ORDINANCE NO. 023-13

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, AMENDING PORT ORCHARD MUNICIPAL CODE CHAPTER 5.12 “BUSINESS LICENSES” IN RESPONSE TO STATE AND FEDERAL ACTIONS RELATING TO MARIJUANA

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

WHEREAS, the regulatory scheme in I-502 required the LCB to adopt rules before December of 2013 to address: methods for producing, processing and packaging of recreational marijuana; security requirements for retail outlets; retail outlet locations and hours of operation; labeling requirements; methods of transport of product throughout the state; taxing of marijuana-related activities; and the creation of a dedicated fund consisting of marijuana excise taxes, license fees, penalties and other income; and

WHEREAS, the LCB issued proposed new regulations (the “Revised Proposed Rules”) on September 4, 2013, which will become final on November 16, 2013; and

WHEREAS, the LCB will accept license applications on November 18, 2013 and issue licenses for the production, processing, and retail sale of recreational marijuana beginning on December 1, 2013; and

WHEREAS, on November 12, 2013, in response to the LCB’s Revised Proposed Rules and the pending issuance of state licenses for the production, processing, and retail sale of recreational marijuana, the City adopted Ordinance No. 022-13 addressing the land use impacts associated with the recreational marijuana; and

WHEREAS, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a memorandum to all U.S. Attorneys acknowledging that several states had adopted laws authorizing marijuana production, distribution, and possession and warning that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [e.g., criminal involvement in the sale and distribution of marijuana; access to minors; drugged driving; growing of marijuana on federal lands] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, based on those harms”; and
WHEREAS, compared to the LCB’s Revised Proposed Rules, chapter 69.51A RCW relating to medical marijuana demonstrates there is no robust state regulatory system for medical marijuana; and

WHEREAS, the City of Port Orchard has adopted local regulations establishing standards and procedures for business licenses, as currently codified in Chapter 5.12 POMC; and

WHEREAS, in light of the above-described actions taken by the State of Washington and DOJ relating to recreational marijuana, the City Council wishes to amend Chapter 5.12 POMC to clarify that a city business license is required for state-licensed producers, processors, and retailers of recreational marijuana operating within city limits; and

WHEREAS, until such time as the State of Washington adopts a more robust regulatory and enforcement system relating to medical marijuana, it is the City Council’s intent that city business licenses shall not be issued to medical marijuana dispensaries or collective gardens because they are prohibited under state and/or federal law; now, therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. The City Council adopts all of the “Whereas” sections of this Ordinance as findings in support of this Ordinance.

SECTION 2. Port Orchard Municipal Code (POMC) section 5.12.010 “Definitions” is amended to read as follows:

5.12.010 Definitions.
For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein.

(1) "Business" includes all activities, occupations, pursuits or professions located and/or engaged in within the city with the object of gain, benefit or advantage to the licensee or to another person or class, directly or indirectly, whether part-time or full-time. Each business location shall be deemed a separate business. For the purposes of this chapter, the owner of any apartment building or buildings containing an aggregate of 10 or more rental units located on a single or contiguous lot(s) and the owner of any business or commercial building containing any rental units shall be considered to be engaged in a “business.” Utility companies are defined as businesses.
(a) For purposes of this chapter, “business” also includes medical marijuana dispensaries and collective gardens as defined under chapter 69.51A RCW and marijuana producers, marijuana processors and marijuana retailers as defined in chapter 69.50 RCW and chapter 314-55 WAC.

(2) “Person” means any individual, firm, partnership, company, corporation, association, receiver, assignee, trust, estate, joint venture, group, joint stock company, business trust, society or any group of individuals acting as a unit.

(3) “Licensee” means any business granted a business license by the city.

(4) “Premises” includes all lands, structures and places, and also any personal property which is either affixed to or is otherwise used in connection with any such business conducted on such premises.

(5) “City license officer” is the city treasurer, her/his designee or any city of Port Orchard police officer.

(6) “Minor” means any person under 18 years of age.

(7) “Nonprofit organization” means an organization which has been granted nonprofit status by the Secretary of State of Washington or the Internal Revenue Service.

