

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, EXTENDING FOR SIX MONTHS THE MORATORIUM UPON MEDICAL MARIJUANA COLLECTIVE GARDENS AS ESTABLISHED BY ORDINANCE NO. 6851 AND AS AMENDED BY ORDINANCE NO. 6873 AND ORDINANCE NO. 6900

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 E2SSB 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 authorizes 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 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 (the 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 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 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, on November 4, 2013, the City Council adopted Ordinance No. 6873 establishing interim regulations 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, Ordinance No. 6873 repealed the Moratorium insofar as it applied to state-licensed retailers, producers, or processors of recreational marijuana. All other new marijuana uses, including medical marijuana establishments, continue to be prohibited by the Moratorium; and

WHEREAS, the City has received no evidence that there is insufficient access to medical marijuana; and

WHEREAS, the Washington State Attorney General issued an advisory opinion in January 2014, that states municipalities can prohibit state-licensed marijuana businesses within a city's boundaries or impose zoning and other land use regulations pertaining to such businesses; and

WHEREAS, legislation was introduced in the Washington State Legislature's 2014 session concerning recreational, commercial, and medical marijuana, which would have merged medical marijuana into the state-licensed recreational market; and

WHEREAS, the Legislature failed to act on the bills, leaving the laws regarding medical marijuana regulations unchanged; and

WHEREAS, the Federal Bureau of Investigation has indicated that it will not conduct criminal background checks on recreational marijuana applicants; and

WHEREAS, there remains uncertainty as to the federal government's position on the legality of and potential enforcement against medical marijuana collective gardens and dispensaries; and

WHEREAS, the United States Department of Justice issued a memorandum on August 29, 2013, which suggested that Washington's medical marijuana system is untenable and inconsistent with federal law enforcement priorities; and

WHEREAS, the legislation proposed in the Washington State legislature concerning medical marijuana was intended, in part, to respond to direction from the federal government about the need to regulate recreational and medical marijuana and such legislation appears likely to be reintroduced next year; and

WHEREAS, the Court of Appeals affirmed a city's right to prohibit collective gardens in *Cannabis Action Coalition v. City of Kent*; and

WHEREAS, jurisdictions are experiencing an increase in violence involving medical marijuana businesses; and

WHEREAS, the City is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390 to renew an existing moratorium for up to six months as long as the City adopts findings of fact and holds a public hearing prior to renewing the moratorium; and

WHEREAS, after conducting a public hearing on April 15, 2014, the City Council found it necessary to extend the duration of the Moratorium and adopted Ordinance No. 6900, extending the Moratorium for an additional six months; and

WHEREAS, a public hearing was held on October 28, 2014, to receive and consider public testimony regarding an additional extension of the Moratorium; and

WHEREAS, the City Council finds that it is necessary to extend the duration of the Moratorium as established by Ordinance No. 6851 and as amended by Ordinance No. 6873 and Ordinance No. 6900 for an additional six months in order to complete the work plan outlined in Ordinance No. 6851 as it pertains to medical marijuana collective gardens; and

WHEREAS, the City has completed certain portions of its work plan regarding permanent regulations of marijuana, including assessing the approaches of other jurisdictions; and

WHEREAS, additional time is needed for the City to complete its work plan related to medical marijuana collective gardens and other marijuana related establishments; and

WHEREAS, it is expected that the Washington State legislature will regulate medical marijuana in the next legislative session; 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;

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

Section 1. Extension of Moratorium Duration. Section 3 of Ordinance No. 6851, as amended by Ordinance No. 6873 and Ordinance No. 6900, is hereby amended as follows:

Section 3. Duration. The interim zoning control set forth in this Ordinance shall be in effect ~~five hundred forty seven (547)~~ seven hundred twenty-nine (729) days, unless subsequently extended by the City Council pursuant to state law.

Section 2. Ordinance No. 6929. This Moratorium does not apply to state-licensed recreational marijuana uses regulated by Ordinance No. 6929, as may be subsequently amended.

Section 3. Findings. The City Council hereby adopts the above recitals as findings of fact in support of this Ordinance.

Section 4. Ordinance No. 6851. All remaining provisions of Ordinance No. 6851, as amended by Ordinance No. 6873 and Ordinance No. 6900, not herein amended or supplemented shall remain in full force and effect.

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 shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Dore Nienabe

CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: