



**ORDINANCE NO. 3347-13**

An Ordinance establishing interim zoning regulations related to recreational marijuana businesses.

**Whereas**, the City Council finds that:

1. Initiative Measure No. 502, approved November 6, 2012, modified the State Controlled Substances Act to allow the possession of marijuana for private, personal use and established a system for lawful production, processing, and retailing of recreational marijuana under state law; and
2. Initiative Measure No. 502 established licenses to be issued by the State Liquor Control Board for producers, processors, and retailers of recreational marijuana (collectively “marijuana businesses”) and gave the State Liquor Control Board the power to adopt rules consistent with the Initiative and to enforce the same; and
3. The State Liquor Control Board plans to adopt rules which will become effective November 16, 2013, and will accept applications for licenses for marijuana businesses for 30 days thereafter; and
4. The State Liquor Control Board rules require applicants for marijuana businesses licenses to identify the location at which they will operate; and
5. The State Liquor Control Board will not consider local zoning regulations in deciding whether to issue licenses for marijuana businesses, but marijuana businesses are required to comply with local zoning requirements; and
6. Establishing zoning regulations for marijuana businesses prior to November 16, 2013, should prevent marijuana businesses from submitting applications to the State Liquor Control Board for locations that do not satisfy the City’s zoning requirements; and
7. The State Liquor Control Board will issue five marijuana retailers licenses for locations within the City, but an unlimited number of marijuana producer licenses and an unlimited number of marijuana processor licenses such that the City cannot know the number of potential marijuana businesses that will locate within the City; and

8. The City cannot fully anticipate all potential impacts of marijuana businesses, which have never existed as legal uses; and

9. The City should take a measured approach which honors the spirit of state law and acts as a pilot project allowing marijuana businesses only in areas that have the greatest likelihood to be permissible areas after full consideration of the proper regulation of marijuana businesses and experience with the impacts of such businesses; and

10. The City's action is a limited first step which can be expanded as may be warranted; and

11. A State Environmental Policy Act, RCW 43.21C, Determination of Non Significance (SEPA #13-015) for the potential regulation of marijuana businesses was issued on July 18, 2013; and

12. The City held a public hearing on the date of adoption of this Ordinance; and

13. Nothing in this Ordinance is intended to encourage any use or activity that violates federal law; and

**Whereas**, the City Council concludes that:

1. The City does have the authority to establish interim regulations; and

2. The City must adopt interim regulations concerning the location of recreational marijuana businesses to act as a stop-gap measure: (a) to allow the City to discover the number of potential marijuana businesses attempting to locate within the City, (b) to provide the City an opportunity to study the issues concerning the appropriate zoning or regulation of such recreational marijuana businesses and prepare appropriate revisions to the City's regulations; and (c) to avoid marijuana businesses establishing vested rights contrary to and inconsistent with any revision the City may make to its regulatory scheme as a result of the City's study of this matter;

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

Section 1. Findings of Fact

The "Whereas" provisions above shall constitute Findings of Fact and are incorporated by reference as if fully set forth herein.

Section 2. Interim Regulations

A. The terms “marijuana,” “marijuana processor,” “marijuana producer,” and “marijuana retailer” shall have the meaning set forth in RCW 69.50.101.

B. Marijuana producers and marijuana processors may operate in the City of Everett pursuant to the following restrictions:

1. Marijuana producers and marijuana processors must comply with all requirements of state law and the Washington State Liquor Control Board’s regulations;

2. Marijuana producers and marijuana processors may locate only within the A-1, M-1, M-2, M-M, and C-2 zones;

3. Marijuana processors located in the A-1 zone may process only marijuana grown on-site;

4. Marijuana producers and marijuana processors may not locate within 1,000 feet of any parcel zoned as residential (R-S, R-1, R-1(A), R-2, R-2(A), R-3, R-3(L), R-4, and R-5 zones);

5. Marijuana producers and marijuana processors may not locate within 1,000 feet of any parcel containing an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older; and

6. Tier 2 and Tier 3 marijuana producers may not locate or operate in the City of Everett.

C. Marijuana retailers may operate in the City of Everett pursuant to the following restrictions:

1. Marijuana retailers must comply with all requirements of state law and the Washington State Liquor Control Board’s regulations;

2. Marijuana retailers may locate only within the B-2, B-3, BMU, C-1, C-1R, C-2, E-1, E-1MUO, and M-2 zones;

3. Marijuana retailers may not locate in Neighborhood Business (B-1) zones;

4. Marijuana retailers may not locate in a building in which non-conforming retail uses have been established in residential zones (R-S, R-1, R-1(A), R-2, R-2(A), R-3, R-3(L), R-4, and R-5 zones);

5. Marijuana retailers may not locate within 1,000 feet of any parcel containing an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older; and

6. Marijuana retailers may not locate within 2,500 feet of any other legally established marijuana retailer.

D. Distances provided under this Ordinance shall be measured as the shortest distance between the perimeters of the parcels at issue.

E. Marijuana producers, marijuana processors, and marijuana retailers are required to acquire all necessary business licenses and are required to comply with municipal tax regulations and all other applicable City ordinances.

F. For the purposes of the 2,500 foot setback between marijuana retailers, marijuana retailers shall be considered to be legally established in the order in which they are issued a City of Everett business license. The City will not issue a business license to a recreational marijuana business prior to the applicant providing the City with a copy of its Washington State Liquor Control Board license.

Section 3. Work Plan

Staff is hereby directed to implement the following work plan during the interim period. Staff is directed to review the number of marijuana producers, marijuana processors, and marijuana retailers issued licenses by the Washington State Liquor Control Board, study the impacts of marijuana producers, marijuana processors, and marijuana retailers operating in the City of Everett and in other jurisdictions to form recommendations for permanent regulation of recreational marijuana licensees, review the legislative approaches of other jurisdictions and the experiences of other jurisdictions, and review any litigation that may relate to the City's regulation of recreational marijuana. In addition, staff is hereby directed to review existing zoning, land use, and other regulations applicable within the City and to consider potential amendments to such regulations, after studying the potential impacts on the peace, health, safety, and welfare, to provide that the recreational use of marijuana is permitted to the extent of the law and in a manner which assures adequate protection of the public health, safety, and welfare.

Section 4. Term

These interim regulations shall terminate one year after they become effective unless earlier repealed or renewed according to law.

Section 5. Enforcement.

Any violation of this Ordinance is subject to enforcement under the provisions of Chapter 1.20 of the Everett Municipal Code or through action of the City Attorney seeking injunctive or other civil relief in any court of competent jurisdiction. The violator will be responsible for costs, including reasonable attorney fees.

Section 6. Conflict

In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 7. Severability

Should any section, subsection, paragraph, sentence, clause, phrase, or portion of this Ordinance or its application to any person or situation, be declared unconstitutional, invalid for any reason, or preempted by state or federal law or regulations, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other persons or situations. The City Council hereby declares that it would have adopted this Ordinance and each section,

subsection, paragraph, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, phrases, or portions be declared unconstitutional, invalid, or preempted.

Section 8. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees, or agents.

Section 9. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal, or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 10. Corrections

The City Clerk is authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers, and any references thereto.

  
Ray Stephanson, Mayor

ATTEST:

  
Sharon Fuller, City Clerk

PASSED: 10-23-13

VALID: 10-25-13

PUBLISHED: 10-31-13

EFFECTIVE DATE: 11-9-13