

## ORDINANCE NO. 1383

## CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON ESTABLISHING INTERIM REGULATIONS AND ZONING CONTROLS FOR MEDICAL CANNABIS TO BE IN FORCE FOR A PERIOD OF SIX MONTHS WHILE THE CITY PLANNING COMMISSION CONSIDERS SUCH REGULATIONS, HOLDS HEARINGS AND RECOMMENDS PERMANENT REGULATIONS FOR CONSIDERATION AND ADOPTION BY THE CITY COUNCIL, DECLARING AN EMERGENCY AND APPROVING A SUMMARY FOR PUBLICATION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

WHEREAS, federal law, since 1970, has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment; and

WHEREAS, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); 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), however, specifying 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, in 2011 the Washington State Legislature passed ESSSB 5073, which 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, a collective garden does not contain more than 15 plants per patient up to a total of 45 plants per garden, and the garden does not contain more than 24 ounces of useable cannabis per patient and up to a total of 72 ounces of useable cannabis per garden; and

WHEREAS, RCW 69.51A.060(1) provides that 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, Section 1102 of ESSSB 5073 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and impose business taxes; and

WHEREAS, as part of the process for the adoption of zoning regulations, the land use impacts of collective gardens must be identified; and

WHEREAS, because the land use impacts of growing marijuana in quantities allowed by the State of Washington have been experienced in other jurisdictions, the City of Lacey may look to the experiences of other cities and counties in adopting zoning regulations for collective gardens; and

WHEREAS, Section 1101(2) of ESSB 5073 exempts cities and their officers and employees from civil or criminal liability for actions taken in good faith under Chapter 69.51A and within the scope of their assigned duties and in carrying out such duties, law enforcement needs to be able to readily distinguish plants growing in compliance with the laws versus those that are not;

WHEREAS, the Lacey City Council therefore believes that certain interim zoning regulations to address collective gardens are necessary, until the City Planning Commission can consider all of the land use impacts of collective gardens, hold a public hearing and recommend permanent regulations to the City Council for adoption; and

WHEREAS, the Council believes this action is taken in good faith as defined in Sections 1101(2) and 1102(1) of ESSB 5073;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, AS FOLLOWS:

Section 1. Definitions.

(A) "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; 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. For the purposes of this ordinance, "cannabis" 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 there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

(B) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC concentration only applies to the provisions of this ordinance and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

(C) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

(D) "Collective Garden" means those gardens authorized under Section 403 of ESSSB 5073, which means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(E) "Indoors" means within a fully enclosed and secure structure that complies with the International Building Code as adopted by Chapter 14.04 of the Lacey Municipal Code, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as 2" by 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

(F) "Legal parcel" means a parcel of land for which one legal title exists.

(G) "Medical use of cannabis" means the manufacture, production, processing, possession, transportation, delivery, ingestion, application, or administration of cannabis for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating medical condition.

(H) "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

(I) "Person" means an individual or an entity.

(J) "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, or address, either alone or when combined with other sources, that establish the person is a qualifying patient or designated provider.

(K) "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

(L) "Process" means to handle or process cannabis in preparation for medical use.

(M) "Produce" means to plant, grow, or harvest cannabis for medical use.

(N) "Qualifying patient" means a person who:

- (a) Is a patient of a health care professional;
- (b) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
- (c) Is a resident of the state of Washington at the time of such diagnosis;
- (d) Has been advised by that health care professional about the risks and benefits of the medical use of cannabis;
- (e) Has been advised by that health care professional that he or she may benefit from the medical use of cannabis; and
- (f) Is otherwise in compliance with the terms and condition established in RCW 69.51A.

The term "qualifying patient" does not include a person who is actively being supervised for a criminal conviction by a corrections agency or department that has determined that the terms of this ordinance and RCW 69.51A are inconsistent with and contrary to his or her supervision and all related processes and procedures related to that supervision.

(O) "School" means an institution of learning for minors, whether public or private, offering regular course of instruction required by the Washington Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher learning, including a community or junior college, college or university.

