

ORDINANCE NO. 1218

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING; ADOPTING INTERIM ZONING CODE AMENDMENTS RELATING TO MEDICAL CANNABIS COLLECTIVE GARDENS; AMENDING SECTION 17.14.020 GHMC; SETTING A PUBLIC HEARING FOR JULY 25, 2011, IN ORDER TO TAKE PUBLIC TESTIMONY REGARDING THE INTERIM ZONING CODE AMENDMENTS; ADOPTING A PLANNING COMMISSION WORK PLAN; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY AND ESTABLISHING AN IMMEDIATE 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, this year the Washington State Legislature considered a bill (E2SSB 5073) that would legalize by authorizing the licensing of medical marijuana or 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 legal basis for legalizing and licensing medical marijuana or cannabis dispensaries, processing facilities and production facilities; and

WHEREAS, E2SSB 5073 also contained a provision authorizing "collective gardens" which would authorize qualifying patients the ability to produce, grow, transport and deliver cannabis for medical use, and that provision was approved by Governor Gregoire and becomes effective on July 22, 2011; and

WHEREAS, E2SSB 5073, as approved further authorized cities to adopt and enforce zoning requirements regarding production and processing of medical cannabis; 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 medical marijuana have been experienced in other jurisdictions, the City of Gig Harbor may look to the experiences of other jurisdictions in drafting zoning regulations for collective gardens; and

WHEREAS, many jurisdictions around the country that have approved medical marijuana uses have experienced numerous land use impacts, such as:

- conversion of residential uses into marijuana cultivation and processing facilities, removing valuable housing stock in a community;
- degrading neighborhood aesthetics due to shuttered up homes, offensive odors; increased night-time traffic; parking issues; loitering from potential purchasers looking to buy from a collective member;
- environmental damages from chemicals being discharged into surrounding and off-site soil and storm and sanitary sewer systems;

- serious risk of fire hazard due to overloaded service connections used to operate grow lights and fans;
- improper ventilation leading to high levels of moisture and mold;
- illegal structural modifications; and
- criminal issues such as home invasions, burglaries and cannabis facilities, theft and property damage; and

WHEREAS, unless interim zoning regulations are imposed, collective gardens may be established within the City of Gig Harbor while the City lacks the necessary tools to ensure that the location is appropriate and that the secondary impacts of such facilities are minimized and mitigated; and

WHEREAS, the City Council deems it to be in the public interest to establish interim zoning regulations related to medical cannabis collective gardens until the City can consider all of the land use impacts of collective gardens, draft regulations, hold hearings and adopt new regulations on the subject in light of the new legislation; and

WHEREAS, the City Council may adopt interim zoning regulations effective for up to one year if a work plan is developed for related studies, necessitating such longer period (RCW 35A.63.220, RCW 36.70A.390); 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, DO ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of this interim zoning ordinance is to enact minimum zoning regulations relating to collective gardens, which both allow collective gardens as a use (under the limitations herein) and also provides notice to those intending to operate and participate in collective gardens that the City is considering additional and more comprehensive zoning regulations on the subject.

Section 2. Preliminary Findings. The recitals set forth above are hereby adopted as the Gig Harbor City Council's preliminary findings in support of the interim zoning regulations 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 7 below.

Section 3. Definitions. The definitions set forth in RCW 69.51A.010 are incorporated herein by this reference. In addition, the following definitions shall apply:

- A. "Marijuana" or "cannabis" means all parts of the plant *Cannabis*, whether growing or not;
- B. "Medical marijuana or cannabis collective garden" or "collective garden" means A garden in an enclosed, permanent structure, 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 and in this ordinance.

C. "Usable cannabis" means dried flowers of the *Cannabis* plant having a tetrahydrocannabinol (THC) concentration greater than three-tenths of one percent per weight or volume. 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.

D. "Youth oriented facility" means facilities owned or operated by non-profit organizations for the purpose of providing recreational and/or educational opportunities for youth including but not limited to Boys & Girls Clubs, YMCAs, YWCAs, little league baseball and other youth sports associations.

Section 4. Interim Zoning Regulations.

A. Zoning Districts. Medical marijuana or cannabis collective gardens shall be allowed as a conditional use in the following zoning districts and no others: ED.

B. Separation Requirements. No collective garden shall be permitted within 500 feet from any existing collective garden, residential zoning district, public park, community center, elementary or secondary school (public and private), commercial child care business or youth oriented facility. The measurement shall be taken in a straight line from property boundary to property boundary.

C. Additional Requirements. 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. Outdoor collective gardens are prohibited. No production, processing or delivery of cannabis may be visible to the public. A collective garden must meet all requirements under E2SSB 5073, including but not limited to limitations on number of members, number of plants, amount of usable cannabis on site, maintenance of each member's valid documentation of qualifying patient status.

D. Applications. In addition to the application requirements for a conditional use set forth in GHMC 17.64.015, an application for a collective garden shall include the following information:

- i. Site plan;
- ii. Floor plan;
- iii. Number of cannabis plants to be grown;
- iv. Electrical and ventilation plans;
- v. Contact person;
- vi. Proof of property ownership or permission from property owner;
- vii. Proof the person signing the application is a qualifying patient;
- viii. Vicinity map showing all collective gardens, public parks, community centers, elementary or secondary schools, commercial child care businesses, youth oriented facilities and boundaries of residential zoning districts within 500feet of the parcel proposed for the collective garden; and

vix. A survey performed by a surveyor licensed by the State of Washington to show the distance to any and all collective gardens, public parks, community centers, elementary or secondary schools, commercial child care businesses, youth oriented facilities and boundaries of residential zoning districts if the proposed collective garden appears to be within 750 feet of any such use.

Section 5. Amendment to Land Use Matrix. Chapter 17.14.020 of the Gig Harbor Municipal Code shall be amended to include a notation that medical marijuana or cannabis collective gardens may be permitted subject to the interim regulations set forth in this ordinance.

Section 6. Duration of Interim Zoning Regulations. The interim zoning regulations adopted by this Ordinance shall commence on the date of adoption of this ordinance. The interim zoning amendments adopted by this ordinance shall remain in effect for a period of nine 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 amendments prior to that date.

Section 7. Public Hearing. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this interim zoning ordinance within sixty (60) days of its adoption. The Council shall hold this hearing on July 25, 2011, 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 interim zoning regulations after the close of the hearing or during the next City Council meeting immediately following.

Section 8. Planning Commission Work Plan. The City of Gig Harbor Planning Commission is hereby directed to review the interim amendments in the winter of 2012 and to make a recommendation on whether said amendments, 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 the end of February, 2012.

Section 9. 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 10. 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 11. 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 immediate adoption of interim regulations for medical cannabis collective gardens, collective 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. The interim zoning regulations must be imposed as an emergency measure to protect the public health, safety and welfare.

Section 12. Publication. This ordinance shall be published by an approved summary consisting of the title.

Section 13. Effective Date. This ordinance shall take effect and be in full force immediately upon passage by a majority vote plus one of the whole membership of the Council.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 11th day of July, 2011.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

FILED WITH THE CITY CLERK: 07/11/11
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