

ORDINANCE NO. 1271

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 36.70A.390 RELATING TO LAND USE AND ZONING FOR STATE ALLOWED MARIJUANA RELATED USES; ADDING A NEW CHAPTER 17.63 GHMC MARIJUANA RELATED USES TO INCLUDE PERMITTING THE PRODUCTION, PROCESSING AND/OR RETAILING OF MARIJUANA AS REGULATED PURSUANT TO WASHINGTON STATE INITIATIVE NO. 502 IN DESIGNATED ZONING DISTRICTS, AND ONLY AT FACILITIES THAT HAVE OBTAINED A VALID LICENSE ISSUED BY THE WASHINGTON STATE LIQUOR CONTROL BOARD; PERMITTING MEDICAL CANNIBAS COLLECTIVE GARDENS IN DESIGNATED ZONING DISTRICTS OF THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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, in 2011 the Washington State Legislature considered a bill (E2SSB 5073) that would have authorized the licensing of medical cannabis dispensaries, production facilities, and processing facilities; and

WHEREAS, on April 29, 2011, Governor Gregoire vetoed the portions of E2SSB 5073 that would have provided the basis under state law for legalizing and licensing medical cannabis dispensaries, processing facilities and production facilities, thereby making these activities illegal; and

WHEREAS, in order to provide qualifying patients with access to an adequate, safe, consistent and secure source of medical quality cannabis, E2SSB 5073 also contained a provision, now codified as RCW 69.51A.085, authorizing "collective gardens" which would authorize qualifying patients the ability to produce, grow, process, transport and deliver cannabis for medical use, and that provision was approved by Governor Gregoire, effective on July 22, 2011; and

WHEREAS, E2SSB 5073, as approved and now codified at RCW 69.51A.140 authorized cities to adopt and enforce zoning requirements regarding production and processing of medical cannabis; and

WHEREAS, as authorized under RCW 35A.63.220 and RCW 36.70A.390, the Gig Harbor City Council approved Ordinance No. 1218 on July 11, 2011 adopting interim regulations for Medical Cannabis Collective Gardens that were effective and in full force immediately for a period of nine months, as amended by Ordinance No. 1222 approved after a public hearing on July 25, 2011; and

WHEREAS, the federal Controlled Substances Act and state laws regarding marijuana and cannabis are contradictory and those contradictions are unresolved so there are uncertainties in the area of local regulation of medical cannabis operations; and

WHEREAS, federal law enforcement actions against medical cannabis operations in the State of Washington and a 2011 decision from the California Court of Appeal (*Pack v. City of Long Beach*, 199 Cal.App.4th 1070 (October 4, 2011), petition for state supreme court review granted, 268 P.3d 1063, but dismissed in August of 2012 because the appeal was withdrawn) that a city's ordinance establishing a permit system for medical marijuana is preempted by the federal Controlled Substances Act further illustrate the uncertainty local governments must deal with; and

WHEREAS, as authorized under RCW 35A.63.220 and RCW 36.70A.390, after a public hearing, the Gig Harbor City Council approved Ordinance 1236 on March 26, 2012 extending the interim regulations for a period of six months and adopting findings justifying the same; and

WHEREAS, the Planning Commission considered the interim regulations in April and May of 2012 and held a public hearing on May 3rd, 2012; and

WHEREAS, the Planning Commission recommended that the interim regulations be extended until after the November 2012 general election when Washington voters will consider Initiative 502. The initiative would decriminalize the licensed production, processing and possession of marijuana by Washington adults; and

WHEREAS, Initiative 502 was passed by the voters of the State of Washington in November 2012, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, City Council further extended interim regulations relating to collective gardens on March 25, 2013; and

WHEREAS, under Initiative 502, the Washington State Liquor Control Board is tasked with the responsibility to adopt the rules governing the licensing and operations of marijuana producers, processors, and retailers, and the Board is currently working on the regulations and is projecting that the rules will be adopted on October 16, 2013; and

WHEREAS, after adoption of the draft rules implementing Initiative 502, the Liquor Control Board anticipates beginning to accept applications for all license types on November 18, 2013 and anticipates issuance of licenses in March/April 2014; and

WHEREAS, Washington State law regarding the regulation of collective gardens is wholly separate from state regulations under Initiative 502; and

WHEREAS, the City has drafted the permanent regulations to regulate medical marijuana under similar requirements outlined in Initiative 502 for recreational marijuana use in order to reduce the potential of creating dueling markets; and

WHEREAS, the Planning Commission considered the permanent regulations in August of 2013, held a public hearing on August 15th, 2013 and recommended passage; and

WHEREAS, the City Council deems it to be in the public interest to codify permanent regulations to protect the health, safety and welfare of citizens of the City; and

WHEREAS, the Gig Harbor City Council held a public hearing on September 9th 2013, to take public testimony relating to this ordinance; and

WHEREAS, nothing in this Ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Purpose. Chapter 17.63 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

Chapter 17.63
MARIJUANA RELATED USES

- 17.63.010 Purpose and Intent
- 17.63.020 Definitions
- 17.63.030 Marijuana Related Uses

17.63.010 Purpose and Intent.

The purpose and intent of requiring standards for Marijuana related uses and facilities is to mitigate the adverse secondary effects caused by such facilities and to maintain compatibility with other land uses and services permitted within the City. In addition, these provisions are intended to acknowledge the authority for collective gardens set forth in RCW 69.51A.085 and enactment by Washington voters of Initiative 502 and state licensing procedure to permit, but only to the extent required by state law, collective gardens, marijuana producers,

marijuana processors, and marijuana retailers to operate in designated zones of the city.

17.63.020 Definitions.

All definitions used in this chapter apply to this chapter only and, except as otherwise revised below, shall have the meanings established pursuant to RCW 69.50.101 and WAC 314-55-010, as the same exist now or as they may later be amended. Select definitions have been included below for ease of reference.

“Child care center” means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC. WAC 314-55-010 (4)

“Collective Garden” means any place, area, or garden where qualifying patients engage in the production, processing, and delivery of cannabis for medical use as set forth in chapter 69.51A RCW and subject to the limitations therein.

“Elementary school” means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction. WAC 314-55-010 (5)

“Game arcade” means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted. WAC 314-55-010 (7). In addition a “game arcade” includes a secondary use within entertainment venues open to persons under the age of 21.

“Library” means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation. WAC 314-55-010 (8)

“Marijuana” means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than zero point three percent (.3%) 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 is incapable of germination.

“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 usable marijuana.

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

“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.

“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.

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

“Perimeter” means a property line that encloses an area. WAC 314-55-010 (14)

“Playground” means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government. WAC 314-55-010 (16).

“Public park” means an area of land for the enjoyment of the public, having facilities for rest and recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails. WAC 314-55-010 (17).

“Public transit center” means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers. WAC 314-55-010 (18)

“Recreational center or facility” means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government. WAC 314-55-010 (19)

“Secondary school” means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction. WAC 314-55-010 (21)

“Useable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include marijuana infused products.

17.63.030 Marijuana Related Uses.

A. The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Gig Harbor is an authorization to circumvent federal law or to provide permission to any person or entity to violate federal law. In addition to collective gardens, only Washington State licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the City of Gig Harbor and then only pursuant to a license issued by the State of Washington.

B. Permits Required

1. Major site plan review as described in Chapter 17.96 GHMC.
2. Development regulations and performance standards shall conform to the requirements of the applicable land use zone.
3. Parking standards, as defined in GHMC 17.72.030 apply as followed:

a) Collective gardens, marijuana producers and marijuana processors shall calculate parking per the standards under Industrial Level 2.

b) Marijuana retailers shall calculate parking per the standards under Sales Level 1.

C. Collective gardens may locate only in the Employment District (ED) zoning district and are subject to the following conditions:

1. A collective garden must be in a permanent structure designed to comply with the City Building Code and constructed under a building permit from the City regardless of the size or configuration of the structure.

2. Outdoor collective gardens are prohibited.

3. No production, processing, or delivery of cannabis may be visible to the public.

4. A collective garden must meet all requirements under RCW 69.51A.085, including but not limited to limitations on the number of members, number of plants, amount of useable cannabis on site, maintenance of each member's valid documentation of qualifying patient status.

5. A location utilized solely for the purpose of distributing cannabis shall not be considered a collective garden.

6. A collective garden must meet the separation provisions set forth in GHMC 17.63.030G.

D. Marijuana producers may be located only in the Employment District (ED) zone of the city. Such facilities and uses may be located only at designated sites licensed by the state of Washington and fully conforming to state law and Chapter 17.63 GHMC.

E. Marijuana processors may locate only in the Employment District (ED) zone of the city, but only at designated sites licensed by the state of Washington and fully conforming to state law and Chapter 17.63 GHMC.

F. Marijuana retailers may locate only in the following zones but only at designated sites licensed by the state of Washington and fully conforming to state law and Chapter 17.63 GHMC:

1. Commercial District (C-1);

2. General Business District (B-2) and;

3. Employment District (ED) only if subordinate to the principal tenant use of Marijuana producer or marijuana processor, and occupy no more than 25 percent of the gross floor area of the principal tenant use.

G. No marijuana processor, marijuana producer, marijuana retailer or collective garden shall locate within 1000 feet, measured in the manner set forth in WAC 314-55-050(10), from any of the existing uses as defined in GHMC 17.63.020:

1. Elementary or secondary school;

2. Playground;

3. Recreation center or facility;

4. Childcare center;

5. Public park;

6. Public transit center;

7. Library; or

8. Game arcade.

H. In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance per se, and may be abated by the city attorney under the applicable provisions of this code or state law, including but not limited to the provisions of Chapter 1.16 GHMC, Chapter 8.10 GHMC, Chapter 17.07 GHMC, and Chapter 19.16.

Section 2. Findings in Support of Establishing New “Marijuana Related Uses” Regulations. The City Council adopts the recitals set forth above in support of establishing a new chapter in Title 17 of the GHMC. In addition, the Gig Harbor City Council makes the following findings:

A. City Council has considered the studies and data on file in the City Clerk's office relating to the land use and other secondary impacts associated with marijuana related uses and further takes notice of and specifically relies upon the data and studies.

B. City Council finds that the definition proposed by the State Liquor Control Board regarding “Game Arcade” requires clarification consistent with the intent of Initiative 502.

C. City Council finds that the Employment District is the appropriate permanent location for medical cannabis collective gardens, marijuana production and marijuana processing uses within the city given the intent of the zone, additionally marijuana retail is proposed as an ancillary use.

D. City Council finds that the Commercial District (C-1) and General Business (B-2) zoning districts of the city are appropriate zones for state licensed marijuana retailers given the intent of the zones.

E. City Council finds that adopting permanent regulations is the best course of action in that the City will regulate all marijuana related uses; however the council recognizes that changes to the code may be required due to the State Liquor Control Boards potential changes to the state licensing process in the future.

Section 3. Transmittal to Department. Pursuant to RCW 36.70A.106, this Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 4. 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 5. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 6. Effective Date. This Ordinance shall be published and shall take effect and be in full force five (5) days after the date of publication.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 23rd day of September, 2013.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

FILED WITH THE CITY CLERK: 09/04/13
PASSED BY THE CITY COUNCIL: 09/23/13
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