

ORDINANCE NO. 3252

AN ORDINANCE OF THE CITY OF LONGVIEW, WASHINGTON ADOPTING A MORATORIUM UPON ESTABLISHMENTS INVOLVED IN THE CULTIVATION, PROCESSING , AND RETAIL SALE OF MARIJUANA

WHEREAS, E2SSB 5073 effective on July 22, 2011, amended the Medical Cannabis Act, Chapter 69.51A RCW, and authorized, at RCW 69.51A.085, the creation of and participation in "collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use" subject to certain conditions; and

WHEREAS, RCW 69.51A.140 authorizes cities to adopt and enforce health and safety requirements related to cannabis, including medical cannabis, within their jurisdictions; and

WHEREAS, Initiative 502, which passed at the November 2012, General Election, directs the Washington State Liquor Control Board to develop rules and regulations to determine the number of producers by county, develop licensing and other regulatory measures for producing, processing, and selling marijuana for non-medical purposes; and

WHEREAS, such rules are being developed and are expected to be completed no later than December 1, 2013, and the City is concerned that marijuana-related land uses could become established in the City that are inconsistent with or conflict with the Liquor Control Board's rules; and

WHEREAS, the City is concerned that marijuana-related land uses could become established in the City prior to the completion and enforcement of the Liquor Control Board rules that could undermine the objectives and goals the City Council has for downtown and other parts of the City; and

WHEREAS, use and delivery of marijuana is still a violation of federal law under the Controlled Substances Act; and

WHEREAS, the Washington State Department of Health has confirmed that medical marijuana dispensaries are illegal under current state law; and

WHEREAS, this Ordinance does not shield medical marijuana users from arrest under state or federal law; and

WHEREAS, this Ordinance does not shield any establishment involved in the use, production, processing, or distribution of marijuana from any other legal requirements; and

WHEREAS, the U.S. Department of Justice has not yet announced the position of the federal government on Washington's legalization of recreational marijuana or on Washington's laws regarding medical marijuana collective gardens; and

WHEREAS, this Ordinance does not take a position as to whether and when any particular collective garden is operating legally; and

WHEREAS, the siting and location of marijuana uses is a significant public safety matter, which is exemplified by Initiative 502's requirement that the Liquor Control Board's rules must determine the maximum number of retail outlets that may be licensed in any specific county, and Initiative 502's requirement that one thousand foot buffers exist between licensed marijuana retailers and any school grounds, playground, recreation center or facility, child care center, public park, library, public transit center or any game arcade which is open to persons under aged twenty-one; and

WHEREAS, additional time is needed to study existing and potential impacts from land uses associated with marijuana; and

WHEREAS, such land use and public safety issues include but are not limited to appropriate signage, taxes, licensing, applicable building codes, location restrictions, density, spacing requirements between marijuana-associated uses, appropriate zones for growing, manufacturing and distribution, and separation from schools and other facilities where children are present; and

WHEREAS, the City will need time to conduct an appropriate analysis and to develop appropriate recommendations for the Longview Planning Commission to consider regarding the issues noted above; and

WHEREAS, the City has legitimate concerns that marijuana-associated land uses have a higher than average potential for burglary and other crimes, and that such concerns need to be evaluated in greater detail before determining appropriate land use controls; and

WHEREAS, potential impacts from marijuana uses include but are not limited to:

- conversion of residential uses into marijuana cultivation and processing facilities, removing valuable housing stock in a community;
- degrading neighborhood and commercial district aesthetics due to shuttered-up homes and buildings and offensive odors;
- 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;
- criminal issues such as home invasions, burglaries of marijuana facilities, theft and property damage, and

WHEREAS, the work plan will be for staff to conduct a survey of the responses made by other jurisdictions to E2SSB 5073 and Initiative 502 relating to marijuana land uses, conduct an evaluation of the effectiveness of such responses and how they have attempted to deal with the issues listed above, conduct an evaluation of the potential impact of other marijuana-related uses in the City that may result from Initiative 502, provide the Planning Commission with a recommendation, forward the Planning Commission's recommendation along with the staff's recommendation to the City Council; and

WHEREAS, this Ordinance does not shield any individual or entity, including users, manufacturers, and deliverers of marijuana, from local, state or federal penalties and liability; and

WHEREAS, this moratorium is authorized by RCW 35A.63.220, and Article 11, Section 11 of the Washington State Constitution; and

WHEREAS, as required by RCW 35A.63.220 and RCW 36.70A.390, the City Council will hold a public hearing within sixty (60) days of the passage of this Ordinance;

NOW THEREFORE, The City Council of the City of Longview do ordain as follows:

Section 1. Moratorium. The Longview City Council hereby declares a moratorium upon:

- A) The submission, acceptance, processing or approval of any permit applications or licenses by or any establishments involved in the sale, use, growing, manufacture or processing of marijuana, including but not limited to performance spaces, private clubs, open-to-the-public night clubs, cabarets, taverns or similar establishments.
- B) The creation by an owner or operator of any land or building of any new use of such land or buildings for the sale, use, growing, distribution, manufacturing, or processing of marijuana.

Section 2. Legally Permitted Collective Gardens Not Affected. The moratorium created by this ordinance shall not apply to collective gardens allowed pursuant to LMC 19.72.

Section 3. Term of Moratorium. The moratorium imposed by this Ordinance shall become effective from and after thirty (30) days from the date of its passage and publication, and shall continue in effect for an initial period of six (6) months thereafter, unless repealed, extended, or modified by the City Council, after a public hearing and

the entry of appropriate findings of fact as required by RCW 35A.63.220, provided, however, that the moratorium shall automatically expire upon the effective date of zoning regulations adopted by the City Council to address the cultivation, processing and retail sale of marijuana in the City of Longview.

Section 4. Public Hearing. A public hearing shall be scheduled within 60 days, at the City Council Chambers of the Longview City Hall, where it will hear evidence and consider the comments and testimony of those wishing to speak such public hearing regarding the moratorium.

Section 5. Preliminary Findings. Following the public hearing, the City Council shall adopt Findings of Fact justifying its actions before the public hearing, and determine whether a work plan is necessary to address the issues regarding cultivation, processing and retail sale of marijuana within the City and extending the moratorium to complete a work plan and implementation of appropriate regulations.

Section 6. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance and the same shall remain in full force and effect. The City of Longview hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 7. That nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

Section 8. That the City of Longview City Clerk is hereby ordered and directed to cause this Ordinance to be published.

Section 9. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 10. This Ordinance shall be in full force and effect from and after thirty (30) days from the date of its passage and publication as provided by law.

Passed by the City Council this ____ day of _____, 2013.

Approved by the Mayor this ____ day of _____, 2013.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

James McNamara
City Attorney

Published: _____