

ORDINANCE NO. 10-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, RELATING TO RECREATIONAL MARIJUANA; ESTABLISHING INTERIM ZONING REGULATIONS FOR RECREATIONAL MARIJUANA PRODUCTION, PROCESSING, AND RETAIL USES; 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, personal use and established a system for lawful production, processing, and retailing of recreational marijuana under state law; and

WHEREAS, Initiative 502 directs the Washington State Liquor Control Board (LCB) to develop rules and regulations related to the licensing and location of recreational marijuana production, processing, and retailing uses as allowed under the Initiative; and

WHEREAS, while the production, processing, and retailing of marijuana remains in violation of the federal Controlled Substances Act (CSA), the City Council wishes to acknowledge the will of Washington voters and the authority exercised by the state of Washington and the LCB to license such facilities, leaving all issues relating to the legality, licensing, siting, and permitting of such facilities to be determined by the federal and state governments in the exercise of their lawful authority; and

WHEREAS, the LCB is expected to adopt new regulations on recreational marijuana production, processing, and retail uses to become effective on November 16, 2013, and will accept applications for licenses for marijuana production, processing, and retailing for thirty days thereafter; 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, the Covington Municipal Code does not currently have specific provisions addressing marijuana producing, processing, or retailing uses; and

WHEREAS, marijuana production, processing, and retailing uses must be addressed in the City's zoning code, but the land use and secondary impacts of these uses are still largely unknown and the regulations that the City will need to address them are uncertain pending the LCB's adoption and implementation of its licensing regulations and procedures; and

WHEREAS, unless the City acts immediately to address recreational marijuana-related 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, the City deems it in the public interest to impose interim zoning regulations for a period of six-months in order to investigate this issue further and obtain regulatory clarity and guidance from the LCB's rules and licensing implementation; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to adopt interim land use regulations and official controls, and the Covington City Council deems it to be in the public interest to adopt the regulations set forth in this ordinance under this authority; and

WHEREAS, a public hearing was held on the regulations set forth in this ordinance on November 12, 2013, and the Council has weighed the testimony received; 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. The City Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 2. Interim Regulations Established. Notwithstanding the existing provisions of the Covington Municipal Code, the City hereby establishes the following interim zoning regulations for the establishment of recreational marijuana production, processing, and retailing uses, as defined herein, subject to the following, and are the sole means of establishing recreational marijuana production, processing, and retailing uses within the City:

Chapter 18.XX Marijuana-Related Uses

18.XX.010 Definitions.

Unless the context clearly indicates otherwise, the terms "marijuana producer", "marijuana processor", and "marijuana retailer" shall have the meanings established pursuant to RCW 69.50.101.

18.XX.020 Marijuana-related Uses.

(1) The production, processing, and retailing of recreational marijuana is and remains illegal under federal law. Nothing in this chapter is an authorization to circumvent federal law or provide permission to any person or entity to violate federal law.

(2) The purpose of the provisions in this chapter is solely to acknowledge the enactment by Washington voters of Initiative 502 and a state licensing procedure and to permit to, but only to, the extent required by state law recreational marijuana producers, processors, and retailers to operate in designated zones of the City.

(3) Only state-licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the City and then only pursuant to the license issued by the State of Washington.

(4) Marijuana producers, marijuana processors, and marijuana retailers are required to acquire all necessary business licenses, permits, and comply with all other applicable City ordinances and regulations.

18.XX.030 Marijuana Producers and Processors.

State-licensed marijuana producers and marijuana processors may only locate in the City pursuant to the following restrictions:

(1) Marijuana producers and marijuana processors must comply with all requirements of state law and the Washington State Liquor Control Board's regulations;

(2) Marijuana producers and marijuana processors may locate only in the Industrial (I) zone;

(3) Marijuana producers and marijuana processors shall not operate as an accessory to a primary use or as a home occupation;

(4) All marijuana production and processing activities shall occur within an enclosed structure and the facility shall be designed, located, constructed, and buffered to blend in with its surroundings and mitigate significant adverse impacts on adjoining properties and the community, and special attention shall be given to minimizing odor, noise, light, glare, and traffic impacts; and

(5) Marijuana producers and processors shall not locate within one thousand feet (1,000 ft) of a public or private school with curricula equivalent to elementary, junior, or senior high schools, or any facility owned or operated by such school; care center, preschool, nursery school, or other childcare facility; public park, trail, playground, or recreational facility; church, temple, synagogue, or chapel; public transit center; public library; or any game arcade admission to which is not restricted to persons aged twenty-one (21) years or older. The one thousand foot buffer shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed use is to be located to the nearest point of the parcel of property from which the proposed land use is to be separated.

18.XX.040 Marijuana Retailers.

State-licensed marijuana retailers may locate in the City pursuant to the following restrictions:

(1) Marijuana retailers must comply with all requirements of state law and the Washington State Liquor Control Board's regulations;

(2) Marijuana retailers may locate only in the General Commercial (GC) and Mixed Commercial (MC) zones;

(3) Marijuana retailers shall not operate as an accessory to a primary use or as a home occupation; and

(4) Marijuana retailers shall not locate within one thousand feet (1,000 ft) of a public or private school with curricula equivalent to elementary, junior, or senior high schools, or any facility owned or operated by such school; care center, preschool, nursery school, or other childcare facility; public park, trail, playground, or recreational facility; church, temple, synagogue, or chapel; public transit center; public library; or any game arcade admission to which is not restricted to persons aged twenty-one (21) years or older. The one thousand foot buffer shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed use is to be located to the nearest point of the parcel of property from which the proposed land use is to be separated.

18.XX.050 Enforcement - Penalty.

(1) Any violation of this chapter is declared to be a public nuisance per se and, in addition to any other remedy provided by law or equity, may be abated by the City under applicable provisions of this code or state law.

(2) No person or entity may violate or fail to comply with any provision of this chapter. Each person or entity commits a separate offense for each and every day they commit, continue, or permit a violation of any provision of this ordinance.

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 this ordinance, that was engaged in that activity 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. Work Plan. City staff is hereby directed to implement the following work plan during the interim period. Staff is directed to review existing laws and regulations applicable to recreational uses of marijuana and to monitor the pending dispute between state and federal law enforcement authorities regarding the legality of recreational marijuana use under state and federal law. In addition, staff is hereby directed to monitor land use, zoning, and other applicable City regulations and to consider potential amendments to such regulations after studying the potential impacts of recreational marijuana uses on the City's health, safety, welfare, and peace. Staff is encouraged to review and consider the experiences of other jurisdictions dealing with similar situations.

Section 5. Conflict. In the event there is a conflict between the provisions of this ordinance and any other City ordinance, the provisions of this ordinance shall control.

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. Corrections. Upon the approval of the City Attorney, the City Clerk is authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerkal errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 8. 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.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, at a regular meeting thereof this 12th day of November, 2013.



Mayor Margaret Harto

EFFECTIVE: November 12, 2013

PUBLISHED: November 15, 2013

ATTESTED:



Sharon Scott
City Clerk

APPROVED AS TO FORM:



Sara Springer
City Attorney