(P) "Terminal or debilitating medical condition" means:

- (1) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
- (2) Intractable pain, limited for the purpose of this ordinance to mean pain unrelieved by standard medical treatments and medications; or

- (3) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or
- (4) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or
- (5) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
- (6) Diseases, including anorexia, which result in nausea, vomiting, cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or
- (7) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

(Q) "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

(R) "Useable cannabis" means dried flowers of the *Cannabis* plant having a THC concentration greater than three-tenths of one percent. Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For purposes of this subsection, "dried" means containing less than fifteen percent moisture content by weight. The term "useable cannabis" does not include cannabis products.

(S) "Valid documentation" means:

- (1) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis;
- (2) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035; and
- (3) In the case of a designated provider, the signed and dated document valid for one year from the date of signature executed by the qualifying patient who has designated the provider.

(T) "Youth-oriented facility" means elementary school, middle school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall not include a day care or preschool facility.

## Section 2. Interim Zoning Regulations.

A. **Collective Garden Permit Required.** In order to site and operate a Collective Garden, the owner or lessee of the property must obtain approval from

the City for a Collective Garden Permit. This requires the submission of a complete application (as described in subsection D herein), and compliance with the following requirements:

**B. Location and Distance Restrictions.**

- (1) No Collective Garden, as defined in Section 1 of this Ordinance, shall be permitted outdoors;
- (2) No Collective Garden shall be located within One Thousand (1000) feet of schools and youth-oriented facilities, as measured from edge of property line to edge of property line;
- (3) No Collective Garden shall be located within Five Hundred (500) feet of another permitted collective garden;
- (4) No Collective Garden shall be located in a manner that will allow the cannabis plants to be visible by the public.

**C. Ownership and Limitation on Numbers.** No more than one Collective Garden may be located on a legal parcel of land, and the parcel must be owned or leased to one of the members of the Collective Garden. A qualifying patient can not be a member of more than one Collective Garden, and must be a member of one Collective Garden for at least thirty (30) days before transferring their membership to another Collective Garden. Each Collective Garden must maintain records of its membership demonstrating compliance with the provisions of this subsection. Such records shall be maintained and be subject to inspection by the City for no less than three years.

**D. Collective Garden Land Use Permit Application.** A complete application for a Collective Garden Land Use Permit shall include:

1. A statement acknowledging that the permit applied for will be issued in conformance with the laws of the State of Washington and this Ordinance and that such issuance does not confer upon the members of the Collective Garden immunity from prosecution under federal law;
2. The location of the parcel where the Collective Garden will be located, by street address and tax parcel number;

3. Either the owner of the property shall sign the application, or the person signing it must demonstrate that they have permission to sign the application on behalf of the owner;

4. A statement describing the proposed security measures for the facility that shall be sufficient to ensure the safety of the members and protect the premises from theft;

5. Payment of a fee which shall be established by Resolution of the City Council, provided, however, but prior to such action, the permit fee shall be \$100.00.

**E. Collective Garden Land Use Permit Procedure; Appeals.**

1. Upon receipt of a complete application, the City Code Enforcement Officer or designee shall schedule with the applicant an inspection or inspections of the premises to insure compliance with this ordinance. If the applicant is in compliance with this ordinance, the Code Enforcement Officer or designee shall issue a Collective Garden Land Use Permit.

2. The issuance of a Collective Garden Land Use Permit shall not be deemed as approval or permission from the City of Lacey to engage in any activity deemed illegal under any applicable law, nor shall it constitute a determination by the City that the manufacture, production, processing, possession, transportation, delivery, dispensing, application, or administration of and use of cannabis engaged in by the licensee or permittee is either legal or illegal under state or federal law.

3. Appeal of the Code Enforcement Officer's decision must be submitted to the City Clerk in writing no later than ten (10) business days following such Officer's decision.

4. Administrative appeals shall be heard by the Community Development Director of the City whose decision upon such appeal shall be final.

