

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2263

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, ADOPTING A SIX (6) MONTH MORATORIUM WITHIN THE CITY OF SNOHOMISH ON THE ESTABLISHMENT, SITING, LOCATION, PERMITTING, LICENSING, OR OPERATION OF MARIJUANA CULTIVATION, PRODUCTION OF MARIJUANA DERIVATIVES, AND THE SALE OF MARIJUANA OR MARIJUANA DERIVATIVES OR ANY OTHER ACTIVITIES ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER WASHINGTON STATE INITIATIVE NO. 502 OR ANY OTHER LAWS OF THE STATE OF WASHINGTON EXCEPT RCW 69.51A, AND SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, ADOPTING A WORK PLAN, PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

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 authorizes the Washington State Liquor Control Board to regulate and tax marijuana for persons twenty-one (21) years of age and older, and adds 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 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 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, I-502 Section 9 contemplates that the Washington State Liquor Control Board will adopt rules to implement the provisions of I-502, which include the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by licensees to transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, I-502 Section 10 contemplates that the Washington State Liquor Control Board will adopt procedures and criteria by December 1, 2013 for issuing licenses to produce, process, and sell marijuana (among other things); and

WHEREAS, I-502 Section 13 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults twenty-one (21) years of age or over; 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, I-502 prohibits anyone from engaging in the commercial activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board; and

WHEREAS, at this point in time, the City of Snohomish does not have specific regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license; and

WHEREAS, with Ordinance 2253, the City Council adopted nuisance regulations regarding medical cannabis cultivation in collective gardens for which an affirmative defense is provided in RCW 69.51A; and

WHEREAS, the definitions in Ordinance 2253 exclude cannabis production, processing, and distribution facilities where such facilities are licensed by the State of Washington; and

WHEREAS, Ordinance 2253 acknowledges the needs of persons suffering from debilitating or terminal conditions and the benefits that some qualified patients experience from the medical use of cannabis, which is different from the recreational use of cannabis as provided for by I-502; and

WHEREAS, neither Ordinance 2253 nor any other City regulation provides for a permit or license to produce, process, or dispense cannabis or its products for medical use or other purpose; and

WHEREAS, the uses described in I-502 have never been allowed in any state or city in the United States, and City needs time to study the secondary land use impacts of these marijuana uses and the various development standards that should be considered to mitigate these impacts before adoption of any regulatory ordinance or issuance of any business license; and

WHEREAS, the Snohomish City Council hereby finds that a moratorium to preserve the status quo is necessary until the State Liquor Control Board definitively acts to establish a final and complete set of rules for the licensing of all of the new marijuana facilities and uses identified in I-502, and until the City can study, draft, hold public hearings, and adopt 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 an immediate moratorium for a period of up to six months if a public hearing on the proposal is held within at least sixty days of its adoption and a work plan is developed for related studies providing for the six-month moratoria period; and

WHEREAS, the City Council desires to impose an immediate six 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 69.51A.140 authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana or marijuana products within their jurisdiction; and

WHEREAS, RCW 36.70A.390 provides that, “A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal”; and

WHEREAS, 35A.63.220 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 35A.63.220 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 Snohomish 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 Snohomish 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 activity within its corporate limits, the City intends to develop appropriate public health, safety, and welfare requirements and zoning and land use regulations 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 to be 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 and amend its public health, safety, and welfare requirements and zoning and land use regulations 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 Snohomish; 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 through the Controlled Substances Act ("CSA"); and

WHEREAS, the activities purported to be legalized under Initiative Measure No. 502 remain violations of federal law through the Controlled Substances Act, and the United States 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 as applied to the intrastate manufacture and possession of marijuana for medical purposes superseded a conflicting California State law; and

