9. AN ORDINANCE RELATING TO MEDICAL MARIJUANA.

STAFF REPORT

QUESTIONS FROM COUNCIL ON STAFF REPORT

READING OF ORDINANCE NO. 12-4

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PULLMAN, WHITMAN COUNTY, WASHINGTON, RELATING TO LICENSES AND TAXATION, AMENDING PULLMAN CITY CODE CHAPTER 6.95 AND PULLMAN CITY ORDINANCE 08-14, (2008), AND ADDING A NEW SECTION 6.95.100, REQUIRING REGISTRATION FOR ALL PERSONS ENGAGED IN THE PRODUCTION, PROCESSING, DISTRIBUTION OR COLLECTIVE CULTIVATION OF MARIJUANA FOR MEDICAL USE AS PROVIDED IN CHAPTER 69.51A R.C.W, ESTABLISHING CONDITIONS FOR SAID BUSINESS REGISTRATIONS AND OTHER MATTERS PROPERLY RELATED THERETO.

DISCUSSION

ACTION TAKEN

NOTES:

REQUEST FOR COUNCIL ACTION

For Meeting of: February 28, 2012

ACTION REQUESTED

Adopt the proposed Ordinance requiring registration with the Pullman Police Department for all persons engaged in the production, processing, distribution or collective cultivation of marijuana for medical use as provided in Chapter 69.51A R.C.W and establish conditions for obtaining a registration document from the City.

BACKGROUND

On August 30, 2011, the City Council established a moratorium on the establishment of collective gardens for the cultivation of marijuana/cannabis for medical use due to the inconsistencies in the new state law authorizing such activity, as well as information from the Department of Justice that implied local government employees could be subjected to federal criminal investigation and prosecution if they facilitate such collective gardens. The Clark County Board of Commissioners subsequently sent a letter to the Drug Enforcement Agency (DEA) specifically asking if local employees would be potential subjects of federal criminal prosecution. The DEA recently replied in the affirmative. Clearly, the ongoing conflict between state laws legalizing the possession of marijuana/cannabis for medical use and the federal Controlled Substances Act have not been resolved during the recent moratorium.

In addition, Initiative 502 seeks to fully decriminalize all marijuana use and possession and impose a system of regulation and taxation on the sale of it, similar to the regulation and taxation of alcohol. I-502 will be on the November ballot. Thus, the state laws continue to be in flux and are virtually impossible for local law enforcement to apply. However, the City is separately authorized by state law to require the registration or licensing of any business, occupation or activity within its jurisdiction under its police powers and is also expressly authorized by RCW 69.51A.140 to regulate "the production, processing or dispensing of cannabis or cannabis products" within its jurisdiction. Accordingly, as discussed with the Council on February 14, the City Attorney and Police Chief recommend the adoption of a registration requirement for any person producing, processing, distributing or collectively cultivating marijuana for medical use within the City of Pullman.

The City Council has previously established comprehensive registration or licensing for other businesses, rental units and vendors under City Code, therefore we recommend implementation of a similar registration program for medical cannabis operations, including collective gardens. The same public health and safety policy reasons for registering commercial businesses, residential rental units or itinerant vendors apply with equal force to medical cannabis operations that the Legislature has authorized in Ch. 69.51A RCW. In addition, registration will enable police to monitor criminal activity near such operations, which provides an additional basis for the requirement. Finally, to protect City employees from potential federal criminal investigation or prosecution, we recommend that applicants for medical cannabis operations registration provide the City with documented approval of their operations from the U.S. Department of Justice as a condition for issuance of the registration. In presenting such approval, the applicant will be demonstrating he or she is in compliance with all applicable state and federal laws, which is a business licensing requirement that has been previously upheld by Washington state courts as reasonable and clear.

The Police Department currently handles the registration of residential rental units and itinerant vendors, and coordinates the registration of commercial businesses through the Department of Revenue's Master Licenses Service. In keeping with other city registration programs, we are recommending that the Police Department also handle the processing and issuance of registrations to medical cannabis operations.

RECOMMENDATION

A proposed ordinance has been drafted for your review. Staff recommends its adoption.

FISCAL IMPACT

$ n/a

BARS Code Number

SUBMITTED BY

Name: Laura D. McAloon
Title: City Attorney
Department: Administration

ATTACHMENTS FOR COUNCIL REVIEW/ACTION

1. Ordinance No. 12- 4

REVIEWED BY

	Initial	Date
Department Head		
City Supervisor	[illegible]	2-24-12
City Attorney (As To Form)	[illegible]	2-24-12

ORDINANCE NO. 12- 4

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PULLMAN, WHITMAN COUNTY, WASHINGTON, RELATING TO LICENSES AND TAXATION, AMENDING PULLMAN CITY CODE CHAPTER 6.95 AND PULLMAN CITY ORDINANCE 08-14, (2008), AND ADDING A NEW SECTION 6.95.100, REQUIRING REGISTRATION FOR ALL PERSONS ENGAGED IN THE PRODUCTION, PROCESSING, DISTRIBUTION OR COLLECTIVE CULTIVATION OF MARIJUANA FOR MEDICAL USE AS PROVIDED IN CHAPTER 69.51A R.C.W, ESTABLISHING CONDITIONS FOR SAID BUSINESS REGISTRATIONS AND OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, the City Council has previously adopted a comprehensive program for the registration of all persons engaged in business within the City of Pullman for public safety purposes and to ensure compliance with state and local laws; and

WHEREAS, in 2011, the Washington State Legislature passed ESSB 5073 which 1) established criteria for the production, possession or administration of marijuana (also known as cannabis) for medical use; 2) established a State registry in the Department of Health for all persons producing, processing or dispensing cannabis for medical use; 3) established a licensing program with the Departments of Health and Agriculture for all persons producing, processing or dispensing cannabis for medical use; 4) authorized the establishment of collective cannabis gardens by up to ten qualifying persons for the purpose of producing, processing, transporting and delivering cannabis for medical use; and

WHEREAS, Governor Christine Gregoire vetoed significant portions of ESSB 5073, including the establishment of State agency licensing and registration of persons engaged in the production, processing, and distribution of medical cannabis; and

WHEREAS, ESSB 5073, now codified as R.C.W. 69.51A.140, also authorizes local government regulation of the "production, processing or dispensing of cannabis or cannabis products within their jurisdiction" through the adoption of zoning, business licensing and regulation, and health and safety requirements to serve the best interests of the City; and

WHEREAS, the veto of the State licensing and registry provisions of ESSB 5073 has resulted in great confusion as to the application, meaning and effect of the current provisions of State law regulating medical cannabis, especially those provisions that reference the vetoed registration requirement; and

WHEREAS, the United States Department of Justice and federal law enforcement agencies in the State of Washington have stated that local government personnel who facilitate the medical marijuana/cannabis laws of the State of Washington may be subject to criminal prosecution under the federal Controlled Substances Act; and

WHEREAS, it does not appear that either current state law as codified in Ch. 69.51A R.C.W, or proposed state laws decriminalizing and regulating medical cannabis as set forth in Initiative 502, can be reconciled with the current federal laws, including the Controlled Substances Act, and the City Council does not intend or desire to subject City employees to any risk of criminal prosecution for violation of federal laws despite the good faith immunity provided by State law in R.C.W. 69.51A.130; and

WHEREAS, the Chief of Police has advised the City Council that the production, processing or dispensing of cannabis or cannabis products has a significant correlation to increased criminal activity in the vicinity of places where cannabis is produced, processed, dispensed or cultivated for any purpose; and

WHEREAS, pursuant to its police powers and the authority granted in RCW 35A.82.020, the City Council has previously implemented a comprehensive system of business registration or licensing for all commercial businesses, taxi businesses, residential rental units and itinerant vendors operating within City limits; and

WHEREAS, the City Council finds that local law enforcement activities related to the application and enforcement of Ch. 69.51A RCW will be simplified if persons engaged in the production, processing, distribution or collective cultivation of marijuana for medical use are required to comply with the City's comprehensive system of registration for public health and safety purposes; and

WHEREAS, the City Council further finds that City employees engaged in the official performance of their duties will be adequately protected from the personal risk of criminal investigation or prosecution for federal drug-related crimes if issuance of a City business registration to persons engaged in the production, processing, distribution or collective cultivation of marijuana for medical use is conditioned on such person(s) providing the City with documented confirmation from

the United States Department of Justice of compliance with all applicable federal laws regarding the production, processing, distribution or collective cultivation of marijuana for medical use.

NOW, THEREFORE, the City Council of the City of Pullman do ordain as follows:

Section 1: Pullman City Code Chapter 6.95.010 and Pullman City Ordinance No. 08-14 §2 (2008), are each hereby amended to read as follows:

6.95.010 Purpose. The purpose of this chapter is to provide for a means of obtaining public safety and emergency contact information on existing and new Commercial Businesses and Medical Cannabis Operations in the City, and to assist in the effective administration of the City's obligations under state, federal and local laws.

Section 2: Pullman City Code Chapter 6.95.020 and Pullman City Ordinance No. 08-14 §3 (2008), are each hereby amended to read as follows:

6.95.020 Definitions. For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

(1) "Commercial Business" means all kinds of vocations, occupations, professions, enterprises, establishments, industries, services and all other kinds of activities and matters that require registration or licensing with the state of Washington and are conducted on any premises in the city of Pullman.

(2) "City" means the City of Pullman.

(3) "Engaged in ~~business~~operations" means commencing, conducting or continuing in Commercial Business or Medical Cannabis Operations, or carrying on any form of activity for gain, profit, or advantage, whether direct or indirect, within the City.

(4) "Registration" or "licensee," as used generally in this chapter, means and includes respectively the words "permit" or "permittee" or the holder for any use for a period of time of any similar privilege, whether relevant to any provision of this chapter or other law or ordinance.

(5) "Person" includes the singular and the plural and also means and includes any person, firm, corporation, association, club, partnership, limited liability

company, individual receiver, assignee, trustee in bankruptcy, trust, estate, joint venture, company, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, collective or otherwise.

(6) "Premises" means and includes all lands, structures and places at a single physical location, and also any property which is either affixed to, or otherwise used in connection with the ~~business~~ operations conducted on such premises.

(7) "City Supervisor" means the Pullman City Supervisor or his or her appointed designee.

(8) "Marijuana" has the same meaning as currently defined in RCW 69.50.101(q) or as amended.

(9) "Medical Cannabis Operations" means any person engaged in the production, processing, distribution or collective cultivation of marijuana for medical use, including any person operating as a "designated provider" as currently defined by R.C.W. 69.51A.010(1) or as amended.

(10) "Medical use of marijuana" has the same meaning as currently defined in R.C.W. 69.51A.010(3) or as amended.

(11) "Nonresident business" means a Commercial Business or Medical Cannabis Operations with a place of business located outside the borders of the City of Pullman and that provides services within the City limits that require registration of the business with the City.

Section 3: Pullman City Code Chapter 6.95.030 and Pullman City Ordinance No. 08-14 §4 (2008), are each hereby amended to read as follows:

6.95.030 ~~Commercial Business~~ Registration Required. Unless exempted in this chapter, no person shall engage in any Commercial Business or Medical Cannabis Operations within the City without first having obtained from the City a valid and current ~~business~~ Registration authorizing such person to ~~carry on that business~~engage in operations. This registration shall be in addition to any other registrations or permits required by State or Federal laws. ~~Commercial Business~~ Registrations required under this Chapter are nontransferable. Each of the ~~business~~ premises on which any person is engaged in operations subject to registration under this Chapter must be registered

separately even if the individual ~~businesses~~ operations are owned, operated, or maintained by the same person or persons. Each ~~business~~ operation owned by a different person, or collective group of persons, must be registered separately even if co-located at the same premises as another ~~business~~operation.

