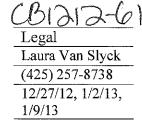
EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Ordinance relating to Marijuana, Amending and Repealing provisions of the Criminal Code (EMC 10.02 and 10.35) in accordance with this Ordinance and Section 17 hereof

	Consent
•	Action
12/27/12	First Reading
1/2/13	Second Reading
1/9/13	Third Reading
	Public Hearing

COUNCIL BILL #
Originating Department
Contact Person
Phone Number
FOR AGENDA OF



Initialed by:
Department Head
CAA
Council President



Location	Preceding Action	Attachments Proposed Ordinance	Department(s) Approval Police, Legal
Amount Budgeted	-0-		
Expenditure Required	-0-	Account Number(s):	
Budget Remaining	-0-		
Additional Required	-()-		

DETAILED SUMMARY STATEMENT:

Washington voters enacted Initiative 502 into law in the November 2012 election. The effective date of the changes to state law was December 6, 2012. Initiative 502 decriminalized some conduct, revised some definitions related to possession of marijuana and drug paraphernalia, and defined a new civil infraction for opening a package containing marijuana or a marijuana-infused product, or consuming marijuana or a marijuana-infused product, in view of the general public. As a first class city, Everett is required by law to provide for the same punishment for a criminal offense of a city ordinance as the punishment provided in state law for the same crime.

RECOMMENDATION:

Adopt an Ordinance relating to Marijuana, Amending and Repealing provisions of the Criminal Code (EMC 10.02 and 10.35) in accordance with this Ordinance and Section 17 hereof.

Ordinance	No.	

An Ordinance relating to Marijuana,

Amending and Repealing provisions of the Criminal Code (EMC 10.02 and 10.35) in accordance with this Ordinance and Section 17 hereof.

Whereas, Initiative 502 was enacted into state law in the November 2012 election; and

Whereas, Initiative 502 decriminalized some conduct and revised some definitions related to possession of marijuana and drug paraphernalia and further there have been changes in State law that need to be reflected in the City's regulations; and

Whereas, Initiative 502 defined a new civil infraction for opening a package containing marijuana or a marijuana-infused product, or consuming marijuana or a marijuana-infused product, in view of the general public; and

Whereas, Everett, a first class city, must provide for the same punishment for a criminal offense of City ordinance as the punishment provided in state law for the same crime;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

Board. "Board" means the state board of pharmacy.

Section 2: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

Controlled Substance. "Controlled Substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

Section 3: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

Deliver / Delivery. "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

Section 4: Ordinance 1145-85 §14 (part) Chapter 10.02 EMC is amended by the addition of the following section:

Drug. "Drug" means (a) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (b) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (c) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (d) controlled substances intended for use as a component of any article specified in (a), (b), or (c) of this section. The term does not include devices or their components, parts, or accessories.

Section 5: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

Drug Paraphernalia.

- A. "Drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance other than marijuana. It includes, but is not limited to:
 - 1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - 2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 - 3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - 4. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;
 - 5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 - 6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
 - 7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - 8. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
 - 9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - 10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
 - 11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

- 12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cocaine into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - b. Water pipes;
 - c. Carburetion tubes and devices;
 - d. Smoking and carburetion masks;
 - e. Miniature cocaine spoons, and cocaine vials;
 - f. Chamber pipes;
 - g. Carburetor pipes;
 - h. Electric pipes;
 - i. Air-driven pipes; and
 - j. Ice pipes or chillers.
- B. In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:
 - 1. Statements by an owner or by anyone in control of the object concerning its use;
 - 2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
 - 3. The proximity of the object, in time and space, to a direct violation of this chapter;
 - 4. The proximity of the object to controlled substances;
 - 5. The existence of any residue of controlled substances on the object;
 - 6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
 - 7. Instructions, oral or written, provided with the object concerning its use;
 - 8. Descriptive materials accompanying the object which explain or depict its use;
 - 9. National and local advertising concerning its use;
 - 10. The manner in which the object is displayed for sale;
 - 11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
 - 12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
 - 13. The existence and scope of legitimate uses for the object in the community; and
 - 14. Expert testimony concerning its use.

Section 6: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

Immediate Precursor. "Immediate precursor" means a substance:

- A. That the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;
- B. That is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and
- C. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

Section 7: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

Marijuana. "Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration 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. The term 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 which is incapable of germination.

Section 8: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

Marijuana-infused products. "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.

Section 9: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

THC Concentration. "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

Section 10: Ordinance 1145-85 §14 (part) (Chapter 10.02 EMC) is amended by the addition of the following section:

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

Section 11: Ordinance 1653-89 §§2 and 9 (part), as amended by Ordinance 2622-02 §1 (EMC 10.35.020), which currently reads as follows:

Possession of drug paraphernalia.

- A. It is unlawful for any person to use, or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance, as defined by Chapter 69.50 RCW, as now or hereafter amended. Any person who violates this section is guilty of a misdemeanor.
- B. Nothing in subsection A of this section prohibits any person over the age of eighteen from possessing sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

Is hereby amended to read as follows:

Possession of drug paraphernalia.

- A. It is unlawful for any person to use, or possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance other than marijuana, as defined by Chapter 69.50 RCW, as now or hereafter amended. Any person who violates this section is guilty of a misdemeanor.
- B. Nothing in subsection A of this section prohibits any person over the age of eighteen from possessing sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

Section 12: Ordinance 1653-89 §§3 and 9(part), as amended by Ordinance 2622-02 §2 (EMC 10.35.030), which currently reads as follows:

Manufacture or delivery of drug paraphernalia.

- A. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance, as defined in Chapter 69.50 RCW, as now or hereafter amended. Any person who violates this section is guilty of a misdemeanor.
- B. Nothing in subsection A of this section prohibits any person over the age of eighteen from possessing sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

Is hereby amended to read as follows:

Manufacture or delivery of drug paraphernalia.

- A. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance other than marijuana, as defined in Chapter 69.50 RCW, as now or hereafter amended. Any person who violates this section is guilty of a misdemeanor.
- B. Nothing in subsection A of this section prohibits any person over the age of eighteen from possessing sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

Section 13: Ordinance 2318-98 §1, as amended by Ordinance 2622-02 §4 (EMC 10.35.055), which currently reads as follows:

Selling or giving drug paraphernalia to another person.

- A. Every person who sells or gives, or permits to be sold or given, to any person any drug paraphernalia in any form commits a civil infraction punishable by a fine of not more than five hundred dollars.
- B. For purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance. Drug paraphernalia includes, but is not limited to, objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
 - 1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - 2. Water pipes;
 - 3. Carburetion tubes and devices;
 - 4. Smoking and carburetion masks;
 - 5. Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - 6. Miniature cocaine spoons, and cocaine vials;
 - 7. Chamber pipes:
 - 8. Carburetor pipes;
 - 9. Electric pipes;

- 10. Air-driven pipes;
- 11. Chillums;
- 12. Bongs; and
- 13. Ice pipes or chillers.
- C. It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.
- D. Nothing in subsection A of this section prohibits legal distribution of injection syringe equipment through public health and community-based HIV prevention programs, and pharmacies.

Is hereby amended to read as follows:

Selling or giving drug paraphernalia to another person.

- A. Every person who sells or gives, or permits to be sold or given, to any person any drug paraphernalia in any form commits a civil infraction punishable by a fine of not more than five hundred dollars.
- B. For purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance other than marijuana. Drug paraphernalia includes, but is not limited to, objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
 - 1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - 2. Water pipes;
 - 3. Carburetion tubes and devices;
 - 4. Smoking and carburetion masks;
 - 5. Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - 65. Miniature cocaine spoons, and cocaine vials;
 - 76. Chamber pipes;
 - 87. Carburetor pipes;
 - 98. Electric pipes;
 - 109. Air-driven pipes; and
 - 11. Chillums;

- 12. Bengs; and
- 1310. Ice pipes or chillers.
- C. It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.
- D. Nothing in subsection A of this section prohibits legal distribution of injection syringe equipment through public health and community-based HIV prevention programs, and pharmacies.

Section 14: Ordinance 1653-89 §§6 and 9 (part) (EMC 10.35.060), which currently reads as follows:

Possession of marijuana.

- A. Any person who possesses forty grams or less of marijuana shall be a guilty of a misdemeanor.
- B. "Marijuana" means all parts of the plant of the genus Cannabis L., whether growing or not; 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. It 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 which is incapable of germination.

Is hereby amended to read as follows:

Possession of marijuana.

- A. Any person who possesses forty grams or less of marijuana shall be a guilty of a misdemeanor.
- B. _"Marijuana" means all parts of the plant of the genus Cannabis L., whether growing or not; 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. It 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 which is incapable of germination. Subsection A of this section shall not apply to or affect the following: The possession, by a person twenty-one years of age or older, of useable marijuana or marijuana-infused products in amounts that do not exceed those set forth in Subsection C of this section.

- C. The amounts of useable marijuana or marijuana-infused products applicable to this section are:
 - 1. One ounce of useable marijuana;
 - 2. Sixteen ounces of marijuana-infused product in solid form;
 - 3. Seventy-two ounces of marijuana-infused product in liquid form.

<u>Section 15:</u> Ordinance 1653-89 as amended (Chapter 10.35 EMC) is hereby amended by the addition of the following section:

Marijuana - Opening or consuming in view of the general public - Failure to Respond - Failure to Comply.

- A. It is unlawful to open a package containing marijuana, useable marijuana, or a marijuana-infused product, or consume marijuana, useable marijuana, or a marijuana-infused product, in view of the general public. A person who violates this section is guilty of a civil infraction and shall be penalized in accordance with the penalty schedule for class 3 civil infractions under Chapter 7.80 RCW.
- B. Any person who, after receiving a statement of the options provided in Chapter 7.80 RCW for responding to the notice of civil infraction and the procedures necessary to exercise these options, fails to exercise one of the options in a timely manner is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. A notice of civil infraction may be complied with by an appearance by counsel.
- C. A person who willfully fails to pay a monetary penalty or to perform community restitution as required by a court under this chapter may be found in contempt of court as provided in Chapter 7.21 RCW.

Section 16: §§1, 9 (part) of Ordinance 1653-89 (EMC 10.35.010) are hereby repealed.

Section 17: This Ordinance amends Section 14 (part) of Ordinance 1145-85 (Chapter 10.02 EMC); amends Section 2, 3 and 9 (part) of Ordinance 1163-89 as amended by Sections 1 and 2 of Ordinance 2622-02 (EMC 10.35.020 and 030); amends Section 1 of Ordinance 2318-98 as amended by Section 4 of Ordinance 2622-02 (EMC 10.35.055); amends Sections 6 and 9 (part) of Ordinance 1653-89 (EMC 10.35.060); amends Ordinance 1653-89 (Chapter 10.35 EMC); and repeals sections 1 and 9 (part) of Ordinance 1653-89 (EMC 10.35.010)

Section 18: General duty.

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision nor any term used in

this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this ordinance by its officers, employees or agents.

Section 19: Savings.

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or before the City or in any way modify any obligation, right or liability, civil or criminal, which may exist by virtue of any of the ordinances herein amended.

Section 20: Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this Ordinance.

<u>Section 21:</u> Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

	RAY STEPHANSON, MAYOR	RAY STEPHANSON, MAYOR		
ATTEST:				
City Clerk				
Passed:	· 			
Effective: Published:	· · · · · · · · · · · · · · · · · · ·			