ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF COLLEGE PLACE, WASHINGTON, AMENDING SECTION 8.03 OF ORDINANCE NO. 539 BY ADDING CONDITIONAL USES FOR MARIJUANA PROCESSING FACILITIES, MARIJUANA PRODUCTION FACILITIES AND MARIJUANA RETAIL OUTLETS; AND FURTHER ADDING A NEW CHAPTER TO ORDINANCE NO. 539, TO BE CODIFIED AS CHAPTER 17.58 OF THE COLLEGE PLACE MUNICIPAL CODE, ESTABLISHING LAND USE CONTROLS RELATING TO RECREATIONAL MARIJUANA PRODUCTION, PROCESSING AND RETAIL SALES PURSUANT TO INITIATIVE 502; AND FURTHER AMENDING SECTION 4 OF ORDINANCE NO. 824 AND SECTION 27.04 OF ORDINANCE 539, CODIFIED AS COLLEGE PLACE MUNICIPAL CODE SECTION 17.81.050.

WHEREAS, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 ("Initiative 502") which decriminalized possession and use of marijuana for "recreational uses" and established a licensing protocol for marijuana production, processing, and retailing and tasking the Washington State Liquor Control Board with the responsibility to establish regulations and licensing marijuana products; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued an opinion (AGO 2014-2) concluding that Initiative 502 does not preempt counties, cities and towns from banning marijuana production, processing, and retail businesses within their jurisdictions, and concluding that the issuance of a license from the Liquor Control Board does not entitle licensee to locate or operate a marijuana processing, producing, or retail business in violation of local rules or without necessary approval from local jurisdictions, concluding that local jurisdictions are permitted under the law to prohibit such activities; and

WHEREAS, the Washington State Court of Appeals Division I issued a decision in Cannabis Action Committee, et al. v. City of Kent (March 31, 2014) that ESSB 5073 did not legalize medical marijuana nor collective gardens, upholding the City of Kent's authority to ban medical marijuana, collective gardens and dispensaries; and

WHEREAS, the general police powers of the City of College Place empower and authorize the City of College Place to adopt land use controls to provide for the regulation of land uses within the City and to provide that such uses shall be consistent with applicable law; and

WHEREAS, the City Council finds and determines that the regulation of marijuana for recreational purposes is subject to the authority and general police power of the City to develop specific and appropriate land use controls regarding such uses; and

WHEREAS, the City Council reserves its powers and authority to appropriately amend, modify and revise such prohibition to implement such land use controls in accordance with applicable law; and
WHEREAS, the City Council has conducted a legislative public hearing for the purpose of determining the interest of the citizens of the City of College Place regarding recreational marijuana production, processing and sale within the City; and

WHEREAS, the City Council finds and determines that the regulations herein contained regarding recreational marijuana production, processing, or retail sales of recreational marijuana are in the best interest of residents of the City of College Place;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COLLEGE PLACE DOES ORDAIN AS FOLLOWS:

Section 1. Additional Conditional Uses. Section 8.03 of Ordinance No. 539 and College Place Municipal Code Section 17.24.040 are hereby amended as follows:

8.03 Conditional uses.

Uses in the IL district that may be permitted by approval of a conditional use permit in accordance with Chapter XIX of this Ordinance are as follows:

A. Storage of flammable material and liquid, stored in tanks of more than 10,000 gallons each;

B. Energy recovery operations utilizing and/or producing garbage, paper, alcohol and gasohol;

C. Replaning mills;

D. Marijuana processing facilities in accordance with Chapter 17.58;

E. Marijuana production facilities in accordance with Chapter 17.58;

F. Marijuana retail outlets in accordance with Chapter 17.58.

Section 2. Recreational Marijuana. A new Chapter is hereby added to Ordinance No. 539 and shall be codified as Chapter 17.58 of the College Place Municipal Code

CHAPTER 17.58 – RECREATIONAL MARIJUANA

17.58.010 Purpose.

The purpose of this chapter is to address initiative 502 passed by Washington voters at the November 6, 2012 general election (Laws of 2013, ch. 3) and Chapter 69.51A of the Revised Code of Washington by identifying land use zones and establishing regulations relating to locations for marijuana processing facilities, marijuana production facilities, marijuana retail outlets, and similar facilities within the City of College Place. Nothing herein shall be construed as authority to violate any United States law. Affirmative terminology used in this chapter regarding permitting, licensing, authorization, and similar terms, shall not be construed as approval, support, endorsement, or encouragement of the activities therein addressed. Such
terms shall instead be construed only to describe circumstances under which there is conditional absence of local prohibition. The City of College Place does not hereby intend to aid, abet, counsel, command, induce or procure any offense against the United States. The City of College Place also does not hereby intend to conspire with any marijuana producer, processor, or retailer to commit any offense against the United States. The purpose of this chapter is to establish local laws which protect public health, safety, and welfare to the greatest extent allowed by a Washington state law that cannot be reconciled with United States law. Nothing herein shall be construed to supersede United States law prohibiting the possession, use, manufacture, or sale of marijuana.

17.58.020 Definitions.

For purposes of this Code, the following definitions are established:

A. "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four (24) hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

B. "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

C. "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where person under twenty-one years of age are not restricted.

D. “Higher education” means a facility for education beyond the secondary level; especially: education provided by a college or university.

E. "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

F. "Marijuana processing facility" means any building, facility or location used 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.

G. "Marijuana production facility" means any building, facility or location used to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
H. "Marijuana retail outlet" means any building, facility or location used to sell useable marijuana and marijuana-infused products to the public.

I. "Perimeter" means the property lines that enclose an area.

J. "Place of worship" means any building where congregations gather for prayer.

K. "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

L. "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

M. "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

N. "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

O. "Residential zoning district" means any zoning district that allows residential and multifamily residential dwelling units as a permitted principal use.

P. "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

17.58.030 Buffer zones.

No marijuana processing facility, marijuana production facility, or marijuana retail outlet may be located within one thousand feet (1000') of the perimeter of the grounds of any elementary or secondary school, higher education college or university, playground, recreation center or facility, child care center, public park, public transit center, library, game arcade, place of worship, or any residential zoning district. The distance shall be measured as the shortest straight line distance from the property line of the facility or outlet to the property line of the
elementary or secondary school, higher education college or university, playground, recreation center or facility, child care center, public park, public transit center, library, game arcade, place of worship, or any residential zoning district. The foregoing are continuing requirements in order to maintain a permit.

17.58.040 State license required.

A. Marijuana processing facilities.

1. No person or entity may own or operate a marijuana processing facility in the City of College Place unless that person or entity holds a valid marijuana processor license issued by the state liquor control board.

2. No person or entity may apply for a marijuana processing facility permit, receive a permit, or hold a permit unless the City of College Place is provided with written confirmation by the state liquor control board that it intends to issue a license to the person or entity upon satisfaction of specified conditions.

B. Marijuana production facilities.

1. No person or entity may own or operate a marijuana production facility in the City of College Place unless that person or entity holds a valid marijuana producer license issued by the state liquor control board.

2. No person or entity may apply for a marijuana production facility permit, receive a permit, or hold a permit unless the City of College Place is provided with written confirmation by the state liquor control board that it intends to issue a license to the person or entity upon satisfaction of specified conditions.

C. Marijuana retail outlets.

1. No person or entity may own or operate a marijuana retail outlet in the City of College Place unless that person or entity holds a valid marijuana retailer license issued by the state liquor control board.

2. No person or entity may apply for a marijuana retail outlet permit, receive a permit, or hold a permit unless the City of College Place is provided with written confirmation by the state liquor control board that it intends to issue a license to the person or entity upon satisfaction of specified conditions.

D. The foregoing are continuing requirements in order to maintain a permit.

17.58.050 Conditional use permit required.
A. Marijuana processing facilities, production facilities and retail outlets shall be processed in accordance with Chapter XIX of Ordinance No. 539 codified as Chapter 17.57 Conditional Use Permits.

B. Marijuana processing facilities.

1. No person or entity may own or operate a marijuana processing facility in the City of College Place unless that person or entity holds a valid conditional use permit issued by the City of College Place.

2. No conditional use permit issued by the City of College Place for a marijuana processing facility shall be construed as authorization or approval by the City of College Place or any local official for the recipient of the permit to own or operate a marijuana processing facility. It is a violation of federal law to own or operate a marijuana processing facility. A conditional use permit constitutes only a determination by the city and its local officials of the circumstances under which they will not commence enforcement proceedings to prevent ownership or operation of a marijuana processing facility if the conditions of the permit and all other state and local requirements are satisfied.

C. Marijuana production facilities.

1. No person or entity may own or operate a marijuana production facility in the City of College Place unless that person or entity holds a valid conditional use permit issued by the City of College Place.

2. No conditional use permit issued by the City of College Place for a marijuana production facility shall be construed as authorization or approval by the City of College Place or any local official for the recipient of the permit to own or operate a marijuana production facility. It is a violation of federal law to own or operate a marijuana production facility. A conditional use permit constitutes only a determination by the city and its local officials of the circumstances under which they will not commence enforcement proceedings to prevent ownership or operation of a marijuana production facility if the conditions of the permit and all other state and local requirements are satisfied.

D. Marijuana retail outlets.

1. No person or entity may own or operate a marijuana retail outlet in the City of College Place unless that person or entity holds a valid conditional use permit issued by the City of College Place.
2. No conditional use permit issued by the City of College Place for a marijuana retail outlet shall be construed as authorization or approval by the City of College Place or any local official for the recipient of the permit to own or operate a marijuana retail outlet. It is a violation of federal law to own or operate a marijuana retail outlet. A conditional use permit constitutes only a determination by the city and its local officials of the circumstances under which they will not commence enforcement proceedings to prevent ownership or operation of a marijuana retail outlet if the conditions of the permit and all other state and local requirements are satisfied.

17.48.060 General requirements.

A. Marijuana production facilities must satisfy all of the requirements for marijuana production under regulations and rules promulgated by the state liquor control board.

B. Marijuana processing facilities must satisfy all of the requirements for marijuana processing under regulations and rules promulgated by the state liquor control board.

C. Marijuana retail outlets must satisfy all of the requirements for marijuana retailers under regulations and rules promulgated by the state liquor control board.

D. The foregoing are continuing requirements in order to maintain a permit.

17.48.070 Production facility requirements.

Marijuana production facilities must be either:

A. Fully enclosed secure indoor facilities or greenhouses with rigid walls, roofs, and doors; or
B. Non-rigid greenhouses enclosed by a secure physical barrier, or other structures enclosed by a secure physical barrier which satisfy the security requirements of Chapter 314-55 WAC.

C. No outdoor production shall be allowed.

D. The foregoing are continuing requirements in order to maintain a permit.

17.58.080 Processing facility requirements.

Marijuana processing facilities must be fully enclosed secure indoor facilities. The foregoing is a continuing requirement in order to maintain a permit.

17.58.090 Outlet requirements.

Marijuana retail outlets must be fully enclosed secure indoor facilities. The foregoing is a continuing requirement in order to maintain a permit.

17.58.100 General facility requirements.
The following requirements apply to all facilities used or intended to be used for or as marijuana production facilities, marijuana processing facilities, or marijuana retail outlets:

A. No outdoor facilities are allowed.

B. No temporary structures are allowed.

C. Facilities may be located only in buildings and structures that are mounted or permanently affixed to a foundation.

D. Facilities may not be located in storage containers, cargo trailers, or other vessels previously used or designed for use in the packing, shipping, movement or transportation of freight, articles, goods or commodities.

E. Facilities may not be located in motor vehicles.

F. Facilities must be connected to approved water and sewerage systems and provide on-site restrooms.

17.58.110 Applications for marijuana facilities – additional requirements.

A. In addition to the information required by Section 19.02 Ordinance No. 539, codified as College Place Municipal Code section 17.57.030, all applications for conditional use permits for marijuana production facilities, marijuana processing facilities, and marijuana retail outlets must contain the following information:

1. A detailed site plan for the proposed project including:
   
   a. Property boundaries;
   
   b. Location of pedestrian access points, driveways, and all other points of ingress/egress points for general and emergency entrance and exit;
   
   c. Location of buildings and structures, including without limitation, dimensions and construction details, and interior layout;
   
   d. Location and construction details of greenhouses, including without limitation, dimensions and construction details, and interior layout, and plans for watering systems, ventilation systems, wastewater disposal systems, and solid waste disposal systems;
   
   e. Location, height and width of any proposed walls, fences, and other property enclosures together with a description of materials to be used to construct such walls, fences, and enclosures;
f. Landscaping including surface treatment and plan for treatment of dust and weeds;

g. Detailed lighting plans, including without limitation, the location, type, height, and brightness of all exterior lighting;

2. A stormwater drainage plan;

3. A traffic plan and/or traffic impact analysis;

4. Provisions for on-site restrooms and other sanitary facilities;

5. Provisions for elimination or mitigation of noise, odors, and other impacts to surrounding and nearby properties;

6. Property security arrangements; and

7. Operating plans and all other information required by Chapter 314-55.

B. No application shall be deemed complete or further processed until all of the information required by this section and Section 19.02 Ordinance No. 539, codified as College Place Municipal Code section 17.57.030, has been provided by the applicant.

17.58.120 Revocation of permit.

The hearing examiner may revoke or modify a conditional use permit under certain circumstances. Such revocation or modification shall be made on any one or more of the following grounds:

A. That the approval was obtained by fraud;

B. That the use for which such approval was granted has been abandoned;

C. That the use for which such approval was granted has at any time ceased for one-year or more;

D. That the permit granted is being exercised contrary to the terms of the conditions of such approval, or in violation of any statute, resolution, code, law, regulation or title. Before a conditional use permit may be revoked or modified, a public hearing shall be held. Procedures concerning public notice shall be the same as those required by this title for the initial consideration of the conditional use permit application.
Section 3. Violation – Penalty. Section 4 of Ordinance No. 824 and Section 27.04 of Ordinance 539, codified as College Place Municipal Code Section 1781.050, are hereby amended as follows:

A. Except in the case of violations of Sections 17.54.020, 17.54.030 and 17.54.040, a violation of any provision of this title or any failure to comply with any of its requirements shall constitute a misdemeanor and shall be punished by a fine not to exceed one thousand dollars, or by imprisonment in jail for a period not to exceed ninety days, or by both such fine and imprisonment. Any person convicted of said misdemeanor shall pay all costs and expenses incurred and involved in the case. Persons violating Sections 17.54.020, 17.54.030 and 17.54.040 shall be guilty of an infraction punishable by a fine not to exceed $100.00.

B. The owner or tenant of any building, structure, premises or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains the violation may each be found guilty of a separate offense and suffer the penalties provided in this section.

C. Nothing contained in this section shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation or to bring an action to enjoin any violation of this title.

Section 4. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance shall take effect and be in full force five (5) days after its passage and publication as provided by law.

PASSED by the City Council of the City of College Place, Washington, this ____ day of ____________, 2014.

___________________________
Julie L. Scott, Mayor

Attest:

______________________________
Sarah Scott, Clerk

Approved as to form:

______________________________
Charles B. Phillips, Attorney