

EMERGENCY ORDINANCE

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1841

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, TERMINATING THE MORATORIUM ENACTED BY ORDINANCE NO. 1750, IMPOSING A MORATORIUM ON THE ESTABLISHMENT, LOCATION, PERMITTING, LICENSING OR OPERATION OF MEDICAL MARIJUANA COLLECTIVE GARDENS, AND MARIJUANA PRODUCTION, PROCESSING, AND RETAILING, AND DECLARING THIS ORDINANCE A PUBLIC EMERGENCY ORDINANCE AND THUS EFFECTIVE IMMEDIATELY

WHEREAS, in 2011, the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073, effective July 22, 2011, which authorizes qualifying patients to create and participate in “collective gardens” for the purpose of producing, processing, transporting, and delivering marijuana for medical use, subject to certain conditions contained therein; and

WHEREAS, under E2SSB 5073 there is no limit to the number of collective gardens that may be located at any site nor restrictions as to where collective gardens may be located in relation to other uses; and

WHEREAS, collective gardens are not currently addressed in the Fife Zoning Code, and

WHEREAS, Section 1102 of E2SSB 5073 authorizes cities to adopt and enforce zoning regulations, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana within their jurisdiction; and

WHEREAS, the City enacted a moratorium on medical marijuana collective gardens by Emergency Ordinance No. 1750 on August 9, 2011, and subsequently extended the moratorium by Ordinance No. 1765, Ordinance No. 1781, Ordinance No. 1825, and Ordinance No. 1838; and

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which “authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana” (I-502, Sec. 1(3)); and

WHEREAS, I-502 allows the liquor control board to license marijuana producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (I-502, Sec. 4(1)); and

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WHEREAS, I-502 allows the liquor control board to license marijuana processors to “process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers” (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the liquor control board to license marijuana retailers to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (I-502, Sec. 4(3)); and

WHEREAS, the liquor control board has issued draft regulations for implementation of I-502 which it intends to adopt effective September 16, 2013; and

WHEREAS, as mandated by I-502, the liquor control board will begin issuing producer, processor, and retailer licenses to qualified applications as early as December 1, 2013; and

WHEREAS, the cultivation, possession or distribution of cannabis marijuana, and marijuana products has been and continues to be a violation of federal law through the Controlled Substances Act; 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 under I-502, however on July 24, 2013 the Drug Enforcement Agency raided several medical marijuana dispensaries in the Puget Sound area for violation of federal law; and

WHEREAS, the City does not currently have any regulations addressing the facilities or uses authorized in I-502; and

WHEREAS, the State Environmental Policy Act (SEPA) checklist prepared by the Washington State Liquor Control Board on the proposed rulemaking for WAC 314-55 related to marijuana licenses, application process, requirements and reporting includes the statement that “A licensee must follow all local and state land and shoreline laws and regulations”; and

WHEREAS, the facilities and uses authorized in I-502 have never been allowed in any state or city in the United States, so there is little existing land use regulation to guide the City; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to adopt moratoria; and

WHEREAS, the City requires time to conduct appropriate research to understand the extent and validity of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for the uses and activities that are allowed under I-502 and E2SSB 5073; and

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WHEREAS, in addition to the legal issues, the City must study, without limitation, the impacts of the location of uses and facilities for the production, processing, and sale of marijuana products and the siting of collective gardens, marijuana cultivation facilities, facilities for the creation of marijuana products, and State licensed marijuana stores in commercial and residential zones, as well as impacts arising from the proximity of these uses, activities and facilities to schools, day cares, parks, religious and cultural facilities, and accordingly the City Council finds that a zoning, licensing and permitting moratorium should be established pending local review of appropriate locations and design requirements of these operations and impacts of I-502 and E2SSB 5073 and its interaction with federal law; and

WHEREAS, since the issues and work plan regarding collective gardens authorized under E2SSB 5073 and the production, processing, and sale of marijuana under I-502 are substantially similar, it will be more clear and efficient to have one moratorium that includes both, rather than two separate moratoria; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act; and

WHEREAS, the immediate enactment of a moratorium on collective gardens, marijuana production, processing, and retailing is necessary to protect the public health, safety or welfare and is a legitimate exercise of the City's police power; now therefore,

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO
ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this Ordinance. The City Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 5 below.

Section 2. Prior Moratorium Terminated. The moratorium on medical marijuana collective gardens, passed by Emergency Ordinance No. 1750 on August 9, 2011 and extended by Ordinance No. 1765, Ordinance No. 1781, Ordinance No. 1825, and Ordinance No. 1838 is hereby terminated.

