

## ORDINANCE NO. 1260

### AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING; EXTENDING INTERIM ZONING CODE AMENDMENTS RELATING TO MEDICAL CANNABIS COLLECTIVE GARDENS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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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 3<sup>rd</sup>, 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. The State Liquor Control Board would be authorized to administer the licensing program and develop rules and regulations; and

WHEREAS, the City was concerned that the Employment District along Bujacich Drive may not be the appropriate permanent location for medical cannabis collective gardens within the city given the intent of the zone to enhance the city's economic base by providing suitable areas to support the employment needs of the community. Medical cannabis collective gardens, by definition, are not businesses; 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 1247 on September 24, 2012 extending the interim regulations for a period of six months and adopting findings justifying the same; and

WHEREAS, Ordinance 1247 called for the Planning Commission to review the interim regulations in the fall of 2012 and winter of 2013, to consider recommendations of the city attorney in response to changes in law, and to make a recommendation on whether the regulations, or some modification thereof, should be permanently adopted; and

WHEREAS, in November 2012, Washington voters approved Initiative 502; however, the regulation of collective gardens is wholly separate from regulation under Initiative 502; and

WHEREAS, the matter of *Cannabis Action Coalition v. City of Kent* has been directly appealed to the Washington State Supreme Court (if direct appeal is not

accepted, the appeal would be heard by the state Court of Appeals) after the King County Superior Court determined the City of Kent had the authority to prohibit collective gardens in its jurisdiction, and an appellate decision would provide much-needed precedent on the issue; and

WHEREAS, during the 2013 session, the Washington State Legislature is considering SB 5528 which could also provide clarity on the state regulations on collective gardens; and

WHEREAS, on February 21, 2013, the Planning Commission considered the existing interim regulations and the events that have taken place since the adoption of Ordinance 1247 and recommended that the interim regulations be extended; and

WHEREAS, it is premature to set permanent regulations for medical cannabis collective gardens given the pending *City of Kent* appeal and state legislation; and

WHEREAS, the City Council deems it to be in the public interest to extend the interim zoning regulations but to not codify permanent regulations due to the uncertainties; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to extend interim regulations for a period of six months after a public hearing and adoption of findings justifying the same; and

WHEREAS, the Gig Harbor City Council held a public hearing on March 11, 2013, to take public testimony relating to this ordinance; and

WHEREAS, at the public hearing on March 11, 2013, no members of the public testified on 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.** The purpose of this ordinance is to extend the interim regulations set forth in Ordinance No. 1218 as further amended by Ordinance No. 1222 and extended under Ordinances No. 1236 and No. 1247, for a period of six months.

**Section 2. Findings in Support of Extending Interim Regulations.** In addition to the findings previously made as set forth in Ordinance No. 1218, Ordinance No. 1222, and Ordinance No. 1236, and Ordinance No. 1247, the Gig Harbor City Council makes the following additional findings:

1. The City Council adopts the recitals set forth above in support of extending the interim regulations originally adopted under Ordinance No. 1218 and as amended by Ordinance No. 1222 and as extended under Ordinances No. 1236 and No. 1247.

**Section 3. Extension of Interim Zoning Regulations.** The duration of the interim zoning regulations shall remain in effect for an additional period of six months, and shall automatically expire at that time unless the same are extended as provided in RCW 36.70A.390 and RCW 35A.63.220 prior to that date, or unless the same are repealed or superseded by permanent regulations prior to that date.

**Section 4. Planning Commission Work Plan.** The City of Gig Harbor Planning Commission is hereby directed to conduct another review the interim regulations in the summer of 2013, to consider any recommendations of the city attorney in response to changes in law, and to make a recommendation on whether the regulations, or some modification thereof, should be permanently adopted. The Gig Harbor Planning Commission is directed to complete its review, to conduct such public hearings as may be necessary or desirable, and to forward its recommendation to the Gig Harbor City Council by August 22, 2013.

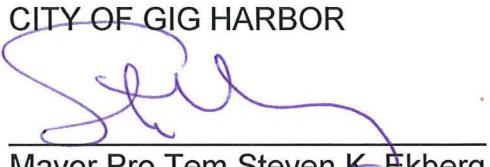
**Section 5. Transmittal to Department.** Pursuant to RCW 36.70A.106, this Ordinance shall be transmitted to the Washington State Department of Commerce.

**Section 6. 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 7. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**Section 8. 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 25th day of March, 2013.

CITY OF GIG HARBOR  
  
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Mayor Pro Tem Steven K. Ekberg

ATTEST/AUTHENTICATED:

Molly Towslee  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

August Schleben

FILED WITH THE CITY CLERK: 03/06/13  
PASSED BY THE CITY COUNCIL: 03/25/13  
PUBLISHED: 03/27/13  
EFFECTIVE DATE: 04/01/13  
ORDINANCE NO: 1260