

ORDINANCE NO. 1290

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING; ESTABLISHING AN IMMEDIATE EMERGENCY MORATORIUM ON THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES OR USES RELATING TO ALL MARIJUANA RELATED USES; ESTABLISHING AN IMMEDIATE EMERGENCY MORATORIUM ON THE SUBMISSION OF ANY BUSINESS LICENSE APPLICATIONS FOR SUCH USES; SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM; SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM; AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM.

WHEREAS, Washington voters approved Initiative 502 (I-502) in 2012, which, among other provisions, allows persons 21 years old and older to legally possess one-ounce of useable marijuana; and

WHEREAS, I-502 legalizes the production, processing, and retail sales of marijuana and directs the Washington State Liquor Control Board (WSLCB) to promulgate rules for the issuance of licenses by the WSLCB to such producers, processors, and retailers; and

WHEREAS, the WSLCB adopted rules pertaining to licensing of the producers, processors, and retailers, promulgated at chapter 314-55 of the Washington Administrative Code; and

WHEREAS, on September 23, 2013, the City Council approved Ordinance No. 1271 regulating marijuana-related uses in the City, codified at chapter 17.63 of the Gig Harbor Municipal Code; and

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

WHEREAS, discussions between the Office of the Superintendent of Public Instruction (OSPI), the Peninsula School District, the City of Gig Harbor, and the WSLCB have brought to the City's attention areas of concern regarding non-traditional educational sites funded by OSPI but not recognized in the permitting of licenses by WSLCB; and

WHEREAS, on March 31, 2014, the Court of Appeals, Division I, in *Cannabis Action Coalition v. City of Kent*, held that despite the authorizing language in RCW 69.51A.085, collective gardens are illegal uses; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications as long as the City Council holds a public hearing on the proposed moratorium within sixty days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, unless a zoning moratorium is imposed, marijuana related uses may seek to locate within the City of Gig Harbor while the City lacks the necessary tools to ensure that the location is appropriate and that the reported secondary impacts of such facilities, which include but are not limited to, citing near sensitive students and uses, are minimized and mitigated; and

WHEREAS, the City Council desires to impose an immediate six month moratorium on the acceptance of any development permit application or business license application for the siting, location or operation of any marijuana related use; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. Marijuana Definitions.

A. “Collective garden” means any place, area, or garden where qualifying patients engage in the production, processing, and delivery of marijuana for medical use as set forth in Chapter 69.51A RCW and subject to the limitations therein, and as further limited by case law.

B. “Marijuana” 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 plants, 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 seeds of the plant which are incapable of germination.

C. “Marijuana processor” means a person licensed by the State Liquor Control Board to process marijuana into usable marijuana and marijuana infused products, package and label usable marijuana and marijuana infused products for sale in retail outlets, and sell usable marijuana and marijuana infused products at wholesale to marijuana retailers.

D. “Marijuana producer” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

E. “Marijuana related use” means any use where a marijuana producer, marijuana processor, marijuana retailer, or collective garden are established or proposed.

F. “Marijuana retailer” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana infused products in a retail outlet.

Section 2. General Definitions.

A. “Exempt development permits” shall include any permit application for a structure or use/operation of property for any marijuana related use, as defined in this ordinance, that is subject to the vested rights doctrine, and that was submitted to the City and determined by the City staff to be complete on or before the effective date of this ordinance.

B. “Non-Exempt development permits or non-exempt business license” shall include any permit or business license application for a structure or use/operation of property for any marijuana related use, as defined in this ordinance, that is:

1. a permit application that is not subject to the vested rights doctrine and/or that was submitted to the City after the effective date of this Ordinance; and/or

2. a business license application for use/operation of property for marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance that was submitted to the City either before or after the effective date of this Ordinance.

Section 3. Preliminary Findings. The recitals set forth above are hereby adopted as the Gig Harbor City Council’s preliminary findings in support of the moratorium imposed by this ordinance. The Gig Harbor City Council may, in its discretion, adopt additional findings after conclusion of the public hearing referenced in Section 6 below.

Section 4. Moratorium Imposed. The City Council hereby imposes an immediate six-month moratorium on the acceptance of all non-exempt development permits and business license applications, as defined in this ordinance. All such non-exempt development permit and business license applications shall be rejected and returned to the applicant. With regard to the City’s acceptance of any exempt development permit applications, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 5. Duration of Moratorium. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as

contemplated by Section 6 herein), the moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire on that date unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Gig Harbor City Council.

Section 6. Public Hearing. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption. The Council shall hold this hearing on June 9, 2014, at 5:30 p.m. or as soon thereafter as the business of the City Council shall permit. The City Council may adopt additional findings justifying the continued maintenance of the moratorium or termination of the moratorium after the close of the hearing or during the next City Council meeting immediately following.

Section 7. Referral to Planning Director. The Gig Harbor Planning Director is hereby authorized and directed to develop a draft ordinance to amend chapter 17.63 of the Gig Harbor Municipal Code regarding I-502 marijuana uses, including but not limited to amending the definition of "secondary school", and prohibiting collective gardens consistent with the recent ruling in *Cannabis Action Coalition v. City of Kent* identified above. The Planning Director shall transmit the draft ordinance to the Department of Commerce and issue a SEPA determination. The draft ordinance shall be presented for direct consideration to the by the City Council during a regular meeting in July or August of 2014. The City Council shall hold a properly noticed public hearing on the draft ordinance prior to its adoption.

Section 8. Transmittal to Department. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce as required by law.

Section 9. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional 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 10. 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, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City's acceptance of development applications for any marijuana related uses, such applications could become vested, leading to development that could be incompatible with the codes eventually adopted by the City. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of applications to the City in an attempt to vest rights for an indefinite period of time.

Section 11. Publication. This ordinance shall be published by an approved summary consisting of the title.

Section 12. Effective Date. This ordinance shall take effect and be in full force and effect immediately upon passage as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 14th day of April, 2014.

CITY OF GIG HARBOR

Mayor Jill Guernsey

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela G. Summerfield

FILED WITH THE CITY CLERK: 04/11/11
PASSED BY THE CITY COUNCIL: 04/14/11
PUBLISHED: 04/23/14
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