Section 4: Pullman City Code Chapter 6.95.040 and Pullman City Ordinance No. 08-14 §5 (2008), are each hereby amended to read as follows:

6.95.040 Exemptions.

(1) The provisions of this chapter shall not apply to:

(a) Minors ~~doing business or operating a business concern~~engaged in a Commercial Business where no other person is employed by the minor, provided this exemption shall not apply to Medical Cannabis Operations;

(b) The United States or any instrumentality thereof and the State of Washington or any municipal subdivision thereof;

(c) Persons engaged in the delivery of newspapers or periodicals to which the recipient subscribes;

(d) The casual sale of personal property where the person selling the item is not regularly engaged in the business of selling said item(s), i.e., garage sales or bake sales;

(e) Sales by farmers or home gardeners of produce raised and harvested exclusively upon lands owned or leased for the raising of produce or fruit, provided this exemption shall not apply to Medical Cannabis Operations;

(f) Temporary craft booths or food booths lasting five (5) days or less in any one location, provided this exemption shall not apply to itinerant vendors as defined in P.C.C. 8.95.010.

(g) Home occupations as defined in P.C.C. 17.55.020 unless the owner of the home occupation is otherwise required by state law to register with the Washington State Department of Licensing Master License Service. A home occupation required to be licensed or registered with the State of Washington shall also register with the City under this chapter;

(h) Persons who own and self-manage one or more residential rental properties as a personal investment and not as a commercial business;

(i) Wholesale distributors selling products to businesses within the City unless said distributor has an office, warehouse or other business establishment located within the City.

(2) The registration fee portion of this chapter shall not apply to:

(a) Fraternal benefit associations or societies as defined in RCW 48.36A.010;

(b) Nonprofit religious organizations;

(c) Nonprofit organizations, associations, clubs, or corporations that are registered as such with the Washington Secretary of State, unless the nonprofit is engaged in Medical Cannabis Operations.

Section 5: Pullman City Code Chapter 6.95.050 and Pullman City Ordinance No. 08-14 §6 (2008), are each hereby amended to read as follows:

6.95.050 Issuance of Commercial Business Registrations; Procedure and Fees.

(1) As of July 1, 2009, registration with the City of Pullman shall be required of all Commercial Businesses within the City. Commercial Businesses existing before that date must be registered with the City on or before July 1, 2009, and with that registration shall be allowed to continue in the City, notwithstanding any other provisions in this chapter. Identification and registration of Commercial Businesses existing before July 1, 2009, shall be coordinated with the Washington State Department of Licensing Master License Service.

(2) Every person wishing to conduct a Commercial Business in the City of Pullman after June 30, 2009, and required to procure a Registration under the provisions of this chapter shall make application for a Commercial Business Registration, and receive approval from the City, before commencing business in the City. An application for a Commercial Business Registration shall be accomplished by filing a completed Master Business Application with the

Washington State Department of Licensing Master License Service. In all instances, the application filing shall include payment of all fees due as established by the City Council. Businesses registering through the Master License Service shall also pay the handling fee authorized by RCW 19.02.075. The applicant shall be required to provide all information requested on said form and failure to do so shall be grounds for refusing to issue the City business registration. In addition, the City Supervisor or his/her designee, from time to time, may request from a person holding a City Commercial Business Registration that they supply to the City an update of the information that was given on the original Registration application. Failure to supply said update as requested shall be sufficient grounds for revocation of the City Commercial Businesses Registration.

(3) The Master License Service will issue a Registrations and Licenses document to an approved business, imprinted with the proof of an approved Registration with the City. The Licenses and Registrations document must be conspicuously posted at the place of business identified on the document.

Section 6: Pullman City Code Chapter 6.95.060 and Pullman City Ordinance No. 08-14 §7 (2008), are each hereby amended to read as follows:

6.95.060 Change of Place of ~~Business~~Operations. ~~When the place of business of a person required to obtain a registration under this chapter is changed, the person shall inform the Master License Service of the change, in coordination with Permit Services.~~ Any change ~~of place~~in the location of the premises used in the ~~of business~~ operation of a Commercial Business or Medical Cannabis Operations ~~must be approved by the City~~will require the filing of a new application for a registration with the City and issuance of a new Registrations and Licenses document by the appropriate agency before ~~commencing business~~engaging in operations at the new location. A change of location may require the ~~filing of a new Master Business Application with the Master License Service and~~ payment of additional application fees. Upon approval of the ~~new business location by the City~~application, a new Registrations