

ORDINANCE NO. 08-11

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, DECLARING AN EMERGENCY AND ADOPTING A TWELVE MONTH MORATORIUM WITHIN THE CITY OF COVINGTON ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE, OR CONTINUATION OF MEDICAL MARIJUANA DISPENSARIES, PRODUCTION FACILITIES, PROCESSING FACILITIES, AND COLLECTIVE GARDENS; DEFINING TERMS; PROVIDING FOR A PUBLIC HEARING ON THE MORATORIUM; AUTHORIZING A WORK PLAN; AND PROVIDING FOR SEVERABILITY.

WHEREAS, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A of the Revised Code of Washington (RCW), creates an affirmative defense for qualifying patients to the charge of possession of marijuana, and provides that such patients can, as an alternative to growing marijuana for their own use, designate a designated provider who can provide medical marijuana to only one patient at a time; and

WHEREAS, many jurisdictions have recently seen the establishment of medical marijuana dispensaries within their boundaries, which offer marijuana and marijuana products in exchange for donations and which claim to be operating as designated providers within the meaning of Chapter 69.51A RCW; and

WHEREAS, the Washington State Department of Health has opined that “the law [current Chapter 69.51A RCW] does not allow dispensaries” and that it is “not legal to buy or sell marijuana,” but the Department of Health has left enforcement of the law to local officials; and

WHEREAS, litigation is pending against several jurisdictions that have decided to oppose the location of such facilities within their boundaries; and

WHEREAS, the Washington State legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073, Medical Cannabis, that became effective on July 22, 2011; and

WHEREAS, uncertainties and ambiguities exist regarding the meaning and enforcement of E2SSB 5073 because Governor Gregoire vetoed significant portions of the bill, creating a bill that fails to legalize and license medical marijuana dispensaries, production facilities, and processing facilities, but does now allow collective gardens and for cities to enact reasonable zoning, licensing, and taxation regulations regarding these uses; and

WHEREAS, the governor’s veto message pertaining to E2SSB 5073, dated April 29, 2011, explained that several sections of the bill were vetoed as a result of a letter from the U.S. Attorneys for Washington State that reiterated that marijuana possession, production, and

distribution is a federal criminal offense and that state workers would not be immune to prosecution under federal law even if state law decriminalized the use, possession, and production of marijuana for medical purposes, therefore the governor was unwilling to place state workers at risk of federal prosecution for enforcing and following state law; and

WHEREAS, though E2SSB 5073 allows medical marijuana collective gardens, the City of Covington currently has no licensing, zoning, or land use requirements that address collective gardens for medical marijuana production or that address medical marijuana production, processing, or dispensing facilities, should such dispensaries be determined to be authorized by E2SSB 5073; and

WHEREAS, given the extreme uncertainty of the legal status of medical marijuana production facilities, processing facilities, and dispensaries under the current law, and given the legislature's inaction on the subject and the strong possibility for the law to change yet again after the 2012 legislative session, the City requires time for a thorough legal review of the complicated legal framework that currently exists and is still evolving; and

WHEREAS, given the limitations on city staff time and resources, it is not an efficient use of city staff time or resources to commence a planning process by staff and an introduction of materials to the Planning Commission until the legal issues surrounding the development of regulations for medical marijuana production, processing, and dispensing facilities, as well as collective gardens, are resolved; and

WHEREAS, the planning process that occurs will need to consider complex zoning, licensing, and taxation regulations for collective gardens, and marijuana production, processing and dispensing facilities should they be deemed legal; and

WHEREAS, once the City Council receives a recommendation from the Planning Commission it will need a reasonable period of time to consider the recommendations, conduct one or more public hearings, and adopt regulations related to the establishment and citing of medical marijuana collective gardens, and production, processing, and dispensing facilities should they be deemed legal; and

WHEREAS, unless an emergency zoning moratorium is imposed, medical marijuana collective gardens and production, processing, and dispensing facilities may seek to locate within the City of Covington while the City lacks the necessary tools to ensure that such uses are legal, that the location is appropriate, and that the reported secondary impacts of such facilities, which include but are not limited to, invasion of the business, burglaries, robberies associated with the cash and drugs maintained on the site, unlawful use and distribution of marijuana for non-medical purposes, and unlawful commercial marijuana growing operations, are minimized and mitigated; and

WHEREAS, the City Council has determined that an emergency moratorium is necessary in order to protect the public interest, health, and safety until such time as the Council can act on a recommendation from the Planning Commission concerning the establishment and citing of

medical marijuana collective gardens, and production, processing, and dispensing facilities should they be deemed legal; and

WHEREAS, pursuant to RCW 35A.63.220, the city may impose land use and development moratoria to be in effect for a period of up to six (6) months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period;

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

Section 1. Findings of Fact. The “WHEREAS” clauses set forth above are hereby adopted as the City Council’s preliminary findings of fact in support of the moratorium imposed by this ordinance. The City Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 5 below.

Section 2. Moratorium Established. A moratorium is hereby enacted prohibiting within the City of Covington the location, establishment, licensing, operation, maintenance, or continuation of any medical marijuana dispensary, any medical marijuana production facility, any medical marijuana processing facility, or any medical marijuana collective garden, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A RCW, or any other laws of the state of Washington. No building permit, occupancy permit, or other development approval shall be issued for any of the purposes or activities listed above, and no business license or registration shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses, or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void and without legal force and effect.

As used in this ordinance, the following terms have the meanings set forth below:

A. “Medical marijuana dispensary” any business, agency, organization, cooperative, network, consultation operation, or other group, or person, no matter how described or defined, including its associated premises and equipment, which has for its purpose or which is used to grow, select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) marijuana for medical use. A person who is the designated provider for only one (1) qualified patient during any fifteen (15) day period and who complies with Chapter 69.15A RCW, shall not be deemed a medical marijuana dispensary for the purposes of this moratorium.

C. “Medical marijuana processing facility” means premises and equipment where marijuana products are manufactured, processed, handled or labeled for sale, delivery, or transfer (for consideration or otherwise) to a medical marijuana dispensary, or to more than one qualifying patient within any fifteen (15) day period.

D. “Medical marijuana production facility” means premises and equipment where marijuana is planted, grown, harvested, processed, stored, handled, packaged or labeled for sale, delivery, or transfer (for consideration or otherwise) to a medical marijuana processing facility, a medical marijuana dispensary, or to more than one qualifying patient within any fifteen (15) day period.

E. “Medical marijuana collective garden” means a group of qualifying patients that share responsibility for acquiring and supplying the resources required to produce and process marijuana for medical use. Examples of collective garden resources would include, without limitation, the following: property used for a collective garden; or equipment, supplies, and labor necessary to grow and harvest marijuana; marijuana plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of marijuana plants. A medical marijuana collective garden shall satisfy the above definition regardless of its formation, ownership, management, or operation as a business, agency, organization, cooperative, network, consultation operation, group, or person. A person who is the designated provider for only one qualified patient during any fifteen (15) day period who complies with Chapter 69.51A RCW or a person who is a qualified patient and who complies with RCW 69.51A, shall not be deemed a medical marijuana collective garden for the purposes of this moratorium.

Section 3. Effective Period of Moratorium. The moratorium established by this ordinance shall become effective as set forth in Section 7 below, and shall continue in effect for twelve months thereafter unless repealed, renewed, or modified by the City Council after a subsequent public hearing and entry of findings of fact.

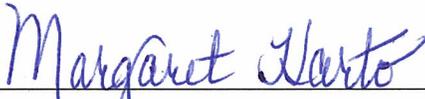
Section 4. Work Program. The City Manager is authorized to allocate the necessary resources to prepare a work program to address issues related to determining the legality of medical marijuana dispensaries, production facilities, processing facilities, and collective gardens, including but not limited to review of the pending dispute between state and federal law enforcement authorities regarding the legality of medical marijuana use under any circumstance and notwithstanding the enactment by the state legislature of RCW 69.51A. In the event that such uses are ultimately determined to be legal, the work plan should also review and research the most appropriate zoning districts in the city for such medical marijuana uses, and develop related development regulations and performance standards applicable to medical marijuana uses in the city as may be necessary.

Section 5. Public Hearing to be Held. A public hearing on the issue of the moratorium shall be held no later than sixty (60) days after the date of adoption herein.

Section 6. 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 7. Effective Date. This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force immediately upon its adoption. The city clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 9th DAY OF AUGUST, 2011.



Mayor Margaret Harto

PUBLISHED: August 12, 2011

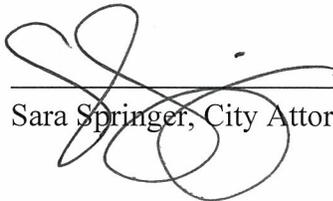
EFFECTIVE: August 12, 2011

ATTESTED:



Sharon Scott, City Clerk

APPROVED AS TO FORM:



Sara Springer, City Attorney