



**SUBSTITUTE
ORDINANCE NO. 28083**

1 BY REQUEST OF DEPUTY MAYOR LONERGAN AND COUNCIL MEMBER
2 CAMPBELL

3 AN ORDINANCE relating to public nuisances; amending Chapter 8.30 of the
4 Tacoma Municipal Code to identify activities related to cannabis that are
5 nuisances.

6 WHEREAS RCW 35.22.280(30) grants the City extensive power to
7 declare what constitutes a nuisance, and to abate the same, and to impose fines
8 upon parties who may create, continue, or suffer nuisances to exist, and

9 WHEREAS RCW 69.51A.140 authorizes cities to adopt and enforce
10 health and safety requirements related to cannabis, including medical cannabis,
11 within their jurisdictions, and

12 WHEREAS the manufacture, delivery, and possession of cannabis is a
13 crime under local, state, and federal law, and

14 WHEREAS Initiative Measure No. 692, approved by the voters of
15 Washington state in 1998 and now codified as amended by the Legislature as
16 Chapter 69.51A RCW, created an affirmative defense to cannabis crimes for
17 "qualifying patients" and "designated providers" meeting certain criteria, and

18 WHEREAS the City does not currently have regulations or requirements
19 for cannabis, except criminal penalties, and

20 WHEREAS the City acknowledges the needs of persons suffering from
21 debilitating or terminal conditions and the benefits that some qualifying patients
22 experience from the medical use of cannabis, and
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1 WHEREAS the City has seen the establishment of cannabis-related
2 businesses within the City limits that offer cannabis and cannabis products to
3 numerous persons that assert they are operating as designated providers or
4 collective gardens within the meaning of Chapter 69.51A RCW, which
5 businesses are variously referred to as dispensaries, cooperatives, patient
6 cooperatives, or patient networks, and designated as both for-profit and
7 not-for-profit, and

8 WHEREAS these businesses are illegal under local, state, and federal
9 law, and the City has provided notice to some of these businesses that they must
10 cease illegal activity, and

11 WHEREAS there is no affirmative defense under Chapter 69.51A RCW for
12 these businesses, and

13 WHEREAS, as a criminal activity, these businesses endanger the comfort,
14 repose, health, and safety of citizens, and constitute a nuisance, and

15 WHEREAS RCW 69.51A.085 provides an affirmative defense to qualifying
16 patients participating in a "collective garden" provided that: (1) no more than ten
17 patients participate in the garden; (2) the garden contain no more than 15 plants
18 per patient and no more than 45 plants total; (3) the garden contain no more than
19 24 ounces of useable cannabis per patient and no more than 72 ounces of
20 useable cannabis total; (4) proof of qualification for all participating patients is
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available on the garden premises; and (5) no useable cannabis is delivered to
1 anyone other than the qualified participating patients, and

2 WHEREAS there is no set limit to the number of collective gardens that
3 may be located at any site, nor any restriction as to where collective gardens
4 may be located in relation to other uses, and
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6 WHEREAS many persons and entities are operating as “collective
7 gardens” with a “business” or “administrative” office at the same location where a
8 dispensary was located and the City believes that cannabis is being delivered at
9 these locations, and
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11 WHEREAS such offices are illegal and constitute a nuisance, and

12 WHEREAS collective gardens and other production, processing,
13 dispensing, and delivery of cannabis for medical use present: (1) issues of public
14 safety and odor for surrounding properties, as well as for the property on which
15 the uses and/or facilities exist; and (2) issues of public welfare and the protection
16 of minors when located near schools, daycare facilities, parks, libraries, youth
17 centers, drug treatment facilities, and other lawful uses, and
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19 WHEREAS the City must ensure that any potential secondary impacts
20 arising from the operation of collective gardens can be adequately regulated, and
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22 WHEREAS, because there can be no lawful business enterprise
23 associated with these activities, the City is precluded from licensing and/or
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otherwise permitting these activities, and as a result cannot use the regulatory tools associated with licensing and permitting, and

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WHEREAS, unless regulations declaring certain activities a nuisance are adopted, the City lacks the necessary tools to address the effect on public health, safety, and welfare of collective gardens and other activities relating to cannabis;

Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That Chapter 8.30 of the Tacoma Municipal Code is hereby amended, as set forth in the attached Exhibit "A."

Section 2. That this ordinance shall become effective as provided by law.

Passed JUL 31 2012

[Signature]
Deputy Mayor

Attest:

[Signature]
City Clerk

Approved as to form:
[Signature]
City Attorney



EXHIBIT "A"

CANNABIS PUBLIC NUISANCE CODE AMENDMENT

Amendments to the Public Safety and Morals Code – Chapter 8.30

These amendments show all of the changes to the existing text of the Public Safety and Morals Code. The sections included are only those portions of the code that are associated with these amendments. New text is underlined and text that is deleted is shown in strikethrough.

