

ORDINANCE NO. 2014-12

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, RELATING TO MARIJUANA USES; PROHIBITING MARIJUANA PRODUCTION, PROCESSING AND RETAILING AND COLLECTIVE GARDENS; TERMINATING ORDINANCE NO. 2013-10 AND ORDINANCE NO. 2014-01; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, in 2012 Washington voters approved Initiative Measure No. 502, codified in relevant part at RCW 69.50.325, *et seq.*, which authorizes certain production, processing and retailing of marijuana; and

WHEREAS, while state law authorizes certain production, processing, and retailing of marijuana, such activities remain in violation of the federal Controlled Substances Act; and

WHEREAS, in 1998 Washington voters approved Initiative Measure No. 692, codified at chapter 69.51A RCW, which created an affirmative defense for "qualifying patients" to the charge of possession of marijuana; and

WHEREAS, in 2011 the Washington State Legislature passed a bill (E2SSB 5073) authorizing "collective gardens" to allow qualifying patients the ability to produce, grow, process, transport and deliver marijuana for medical use, effective on July 22, 2011 and codified at RCW 69.51A.085; and

WHEREAS, on August 14, 2013, the Poulsbo City Council adopted Ordinance No. 2013-10 establishing interim regulations authorizing limited marijuana-related uses in the Light Industrial zoning district, subject to various conditions; and

WHEREAS, on February 5, 2014, the Poulsbo City Council adopted Ordinance No. 2014-01 extending the interim regulations for six months in accordance with the authority set forth in RCW 35A.63.220 and RCW 36.70A.390, as the City of Poulsbo had not yet completed its public process for adoption of permanent regulations regarding marijuana-related uses; and

WHEREAS, City planning staff initiated amendments to the zoning code which would allow limited marijuana uses in the Light Industrial zoning district; and

WHEREAS, the Poulsbo Planning Commission held a public hearing on May 13, 2014, to take public testimony on the proposed amendments, and recommended approval of the proposed zoning amendments; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued an advisory opinion opining that Initiative 502 did not preempt municipalities from banning state-licensed marijuana businesses within a city's boundaries nor did it preempt a municipality from imposing zoning and other land use regulations pertaining to such businesses; and

WHEREAS, on March 31, 2014, the Court of Appeals, Division I, in *Cannabis Action Coalition v. City of Kent*, held that despite the authorizing language in RCW 69.51A.085, collective gardens are illegal uses; and

WHEREAS, the Poulsbo City Council held a public hearing on permanent regulations regarding marijuana-related uses in the City on June 11, 2014, and after considering all testimony given at the public hearing, the recommendation of the Planning Commission, and the current state of the law, determined that a prohibition of marijuana land uses is justified and in the best interests of the City; and

WHEREAS, the Poulsbo City Council desires to adopt this ordinance to make formal the determination made at the June 11, 2014 City Council meeting to prohibit marijuana-related land uses; Now, therefore,

THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. In support of the actions taken by this ordinance, the Poulsbo City Council hereby adopts the following as findings and conclusions the recitals set forth above and the following:

A. Marijuana remains illegal under federal law. A memorandum issued by the U.S. Attorney General's office on August 29, 2013 did not change the law, but only announced the decision of the U.S. Attorney's Office to exercise prosecutorial discretion with regard to enforcement of the federal law within the States of Colorado and Washington. The U.S. Attorney's Office reserved the power to prosecute in any instance where it felt the efforts of the states fell short of "robust regulation," where a threat exists for the illegal distribution to minors, or where a threat of interstate distribution of marijuana was encountered.

B. The City of Poulsbo has been granted constitutional authority to enact legislation regulating land uses within its jurisdiction so long as such local legislation is consistent with the general laws (Constitution Article 11, Section 11).

C. Nothing in Initiative 502 decriminalizing certain possession, use and delivery of specified amounts of marijuana and authorizing the Washington State Liquor Control Board to develop and implement regulations for the licensing of marijuana production, processing and retailing expressly or impliedly preempts the City of Poulsbo from exercising its land use regulatory authority, including the ban of marijuana production, processing and retailing within city limits.

D. Nothing in chapter 69.51.A RCW--Medical Use of Cannabis Act--expressly or impliedly preempts the City of Poulsbo from exercising its land use regulatory authority, including the ban of collective gardens.

E. Initiative 502 and chapter 69.51A RCW do not *require* that any city allow the location of marijuana production, processing or retailing facility, or collective garden, within its jurisdiction. The City retains jurisdiction under the state constitution and state law to adopt and enforce land use regulations intended to preserve and promote the general health, safety and welfare of its community.

F. Prohibiting the production, processing and retailing of marijuana as set forth in Initiative 502 and collective gardens as set forth in chapter 69.51A RCW is not intended to regulate the individual use of marijuana as authorized by Initiative 502 and chapter 69.51A RCW.

G. Unlike past practices of the State legislature to share in those revenues derived from activities that have a direct impact on the cities, the enabling legislation authorizing recreational marijuana retail sales within the state specifically excludes the City from any level of the excise tax levied.

Section 2. Termination of Interim Regulations under Ordinance No. 2013-10 and Ordinance No. 2014-01. The interim land use regulations set forth in Ordinance No. 2013-10, as extended by Ordinance No. 2014-01, are hereby terminated.

Section 3. Acknowledgment of PMC 18.20.050. The Poulsbo City Council acknowledges that section 18.20.050--Legal Uses--of the Poulsbo Municipal Code provides that no land use which is prohibited by state or federal law will be allowed by the City, and because production, processing and retailing of marijuana are illegal under federal law, and because collective garden uses are illegal under state and federal law, such land uses are therefore prohibited in the City.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance.

Section 5. Effective Date. This ordinance shall take effect five days after its publication, or publication of a summary thereof, in the City's official newspaper, or as otherwise provided by law.

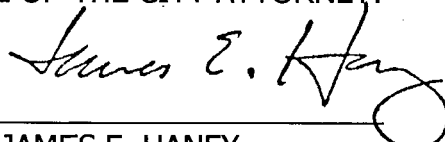
APPROVED:

  
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MAYOR REBECCA ERICKSON

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
CITY CLERK KYLIE PURVES

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

  
BY \_\_\_\_\_  
JAMES E. HANEY

FILED WITH THE CITY CLERK: 06/17/2014  
PASSED BY THE CITY COUNCIL: 07/02/2014  
PUBLISHED: 07/11/2014  
EFFECTIVE DATE: 07/16/2014  
ORDINANCE NO. 2014-12

**SUMMARY OF ORDINANCE NO. 2014-12**

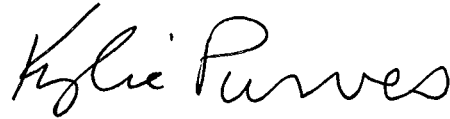
of the City of Poulsbo, Washington

On the 2nd day of July, 2014, the City Council of the City of Poulsbo, passed Ordinance No. 2014-12. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, RELATING TO MARIJUANA USES; PROHIBITING MARIJUANA PRODUCTION, PROCESSING AND RETAILING AND COLLECTIVE GARDENS; TERMINATING ORDINANCE NO. 2013-10 AND ORDINANCE NO. 2014-01; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this 2nd day of July, 2014.



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CITY CLERK KYLIE PURVES