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Title: AN ORDINANCE creating a new section and establishing a prohibited pesticides testing program for marijuana retailers; adding a new chapter to K.C.C. Title 2A and prescribing penalties.

Sponsors: Jeanne Kohl-Welles

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Attachments: 1. 2016-0424_SR_Proposed_Pesticide_Regulation_Ordinance.docx, 2. 2016-0424_ATT2_Striking_Amendment_S1..docx, 3. 2016-0424_Striking_Amendment_S2_Revision 2.docx, 4. Seattle Times Op-Ed by CM Kohl-Welles Handout at 08312016 HHHS Meeting.docx

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Clerk 08/21/2016

AN ORDINANCE creating a new section and establishing a prohibited pesticides testing program for marijuana retailers; adding a new chapter to K.C.C. Title 2A and prescribing penalties.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. Washington state Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense to the charge of possession of marijuana for qualifying patients.

B. On November 6, 2012, the voters of the state of Washington passed Washington state Initiative Measure No. 502, providing a framework under which recreational marijuana may be produced, processed and retailed under a state licensing system.

C. In July 2015, Chapter 70, Laws of Washington 2015 incorporated distribution of medical marijuana

products into the recreational marijuana regulatory system.

D. In July 2015, Chapter 4, Laws of Washington 2015 2nd Special Session further clarified the marijuana regulatory system.

E. Chapter 70, Laws of Washington 2015 requires the Washington state Liquor and Cannabis Board to establish standards for medical marijuana endorsements within the recreational system.

F. The Washington state Liquor and Cannabis Board has adopted administrative rules for licensing marijuana businesses, including rules prohibiting the use of defined pesticides, for the establishment of independent testing laboratories, and for the inspection and testing of marijuana products.

G. The Washington state Liquor and Cannabis Board currently conducts limited pesticide testing of marijuana samples from licensed producers, but does not conduct any testing of marijuana products offered at licensed and or medically endorsed retail locations.

H. Testimony from the county's chief medical officer and other health care professionals and researchers before the King County Seattle board of health on June 16, 2016 noted that the chance of prohibited pesticides in marijuana products being available at retail marijuana stores could constitute a significant threat to public health and safety.

I. For the purposes of ensuring public health and safety it is the policy of King County to minimize the exposure of citizens to the harmful effects of prohibited pesticides in legal marijuana products.

SECTION 2. Sections 3 through 12 of this ordinance should constitute a new chapter in K.C.C. Title 2A.

SECTION 3. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Director" means the director of the department of public health or the director's authorized representative.

B. "Independent testing laboratory" means a third-party testing laboratory certified by the state or their

vendor as meeting the state's accreditation and other requirements before conducting required quality assurance tests.

C. "Liquor and Cannabis Board" is the state agency responsible under RCW 66.08.050 with the responsibility for regulating marijuana production, processing and retail sales.

D. "Marijuana" means: all parts of the plant cannabis, whether growing or not, with a percentage concentration of delta-9 tetrahydrocannabinol, also known as THC, content per dry weight of any part of the plant cannabis, or per volume or weight of marijuana product 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. "Marijuana" 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 that is incapable of germination.

E. "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant cannabis and having a THC concentration greater than ten percent.

F. "Marijuana Excise Tax" means the revenues collected by the state of Washington under RCW 69.50.535.

G. "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in this section, and have a THC concentration no greater than ten percent. "Marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

H. "Marijuana products" means useable marijuana, marijuana concentrates and marijuana-infused products.

I. "Marijuana retail store" as defined by RCW 69.50.101.

J.1. "Prohibited pesticide" means, but is not limited to:

a. any substance or mixture of substances intended to prevent, destroy, control, repel or mitigate any insect, rodent, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in a living person or other animal that is normally considered to be a pest;

b. any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

c. any spray adjuvant.

