar days prior to the meeting, as to the type of service or equipment needed. Each request will be considered individually according to the type of request, the availability of resources, and the financial ability of the City to provide the requested services or equipment.

City of Auburn
Notice of Planning Commission Public Hearing

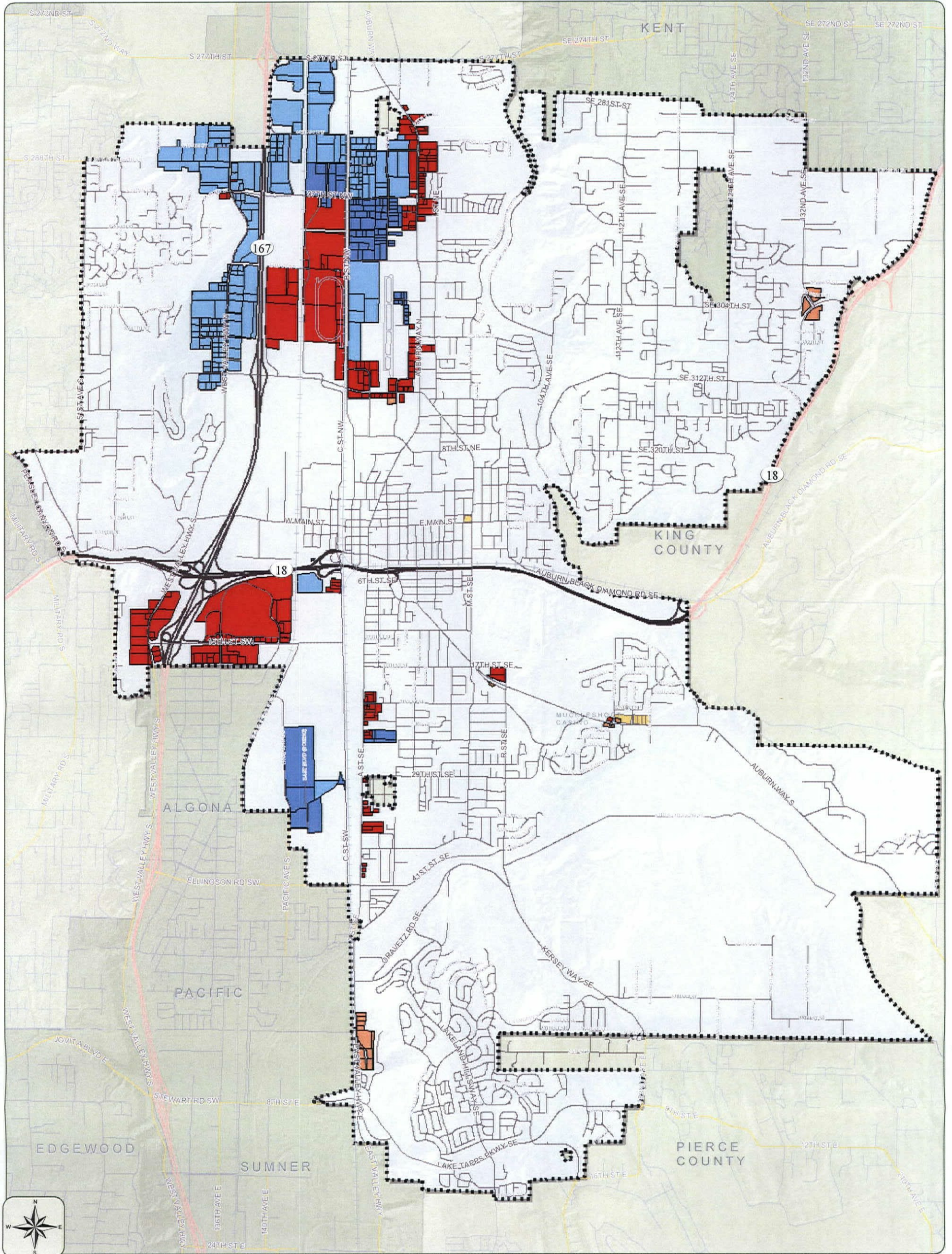
The Planning Commission of the CITY OF AUBURN, Washington, will conduct a public hearing on August 6, 2014, at 7:00 P.M. in the Council Chambers of the Auburn City Hall located at 25 West Main Street on the following matter:

Case Number: ZOA14-0003 – Review proposed draft language amendments to the following Auburn City Code (ACC) sections: 9.22.010, 1.04.060, 5.10.040, and 18.02.020, as part of the continued review of options for regulating I-502 state licensed Recreational Marijuana uses in the City.

The public hearing will be held in the Council Chambers, Auburn City Hall, located at 25 West Main Street. The public is invited to attend to express comments or opinions. Written comments may be submitted up until and at the public hearing. If you have further comments or questions, please contact David Jones, Senior Planner at dljones@auburnwa.gov or 253-804-5031.

For citizens with speech, sight or hearing disabilities wishing to review documents pertaining to this hearing, should contact the City of Auburn within 10 calendar days prior to the meeting, as to the type of service or equipment needed. Each request will be considered individually according to the type of request, the availability of resources, and the financial ability of the City to provide the requested services or equipment.

Potential State Licensed Locations for Cannabis Uses (After 1,000 foot Buffer Requirement)



- City of Auburn
- C3 Heavy Commercial District
- M1 Light Industrial District
- C1 Light Commercial District
- CN Neighborhood Shopping District
- M2 Heavy Industrial District

Printed On: 3/20/2014
Map ID: 4313

Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.