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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117781

AN ORDINANCE relating to land use and zoning, creating a new Section 23.42.058 and amending Sections 23.50.012, 23.84A.012, 23.84A.018, and 23.84A.025 of the Seattle Municipal Code to establish locational restrictions on the production, processing, selling, or delivery of marijuana, to modify the definition of food processing, and to modify existing allowances for agricultural uses in certain industrial areas.

WHEREAS, in 1998 the State of Washington approved the medical use of marijuana by patients with certain medical conditions; and

WHEREAS, in 2011 the Washington State Legislature passed ESSSB 5073 that, among other things: (1) permits collective gardens by qualifying patients whereby they may, consistent with state law, collectively grow marijuana for their own medical use; and (2) clarifies that cities may continue to use their zoning authority to regulate the production, processing, or dispensing of marijuana within their respective jurisdictions; and

WHEREAS, Governor Christine Gregoire signed into law those portions of ESSSB 5073 described above, which took effect on July 22, 2011, as more fully set forth in Laws of 2011, Chapter 181; and

WHEREAS, in 2011 the Seattle City Council passed and the Mayor signed Ordinance 123661 clarifying that the manufacture, production, processing, possession, transportation, delivery, dispensing, application, or administration of marijuana must comply with all applicable City laws, and that compliance with City laws does not constitute an exemption from compliance with applicable state and federal regulations; and

WHEREAS, in 2012 the people of Washington State passed Initiative 502 legalizing the possession of small amounts of marijuana and directing the Washington State Liquor Control Board to develop a process for regulating the production, processing, selling, and delivery of marijuana; and

WHEREAS, the City of Seattle believes that any production, processing, selling, or delivery of marijuana should be conducted in a safe and fair manner for the health, safety, and welfare of the community; and

WHEREAS, the City of Seattle believes that the health, safety, and welfare of the community is best served by excluding from certain zones any production, processing, selling, or

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delivery of marijuana at a level greater than the level that may permissibly be included in a single collective gardens under current state law; and

WHEREAS, the City of Seattle is responding to the changes in state law in a responsible manner that will minimize impacts on patients, providers, and the health, safety, and welfare of the community; and

WHEREAS, the City of Seattle is monitoring the development of state regulations, and may need to revise its regulations in the future; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 23.42.058 of the Seattle Municipal Code is added as follows:

23.42.058 Marijuana

A. Except as provided in subsection 23.42.058.B, the production, processing, selling, or delivery of marijuana, marijuana-infused products, or useable marijuana that involves more than 45 marijuana plants, 72 ounces of useable marijuana, or an amount of marijuana-infused product that could reasonably be produced with 72 ounces of useable marijuana, may not be conducted in association with any business establishments or dwelling units located in any of the following areas:

1. Any Single-family zone;
2. Any Multifamily zone;
3. Any Neighborhood Commercial 1 (NC1) zone;
4. Any of the following Downtown zones:
    a. Pioneer Square Mixed (PSM);
    b. International District Mixed (IDM);
    c. International District Residential (IDR);
    d. Downtown Harborfront 1 (DH1);
    e. Downtown Harborfront 2 (DH2); or
    f. Pike Market Mixed (PMM); or
5. Any of the following districts:

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a. Ballard Avenue Landmark District;

b. Columbia City Landmark District;

c. Fort Lawton Landmark District;

d. Harvard-Belmont Landmark District;

e. International Special Review District;

f. Pike Place Market Historical District;

g. Pioneer Square Preservation District; or

h. Sand Point Overlay District.

B. The selling or delivery of marijuana-infused products or useable marijuana in association with a business establishment located in the Pioneer Square Mixed zone or the Pioneer Square Preservation District is exempt from the limits in subsection 23.42.058.A if the business establishment demonstrates to the satisfaction of the Director that:

1. The business establishment held a 2012 City of Seattle business license;

2. The business establishment held a 2013 City of Seattle business license as of March 25, 2013; and

3. The business establishment occupied a structure in the Pioneer Square Mixed zone or the Pioneer Square Preservation District where it sold or delivered marijuana-infused products or useable marijuana during 2012.

