

## **ORDINANCE NO. 09-15**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, TO RENEW THE PREVIOUSLY ADOPTED INTERIM ZONING REGULATIONS FOR RECREATIONAL MARIJUANA PRODUCTION, PROCESSING, AND RETAIL USES FOR SIX MONTHS; PROVIDING FOR A PUBLIC HEARING ON THE RENEWAL; ADOPTING FINDINGS OF FACT; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY 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**, 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, has accepted applications, and has begun to issue licenses for recreational marijuana businesses; 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 recreational marijuana producers, processors, and retailers, but those businesses are required to comply with local zoning regulations and controls; and

**WHEREAS**, though the LCB has begun issuing licenses for recreational marijuana businesses, the land use and secondary impacts of these uses are still largely unknown and the regulations that the city will need to address them remain uncertain; and

**WHEREAS**, in their 2015 session, the state legislature enacted new regulations to incorporate the production, processing, and retail of medical marijuana under the same regulatory structure as recreational marijuana and such regulations have required the LCB to change their rules and policies for issuing state licenses for recreational marijuana businesses, and city staff anticipates additional changes to LCB policies and rules for issuing state marijuana licenses therefore city staff will continue to follow the activities of the LCB in their adoption of policies surrounding the state licensing, siting, and taxation of recreational marijuana; 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, and 03-15; and

**WHEREAS**, unless the City acts immediately to renew 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 to the council proposed permanent local regulations for marijuana businesses for adoption in the first quarter of 2016, and said proposed permanent regulations will be informed by state law, LCB regulations and policies, and case law; and

**WHEREAS**, on October 27, 2015, 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 renewal 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 October 27, 2015, and materials provided by city staff, the council deems it in the public interest to renew the previously adopted interim zoning regulations for recreational marijuana production, processing, and retail uses for six-months to observe and investigate further the land use and secondary impacts of said uses, state regulation of such uses, and 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. Adoption of Interim Zoning.** The amended interim zoning regulations adopted by Ordinance No. 06-14 and extended by Ordinance Nos. 12-14 and 03-15 shall be renewed for a six (6) month period ending on April 27, 2016, and shall automatically expire on that date unless earlier repealed, amended, or extended by the city council.

**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. Declaration of Emergency - Effective Date.** The Covington City Council declares that an emergency exists necessitating that this ordinance become effective immediately for the protection of the public health and safety, public peace, and public property. This ordinance shall take effect immediately upon passage.

**PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON,** at a regular meeting thereof this 27th day of October, 2015.

  
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Mayor Margaret Harto

PUBLISHED: October 30, 2015  
EFFECTIVE: October 27, 2015

ATTESTED:

  
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Sharon Scott, City Clerk

APPROVED AS TO FORM:

  
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Sara Springer, City Attorney