

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, ADOPTING A MORATORIUM UPON MEDICAL MARIJUANA COLLECTIVE GARDENS AND OTHER ESTABLISHMENTS INVOLVED IN THE SALE, MANUFACTURING, DISTRIBUTION OR USE OF MARIJUANA; AND DIRECTING THE SETTING OF A PUBLIC HEARING.

WHEREAS, E2SSB 5073 effective on July 22, 2011, amended the Medical Cannabis Act, Chapter 69.51A RCW, and authorized, at RCW 69.51A.085, the creation of and participation in "collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use" subject to certain conditions; and

WHEREAS, state law acknowledges the needs of persons suffering from debilitating or terminal conditions and the benefits that some qualifying patients experience from the medical use of cannabis; and

WHEREAS, RCW 69.51A.140 authorizes cities to adopt and enforce health and safety requirements related to cannabis, including medical cannabis, within their jurisdictions; and

WHEREAS, Initiative 502, which passed at the November 2012, General Election, directs the Washington State Liquor Control Board to develop rules and regulations to determine the number of producers by county, develop licensing and other regulatory measures for producing, processing, and selling marijuana for non-medical purposes; and

WHEREAS, such rules are being developed and are expected to be completed no later than December 1, 2013, and the City is concerned that marijuana-related land uses could become established in the City that are inconsistent with or conflict with the Liquor Control Board's rules; and

WHEREAS, the City is concerned that marijuana-related land uses could become established in the City prior to the completion and enforcement of the Liquor Control Board rules that could undermine the objectives and goals the City Council has for downtown and other parts of the City; and

WHEREAS, use and delivery of marijuana is still a violation of federal law under the Controlled Substances Act; and

WHEREAS, the Washington State Department of Health has confirmed that medical marijuana dispensaries are illegal under current state law; and

WHEREAS, this Ordinance does not shield medical marijuana users from arrest under state or federal law; and

WHEREAS, this Ordinance does not shield any establishment involved in the use, production, processing, or distribution of marijuana from any other legal requirements; and

WHEREAS, the U.S. Department of Justice has not yet announced the position of the federal government on Washington's legalization of recreational marijuana or on Washington's laws regarding medical marijuana collective gardens; and

WHEREAS, this Ordinance does not take a position as to whether and when any particular collective garden is operating legally; and

WHEREAS, there may already be as many as eight and possibly more collective gardens currently in the City of Olympia; and

WHEREAS, collective gardens in Olympia may not be fully complying with state law applicable to collective gardens; and

WHEREAS, due to the prevalence of collective gardens in downtown Olympia, the downtown may be at a saturation point whereby existing collective gardens and/or additional collective gardens could undermine the objectives and goals the City Council has for downtown and other areas of the City; and

WHEREAS, the siting and location of collective gardens is a significant public safety matter, which is exemplified by Initiative 502's requirement that the Liquor Control Board's rules must determine the maximum number of retail outlets that may be licensed in any specific county, and Initiative 502's requirement that one thousand foot buffers exist between licensed marijuana retailers and any school grounds, playground, recreation center or facility, child care center, public park, library, public transit center or any game arcade which is open to persons under aged twenty-one; and

WHEREAS, based on the City's experience with collective gardens, the land uses and business practices do not appear to be the same as pharmacies or retail establishments; and

WHEREAS, additional time is needed to study existing and potential impacts from land uses associated with marijuana; and

WHEREAS, such land use and public safety issues include but are not limited to appropriate signage, taxes, licensing, applicable building codes, location restrictions, density, spacing requirements between marijuana-associated uses, appropriate zones for growing, manufacturing and distribution, and separation from schools and other facilities where children are present; and

WHEREAS, the City will need at least a year to conduct an appropriate analysis and to develop appropriate recommendations for the Olympia Planning Commission to consider regarding the issues noted above; and

WHEREAS, the City has legitimate concerns that marijuana-associated land uses have a higher than average potential for burglary and other crimes, and that such concerns need to be evaluated in greater detail before determining appropriate land use controls; and