Section 2. Note 14 to Table A for Section 23.50.012 of the Seattle Municipal Code, which section was last amended by Ordinance 123986, is amended as follows:

23.50.012 Permitted and Prohibited Uses

A. All uses are permitted outright, prohibited or permitted as a conditional use, according to Table A for 23.50.012 and this Section 23.50.012.

B. All permitted uses are allowed as either a principal use or an accessory use, unless otherwise indicated in Table A for 23.50.012.

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Table A For 23.50.012 Uses in Industrial Zones					
	PERMITTED AND PROHIBITED USES BY ZONE				
USES	IB	IC	IG1 and IG2 (general)	IG1 in the Duwamish M/I Center	IG2 in the Duwamish M/I Center
A. AGRICULTURAL USES					
A.1. Animal Husbandry	X	X	X	X	X
A.2. Aquaculture	P	P	P	P	P
A.3. Community Garden	P(14)	P(14)	P(14)	P(14)	P(14)
A.4. Horticulture	X	X	X	X	X
A.5. Urban Farm	P(14)	P(14)	P(14)	P(14)	P(14)
***					

Notes to Table A for 23.50.012

* * *

(14) Except within designated manufacturing and industrial centers, where they are permitted only on rooftops and/or as ((~~vertical farming~~))indoor agricultural operations. Indoor agricultural operations within designated manufacturing and industrial centers (excluding associated office or food processing areas) shall not exceed 50,000 square feet in IB, IC, and IG2 zones, and are prohibited in IG1 zones.

* * *

Section 3. Section 23.84A.012 of the Seattle Municipal Code, last amended by Ordinance 123495, is amended as follows:

23.84A.012 "F"

* * *

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"Food processing and craft work" means a commercial use in which food items and craft work are produced without the use of a mechanized assembly line and includes but is not limited to the following:

1. "Custom and craft work" means a food processing and craft work use in which nonfood, finished, personal or household items, which are either made to order or which involve considerable handwork, are produced. Examples include but are not limited to pottery and candlemaking, production of orthopedic devices, motion picture studios, printing, creation of sculpture and other art work, and glassblowing. The use of products or processes defined as high-impact uses shall not be considered custom and craft work.

2. "Food processing" means a food processing and craft work use in which ((~~food~~))products for human consumption((~~ in its final form~~)), such as candy, baked goods, seafood, sausage, tofu, pasta, beverages, tinctures, consumable oils, products to be smoked, etc., ((~~is~~))are produced((~~, when the food is distributed to retailers or wholesalers~~)) for ((~~re~~))sale and consumption off the premises. Food processing includes catering services. ((~~Food or beverage p~~))Processing of products for human consumption using mechanized assembly line production of canned or bottled goods is not included in this definition, but ((~~shall be~~))is considered to be light manufacturing.

* * *

Section 4. Section 23.84A.018 of the Seattle Municipal Code, last amended by Ordinance 123770, is amended by adding the following new definition:

23.84A.018 "I"

* * *

"Indoor agricultural operation" means a business establishment with an agricultural use that is limited to plants grown in containers within an enclosed structure.

* * *

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Section 5. Section 23.84A.025 of the Seattle Municipal Code, last amended by Ordinance 123913, is amended by adding the following new definitions:

23.84A.025 "M"

* * *

"Marijuana" means all parts of the plant Cannabis, whether growing or not; 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:

1. the mature stalks of the plant;

2. fiber produced from the mature stalks of the plant;

3. oil or cake made from the seeds of the plant;

4. any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or

5. 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 useable marijuana.

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

* * *

Section 6. Business establishments and dwelling units where the production, processing, selling, or delivery of marijuana was being conducted prior to the effective date of this ordinance must come into compliance with Section 23.42.058 no later than 12 months from the effective date of this ordinance.

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Section 7. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

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Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Rebecca Herzfeld/684-8148	Not applicable

Legislation Title:
AN ORDINANCE relating to land use and zoning, creating a new Section 23.**42.058 and** amending Sections **23.50.012,** 23.84A.012, 23.84A.018**,** and 23.84A.025 of the Seattle Municipal Code to establish locational restrictions on the production, processing, selling, or delivery of marijuana, to modify the definition of food processing, and to modify existing allowances for agricultural uses in certain industrial areas.

Summary of the Legislation:
The proposed bill would establish regulations for the production, processing, selling, or delivery of marijuana in certain areas within Seattle. The legislation would accomplish this by establishing restrictions on the production, processing, selling, or delivery of marijuana in:

1. Single-family zones
2. Multifamily zones
3. Neighborhood Commercial 1 zones
4. The following Downtown zones:
    - Pioneer Square Mixed
    - International District Mixed
    - International District Residential
    - Downtown Harborfront 1
    - Downtown Harborfront 2
    - Pike Market Mixed.
5. The following historic and special review districts:
    - Ballard Avenue Landmark District
    - Columbia City Landmark District
    - Fort Lawton Landmark District
    - Harvard-Belmont Landmark District
    - International Special Review District
    - Pike Place Market Historical District
    - Pioneer Square Preservation District
    - Sand Point Overlay District.

The intent of the changes is to prevent the location of larger commercial operations in areas where they could have adverse impacts, without affecting the individual collective gardens envisioned for medical use by the State rules. The proposed legislation would also clarify the definition of food processing, implement a size limit for indoor agricultural operations in industrial areas, and modify existing allowances for certain agricultural uses in industrial areas.

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Background:
The proposed ordinance was developed in response to the new State legislation (the Medical Use of Cannabis Act and Initiative 502) and is based on the work of an interdepartmental team consisting of City staff and representatives of the Mayor, City Council, and City Attorney. A stakeholder group of medical-marijuana industry representatives was also convened to provide feedback on the proposal. In the fall of 2012, Councilmembers Clark and Licata also discussed the proposal at District Council meetings throughout the city to gain feedback on the proposal. Department of Planning and Development (DPD) estimates that there were about 150 marijuana-related businesses operating within Seattle as of July 2012.

Please check one of the following:

_X_ This legislation does not have any financial implications.
(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?
Yes, this proposal will change the way in which DPD compliance staff responds to complaints received from the public about the production, processing, selling, or delivery of marijuana. Under existing provisions, DPD received about 16 complaints regarding the location of activities involving marijuana during an 18-month period from June 2011 to December 2012. In response to these complaints, compliance staff sought to determine compliance with existing codes, such as the Land Use, Building, and Electrical Codes. Under the proposed regulations, staff would also be expected to assess the amount of marijuana plants, marijuana products, and usable marijuana on-site. This analysis would add time to individual enforcement actions. At the same time, new regulations may help reduce conflicts and thus the number of complaints by establishing clear expectations about the appropriate scale of production, processing, selling, or delivery of marijuana in various neighborhoods.

Overall, it is likely that the rules would result in a minor increase in the amount of time that code compliance staff dedicates to this issue. Given the scale of this increase, DPD anticipates that the increase can be handled within existing resources.

b) What is the financial cost of not implementing the legislation?
The lack of clarity in existing regulations regarding the location of agricultural uses in industrial areas has added significant time to the DPD review of permits for proposals that include an agricultural use in an industrial area. As these costs are largely offset by increased permit fees, DPD believes that the cost of not implementing the legislation would not be significant.

c) Does this legislation affect any departments besides the originating department?
Compliance cases that cannot be resolved without legal action will be referred to Law for additional enforcement work.

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d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

The City could regulate activities involving the production, processing, selling, or delivery of marijuana as a separate land use, which would trigger the requirement of a use permit when locating these facilities. This alternative would tend to shift costs from compliance to permit review. However, it could lead to potential legal issues resulting from permitting activities that are considered illegal under federal law.

e) Is a public hearing required for this legislation?

Yes, a public hearing will be held by City Council.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

Notice of the public hearing will be published in the Daily Journal of Commerce.

g) Does this legislation affect a piece of property?

No.

h) Other Issues: None.

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