

ORDINANCE NO. 2014-09

AN ORDINANCE, adopting a six (6) month moratorium within the City of Wenatchee on the establishment, siting, location, permitting, licensing or operation of marijuana cultivation, production or marijuana derivatives, and the sale of marijuana or marijuana derivatives or any other activities asserted to be authorized or actually authorized under the Washington State Initiative No. 502 and subsequent laws of the State of Washington.

WHEREAS, Initiative Measure No. 502 (I-502), approved by the voters of Washington State on November 6, 2012, purports to legalize the production, sale and use of marijuana products purchased from State licensed stores for adults age twenty-one (21) and over; and

WHEREAS, I-502 Section 1 (3) authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one (21) years of age and older, and add a new threshold for driving under the influence of marijuana; and

WHEREAS, I-502 Section 4 (1) allows the Washington State Liquor Control Board to license marijuana processors to process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers; and

WHEREAS, I-502 Section 4 (3) allows the Washington State Liquor Control Board to license marijuana retailers to sell usable marijuana and marijuana-infused products at retail in retail outlets; and

WHEREAS, I-502 Section 6 (7) states that before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the incorporated city, and the city has the right to file its written objection to such licenses within twenty (20) days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license; and

WHEREAS, I-502 Section 6 (8) establishes certain limitations on the Washington State Liquor Control Board's issuance of licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary school or secondary school, playground, recreation facility, child care center, public park, public transit center or library, or any

game arcade, admission to which is not restricted to persons aged twenty-one (21) years or older; and

WHEREAS, the Washington State Liquor Control Board adopted procedures and criteria for issuing licenses to produce, process and sell marijuana (among other things); and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, the City of Wenatchee has not addressed regulations or controls specifically related to facilities or uses identified in I-502, other than the requirements for a general business license; and

WHEREAS, I-502 prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board; and

WHEREAS, the uses described in I-502 have heretofore not been allowed in any city in the State of Washington and only recently in the State of Colorado in the entire United States, and the City needs time to study the secondary land use impacts of these marijuana uses and the various development standards regarding impacts before adoption of any regulatory ordinance or issuance of any business license; and

WHEREAS, City staff has been attending conferences, participating in webinars, observing what other municipalities have done and are doing with respect to regulating marijuana and the activities allowed by I-502, and determined that they need additional time to synthesize and analyze the information before proposing appropriate development standards and regulations; and

WHEREAS, the Wenatchee City Council hereby finds that a moratorium to preserve the status quo is necessary, until the City can study the appropriate land use and/or licensing regulations to address these new uses; and

WHEREAS, RCW 36.70A.390 authorizes the City Council to adopt a moratorium for a period of up to six (6) months if a public hearing on the proposal is held within at least sixty (60) days of its adoption providing for the six (6) month moratoria period; and

WHEREAS, the City Council desires to impose a six (6) month moratorium on the acceptance of any development permit application or business license or application for the siting, location or operation of any marijuana processor, marijuana producer, or marijuana retailer; and

WHEREAS, RCW 35.63.200 provides a similar process as described above for adopting and extending land use moratoriums; and

WHEREAS, moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, the Wenatchee Municipal Code does not currently have specific provisions addressing licensing, producing, processing or retailing of recreational marijuana; and

WHEREAS, in conformity with the responsibilities of the City of Wenatchee to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the City's authority to regulate land use activities within its corporate limits, the City intends to develop appropriate business licensing for the establishment of facilities producing, processing and retailing of recreational marijuana; and

WHEREAS, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of the pending rules and regulations established by the Washington State Liquor Control Board pursuant to I-502; and

WHEREAS, a moratorium will provide the City with additional time to review its public health, safety and welfare requirements and business licensing related to the establishment of facilities producing, processing and retailing recreational marijuana as authorized by I-502; and

WHEREAS, the City Council concludes that the City does have authority to establish a moratorium and that the City must adopt a moratorium concerning the filing, acceptance, and processing of new land use applications or licensing for the establishment of, or operation of, any facility, building or premises used for the production, processing or retailing of recreational marijuana, to protect the health, safety and welfare of the citizens of Wenatchee; and

WHEREAS, in addition, the cultivation, possession or distribution of cannabis, marijuana, and marijuana products has been and continues to be a violation of federal law under the Controlled Substances Act ("CSA"); and

