

**ORDINANCE NO. 07-2016**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, AMENDING ORDINANCE NO. 09-15 TO EXTEND THE INTERIM ZONING REGULATIONS FOR RECREATIONAL MARIJUANA PRODUCTION, PROCESSING, AND RETAIL USES UNTIL JULY 1, 2016; PROVIDING FOR A PUBLIC HEARING ON THE EXTENSION; ADOPTING FINDINGS OF FACT; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Initiative 502, passed by Washington voters on November 6, 2012, and codified in Chapter 69.50 of the Revised Code of Washington (RCW), modified the State Controlled Substances Act to allow the possession of recreational marijuana for private and personal use and established a system for lawful production, processing, and retailing of recreational marijuana under state law; and

**WHEREAS**, in 2013 and 2014 the Washington State Liquor Control Board (LCB) developed rules and regulations related to the licensing and location of recreational marijuana production, processing, and retailing uses as allowed under the Initiative, and began accepting applications and issuing licenses for recreational marijuana businesses; and

**WHEREAS**, in April 2015 the state legislature passed, and the governor signed into law, SB 5052, the Cannabis Patient Protection Act (the "Act"); and

**WHEREAS**, the Act establishes the state LCB, now Liquor and Cannabis Board, as the oversight body for all marijuana uses, both recreational and medical, provides guidance and rules for the regulation and licensing of medical marijuana, eliminates collective gardens to be replaced with medical marijuana collectives and personal grows, and requires special endorsements for marijuana retailers wishing to sell medical marijuana in addition to recreational marijuana; and

**WHEREAS**, the significant portions of the Act that affect the city's zoning and licensing regulations does not go into effect until July 1, 2016; and

**WHEREAS**, on January 16, 2014, the Washington State Attorney General issued a formal opinion which concluded that I-502 does not prevent local governments from regulating or banning marijuana businesses; and

**WHEREAS**, the LCB will not consider local zoning regulations in deciding whether to issue licenses for marijuana producers, processors, and retailers, but those businesses are required to comply with local zoning regulations and controls; and

**WHEREAS**, RCW 35A.63.220 and RCW 36.70A.390 authorize the city to adopt interim land use regulations and official controls; and

**WHEREAS**, on November 12, 2013, the city council adopted Ordinance No. 10-13, which declared an emergency necessitating the immediate adoption of interim zoning regulations for recreational marijuana production, processing, and retail uses for an initial six-month period, which regulations were subsequently amended by Ordinance No. 06-14 and subsequently renewed by Ordinance Nos. 12-14, 03-15; and 09-15and

**WHEREAS**, unless the City extends the interim zoning regulations for recreational marijuana uses, such uses may be able to locate in the City without regulation and thereby have adverse impacts on the City and its citizens; and

**WHEREAS**, city staff intends to present proposed permanent local regulations for marijuana businesses for adoption by July 1, 2016, and said proposed permanent regulations will be informed by state law, LCB regulations and policies, and case law; and

**WHEREAS**, on March 8, 2016, the city council conducted a public hearing, providing an opportunity for the public to comment on the interim zoning regulations set forth in this ordinance prior to their extension and the council has weighed the testimony received; and

**WHEREAS**, pursuant to WAC 197-11-800(19), the adoption of this ordinance is exempt from environmental review under the State Environmental Policy Act; and

**WHEREAS**, based on the public testimony received on March 8, 2016, and materials provided by city staff, the council deems it in the public interest to extend the current interim zoning regulations for recreational marijuana production, processing, and retail uses until July 1, 2016, to allow staff to prepare permanent regulations for the council's consideration and adoption; and

**WHEREAS**, nothing in this ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Findings of Fact.** In accordance with RCW 35A.63.220 and RCW 36.70A.390, which require the city council to adopt findings of fact justifying the adoption of interim zoning regulations, the "WHEREAS" clauses set forth above are hereby adopted as the city council's findings of fact in support of the interim zoning regulations imposed by this ordinance and are fully incorporated herein by this reference. The city council may adopt additional findings in the event that additional evidence is presented to the city council.

**Section 2. Extension of Interim Zoning Regulations.** The six-month interim zoning regulations established by Ordinance No. 09-15 shall not lapse and shall be extended to be effective until July 1, 2016, unless earlier terminated.

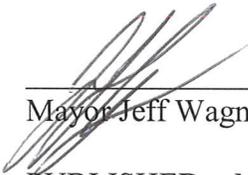
**Section 3. No Non-Confirming Uses.** No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer, as those terms are defined in the ordinances referenced in Section 2 herein, that was engaged in that activity upon expiration of any prior interim zoning regulations and prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Covington Municipal Code and that use shall not be entitled to claim legal non-confirming use status.

**Section 4. Severability.** Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

**Section 5. Corrections.** Upon the approval of the city attorney, the city clerk is authorized to make any necessary technical corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

**Section 6. Effective Date.** This ordinance shall be published in the official newspaper of the city and shall take full force and effect five (5) days after the date of publication.

**PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON,** at a regular meeting thereof on the 8<sup>th</sup> day of March, 2016, and signed in authentication of its passage.

  
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Mayor Jeff Wagner

PUBLISHED: March 11, 2016  
EFFECTIVE: March 16, 2016

ATTESTED:

  
\_\_\_\_\_  
Sharon Scott, City Clerk

APPROVED AS TO FORM ONLY:

  
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Sara Springer, City Attorney