Section 3. Moratorium Imposed. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a moratorium is hereby imposed prohibiting the creation, establishment, location, operation, licensing, maintenance or continuation of:

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(a) any facility, business or use for producing, processing or retailing of marijuana or marijuana infused products; and

(b) any collective garden, as authorized by E2SSB 5073 for the purpose of producing, processing, transporting, and/or delivering marijuana (cannabis) for medical use.

Section 4. Use Prohibited. While this moratorium is in effect, the producing, processing, and retailing of marijuana or marijuana infused products are hereby designated as prohibited uses in all zoning districts in the City of Fife. No business license application shall be accepted and no business license shall be issued under FMC Chapter 5.01 to any person for producing, processing or retailing of marijuana or marijuana infused products.

Section 5. Use Prohibited—Collective Gardens. While this moratorium is in effect Collective gardens as referenced and defined in E2SSB 5073 are hereby designated as prohibited uses in the City of Fife. No business license application shall be accepted and no business license shall be issued under FMC Chapter 5.01 to any person for a medical marijuana collective garden.

Section 6. Definitions. As used in this ordinance, the following definitions apply:

"Marijuana" or "marihuana" 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.

"Marijuana processing" means processing marijuana into useable marijuana and marijuana-infused products, packaging and labeling useable marijuana and marijuana-infused products for sale in retail outlets, and selling useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

"Marijuana producing" means producing and selling marijuana at wholesale to marijuana processors and other marijuana producers.

"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.

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"Marijuana retailing" means selling useable marijuana and marijuana-infused products in a retail outlet.

"Retail outlet" means a location for the retail sale of useable marijuana and marijuana-infused products.

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

Section 7. Duration. This moratorium shall remain in effect until August 13, 2014, unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless earlier terminated by the City Council.

Section 8. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be held on the moratorium at 7:00 P.M. on August 27, 2013 at Fife City Hall, 5411 23rd Street East, Fife, Washington.

Section 9. Work Plan. During the moratorium period, the City staff shall study the issues concerning the establishment and operation of medical marijuana collective gardens allowed under E2SSB 5073, and the producing, processing and retailing facilities allowed under I-502, prepare appropriate regulations in accordance with the work plan attached hereto as Exhibit A.

Section 10. Emergency Ordinance. This Ordinance, passed by a majority plus one of the whole membership of the City Council, is hereby designated as a Public Emergency Ordinance necessary for the protection of public health, safety, public property or the public peace and shall be effective upon adoption.

Section 11. Severability. Each and every provision of this Ordinance shall be deemed severable. If any provision of this Ordinance should be deemed to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, then it shall not affect the validity of the remaining sections so long as the intent of the Ordinance can be fulfilled without the illegal section.

Introduced the 13th day of August, 2013.

Passed by the City Council on the 13th day of August, 2013.


David K. Zabell, City Manager

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ATTEST:

Carol Etgen
Carol Etgen, City Clerk

APPROVED AS TO FORM:

Loren D. Combs
Loren D. Combs, City Attorney

Published: 8/15/13
Effective Date: 8/13/13, 2013

EXHIBIT A

| CITY OF FIFE WORK PLAN TIMELINE* | | | | | |
|---|--|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| WORK ITEM NO.** | WORK ITEM | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 1 | City Council Public Hearing to Accept Testimony on Moratorium | X | X | | |
| 2 | Review Literature, Reports, Studies Related to Secondary Impacts of Marijuana Related Land Uses. | X | X | X | X |
| 3 | Review Adopted Washington State Liquor Control Board Rules | X | X | | |
| 4 | Review State - Federal Law Conflict on Legality of Marijuana | X | X | X | X |
| 5 | Planning Commission Review of Issues/ Development of Ordinance | X | X | X | |
| 6 | Planning Commission Recommendation | | | X | |
| 7 | Transmit Proposed Development Regulation Amendment to State Department of Commerce | | X | X | |
| 8 | SEPA Review and Issuance of SEPA Determination | | X | X | |
| 9 | City Council Public Hearing | | | | X |
| 10 | City Council Action | | | | X |
| 11 | Transmit Adopted Development Regulation to State Department of Commerce; Ordinance Publication | | | | X |

“X” means task is actively planned for that quarter.