WHEREAS, two U.S. Attorneys (Federal Department of Justice) situated in Washington have gone on record stating that marijuana is a Schedule I controlled substance under federal law, and as such, growing, distributing, and possessing marijuana in any capacity other than as part of a federally authorized research program is a violation of federal law, regardless of state laws permitting such activities, and also concluded publicly that local governmental employees who conducted marijuana regulatory activities under Washington State law are subject to prosecution under the CSA; and

WHEREAS, in 2012, the Board of Clark County Washington Commissioners requested a determination from the federal government whether such enforcement efforts would extend to

local government activities implementing Washington state laws on marijuana, where those laws conflict with the CSA, and the responsive letter from Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Division Control, U.S. Department of Justice, Drug Enforcement Administration, states that anyone who knowingly carries out the marijuana activities contemplated by Washington State law which are inconsistent with the CSA, as well as anyone who facilitates such activities, or conspires to commit such violations of the CSA, is subject to criminal prosecution as provided in the CSA, including both local elected officials and local government staff; and

WHEREAS, the recently approved Initiative Measure No. 502 does not appear to change the basis for the analysis by the U.S. Attorneys, and any State or local officials who undertake marijuana regulatory activities remain subject to federal prosecution; and

WHEREAS, because prior to the passage of Initiative Measure No. 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 or distribution of marijuana; and

WHEREAS, on August 29, 2013, the US Department of Justice outlined its policies to address Initiative No. 502 and a Colorado initiative, but the practical effect of said policies is presently unknown; and

WHEREAS, on October 21, 2013, the Washington State Liquor Control Board announced its draft position on how to reconcile regulation under Initiative Measure No. 502 with medical marijuana use; and

WHEREAS, the City requires time to conduct appropriate research to understand the extent and validity of the changes provided in the new law 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 Initiative Measure No. 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, 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, day cares, 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 adopts the foregoing as its findings of facts justifying the adoption of this ordinance;

NOW THEREFORE, the City Council of the City of Snohomish, Washington do ordain as follows:

Section 1. Preliminary Findings.

The recitals and findings set forth above are hereby adopted as the City Council preliminary findings in support of the moratorium imposed by this ordinance in compliance with RCW 36.70A.390 and RCW 35A.63.220. The City Council may in its discretion adopt additional findings at the conclusion of the public hearing referenced in Section 6 below.

Section 2. Moratorium Imposed.

Pursuant to Washington State law, a moratorium is hereby enacted prohibiting within the City of Snohomish 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 and licensed or actually authorized and licensed under Washington State Initiative No. 502 or any other laws of the state of Washington (Marijuana Use). 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. Definition of Marijuana Use.

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

Marijuana Definitions.

“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 except a collective garden that does not constitute a cannabis nuisance under Ordinance 2253.

“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 useable 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 useable marijuana and marijuana-infused products.

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

Section 4. No Nonconforming Uses.

No use that constitutes or purports to be a Marijuana Use as that term is 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 Snohomish Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 5. 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 6. Public Hearing.

The City Council will hold a public hearing at the regular City Council meeting of December 3, 2013, at 7:00 p.m. or as soon thereafter as the business of the City Council shall permit and which date is no more than sixty (60) days after the date of adoption herein in order to take public testimony and to consider adopting further findings.

Section 7. Work Program.

The City Manager 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 implementation of federal law enforcement policies 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 or the City Council determines the risk of federal criminal prosecution is sufficiently low, the work program should also develop appropriate land use regulations pursuant to the newly amended law, for review and recommendation for inclusion in the zoning regulations or other provisions of the Snohomish Municipal Code, including business licensing and other regulations, for review for inclusion in the Snohomish Municipal Code.

Section 8. Severability. If 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 9. Effective Date.

This Ordinance shall become affective five (5) days following passage and publication as required by law.

ADOPTED by the City Council and **APPROVED** by the Mayor this 5th day of November, 2013.

CITY OF SNOHOMISH

By _____
Karen Guzak, Mayor

ATTEST:

By _____
Torchie Corey, City Clerk

Approved as to form:

By _____
Grant Weed, City Attorney

Date of Publication: _____

Effective Date: _____