

## ORDINANCE NO. 06-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, TO EXTEND THE MORATORIUM ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE, OR CONTINUATION OF MEDICAL MARIJUANA DISPENSARIES, PRODUCTION FACILITIES, PROCESSING FACILITIES, COLLECTIVE GARDENS, AND RELATED BUSINESSES WITHIN THE CITY OF COVINGTON UNTIL JULY 1, 2016; PROVIDING FOR A PUBLIC HEARING ON THE MORATORIUM; ADOPTING FINDINGS OF FACT SUPPORTING THE MORATORIUM ADOPTED BY ORDINANCE NOS. 08-11, 12-12, 01-13, 07-13, 05-14, 10-14; 02-15, and 06-15, 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, on July 24, 2012, the Covington City Council passed Ordinance No. 12-12, which provided for a six-month extension of the moratorium on the establishment, location, operation, licensing, maintenance, or continuation of medical marijuana dispensaries, production facilities, processing facilities, collective gardens, or any business or organization offering any type of service relating to collective gardens or to producing, processing, or dispensing medical marijuana; and

WHEREAS, on January 8, 2013, August 27, 2013, February 25, 2014, August 12, 2014, February 10, 2015, and August 11, 2015, the Covington City Council passed Ordinance Nos. 01-13, 07-13, 05-14, 10-14, 02-15, and 06-15 respectively, which provided for additional six-month extensions of said moratorium; 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, 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, the state legislature passed SB 5052, the Cannabis Patient Protection Act (the “Act”) and the governor signed it into law in April 2015; and

WHEREAS, the Act establishes the state Liquor Control Board, now Liquor and Cannabis Board, as the oversight body for medical marijuana, provides guidance and rules for the regulation and licensing of medical marijuana, and eliminates collective gardens to be replaced with medical marijuana collectives and personal grows, effective July 1, 2016; 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, 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 medical marijuana uses 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 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, city staff requires time to analyze all provisions of the Act to recommend and develop a system of permanent regulations for all marijuana establishments and uses within the city; and

WHEREAS, the city must extend the moratorium on the establishment, location, licensing, maintenance, or continuation of medical marijuana dispensaries, production facilities, processing facilities, collective gardens, and related businesses until July 1, 2016, to act as a stop-gap measure to provide an opportunity for staff to harmonize and incorporate the provisions of the Act with the city’s current interim regulations for recreational marijuana 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 February 9, 2016, the city council held a properly noticed 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 February 9, 2016, and based upon additional materials presented by city staff, a moratorium of limited duration is in the public interest; and

WHEREAS, on February 9, 2016, the city council considered the foregoing facts, materials, and testimony, and deliberated on the issue of whether to continue the moratorium; and

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

WHEREAS, on February 9, 2016, 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. Moratorium Extension.** This six-month moratorium established by Ordinance No. 06-15 shall not lapse and shall be extended to be effective until July 1, 2016, unless earlier terminated.

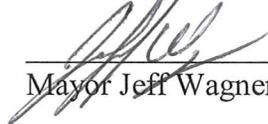
**Section 4. Severability.** Should any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law 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 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 on the date listed below.

PASSED BY THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, at a regular meeting thereof on the 9<sup>th</sup> day of February, 2016, and signed in authentication of its passage.

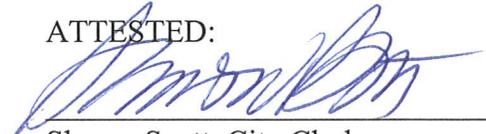
**CITY OF COVINGTON**

  
\_\_\_\_\_  
Mayor Jeff Wagner

PUBLISHED: February 12, 2016

EFFECTIVE: February 19, 2016

ATTESTED:

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

APPROVED AS TO FORM ONLY:

  
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Sara Springer, City Attorney