

ORDINANCE NO. 12-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, AMENDING ORDINANCE NO. 08-11 TO EXTEND THE MORATORIUM ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE, OR CONTINUATION OF MEDICAL MARIJUANA DISPENSARIES, PRODUCTION FACILITIES, PROCESSING FACILITIES, AND COLLECTIVE GARDENS WITHIN THE CITY OF COVINGTON FOR AN ADDITIONAL SIX MONTHS; PROVIDING FOR A PUBLIC HEARING ON THE MORATORIUM EXTENSION; AMENDING ORDINANCE NO. 08-11; ADOPTING FINDINGS OF FACT SUPPORTING THE MORATORIUM ADOPTED BY ORDINANCE NO. 08-11; AND PROVIDING FOR SEVERABILITY.

WHEREAS, on August 9, 2011, the Covington City Council passed Ordinance No. 08-11, which declared an emergency necessitating the immediate imposition of a moratorium on the establishment, location, operation, licensing, maintenance, or continuation of medical marijuana dispensaries, production facilities, processing facilities, and collective gardens, as more particularly described in Ordinance No. 08-11; and

WHEREAS, 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, 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, state law also allows, under certain conditions, collective gardens and provides the city the authority to adopt zoning, health and safety, ad taxing regulations relating to collective gardens; and

WHEREAS, the U.S. Attorneys for Washington State have reiterated that marijuana possession, production, and distribution is a federal criminal offense and that local officials and employees would not be immune to prosecution under the federal Controlled Substances Act, 21 U.S.C. §801 et seq., even if state law decriminalized the use, possession, and production of marijuana for medical purposes; and

WHEREAS, though state law 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; and

WHEREAS, unregulated collective gardens are anticipated to have negative secondary impacts including a possible increase of criminal activity in the area of collective gardens, a possible increase in illegal drug activity in the area of the collective gardens, possible illegal distribution of medical marijuana, and may present health and safety concerns related to the handling of chemicals used in the growing and processing of marijuana, the ventilation of collective gardens and related air quality issues, and the electrical wiring of collective garden facilities; and

WHEREAS, the Covington City Council established a one-year moratorium to prevent the location and vesting of any medical marijuana collective gardens or medical marijuana production, processing, or dispensing facilities within the city while the city lacks the necessary tools to ensure regulation of the negative secondary impacts and health and safety concerns and to maintain the status quo while legal, political, and policy and city code impacts are studied and considered; and

WHEREAS, given the continuing uncertainty of the legal status of medical marijuana production facilities, processing facilities, and dispensaries under the current state law, and given the possibility of several pending actions that could clarify the conflict between state and federal law, including: (a) Initiative 502 regarding the legalization of the recreational use of marijuana; (b) *John and Jane Does 1-13 v. City of Seattle*, King County Cause No. 11-2-42621-SEA regarding Seattle's regulation of collective gardens; (c) *Cannabis Action Coalition, et.al. v. City of Kent*, King Count Cause No. 12-2-19726-1-KNT regarding Kent's prohibition of collective gardens; and (d) Bellingham's enforcement against collective gardens operating within its city limits, the city requires additional time for continued 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 and the City Council 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 legal, zoning, licensing, health and safety, and taxation regulations for collective gardens, and marijuana production, processing and dispensing facilities should they be deemed legal; and

WHEREAS, the city wishes to amend the moratorium to include any business or organization offering any type of service relating to collective gardens or to producing, processing, or dispensing medical marijuana; and

WHEREAS, the city must extend the moratorium on the establishment, location, licensing, maintenance, or continuation of medical marijuana dispensaries, production facilities, processing facilities, and collective gardens for an additional six months to act as a stop-gap measure to provide an opportunity for legal clarification of the city's ability to regulate the siting and activities of collective gardens and medical marijuana dispensaries, production facilities, and

processing facilities if deemed legal, and to avoid the unregulated establishment of collective gardens within the city with rights contrary to and inconsistent with any revision the city may make to its regulatory scheme as a result of the city's continued consideration of this matter; and

WHEREAS, on July 24, 2012, the City Council held a public hearing on the moratorium as required by RCW 35A.63.220, and on that date accepted testimony from all members of the public desiring to be heard on the subject; and

WHEREAS, based upon the public testimony received on July 24, 2012, and based upon additional materials presented by city staff, a moratorium of limited duration is in the public interest; and

WHEREAS, on July 24, 2012, the City Council considered the foregoing facts, materials, and testimony, and deliberated on the issue of whether to maintain the moratorium; and

WHEREAS, RCW 35A.63.220 authorizes the City Council to adopt land use moratoria; and

WHEREAS, on July 24, 2012, the city's SEPA Responsible Official determined that the moratorium is exempt from SEPA under RCW 43.21.030(2)(c);

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

Section 1. Adoption of Defined Terms. For the purpose of this ordinance, the definitions of "Medical marijuana dispensary", "Medical marijuana processing facility", "Medical marijuana production facility", and "Medical marijuana collective garden" in Ordinance No. 08-11 are hereby adopted by reference as if fully set forth herein.

Section 2. Findings of Fact. In accordance with RCW 35A.63.220, which requires the City Council to adopt findings of fact justifying the adoption of moratoria, the "WHEREAS" clauses set forth above are hereby adopted as the City Council's findings of fact in support of the moratorium imposed by this ordinance and are by this reference incorporated herein as if set forth in their entirety.

Section 3. Amendment to Ordinance No. 08-11. Section 2 of Ordinance No. 08-11 is hereby amended as follows:

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, any medical marijuana collective garden, or any business or organization offering any type of service relating to collective gardens or to producing, processing, or dispensing medical marijuana, 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.

Section 4. Moratorium Expiration. The one-year moratorium established by Ordinance No. 08-11 shall not lapse and shall be extended for an additional six months to be effective through February 12, 2013.

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

ADOPTED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, at a regular meeting thereof this 24th day of July, 2012.



Mayor Margaret Harto

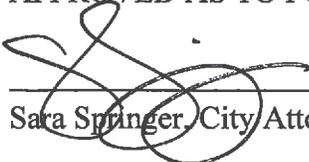
PUBLISHED: July 27, 2012
EFFECTIVE: August 1, 2012

ATTESTED:



Sharon Scott, City Clerk

APPROVED AS TO FORM:



Sara Springer, City Attorney