2. For the purposes of this subsection, "pesticides" include substances commonly referred to as herbicides, fungicides and insecticides that are not registered by Washington state Department of Agriculture under chapter 15.58 RCW as allowed for use in the production, processing and handling of marijuana.

NEW SECTION. SECTION 4. A. Except as otherwise specifically provided in this chapter, WAC 314-55-084 is hereby adopted and by this reference and made a part of this chapter.

B. The director shall only test product samples to determine if they contain prohibited pesticides as defined WAC 314-55-084.

C. This chapter applies to all the licensed retail licensees in the unincorporated area of King County. The director may enter into agreements with cities within the county to provide for testing services in those jurisdictions.

NEW SECTION. SECTION 5. A. The director shall only test product samples to determine if they contain prohibited pesticides as defined WAC 314-55-084, as amended.

B. The director is authorized to contract with independent testing laboratories for the purposes of testing product samples to determine if the samples contain a prohibited pesticide.

NEW SECTION. SECTION 6. A. After presenting identification credentials, the director is authorized to enter and conduct inspections of any licensed marijuana retail store during normal business hours, hours of operation and other reasonable times to determine compliance with and enforce this chapter, including the purchase of marijuana products as samples to be submitted for testing for prohibited pesticides.

B.1. The director shall document on an inspection form:

- a. information about the marijuana retail store, including license information;
- b. a list of the sample marijuana products procured to be tested.

2. At the conclusion of the inspection, and upon receipt of the sample test results, the director shall furnish the owner or operator of the licensed marijuana retail store a copy of all laboratory test results.

C. The director shall make all inspection reports, including marijuana retail store information, marijuana products procured and tested, along with test results, available for public inspection.

NEW SECTION. SECTION 7. It is unlawful for any owner, operator or employee of a licensed marijuana retail business to fail to comply with this chapter or any order of the director issued to carry out or enforce this chapter.

NEW SECTION. SECTION 8. A. The director is authorized to adopt rules consistent with the provisions of this chapter.

B. The director may enforce this chapter and any rules and regulations adopted or authorized by this chapter in accordance with K.C.C. Title 23.

NEW SECTION. SECTION 9. A. The first violation of this chapter within twelve months is a civil infraction or a citation under K.C.C. chapter 23.20, punishable by a fine of up to one hundred twenty-five dollars.

B. The second violation of this chapter within twelve months is a civil infraction or a citation under K.C.C. chapter 23.20, punishable by a fine of up to two hundred and fifty dollars.

C. Each subsequent violation of this chapter within twelve months is a civil infraction or citation under K.C.C. chapter 23.20, punishable by a fine of up to double the amount fined for the previous infraction. A violation that occurs within twelve months of the previous violation is a subsequent violation.

D. In the event of any violation, the director shall refer the evidence of the violation to the Liquor and Cannabis Board for state enforcement actions.

F. Nothing in this section is intended to limit the director's authority to pursue any remedy available under K.C.C. Title 23.

NEW SECTION. SECTION 10. A person aggrieved by an order or a citation by the director may appeal in accordance with K.C.C. Title 23. A person aggrieved by a civil infraction issued by the director may appeal in accordance with the Washington Court Rules.

NEW SECTION. SECTION 11. The costs associated with the implementation of this chapter shall be funded with an appropriation from the county's share of Marijuana Excise Tax local allotment from the state of Washington. The director shall not enforce this chapter in the event that the state fails to appropriate or to disburse local allotments of the Marijuana Excise Tax.

NEW SECTION. SECTION 12. A. The director shall report on June 30, 2017, and annually thereafter on the county's marijuana testing program.

B. The report shall include, but not be limited to, the following:

1. The number of retail marijuana stores visited;
2. The number of samples purchased and tested;
3. The results of the tests, in total and by each test site; and
4. The number of citations issued.

C. The report shall be filed in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the paper original and distribute electronic copies to all councilmembers.

SECTION 13. A. Section 6 of this ordinance takes effect January 1, 2017.