SECTION 3. POMC section 5.12.050 “Disclaimer of city liability” is amended to read as follows:

5.12.050 Disclaimer of city liability; indemnification.

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

(2) For all city business licenses issued to businesses operating under chapter 69.50 RCW, chapter 314-55 WAC, and chapter 16.39 POMC “Recreational Marijuana:”

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

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

**SECTION 4.** POMC section 5.12.070 “General qualifications of licensees” is amended to read as follows:

**5.12.070 General qualifications of licensees.**

(1) No license shall be issued, nor shall any license be renewed, pursuant to the provisions of this chapter to:

(a) An applicant who is under 18 years of age at the time of the application, unless he/she shall obtain the written consent of said applicant’s parent or guardian to make said application;

(b) An applicant who has had a similar license revoked or suspended, pursuant to POMC 5.12.120, or its predecessor;

(c) An applicant who shall not first comply with the general laws of the state;

(d) An applicant who seeks such a license in order to practice some illegal act or some act injurious to the public health or safety;

(e) A business license will not be issued for any activity that is known to violate local, state, and/or federal law, except as otherwise specifically allowed pursuant to chapter 69.50 RCW, chapter 314-55 WAC, and chapter 16.39 POMC “Recreational Marijuana.”

(2) Any person, including city officials, may submit written complaints or objections to the city license officer regarding the application for any license, and the city license officer is additionally authorized to request and receive information from all city departments as will tend to aid her/him in determining whether to issue or deny the license. Such information shall be confidential unless a hearing is requested on the application, or if the applicant shall request the information in writing. All information, complaints or objections shall be investigated and considered by the city license officer prior to issuing, denying or renewing any license.

**SECTION 5.** POMC section 5.12.120 “Suspension or revocation procedure” is amended to read as follows:

**5.12.120 Suspension or revocation procedure.**

(1) In addition to the other penalties provided herein or by law, any business license issued under the provisions of this chapter may be revoked or suspended, should any or all of the following conditions apply:
(a) The license was procured by fraud, false representation, or material omission of fact; or

(b) The licensee or any of its employees, officers, agents or servants, while acting within the scope of their employment, violates or fails to comply with any of the provisions of this chapter; or

(c) The licensee’s continued conduct of the business for which the license was issued has or will result in a danger to the public health, safety or welfare, or the violation of any federal or state law or any ordinance or regulation of the city; provided, however, for purposes of this chapter only, a recreational marijuana use operated in full compliance with chapter 69.50 RCW, chapter 314-55 WAC, and chapter 16.39 POMC “Recreational Marijuana shall not be deemed to violate federal or state law;” or

(d) The licensee has been convicted in any court of violating any federal, state or city statute, law, regulation or ordinance upon the business premises stated in the license; or

(e) The place of business does not conform to city ordinance; or

(f) The license is being used for a purpose different from that for which it was issued.

(2) Whenever the city license officer determines that there is cause for suspending or revoking any license issued pursuant to this chapter, the officer shall notify the person holding the license by mail, return receipt requested, of the determination. Notice mailed to the address on the license shall be deemed received three days after mailing. The notice shall specify the grounds for suspension, denial or revocation.

(3) The licensee may appeal the decision of the city officer to deny or revoke a business license by filing a written notice of appeal to the city council and paying the appeal fee of $200.00 within 15 calendar days of the city license officer’s decision.

(4) Upon timely receipt of the notice of appeal, the city license officer shall set a date for hearing the appeal. The city license officer shall mail notice of the date of the hearing to the licensee at least 15 calendar days prior to the hearing date.

(5) The hearing shall be de novo. The city council may affirm, reverse or modify the city license officer’s decision. The appeal fee shall be refundable only if the city council finds in favor of the applicant.

(6) The decision of the city council shall be final. Any person desiring to appeal must file the appropriate action in Kitsap County superior court within 15 calendar days of the city council’s decision.

(7) It is unlawful for any such person whose city business license has been revoked or suspended to continue operation of the business enterprise, or to keep the license issued to him/her in his/her possession and control, and the same shall immediately be surrendered to the city license officer. Following
revocation, no business license shall be issued for a period of 12 months to the person or business entity whose license was revoked, or to any business entity owned or controlled by such person or entity.

SECTION 6. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 7. This ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 12th day of November 2013.

Timothy C. Matthes, Mayor

ATTEST:

Brandy Rinearson, CMC, City Clerk

APPROVED AS TO FORM:

Gregory A. Jacoby, City Attorney

Sponsored by:

Fred Chang, Councilmember
NOTICE OF CITY OF PORT ORCHARD
ORDINANCE

The following is a summary of an Ordinance approved by the Port Orchard City Council at their regular Council meeting held November 12, 2013.

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Copies of Ordinance No. 023-13 are available for review at the office of the City Clerk of the City of Port Orchard. Upon written request a statement of the full text of the Ordinance will be mailed to any interested person without charge. Thirty days after publication, copies of Ordinance No. 023-13 will be provided at a nominal charge.

City of Port Orchard

Brandy Rinearson
City Clerk

Publish: Port Orchard Independent
November 22, 2013