

ORDINANCE NO. 1301

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

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 legalized certain levels of possession of marijuana along with the production, processing, and retail sales of marijuana and directed 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, 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, discussions between the Office of the Superintendent of Public Instruction (OSPI), the Peninsula School District, the City of Gig Harbor, and the WSLCB 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, as a result, on April 14, 2014, the City approved Ordinance No. 1290 adopting an immediate six-month moratorium on applications for marijuana uses while the City considered regulations to address the definition of "secondary school" and the outcome of the *City of Kent* case identified above; and

WHEREAS, the City Council held several public meetings to discuss the appropriate provisions for regulation of marijuana uses in the City and during this period the Pierce County Superior Court, on August 29, 2014, upheld the City of Fife's ban on all marijuana uses within the City of Fife; and

WHEREAS, the legal landscape relating to marijuana uses is in continued flux and development, and the City Council anticipates and desires additional guidance from the legislature and the courts in the near future, including statutory or precedential direction on whether a city can prohibit all marijuana uses within its jurisdiction; and

WHEREAS, the secondary impacts associated with marijuana related uses could include crimes against the businesses as a result of the products maintained on the site, increased criminal activity in areas around the businesses, loss of revenue for neighboring businesses, and exposure of marijuana uses to children; and

WHEREAS, the City will receive no additional funding from the state to provide necessary resources and enforcement; and

WHEREAS, the City Council may adopt a moratorium for a period of up to twelve months on the acceptance of certain development permit applications as long as it holds a public hearing and adopts a work plan as a part of the ordinance (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 secondary impacts of such facilities are minimized and mitigated; and

WHEREAS, the City Council has determined that it is in the public interest to establish a 12-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 to allow the City to evaluate future amendments to chapter 17.63 of the Gig Harbor Municipal Code, up to and including a potential prohibition on marijuana uses, and on September 22, 2014, held a public hearing on the moratorium; and

WHEREAS, a moratorium is necessary to preserve the status quo until the City adopts appropriate zoning, health safety, and/or licensing regulations; 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. Findings. The recitals set forth above are hereby adopted as the Gig Harbor City Council's findings in support of the moratorium imposed by this ordinance.

Section 4. Moratorium Imposed. The City Council hereby imposes a twelve 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. The moratorium set forth in this ordinance shall be in effect for a period of twelve months from the effective date of this ordinance and shall

automatically expire after twelve months 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. Work Plan; Referral to Planning Commission. The Gig Harbor Planning Commission 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 definitions found in chapter 17.63 GHMC, analyzing established land use zoning districts for propriety of marijuana related uses, prohibiting collective gardens consistent with the ruling in *Cannabis Action Coalition v. City of Kent* identified above, and making any other recommendations in response to changes in law. Considering the existing work schedule of the Planning Commission, the Planning Commission shall begin work on the draft amendments by their first regularly scheduled meeting in May 2015 and hold a properly noticed public hearing and prepare final recommendation to City Council on their draft amendments by the end of June 2015. 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 City Council consideration at the first regular meeting in July of 2015, and a final ordinance adopted as reasonably soon thereafter as the City Council can hold a public hearing and complete deliberations on the ordinance.

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. Termination of Moratorium under Ordinance No. 1290. Upon the effective date of this ordinance, the moratorium established under Ordinance No. 1290 is hereby terminated.

Section 10. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 22nd day of September, 2014.

CITY OF GIG HARBOR



Mayor Jill Guernsey

ATTEST/AUTHENTICATED:



Molly M. Towslee

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



Angela G. Summerfield

FILED WITH THE CITY CLERK: 09/17/14
PASSED BY THE CITY COUNCIL: 09/22/14
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