**F. Prohibition Against Other Methods of Medical Cannabis Dispensing.**

It shall be unlawful to dispense medical cannabis by any means other than one qualifying patient and one qualified provider in accordance with state law or through a Collective Medical Cannabis Garden as specified by state law and the regulation set forth in this chapter. Such prohibition includes the dispensing of medical cannabis by gift, sale or any other means whatsoever.

Section 3. Findings of Fact. The recitals set forth above are hereby adopted as Findings of the City Council.

**Section 4. Moratorium and Interim Regulations Adopted.** A moratorium is adopted upon the filing of any application or the issuance of any permit or business license for the establishment of a medical cannabis collective garden except those collective gardens meeting the provisions of these interim regulations and within the zoning districts allowed herein.

**Section 5. Zone Districts. Medical Cannabis Collective Gardens,** as defined herein, shall be allowed on an interim basis in the Agricultural, Light Industrial, Industrial, General Commercial, Light Industrial/Commercial Districts and Central Business Districts 4 and 5 of the City and in no other locations.

**Section 6. Duration of Interim Regulations.** The interim zoning and other regulations adopted herein shall commence on the date of the adoption of this ordinance. As long as the City Council holds a public hearing on these interim regulations and zoning provisions within 60 days, such interim zoning and regulations shall be effective for 6 months after the date of adoption or until earlier action of the City Council, whichever should first occur.

**Section 7. Public Hearing on Regulations.** Pursuant to RCW 35A.63.220, the City Council shall hold a public hearing on the interim regulations set forth herein within 60 days of the adoption of this ordinance. The Council hereby schedules this hearing for March 8, 2012. After the holding of such public hearing, the Council shall either confirm, modify or repeal the interim regulations and zoning restrictions contained herein.

**Section 8. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 9. Declaration of Emergency.** The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council. Without the adoption of interim zoning regulations, medical cannabis gardens could locate and operate in the City without restriction, eventually leading to the establishment or operation of such use in locations or conditions that might later be restricted or prohibited in the zoning regulations eventually adopted by the City of Lacey. Therefore, the interim zoning must be imposed as an emergency measure to protect the public health, safety and welfare.

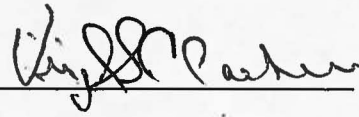
**Section 10. Permanent Regulations.** The City Council directs the City staff to refer this ordinance to the Lacey Planning Commission for its review and recommendation of permanent regulations to replace the interim regulations adopted herein.

**Section 11.** The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,  
WASHINGTON, at a regularly-called meeting thereof, held this 9<sup>th</sup> day of  
February, 2012.




CITY COUNCIL

By: 

Mayor

Approved as to form:

  
City Attorney

Attest:

  
City Clerk

**SUMMARY FOR PUBLICATION****ORDINANCE NO. 1383****CITY OF LACEY**

**The City Council of the City of Lacey, Washington, passed on February 9, 2012, Ordinance No. 1383, entitled "AN ORDINANCE OF THE CITY OF LACEY, WASHINGTON ESTABLISHING INTERIM REGULATIONS AND ZONING CONTROLS FOR MEDICAL CANNABIS TO BE IN FORCE FOR A PERIOD OF SIX MONTHS WHILE THE CITY PLANNING COMMISSION CONSIDERS SUCH REGULATIONS, HOLDS HEARINGS AND RECOMMENDS PERMANENT REGULATIONS FOR CONSIDERATION AND ADOPTION BY THE CITY COUNCIL, DECLARING AN EMERGENCY AND APPROVING A SUMMARY FOR PUBLICATION."**

The main points of the Ordinance are described as follows:

1. The Ordinance declares a moratorium and adopts interim regulations related to medical cannabis collective gardens.
2. The moratorium and regulations shall be effective for a period of 6 months or until earlier action by the City Council.
3. A public hearing shall be held by the City Council on March 8, 2012 regarding the subject matter of this Ordinance.
4. The Ordinance approves this Summary for publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: February 13, 2012.