

ORDINANCE NO. _____

AN INTERIM ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON RELATING TO STATE-LICENSED MARIJUANA PRODUCERS, PROCESSORS, AND RETAILERS; ADOPTING A NEW CHAPTER 18.51 OF THE OLYMPIA MUNICIPAL CODE; AND DECLARING AN EMERGENCY.

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug; and

WHEREAS, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as chapter 69.51A RCW, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana (cannabis); and

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law" (RCW 69.51A.005), but that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for non-medical purposes" (RCW 69.51A.020); and

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011; and

WHEREAS, on April 29, 2011, former Governor Christine Gregoire vetoed all of the provisions of E2SSB 5073 relevant to medical marijuana dispensaries but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually and in collective gardens; and

WHEREAS, RCW 69.51A.085 permits qualifying patients "to create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use," provided no more than ten qualifying patients participate in a collective garden, a collective garden does not contain more than 15 plants per patient up to a total of 45 plants per collective garden, and the collective garden does not contain more than 24 ounces of useable cannabis per patient, up to a total of 72 ounces of useable cannabis; and

WHEREAS, under RCW 69.51A.060(1), it is a class 3 civil infraction to display medical cannabis in a manner or place which is open to view of the general public, which would include growing plants; and

WHEREAS, RCW 69.51A.140 authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction and that nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction; and

WHEREAS, Initiative Measure No. 502, approved by the voters of Washington State on November 6, 2012, calls for the establishment of a regulatory system licensing producers, processors, and retailers of recreational marijuana for adults 21 years of age and older, legalizes the possession and private recreational use of marijuana, and requires the Washington State Liquor Control Board to adopt procedures and criteria by December 1, 2013, for issuing licenses to produce, process, and sell marijuana; and

WHEREAS, the City of Olympia adopted Ordinance No. 6851 on May 7, 2013, imposing a moratorium on the establishment of medical cannabis collective gardens and other establishments involved in the sale, manufacturing, distribution, or use of marijuana because of the potential impact on the public health, safety, and welfare; and

WHEREAS, the Washington State Liquor Control Board has announced that it will adopt its rules pertaining to the licensing of marijuana producers, processors, and retailers by October 16, 2013, with an effective date of November 16, 2013, and begin accepting applications for license types on November 18, 2013; and

WHEREAS, there is insufficient time between the effective date of the Liquor Control Board's rules and the Board's date for accepting marijuana applications for the City to go through the normal Growth Management Act development regulation adoption process; and

WHEREAS, the City currently does not have specific zoning regulations pertaining to state-licensed producers, processors, and retailers of state-licensed recreational marijuana; and

WHEREAS, the City Council conducted a public hearing on June 25, 2013, as required by Ordinance No. 6851, to take public testimony regarding the establishment of the moratorium; and

WHEREAS, the City Council has studied the potential land use impacts associated with state-licensed marijuana producers, processors, and retailers and has now prepared this Interim Ordinance to address these impacts; and

WHEREAS, the City Council conducted a public hearing on October 15, 2013, to take public testimony regarding interim regulations pertaining to state-licensed producers, processors, and retailers of state-licensed recreational marijuana; and

WHEREAS, the City Council finds that it is necessary to adopt this Interim Ordinance to avoid unanticipated negative impacts on the community and the public health, safety, and welfare associated with state-licensed marijuana producers, processors, and retailers; and

WHEREAS, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for no longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal;" and

WHEREAS, interim zoning controls enacted under RCW 35A.63.220 and/or RCW 36.70A.390 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, this Ordinance is also adopted pursuant to Article 11, Section 11, of the Washington State Constitution; and

WHEREAS, this Ordinance is supported by the staff report and attachments and documents on file with the City of Olympia and also by the professional judgment and experience of City staff; and

WHEREAS, by adopting this interim chapter to Olympia Municipal Code Title 18, the same penalties that apply elsewhere in Title 18 will also apply to this interim chapter; and

WHEREAS, the City Council finds that the restrictions and requirements established by this Ordinance are necessary for the immediate preservation of the public peace, health, or safety and for the immediate support of city government and its existing public institutions;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Adoption of OMC 18.51. There is hereby adopted a NEW CHAPTER 18.51 to Title 18 of the Olympia Municipal Code to read as follows:

**Chapter 18.51
STATE-LICENSED MARIJUANA PRODUCERS, PROCESSORS, AND RETAILERS
REGULATIONS**

18.51.000 Chapter

Sections:

- 18.51.010 Findings
- 18.51.020 Purpose
- 18.51.030 Definitions
- 18.51.040 State-Licensed Marijuana Producers, Processors and Retailers Requirements
- 18.51.050 Nuisance Abatement

18.51.010 Findings

The City Council finds that nothing in this chapter 18.51 OMC shall be construed to supersede Washington State or federal law pertaining to the acquisition, possession, manufacture, sale or use of marijuana.

18.51.020 Purpose

The purpose of these regulations of state-licensed marijuana producers, processors, and retailers is to mitigate potential impacts on nearby properties of marijuana producers, processors, or retailers licensed by the State of Washington Liquor Control Board and to promote the public health, safety, and welfare.

18.51.030 Definitions

- A. "Marijuana" shall have the definition as provided in RCW 69.50.101 (s) as it currently states or as may be amended.
- B. "Marijuana processor" shall have the definition as provided in RCW 69.50.101 (t) as it currently states or as may be amended.
- C. "Marijuana producer" shall have the definition as provided in RCW 69.50.101 (u) as it currently states or as may be amended.

D. "Marijuana retailer" shall have the definition as provided in RCW 69.50.101 (w) as it currently states or as may be amended.

18.51.040 State-Licensed Marijuana Producer, Processor and Retailer Requirements

A. General requirements.

A marijuana producer, processor, or retailer licensed by the State of Washington Liquor Control Board shall be required to comply with all applicable regulations established by the City including, but not limited to, all building and fire code regulations and zoning regulations and shall be required to provide a copy of the state-issued license to the City upon request. A marijuana producer, processor, or retailer licensed by the State of Washington Liquor Control Board shall also be required to comply with all applicable state regulations and all requirements set forth in the state-issued license.

B. Premises Requirements.

A recreational producer, processor, or retailer must operate in compliance with the following conditions:

1. From a public right-of-way, there shall be no exterior display of marijuana or marijuana cultivation visible outside of the premises.
2. The marijuana of a retailer, producer, or processor shall be entirely within a permanent enclosed structure with a roof. The structure shall comply with all applicable code requirements.
3. Areas where marijuana is grown, stored, or dispensed must be provided with ventilation systems so that no odors are detectable off the premises.
4. All premises must comply with the noise control requirements of the Olympia Municipal Code.
5. No minors shall be permitted on marijuana producer, processor, or retailer premises unless accompanied by a parent or guardian.
6. Consumption of marijuana, products containing marijuana or alcohol on the premises is prohibited, as are any other associated uses such as a smoking room, dance or performance space, private club, open-to-the-public nightclub, cabaret, tavern, or similar establishment.
7. All premises must have an operating security and alarm system that is monitored twenty-four (24) hours a day and that includes a video recording system that monitors production, storage, and point of sale areas. All video recordings must be continuously recorded twenty-four (24) hours a day and must be kept for a minimum of forty-five (45) days on the licensee's recording device. All videos are subject to inspection by the Olympia Police Department upon request.
8. A recreational retailer may be open only between the hours of 8 a.m. and 9 p.m.

C. City Zoning

1. State-Licensed Marijuana Retailers

- i. No person may conduct business within the City of Olympia as a state-licensed marijuana retailer unless they are located within a HDC4 or GC Zone in accordance with OMC Title 18, Unified Development Code and licensed under this chapter.
- ii. Waste products must be disposed of in a secure manner that would prevent exposure to the public or create a nuisance.
- iii. A retailer is required to obtain a conditional use permit approved by the Hearing Examiner pursuant to chapter 18.48 OMC.

2. State-Licensed Marijuana Producers and Processors

- iv. No person may conduct business within the City of Olympia as a state-licensed marijuana producer or processor unless it is located within a light industrial zone in accordance with OMC Title 18, Unified Development Code, and licensed under this chapter.
- v. Waste products must be disposed of in a secure manner that would prevent exposure to the public or create a nuisance.
- vi. A producer and/or processor is required to obtain a conditional use permit approved by the Hearing Examiner pursuant to chapter 18.48 OMC.

18.51.050 Nuisance Abatement

In addition to any other available remedy or penalty, any violation of this chapter, is declared to be a public nuisance per se, and may be abated under the applicable provisions of the Olympia Municipal Code and state law.

Section 2. Effective Date and Duration.

- A. This Ordinance shall be effective five (5) days after publication.
- B. This Ordinance shall be effective for one (1) year, unless subsequently extended by the City Council.

Section 3. Repeal of Moratorium. The moratorium imposed by Ordinance No. 6851 is repealed only to the extent that the activity is covered by this Ordinance, which addresses recreational sales, processing, and production of marijuana. Accordingly, the moratorium no longer applies to state-licensed retailers, producers, or processors of recreational marijuana. All other uses, including medical marijuana establishments, continue to be prohibited by the moratorium.

Section 4. Severability. If any provision of this Ordinance, or its application to any person, entity, or circumstance, is for any reason held invalid, the remainder of the Ordinance, or the application of the provisions to other persons, entities, or circumstances, is not affected.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 6. Findings. The City Council adopts the recitals to this Ordinance as findings of fact in support of the enactment of this Interim Ordinance. The work plan is for staff to prepare and submit a draft set of regulations to the Olympia Planning Commission for their consideration and recommendation. City staff will then transmit its recommendation and the Planning Commission's recommendation to the City Council. Given the Planning Commission's full schedule with the implementation stage of the Comprehensive Plan Update and with more meetings than its historical average, it is appropriate and necessary that this Ordinance be effective for one (1) year.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darra Nienaber

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: