

ORDINANCE NO. 13-749

**AN ORDINANCE of the City of Federal Way, Washington, imposing a one year moratorium on marijuana collective gardens and other activities involved in the sale, manufacturing, or distribution of marijuana; setting a date for a public hearing; and amending the Planning Commission Work Program.**

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WHEREAS, Initiative 502, passed November 2012, directs the Washington State Liquor Control Board to develop a licensing program for producers, processors and retailers of recreational marijuana; and

WHEREAS, the proposed Washington State Liquor Control Board recreational marijuana rules do not affect local zoning and building regulations, but do place location restrictions on recreational marijuana businesses that will need to be monitored by the City; and

WHEREAS, the Washington State Liquor Control Board will begin accepting marijuana license application on November 18, 2013, and will finalize its recreational marijuana rules and licensing program by December 1, 2013; and

WHEREAS, City staff need time after the Washington State Liquor Control Board finalizes its rules to evaluate and propose regulations to Council in response to Initiative 502;

WHEREAS, the Legislature passed E2SSB 5073, effective July 22, 2011, that amended the Medical Cannabis Act, Chapter 69.51A RCW, which allows marijuana to be grown in "collective gardens" for the purpose of producing, processing, transporting and delivering marijuana for medical use subject to certain conditions; and

WHEREAS, E2SSB 5073 allows the City to regulate medical marijuana by enacting zoning, licensing and/or health and safety requirements; and

WHEREAS, the City does not have any land use regulations regarding “collective gardens” under E2SSB 5073 and proposed regulations in response to Initiative 502 will likely impact “collective gardens”; and

WHEREAS, the authority of a city to regulate and ban medical marijuana collective gardens is currently pending before the Washington State Supreme Court; and

WHEREAS, marijuana is a schedule I controlled substance and the growing, distribution and possession of marijuana is a violation of Federal law; and

WHEREAS, the Department of Justice has stated in a letter dated January 17, 2012, that public employees who knowingly carry out marijuana activities contemplated by Washington State law, or who facilitate such activities, or conspire to commit such violations, are subject to criminal prosecution under federal law; and

WHEREAS, on August 29, 2013, the Department of Justice issued a memorandum that implies that the federal government will not interfere with state and local marijuana regulations provided that those regulations implement a strong and effective regulation and enforcement system that contains robust controls and procedures on paper and that is effective in practice as evidenced by providing necessary resources and enforcement actions to address certain federal government concerns; and

WHEREAS, in order to address the federal government’s concerns it is anticipated that the City will need to take an active role in providing necessary resources and enforcement; and

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

WHEREAS, under the business regulations in Federal Way Revised Code 12.05, marijuana related businesses are currently prohibited from operating in the City as they violate Federal law; and

WHEREAS, in order to address Initiative 502 and E2SSB it is anticipated that amendments will need to be made to the City's building, zoning, business and public safety regulations; and

WHEREAS, the City is concerned that marijuana related uses could become established in the City that are inconsistent with or conflict with these anticipated amendments; and

WHEREAS, the Council has determined that it is in the public interest to establish a moratorium to evaluate and, if necessary, enact regulations in response to Initiative 502, E2SSB 5073 and Department of Justice guidance; and

WHEREAS, the Planning Commission's work program will need to be amended to add marijuana related code amendments as a high priority; and

WHEREAS, a work group of City staff will need to be created to review and develop proposed marijuana related code amendments; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to adopt a moratorium; and

WHEREAS, the adoption of this moratorium is exempt from the requirements of a threshold determination under the State Environmental Policy Act; and

WHEREAS, the desire to maintain the status quo and the potential adverse impacts on the public health, property, safety and welfare of the City and its citizens if this Ordinance does not take effect immediately, justify the declaration of an emergency and the designation of this

ordinance as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace by the City Council;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council of the City of Federal Way makes the following findings of fact:

- (a) The forgoing whereas provisions are adopted as findings of fact.
- (b) A moratorium is necessary to provide the City with sufficient time to study the potential impacts of Initiative 502 and E2SSB 5073; develop appropriate zoning, health safety, and/ or licensing regulations; and insure that the regulations comply with the law.
- (c) A moratorium is necessary to preserve the status quo until the City adopts appropriate zoning, health safety, and/ or licensing regulations.

Section 2. Moratorium Established. No marijuana producers, processors or retailers licensed by the Washington State Liquor Control Board as authorized by Initiative 502 and no marijuana “collective gardens” or activities as authorized by E2SSB 5073 for purposes including but not limited to producing, processing, transporting and/or delivering of marijuana shall be allowed within the City. The City Clerk shall not accept nor issue marijuana related business applications or registrations for the duration of this moratorium.

Section 3. Work Plan. A work group consisting of representatives from Police, Community and Economic Development, the Clerk’s Office and the City Attorney’s Office is hereby established to develop draft regulations regarding marijuana related uses once the Washington State Liquor Control Board rules become final. Within approximately six months of

the issuance of the final rules, the work group shall report back to Council with the proposed regulations and timeline for implementation.

Section 4. Planning Commission Work Program. The Planning Commission Work Program is amended to add marijuana related code amendments as a high priority.

Section 5. Duration of Moratorium. This moratorium shall be in effect for one year from the effective date of this ordinance.

Section 6. Public Hearing. A public hearing for this moratorium will be held on December 3, 2013, at the regularly scheduled City Council Meeting.

Section 6. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to any other persons or circumstances.

Section 7. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 8. Effective Date. By unanimous consent, the Council finds that this moratorium is for a public emergency and needed for the immediate support of City governments and is not subject to initiative or referendum pursuant to FWRC 1.30. This ordinance shall take effect and be in full force upon adoption.

PASSED by the City Council of the City of Federal Way this 5<sup>th</sup> day of November, 2013.

CITY OF FEDERAL WAY

  
MAYOR, SKIP PRIEST

ATTEST:

  
CITY CLERK, CAROL MCNEILLY, CMC

APPROVED AS TO FORM:

  
CITY ATTORNEY, PATRICIA A. RICHARDSON

FILED WITH THE CITY CLERK:	10/30/2013
PASSED BY THE CITY COUNCIL:	11/05/2013
PUBLISHED:	11/08/2013
EFFECTIVE DATE:	11/05/2013
ORDINANCE NO.:	13-749