WHEREAS, the activities purported to be legalized under Initial Measure No. 502 remain violations of federal law through the Controlled Substances Act, and the United State Supreme Court in *Gonzales v. Raich*, 545 U.S. 1, (2005) which held that the CSA's categorical prohibition of the manufacture and possession of marijuana for medical purposes superseded a conflicting California State law; and

WHEREAS, the Deputy Attorney General, James M. Cole, issued a Memorandum for all United States attorneys on August 29, 2013 that reiterated that Congress had determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime, but, nevertheless, the Memorandum stated that due to the Department of Justice's limited resources its enforcement efforts will be focused on eight (8) priorities. The Memorandum did not state that federal law would not be enforced; and

WHEREAS, because prior to the passage of I-502, the possession or distribution of marijuana was a violation of both the Washington Uniform Controlled Substances Act and a violation of the federal CSA, the City has not studied or implemented zoning for uses involving the production, processing or distribution of marijuana; and

WHEREAS, the City requires time to conduct appropriate research and understand the extent and validity of the changes provided in the law and the licensing regulation recently enacted to analyze impacts and potential liabilities under federal law and to determine an appropriate regulatory framework for the uses and activities that are allowed under I-502; and

WHEREAS, in addition to the legal issues, the City must study, without limitation, the impacts of the location of uses and facilities for the production, processing, sale and use of marijuana products and the siting of marijuana cultivation facilities, facilities for the creation of marijuana products, and State licensed marijuana stores in commercial and residential zones, as well as impacts arising from the proximity of these uses, activities and facilities to schools, daycares, parks, religious and cultural facilities, and accordingly the City Council finds that a zoning, licensing and permitting moratorium should be established pending local review of appropriate locations and design requirements of these operations and impacts of the newly amended law and its interaction with federal law; and

WHEREAS, the City Council held a public hearing, upon notice, at the regular City Council meeting of June 26, 2014 at 5:15 p.m. in order to take public testimony and to consider adopting further findings; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WENATCHEE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Findings.

The recitals set forth above are hereby adopted as the City Council findings in support of the moratorium imposed by this ordinance.

Section 2. Moratorium Imposed.

Pursuant to Washington State law, a moratorium is hereby enacted prohibiting within the City of Wenatchee the establishment, siting, location, operation, licensing, or maintenance of facilities, structures, businesses or any other activities involving the production, sale and use of marijuana and marijuana products asserted to be authorized or actually authorized under Washington State Initiative No. 502 or any other laws of the state of Washington. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above and no business license 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 in any license or development application during the moratorium are null and void and without legal force or effect.

Section 3. Definitions.

As used in this ordinance the following list of terms shall have the meaning set forth below:

“Marijuana Use” includes any store, agency, organization, dispensary, cooperative, network consultation, operation, or other business entity, group or person, no matter how described or defined, including any associated premises and equipment which has for its purpose or which is used to grow, select, measure, process, package, label, deliver, dispense, sell or otherwise transfer for consideration, or otherwise, marijuana in any form.

“Cannabis or Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“Marijuana processor” means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

“Marijuana producer” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include usable marijuana.

“Marijuana retailer” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

“Retail Outlet” means a location licensed by the State Liquor Control Board for the retail sale of usable marijuana and marijuana-infused products.

“Usable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

Section 4. Effective Period for Moratorium.

The moratorium set forth in this ordinance shall be in effect for a period of six (6) months from the date this ordinance is passed and shall automatically expire at the conclusion of that six (6) month

period unless the same is extended by the City as provided in State law or unless terminated sooner by ordinance.

Section 5. Work Program.

The Mayor and other responsible staff are hereby authorized to study and address issues related to determining the legality of Marijuana Uses as defined herein, including but not limited to review of the pending dispute between state and federal law enforcement authorities regarding the legality of Marijuana Uses under any circumstances and notwithstanding the adoption of Initiative Measure No. 502. In the event that such uses are ultimately determined to be legal, the Wenatchee Municipal Code shall be amended to exempt such uses from requiring a business license.

Section 6. Severability.

In any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 7. Effective Date.

This ordinance, being an exercise of power specifically delegated to the City Council, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this
26 day of June, 2014.

CITY OF WENATCHEE,
a municipal Corporation

By: Frank Kuntz
FRANK KUNTZ, Mayor

ATTEST:

By: Tammy Stanger
TAMMY STANGER, City Clerk

APPROVED:

By: _____
STEVE D. SMITH, City Attorney

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