

ORDINANCE NO. 1206

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING; ADOPTING AN IMMEDIATE EMERGENCY MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA OR CANNABIS DISPENSARIES, PRODUCTION FACILITIES, AND PROCESSING FACILITIES WITHIN THE CITY; DEFINING TERMS; SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM; ESTABLISHING SIX MONTHS AS THE TENTATIVE EFFECTIVE PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM; AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM.

WHEREAS, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998 and now codified as chapter 69.51A RCW, creates an affirmative defense for “qualifying patients” to the charge of possession of marijuana, and provides that such patients can, as an alternative to growing marijuana for their own use, designate a “designated provider” who can “provide” (not sell) medical marijuana to “only one patient at a time;” and

WHEREAS, many jurisdictions have recently seen the establishment of “medical marijuana dispensaries” within their boundaries, which offer marijuana and marijuana products to qualified patients in exchange for “donations” and which claim to be operating as designated providers within the meaning of chapter 69.51A RCW; and

WHEREAS, the Washington State Department of Health has opined that “the law [current chapter 69.51A RCW] does not allow dispensaries” and that it is “not legal to buy or sell marijuana,” but the Department of Health has left enforcement of the law to local officials; and

WHEREAS, the Washington State Legislature is currently considering at least one bill that would legalize and license medical marijuana or cannabis dispensaries, production facilities, and processing facilities, and that would allow cities to enact reasonable zoning, licensing, and taxation regulations regarding these uses; and

WHEREAS, given the uncertainty of the status of dispensaries and other facilities under the current law and given the potential for new legislation on the subject, the City of Gig Harbor needs time to consider zoning regulations for marijuana or cannabis dispensaries, processing facilities, and production facilities and the City Council has therefore determined that a zoning moratorium should be established pending local review of the issue and final action by the legislature; 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, medical marijuana or cannabis dispensaries, production facilities, and processing facilities 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, invasion of the business, burglaries, and robberies associated with the cash and drugs maintained on the site, are minimized and mitigated; Now, therefore,

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

Section 1. Definitions. As used in this ordinance, the following terms have the meanings set forth below:

A. "Marijuana" or "cannabis" means all parts of the plant *Cannabis*, whether growing or not; 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. "Marijuana" or "cannabis" 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. The terms "marijuana" and "cannabis" include cannabis products and useable cannabis.

B. "Medical marijuana or cannabis dispensary" means premises and equipment used to select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) marijuana or cannabis for medical use to more than one qualifying patient within any thirty (30) day period.

C. "Medical marijuana or cannabis processing facility" means premises and equipment where marijuana and cannabis products are manufactured, processed, handled and labeled for sale, delivery, or transfer (for consideration or otherwise) to a medical marijuana or cannabis dispensary or to more than one qualifying patient within any thirty (30) day period.

D. "Medical marijuana or cannabis production facility" means premises and equipment where cannabis is planted, grown, harvested, processed, stored, handled, packaged or labeled for sale, delivery, or transfer (for consideration or otherwise) to a medical marijuana or cannabis processing facility, a medical marijuana or cannabis dispensary, or to more than one qualifying patient within any thirty (30) day period.

E. "Cannabis products" means products that contain cannabis or extracts thereof, have a measurable tetrahydrocannabinol (THC) concentration greater than three-tenths of one percent per weight or volume, and are intended for human consumption or application, including but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis.

F. "Useable 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. The term "useable cannabis" does not include cannabis products.

In addition to the above definitions and as necessary to interpret or apply this ordinance, the City hereby adopts those definitions set forth in chapter 69.51A RCW, as the same now exists or as it may hereafter be amended.

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 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 5 below.

Section 3. Moratorium Imposed. The City Council hereby imposes an immediate six-month moratorium on the acceptance of any development permit applications for, and prohibiting the location and establishment of, any medical marijuana or cannabis dispensary, any medical marijuana or cannabis production facility, and any medical marijuana or cannabis processing facility within the Gig Harbor city limits. No building permit, occupancy permit, or other development approval for these purposes shall be issued while this moratorium is in effect.

Section 4. 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 5 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 5. 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 13, 2011, at 5:30 p.m. or as soon thereafter as the business of the City Council shall permit. At the following City Council meeting, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or terminate the moratorium.

Section 6. Referral to Staff and Planning Commission. The Gig Harbor Planning Director is hereby authorized and directed to develop draft regulations regarding marijuana or cannabis dispensaries, production facilities, and processing facilities. The regulations shall be referred to the Gig Harbor Planning Commission for review and recommendation for inclusion in the zoning ordinances of the City of Gig Harbor.

Section 7. 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 8. 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 9. 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 medical marijuana or cannabis dispensaries, production facilities and processing facilities, 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 10. Publication. This ordinance shall be published by an approved summary consisting of the title.

Section 11. 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 25th day of April, 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: 04/25/11
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