* Timeline is based on “quarters” (three month increments). Quarters (e.g. 1st quarter, 2nd quarter) are based on one year duration of moratorium.

** A description of each work item is provided in the accompanying narrative below with the corresponding work item number.

EXHIBIT A

Work Plan Narrative

1. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, a public hearing shall be held on the moratorium. The moratorium is scheduled to be held at 7:00 P.M. on August 27, 2013 at Fife City Hall, 5411 23rd Street East, Fife, Washington. During this public hearing, the public will be invited to comment on the moratorium and related issues.
2. Throughout the duration of the moratorium, the City will continually research and review literature, reports, studies and other materials related to secondary effects of medical marijuana and recreational marijuana related land uses.

This work plan item recognizes that characteristics and secondary effects of marijuana land uses within the City may have an impact on the type and manner of regulation which the City chooses to employ. Review of literature, studies, reports and other materials on the secondary effects of medical and recreational marijuana related businesses is necessary to determine an appropriate local regulatory approach.

3. The Washington State Liquor Control Board (WSLCB) rules related to implementation of Initiative 502 are scheduled for adoption by the WSLCB on August 14, 2013. The effective date of the rules is scheduled for September 16, 2013. The rules set forth requirements for State licensing of marijuana producers, processors and retailers. This includes, but is not limited to, provisions for the license application process, applicant qualifications, taxation, security, transportation, waste disposal, signage, hours of operation, distances from certain sensitive land uses and other considerations that have relation to impacts upon the community and surrounding land uses.

This work item will evaluate the extent to which the adopted WSLCB State rules address land use impacts associated with marijuana related land uses in the City of Fife and the extent to which additional development regulations are needed. Review of the State rules, when adopted, is necessary to determine an appropriate local regulatory approach.

Further, although Washington State law authorizes medical marijuana collective gardens (Chapter 69.51A RCW) separately from Initiative-502, the secondary effects for medical marijuana collective gardens and Initiative 502 related land uses may have some similarity. This makes it appropriate that they be reviewed together.

4. The cultivation, possession or distribution of cannabis marijuana, and marijuana products, even for medical purposes, has been and continues to be a violation of federal law through the Controlled Substances Act. The U.S. Department of Justice has not yet announced the position of the federal government on Washington's legalization of recreational marijuana under I-502, however on July 24, 2013 the Drug Enforcement Agency raided several medical marijuana dispensaries in the Puget Sound area for violation of federal law.

During the moratorium period the City will monitor and evaluate the federal government's position on Washington State's legalization of recreational marijuana as well as on marijuana use for medical purposes. The City will also monitor and review pertinent legal writings, opinions and decisions. Review of the relationship of federal and State law is necessary to determine an appropriate local regulatory approach.

- 5, 6. Fife Municipal Code section 14.02.030 "Project permit application framework" requires that the City of Fife Planning Commission ("Planning Commission") make a recommendation on zoning code text amendments.

During the moratorium period City staff will work with the Planning Commission to prepare draft code amendment for marijuana related land uses and make a recommendation to the City Council. The draft code amendment will result from staff review of the adopted State rules and studies, literature and reports addressing negative secondary

effects of such uses. It will also take into consideration information related to the federal government's position on the recreational, medical or other use of marijuana and/or marijuana related products. Other sources of information that may become available through, for example, public comment will also be reviewed and considered.

7. RCW 36.70A.106 (1) requires each county and city proposing to adopt development regulations to notify the Washington State Department of Commerce of its intent to adopt such regulations at least sixty (60) days prior to final adoption (unless expedited review is requested and granted pursuant to RCW 36.70A.106 3(b)).

The City shall comply with this requirement.

8. Amendments to development regulations are subject to the State Environmental Policy Act (SEPA). The City of Fife SEPA procedures are contained in FMC Chapter 17.04 entitled "SEPA Guidelines".

The City shall comply with this requirement.

- 9, 10. Fife Municipal Code section 14.04.030 requires a public hearing and decision on code amendments by the City Council.
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The City shall comply with this requirement. Unless adopted by emergency, the ordinance shall go through one or two readings prior to final passage.

11. RCW 36.70A.106 (1) requires that each county and city transmit a complete and accurate copy of its comprehensive plan or development regulations amendment to the Washington State Department of Commerce within ten days after final adoption. Fife Municipal Code section 1.16.010 entitled "Documents publication" requires that all ordinances approved, passed and enacted by the city council shall be published in The News Tribune, (the official newspaper of the city.)

The City shall comply with these requirements.