WHEREAS, potential impacts from medical marijuana uses include but are not limited to:

- conversion of residential uses into marijuana cultivation and processing facilities, removing valuable housing stock in a community;
- degrading neighborhood and commercial district aesthetics due to shuttered-up homes and buildings and offensive odors;
- increased night-time traffic; parking issues; loitering from potential purchasers looking to buy from a collective member;
- environmental damages from chemicals being discharged into surrounding and off-site soil and storm and sanitary sewer systems;
- serious risk of fire hazard due to overloaded service connections used to operate grow lights and fans;
- improper ventilation leading to high levels of moisture and mold;
- illegal structural modifications;
- criminal issues such as home invasions, burglaries of medical marijuana facilities, theft and property damage; and

WHEREAS, at least one jurisdiction in Washington has banned collective gardens; and

WHEREAS, the Olympia Planning Commission already has an extremely busy docket associated with the state-mandated Comprehensive Plan and development regulation updates; and

WHEREAS, the work plan will be for staff to conduct a survey of the responses made by other jurisdictions to E2SSB 5073 and Initiative 502 relating to marijuana land uses, conduct an evaluation of the effectiveness of such responses and how they have attempted to deal with the issues listed above, conduct an evaluation of the current and potential impacts of collective gardens in the City, conduct an evaluation of the potential impact of other marijuana-related uses in the City that may result from Initiative 502, provide the Planning Commission with a recommendation, forward the Planning Commission's recommendation along with the staff's recommendation to the City Council; and

WHEREAS, this Ordinance does not shield any individual or entity, including users, manufacturers, and deliverers of marijuana, from local, state or federal penalties and liability; and

WHEREAS, this moratorium is authorized by RCW 35A.63.220, RCW 36.70A.390 and Article 11, Section 11 of the Washington State Constitution; and

WHEREAS, this Ordinance is supported by the staff report provided to Council, documents on file with the City of Olympia and professional judgment of City Staff; and

WHEREAS, as required by RCW 35A.63.220 and RCW 36.70A.390, the Olympia City Council will hold a public hearing within sixty (60) days of the passage of this Ordinance;

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

Section 1. Moratorium. The Olympia City Council hereby declares a moratorium upon:

- A) The submission, acceptance, processing or approval of any permit applications or licenses by or for new marijuana collective gardens as described in RCW 69.51A.085 and any other establishments involved in the sale, use, growing, manufacture or processing of marijuana, including but not limited to performance spaces, private clubs, open-to-the-public night clubs, cabarets, taverns or similar establishments.
- B) The creation by an owner or operator of any land or building of any new use of such land or buildings for the sale, use, growing, distribution, manufacturing, or processing of marijuana.
- C) Collective Gardens as described in RCW 69.51A.085 being a part of or connected to any other type of land use, including but not limited to performance spaces, private smoking or use clubs, open-to-the-public night clubs, cabarets, taverns and similar establishments.

Section 2. Effect of Moratorium. The moratorium does not alter any requirement that existing collective gardens must comply with all applicable laws, and does not impact in any way the City's authority to enforce the Olympia Municipal Code or state laws. Violations of this Ordinance are subject to the City's zoning penalties more particularly described in Chapters 18.73 and 4.44 of the Olympia Municipal Code and state public nuisance laws.

Section 3. Duration. The interim zoning control set forth in this Ordinance shall be in effect for three hundred and sixty five days (365), unless subsequently extended by the City Council pursuant to state law.

Section 4. Public Hearing. Pursuant to RCW 35A.63.220 and 36.70A.390, a public hearing will be held by June 25, 2013.

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. Severability. The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of this Ordinance or application of the provision to other persons or circumstances shall be unaffected.

Section 7. Effective Date. This Ordinance is designated as a public emergency ordinance necessary for the protection of public health, safety, property, and peace and therefore shall take effect immediately upon adoption by the City Council.

Section 8. Findings. The City Council hereby adopts the above recitals as findings of fact in support of this Ordinance.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: