



**AN ORDINANCE OF THE CITY OF SUNNYSIDE, WASHINGTON,
ENACTING A NEW SECTION 17.04.055
ENTITLED "MARIJUANA RETAIL SALES, PROCESSING, AND
PRODUCTION - PROHIBITED"**

WHEREAS, in 1998, the voters of the State of Washington approved Initiative Measure No. 692. Now codified as Chapter 69.51A RCW, entitled the Medical Use of Marijuana Act, which created an affirmative defense to state criminal liability for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, the legislature adopted ESSB 5073, with certain provisions vetoed by the Governor, which became effective July 22, 2011, which enacted provisions authorizing establishment and operation of "collective gardens" for medical marijuana purposes subject to land use powers of municipalities within the State of Washington; and

WHEREAS, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 ("Initiative 502") which decriminalized possession and use of marijuana for "recreational uses" and established a licensing protocol for marijuana production, processing, and retailing tasking the Washington State Liquor Control Board the responsibility to establish regulations and licensing marijuana products; and

WHEREAS, Congress passed the *Comprehensive Drug Abuse Prevention and Control Act of 1970*, Pub.L. No. 91-513, 84 Stat. 1236, to create a comprehensive drug enforcement regime it called the *Controlled Substances Act*, 21 U.S.C. § 801-971.

Under the Controlled Substances Act (also “CSA”), Congress established five “schedules” of controlled substances. 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 U.S.C. § 812(b); and

WHEREAS, marijuana is currently listed as a “Schedule I” controlled substance, 21 U.S.C. § 812(c), Schedule I(c)(10). For a substance to be designated a Schedule I controlled substance, it must be found: (1) that the substance “has high potential for abuse”; (2) that the substance “has no currently accepted medical use in treatment in the United States”; and (3) that “[t]here is a lack of accepted safety for use of the drug or other substance under medical supervision.” 21 U.S.C. § 812(b)(1). The Controlled Substances Act sets forth procedures by which the schedules may be modified. See 21 U.S.C. § 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). Possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful; and

WHEREAS, the United States Supreme Court has 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, Court decisions in other jurisdictions have held that local legislation authorizing conduct and uses in violation of the federal Controlled Substances Act are in conflict with such federal legislation and thus preempted by the federal law [*cf.*, *Pack v. Superior Court*, 199 Cal.App.4th 1070, (October 4, 2011); *Emerald Steel Fabricators v. Bureau of Labor and Industries*, 348 Or. 159, 230 P.3d 518 (2010)]; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued an opinion (AGO 2014-2) concluding that Initiative 502 does not preempt counties, cities and towns from banning marijuana production, processing, and retail businesses within their jurisdiction, and concluding that the issuance of a license from the Liquor Control Board does not entitle licensee to locate or operate a marijuana processing, producing, or retail business in violation of local rules or without necessary approval from local jurisdictions, concluding that local jurisdictions are permitted under the law to prohibit such activities; and

WHEREAS, the Washington State Court of Appeals Division I issued a decision in *Cannabis Action Committee, et al. v. City of Kent* (March 31, 2014) that ESSB 5073 did not legalize medical marijuana nor collective gardens upholding the City of Kent's authority to ban medical marijuana, collective gardens and dispensaries; and

WHEREAS, the Pierce County Superior Court issued a decision *MMH, LLC, and Graybeard Holdings, LLC v. City of Fife* (S/C NO. 14-2-10487-7) that upheld the City of Fife's ordinance that banned marijuana production, processing, and retail businesses within their jurisdiction.

WHEREAS, the Chelan County Superior Court issued a decision in *SMP Retail, LLC v. City of Wenatchee*, (S/C NO. 14-2-00555-0) that upheld a moratorium banning marijuana production, processing, and retail businesses within their jurisdiction.

WHEREAS, the general police powers of the City of Sunnyside empower and authorize the City of 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 has conducted legislative public hearings before the Planning Commission and City Council for the purpose of determining the interest of the citizens of the City of Sunnyside regarding recreational marijuana, processing and sale within the City; and

WHEREAS, the City Council finds and determines that the regulation of marijuana for recreational purposes 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 Chapter 17.04 “General Zoning Provisions” of the Sunnyside Municipal Code should be amended to add a new Section 17.04.055 prohibiting recreational marijuana related land uses within the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. That a new Section 17.04.055 entitled "Marijuana Retail Sales, Processing, and Production - Prohibited" of the Sunnyside Municipal Code, shall be and hereby is enacted and shall read as follows:

17.04.055 Marijuana Retail Sales, Processing, and Production - Prohibited.

Marijuana related land uses such as recreational marijuana production, processing, retail sales, although may be allowed by State law, are expressly prohibited from locating or operating in any zone within the City of Sunnyside.

Section 2. Except as amended herein, Chapter 17.04 of the Sunnyside Municipal Code shall remain unchanged.

Section 3. This Ordinance shall be in full force and effect five days after passage and publication as required by law.

PASSED this 27th day of April, 2015.



JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CMC, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, PLLC
Attorneys for the City of Sunnyside