RESOLUTION NO. 4992

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, ESTABLISHING A MORATORIUM ON ACCEPTANCE OR PROCESSING OF APPLICATIONS FOR BUSINESS LICENSES AND OTHER LICENSES, PERMITS AND APPROVALS FOR MARIJUANA/CANNABIS RELATED BUSINESSES AND USES

WHEREAS, Washington State's Initiative 502 (I-502) was an initiative to the Washington State Legislature seeking reform of the laws in this state on marijuana, which Initiative appeared on the November 2012 general election ballot, and was passed by a margin of approximately 56 percent to 44 percent; and

WHEREAS, notwithstanding the State Initiative, the City of Auburn has in its City Code a provision that precludes enactment of city ordinances that are in conflict with state or federal law, as follows.

> 1 04.060 Conflict of ordinances with state or federal law.
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> All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void This provision does not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances. Any action, use or conduct which is not permitted or allowed is prohibited (Ord 6416 § 3, 2012.)

and

WHEREAS, notwithstanding the State Initiative, there are clear conflicts between the State and Federal law on marijuana/cannabis, as cannabis is still classified as a schedule I controlled substance under federal law and subject to federal prosecution under the doctrine of dual sovereignty; and

WHEREAS, in addition to the conflict between the State Initiative and Federal law, the practices of those involved in marketing marijuana/cannabis products are changing, so that how certain things would be addressed by the State of Washington is in flux and fraught with uncertainties, and

WHEREAS, following the passage of I-502, the State of Washington has moved forward with the development of processes and regulations for marijuana licenses, requirements for an application process and for reporting, and other requirements for marijuana/cannabis related businesses, and

WHEREAS, Chapter 69 51A of the Revised Code of Washington (RCW), most recently amended by Laws of the State of Washington, Chapter 181 in 2011, contains provisions regarding medical cannabis that are not addressed in the State Initiative These most recent amendments, combined with the State Initiative, appear to create a "two tiered" system regarding marijuana/cannabis, depending on whether the use is recreational or medical There continues to be uncertainty as to how to reconcile the differences between recreational and medical cannabis

WHEREAS, it is appropriate that the (currently "draft") provisions of the Washington Administrative Code (WAC) – Chapter 314-55 WAC – be thoroughly evaluated in terms of what they mean for the City of Auburn, how the City should address these State regulations and the possible effect on Chapter 69 51A RCW; and

WHEREAS, the City of Auburn does not currently have a specific provision in its zoning and land use codes addressing the use of property for marijuana/cannabis related businesses or medical marijuana, and

WHEREAS, in conformity with the responsibilities of the City of Auburn to provide for zoning and land use regulations pursuant to state law, and the City's authority to regulate land use activity within its corporate limits, the City intends to explore and evaluate how it can develop appropriate zoning and land use regulations for marijuana/cannabis related businesses and medical marijuana related activities, and

WHEREAS, the City Council understands, based on information compiled by other jurisdictions and publicly available, that the secondary impacts associated with marijuana/cannabis related businesses and medical marijuana related activities could include crimes against the businesses themselves as a result of the products maintained on the site, increased criminal activity in areas around the businesses, loss of revenue for neighboring businesses, and exposure of marijuana/cannabis products to minors, and

WHEREAS, the City Council further understands, based on information compiled by other jurisdiction and publicly available, that indiscriminately and inappropriately allowing state licensed marijuana/cannabis related businesses to be located within the City may result in diminution of real estate property values, and may, as well, result in adverse impacts to the affected neighborhoods, and

WHEREAS, to avoid or minimize the potential negative impacts of any future use of property for such marijuana/cannabis related businesses in the City of Auburn, it will be necessary for there to be City regulations in place to 1) properly review and assess the impacts a marijuana/cannabis related business may have on the City and the immediate neighborhood; and 2) determine reasonable and appropriate measures to be taken to mitigate those identified negative impacts, and

WHEREAS, in order to fully consider all the options and alternatives for such regulations, including evaluation of State regulations, and to fully investigate and review all of the factors involved in developing potential appropriate regulation of marijuana/cannabis related businesses, the City needs time to complete such reviews and put into place such regulations prior to accepting applications for siting State licensed marijuana/cannabis related businesses and medical marijuana related activities, and

WHEREAS, RCW Sections 35A.63.220 and 36 70A.390 authorize cities to adopt moratoria; and

WHEREAS, consistent with the provisions of RCW 35A.63.220, it is appropriate for the City Council to hold public hearings and to authorize the holding of public hearings and/or other means to gather information and adopt findings of fact supporting and justifying the moratorium, and to implement a work plan for review of the issues related to marijuana/cannabis related businesses in the development of the City's business and land use regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows.

Section 1 Moratorium Established Pursuant to RCW 35A.63.220, a moratorium is hereby imposed prohibiting the City from receiving and/or processing any applications for any marijuana/cannabis related business in any and all zoning districts in the City of Auburn. For the purposes hereof, marijuana/cannabis related businesses includes any activities licensable by the State and/or activities addressed by I-502 or by

other State Law regarding commercial, recreation and medical marijuana growing operations, collective gardens, and activities related thereto.

Section 2. Term of Moratorium. The moratorium imposed by this resolution shall become effective on the date hereof, and shall continue in effect for an initial period of one year, unless repealed, extended or modified by the City Council after subsequent public hearing(s) and entry of appropriate findings of fact pursuant to RCW 35A.63.220, provided that the moratorium shall automatically expire upon the effective date of zoning and land use regulations adopted by the City Council to address the implementation of the State's licensing of any marijuana/cannabis related business to be located in the City of Auburn.

Section 3 Preliminary Findings The following preliminary findings of fact are hereby adopted:

A. That marijuana/cannabis related businesses have the potential for significant impacts on neighborhoods and the community

B That because of the potential impacts of these marijuana/cannabis related businesses, special care and attention needs to be employed in evaluating, considering and developing appropriate legislation that satisfactorily addresses the concerns of the City while also conforming to legal requirements.

C It is appropriate to collect and compile documentation, information, testimony and statements of concerned citizens of the City and of other persons interested in or familiar with the issues of transitory accommodations and their impacts to fully explore ways to protect the City and its citizens from the adverse impacts of marijuana/cannabis related businesses.

Section 4 Conclusion. Based on the above Findings of Fact, the City Council concludes that the City has the authority to establish a moratorium, and that it is necessary to establish a moratorium, concerning the establishment, operation, and processing of applications for marijuana/cannabis related businesses, to act as a stop-gap measures in order to 1) to provide the City with an opportunity to study the issues concerning the siting of such State licensed marijuana/cannabis related businesses and prepare appropriate revisions to the City's codes and regulations, and 2) to protect the

health, safety and welfare of the citizens of Auburn by ameliorating negative impacts of marijuana/cannabis related businesses.

Section 5 Work Plan. The following work plan is adopted to address the issues involving marijuana/cannabis related business regulations.

A. That the City of Auburn Planning Commission shall be authorized and directed to hold public hearings and public meetings to fully receive and consider statements, testimony, positions and other documentation or evidence related to the issue of marijuana/cannabis related businesses.

B That the Planning Commission and City staff are authorized and directed to review the experiences of other jurisdictions, the status of legal cases, and statistical data, information, studies and other evidence compiled by other municipalities, of adverse impacts of marijuana/cannabis related businesses, and to review State and Federal law and regulations and the regulations, ordinances and codes adopted and implemented by other municipalities to address marijuana/cannabis related business land uses, and any other information that is pertinent to consideration of marijuana/cannabis related businesses.

C That the City of Auburn Planning Commission shall work with City staff and the citizenry of the City to develop proposals for regulation of marijuana/cannabis related business land uses and zoning considerations, to be forwarded in their recommendations to the City Council for inclusion in ordinances and ultimate adoption as a part of the City Code of the City of Auburn.

D That the Mayor, in consultation with the City Attorney, Planning & Development Director, the Police Chief and other staff, shall periodically advise and report to the City Council as to the status of hearings, meetings and information development regarding activities of the Planning Commission and City staff relative to the evaluation, consideration and development of regulations related to marijuana/cannabis related business land uses, with such reports to be scheduled approximately every six (6) months or as appropriate throughout the period of the moratorium and any extensions thereof, until adoption of a comprehensive ordinance as developed, relating to marijuana/cannabis related business land uses becoming effective in conjunction with the termination of the moratorium referred to in this Resolution.

Section 6 Public Hearing. A public hearing shall be scheduled for 7 30 p.m or as soon thereafter as the matter may be heard, on the 21 day of October, 2013, in City Council Chambers, 25 West Main Street, Auburn, Washington 98001, to

hear and consider the comments and testimony of those wishing to speak at such public hearing regarding the moratorium.

Section 7 Severability If any sections, sentence, clause or phrase of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property or circumstance, such invalidity or unconstitutionality or inapplicability shall not effect the validity or constitutionality of any other section, sentence, clause or phrase of this Resolution or its application to any other person, property or circumstance

Section 8 Effective Date. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this 16th day of September, 2013

CITY OF AUBURN

PETER B LEWIS, MAYOR

ATTEST

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B Heid, City Attorney