

EXHIBIT A



September 10, 2013

Ms. Jenny A. Durkan  
United States Attorney  
Western District of Washington  
U.S. Attorney's Office  
700 Stewart Street, Suite 5220  
Seattle, WA 98101

Re: Washington State Initiative 502

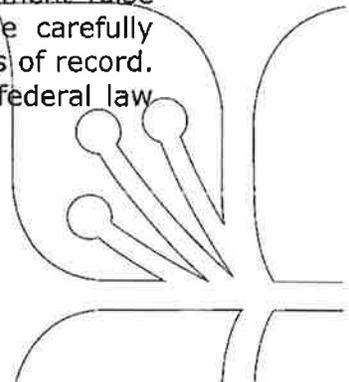
Dear Ms. Durkan:

I am the City Attorney of the City of University Place, Washington. Since the passage of Washington State Initiative 502 which purports to legalize marijuana in our state, and also to create a licensed marijuana industry, the City of University Place, along with many other local jurisdictions, has been awaiting formal action by the State or federal government to address the legal validity of I- 502, in light of the prohibition on marijuana in the federal Controlled Substances Act.

The current State administration will not subject I-502 to a legal test, and with the statement by Attorney General Eric Holder on August 29, and the prosecutorial guidance from Deputy Attorney General James Cole, it appears no further action is forthcoming from the current federal administration prior to the State's implementation of I-502. This leaves local jurisdictions in our State with the unprecedented and very difficult decision of whether to participate in violating federal law, or to defy those portions of Initiative 502 that would necessitate the local zoning, licensing and regulation of the new marijuana industry.

Unfortunately, neither the U.S. Attorney General's recent statement, nor the prosecutorial guidance to U.S. Attorneys address the pressing concerns of local governments in Washington who are faced with the prospect of participating in the regulatory zoning and licensing of production, processing, distribution and retail sale of marijuana. While those portions of I-502 that purport to legalize the possession and consumption of marijuana can be accommodated through police and prosecutorial guidelines, the portions that necessitate the active and ongoing authorization and regulation of the new marijuana industry by government raise grave concerns. In advising my clients on this difficult issue, I have carefully researched the relevant law and the decisions of state and federal courts of record. As a last step in my due diligence, I am consulting you as the chief federal law enforcement official for the Western District of Washington.

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Based on various prior statements by federal authorities and my own research, the question of whether a state law may legalize marijuana in defiance of the federal Controlled Substances Act has been completely and conclusively answered in the negative by the US Supreme Court in *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), and *Gonzales v Raich* 545 U.S. 1 (2005). I have found no countervailing authority. I also understand from prior statements by federal authorities and my research that Washington State government officials and employees, including local elected and appointed officials, who participate in the zoning, licensing and regulation of the new Washington marijuana industry, are subject to federal criminal prosecution for violating federal law. While the main motivator for our City is a desire to obey the law in accordance with our oaths of office, even the possibility of criminal prosecution is a tremendous concern.

In addition to our substantial concerns about violating federal law, and the attendant criminal penalties, our City is also concerned about breaching our federal grant agreements. University Place, as with every city and county in the State of Washington, is the recipient or sub-recipient of federal grant funds for purposes including transportation projects and law enforcement. Each of those grant agreements requires that the City "assure and certify" compliance with all federal statutes, regulations, policies, guidelines and requirements. I have not located any federal law, rule or judicial decision that would exempt compliance with all of, or with the marijuana portion of, the Controlled Substances Act. As a consequence, by participating in the implementation and regulation of Washington's new marijuana industry, the City of University Place would be in breach of all of our federal grant agreements, and would be subject to the penalties associated with the breach of those agreements.

We may infer from the President and Attorney General's statements that, at the moment, it is not the current federal administration's intent to prosecute Washington State government officials, or deem Washington recipients of federal grants in breach of their obligations for participating in Washington's new marijuana industry. However, to competently advise my clients on this issue I am bound to pose two essential questions. First, is there any legal basis which I have not discovered to conclude that the marijuana industry portions of I-502 are not violations federal law? Second, is there any legal basis which I have not discovered to conclude that Washington local governments who participate in the zoning, licensing and regulation of the new Washington marijuana industry are not subject to federal criminal prosecution, and are not in breach of their federal grant agreements? My own research answered both questions in the negative, but as my final piece of due diligence I am seeking your input.

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I am fully aware that a response to this inquiry is not mandatory, and that the politics surrounding this legal issue renders a response difficult. Nevertheless, I would greatly appreciate the courtesy of a reply.

Respectfully,

  
Steve Victor  
City Attorney

Chapter 5.35

MARIJUANA/CANNABIS USES

Sections:

5.35.010 Definitions.

5.35.020 State-Licensed Facilities.

5.35.030 Dispensaries

5.35.040 Severability

5.35.010 Definitions.

"Cannabis" also known as Marijuana means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Cannabis Dispensary" means any cannabis (marijuana) use that is not licensed by the State, which operates in a manner analogous to a retail store by having qualifying patient customers who wish to purchase cannabis (marijuana) for money, execute paperwork to join an RCW 69.51A "collective garden" make their purchase for money, and after completion of the purchase, execute paperwork to resign from the collective.

"Marijuana" also known as Cannabis means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Marijuana-Infused Products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include usable marijuana.

"Marijuana Processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

"Marijuana Producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

"Marijuana Retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

"Retail Outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

"THC Concentration" means the percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant cannabis, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant cannabis regardless of moisture content.

"Useable Marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

#### 5.35.020 State-Licensed Marijuana Businesses.

The following provisions apply to marijuana businesses licensed by Washington State.

A. State-licensed marijuana businesses shall be subject to all standards and other requirements of the University Place Development Regulations.

B. As a condition of licensure, all applicants for a University Place marijuana related business license shall execute in a form prescribed by the City, an acknowledgement that they are aware that marijuana remains a controlled substance under federal law, and that they are subject to criminal prosecution, and forfeiture of their business and personal assets under federal law; that they indemnify, defend, hold harmless and release the City and its officers and employees from any all claims arising in any manner from federal enforcement against them or their business.

C. State-licensed marijuana businesses shall not be permitted within 1,000 feet of the perimeter grounds of the following entities:

1. Elementary or secondary schools;
  2. Playground;
  3. Recreation center or facility;
  4. Child-care center;
  5. Public Park;
  6. Public transit center;
  7. Library;
  8. Game arcade (where admission is not restricted to persons age 21 or older);
- University Place shall rely upon the definitions set forth in the Washington Administrative Code when identifying the entities listed above.

D. All applications by State-licensed marijuana businesses for Conditional Use Permits in University Place shall include written federal certification of compliance by the applicant with all requirements of federal law.

E. Compliance with Federal Law.  
No application for a State-licensed marijuana business shall be accepted by University Place until such time as the federal law is amended to allow marijuana production, processing, and retail sale for recreational use in the State of Washington.

#### F. Marijuana-Licensed Retail Outlets.

1. State licensed marijuana retail outlets shall only be permitted through a Conditional Use Permit in a Mixed Use District (MUD).

2. Subject to any more specific conditions in the CUP, a City-permitted, State-licensed marijuana retail outlet may sell usable marijuana, marijuana-infused products, and marijuana paraphernalia between the hours of 8:00 AM and 9:00 PM.

3. Subject to any more specific conditions in the CUP, a City-permitted, State-licensed marijuana retail outlet may only sell usable marijuana, marijuana-infused products, and marijuana paraphernalia in a detached building containing no additional business activities.

#### G. State-Licensed Marijuana Processors.

1. State-licensed marijuana processors shall be permitted through a Conditional Use Permit in a Light-Industrial-Business Park Zone.

#### H. State-Licensed Marijuana Producers.

1. State-licensed marijuana indoor producers shall be permitted through a Conditional Use Permit in a Light-Industrial-Business Park Zone.

2. Marijuana outdoor producers are prohibited.

3. Subject to any more specific conditions in the CUP, a City-permitted, State-licensed marijuana production shall take place within a fully enclosed secure indoor facility or greenhouse.

4. Subject to any more specific conditions in the CUP, a City-permitted, State-licensed marijuana indoor production facility shall be limited to 10,000 square feet of production space.

I. Nuisance Abatement. In addition to any other available remedy or penalty, any violation of this Section, or any continued business operation after any state or federal directive to cease operations is declared to be a public nuisance per se, and may be abated under the applicable provisions of this Code or state law.

#### 5.35.030 Cannabis Dispensaries

Cannabis Dispensaries as defined in this Chapter are prohibited in University Place, and are declared to be a public nuisance per se.

#### 5.35.040 Severability.

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances shall not be affected.

Exhibit C to Ordinance No. 637

Chapter 4.75

MARIJUANA/CANNABIS EXCISE TAX

Sections:

- 4.75.010 Imposed.
- 4.75.020 Administration of tax.
- 4.75.030 Tax due date – Delinquency.
- 4.75.040 Financial records
- 4.75.050 Definitions.
- 4.75.060 Unlawful acts
- 4.75.070 Penalty.

4.75.010 Imposed.

There is levied upon all persons, associations or organizations an excise tax of ten percent (10%) upon the recipient, of the wholesale value of all marijuana (cannabis) delivered within the City for processing, and ten percent (10%) upon the recipient of the retail value of all marijuana (cannabis) delivered within the City for retail sale.

4.75.020 Administration of tax.

The administration and collection of the tax imposed by UPMC 4.75.010 shall be by the City manager or designee. The City Manager or designee may adopt appropriate administrative regulations, including reporting requirements, to ensure the effective administration of the provisions of this Chapter.

4.75.030 Tax due date – Delinquency.

A. The tax imposed by this Chapter shall be due and payable in monthly installments, and remittance therefor shall accompany such return and be made on or before the fifteenth day of the month following the month in which the tax accrued.

B. For each payment due, if such payment is not made by the due date thereof, there shall be added a penalty and interest as follows:

1. If paid one to ten days late, there shall be a penalty of 10 percent added to the amount of tax due.
2. If paid 11 to 20 days late, there shall be a penalty of 15 percent added to the amount of tax due.
3. If paid 21 to 30 days late, there shall be a penalty of 20 percent added to the amount of tax due.
4. If paid 31 to 60 days late, there shall be a penalty of 25 percent added to the amount of tax due.
5. In addition to the above penalty, the City will charge the taxpayer interest on all taxes due at the rate of one percent per month or portion thereof that said amounts are past due.

4.75.040 Financial records.

It shall be the responsibility of the taxpayer or taxpaying entity subject to taxation under this Chapter to make available at all reasonable times, such financial records as the City Manager or designee may require, in order to determine full compliance with this Chapter.

4.75.050 Definitions.

For the purposes of this Chapter, the terms used herein shall have the same meanings as defined in Chapter 5.35 UPMC, as the same now exists or may hereafter be amended.

4.75.060 Unlawful acts.

It is unlawful for any individual person or entity liable for the tax imposed by this Chapter to fail to pay the tax when due or to make any false or fraudulent return or any false statement in connection with the return.

4.75.070 Penalty.

Any person violating any provision of this Chapter shall be guilty of a misdemeanor and upon conviction thereof punished pursuant to state law or City ordinance.