Chapter 8.30

PUBLIC NUISANCES

Sections:

- 8.30.010 Purpose and intent.
8.30.020 Definitions.
8.30.030 Public nuisance defined.
8.30.040 Specific public nuisances declared.
8.30.045 Cannabis.
8.30.050 Parking of vehicles on residential property.
8.30.055 Abandoned property in the right-of-way.
8.30.060 Penalty for violation.
8.30.070 Emergency actions.
8.30.080 Notice of Violation and Abatement.
8.30.090 Alternative Process – Notice of Violation, civil penalty, and abatement.
8.30.100 Hearing by the Hearing Officer.
8.30.110 Abatement process.
8.30.120 Recovery of costs and expenses.
8.30.130 Hearing regarding cost of abatement.
8.30.140 Additional relief.
8.30.150 Repeat offenders.
8.30.160 Severability.

8.30.045 Cannabis.

A. Producing, manufacturing, processing, delivering, distributing, possessing, and using cannabis are crimes under the municipal code, state law, and federal law. Washington state law, Chapter 69.51A RCW, provides an affirmative defense for certain cannabis-related crimes. There is no affirmative defense under federal law. This section is a civil remedy and does not alter or affect any criminal law governing the production, manufacture, processing, delivery, distribution, possession, or use of cannabis.

The production, manufacture, processing, delivery, distribution, possession, or use of cannabis for medical purposes for which there is an affirmative defense under state law may be a nuisance by unreasonably annoying, injuring, or endangering the comfort, repose, health, or safety of others; by being unreasonably offensive to the senses; by being an unlawful act; by resulting in an attractive nuisance; or by otherwise violating the municipal code or state law.

B. Definitions.

1. "Collective Garden" means any place, area, or garden where qualifying patients (as defined in RCW 69.51A.010) share responsibility and engage in the production, processing and/or delivery of cannabis for medical use as set forth in RCW 69.51A.085 and in full compliance with all limitations and

requirements set forth in RCW 69.51A.085. “Collective garden” does not include any office, meeting place, or club associated with a collective garden which is not located within the same structure as the collective garden itself.

2. “Medical Cannabis garden” means any place, area, or garden where a qualifying patient or designated provider (as defined in RCW 69.51A.010) produces or processes cannabis for medical use as set forth in RCW 69.51A.040 and in full compliance with all limitations and requirements set forth in RCW 69.51A.040.

3. “Cannabis garden” means any place, area, or garden where cannabis is produced or processed and either (a) the person producing or processing the cannabis is not a qualifying patient or designated provider or (b) a copy or copies of the valid documentation of the qualifying patient(s) who own or share responsibility for the garden is not available at all times on the premises or (c) the number of plants or useable cannabis on the premises exceeds the limits set forth in RCW 69.51A.040(1)(a), RCW 69.51A.040(1)(b), or RCW 69.51A.085, or the garden is not otherwise in full compliance with RCW 69.51A.040(1)(a), RCW 69.51A.040(1)(b), or RCW 69.51A.085.

4. “Dispensary” means any place where cannabis is delivered, sold, or distributed or offered for delivery, sale, or distribution. Dispensary does not include a private residence where a designated provider delivers medical cannabis to his or her qualifying patient or a private residence where a member of a collective garden delivers medical cannabis to another member of the same collective garden. Dispensary does not include a collective garden, but does include any office, meeting place, club, or other place which is not located within the same structure as the collective garden itself where medical cannabis is delivered regardless of whether the delivery is made to another member of the collective garden.

5. “Cannabis” or “Marijuana” means all parts of the plant Cannabis, commonly known as marijuana, 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.

6. The definitions contained in Chapter 69.50 RCW and Chapter 69.51A RCW shall be used to define any term in this section.

C. The following specific acts, omissions, places, and conditions are declared to be a public nuisance, including, but not limited to, any one or more of the following:

1. Any cannabis garden is a nuisance per se.

2. Any dispensary is a nuisance per se.

3. Any place where cannabis is visible to the public or is visible from property owned or leased by another person or entity. This includes smoking cannabis in a manner that it is visible from public property or from property owned or leased by another person or entity.

4. Any place that cannabis can be smelled from a public place or from a property owned or leased by another person or entity.

5. Any collective garden located closer than the distance noted below to any of the following, whether in or out of the City:

a. Within 600 feet of any public or private elementary or secondary school;

b. Within 600 feet of any daycare, nursery, or preschool;

c. Within 600 feet of any park;

d. Within 600 feet of any library;

e. Within 600 feet of any drug rehabilitation facility, substance abuse facility, or detoxification center; or

f. Within 600 feet of any drop-in center for youth.

g. The separation required between the collective garden and other uses identified in this subsection shall be measured from the nearest edge or corner of the property of each use.

6. Any collective garden where any person under the age of eighteen years is present or is permitted to be present.
7. Any collective garden or medical cannabis garden that is not fully enclosed within a structure.
8. Any parcel containing more than one collective garden, medical cannabis garden, or combination of collective garden and medical cannabis garden.
9. Any collective garden or cannabis garden where any violation of Chapter 69.50 RCW occurs and for which the affirmative defense created by Chapter 69.51A RCW would not apply.
10. Any place bearing a sign or placard advertising cannabis for sale or delivery.
11. Any place where any production, manufacture, processing, delivery, distribution, possession, or use of cannabis occurs for which there is not an affirmative defense under state law.
12. Any place other than a private residence where cannabis is smoked or ingested.

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