

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2238

AN INTERIM ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, ADOPTING AN EXTENSION OF A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA/CANNABIS COLLECTIVE GARDENS, AND THE LICENSING AND PERMITTING THEREOF; DEFINING “MEDICAL MARIJUANA DISPENSARY;” PROVIDING FOR A PUBLIC HEARING; REFERRING THE MATTER TO THE PLANNING COMMISSION FOR REVIEW; ESTABLISHING AN EFFECTIVE DATE; AMENDING ORDINANCE 2218 AND 2232; AND PROVIDING THAT THE EXTENDED MORATORIUM WILL EXPIRE SIX (6) MONTHS FROM THE DATE OF ADOPTION

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for “qualifying patients” to the charge of possession of marijuana; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be “construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes;” and

WHEREAS, the Washington State Department of Health opines that it is “not legal to buy or sell” medical marijuana and further opines that “the law [Chapter 69.51.A RCW] does not allow dispensaries,” leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana/cannabis, no matter how designated by dispensaries, is prohibited by federal and state law; and

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 (“the bill”) was adopted with a partial veto of the Governor, and became effective July 22, 2011; and

WHEREAS, Governor Gregoire vetoed 36 of the 58 provisions of ESSB 5073 and this has created considerable uncertainties and ambiguities regarding the meaning and enforcement of the bill; and

WHEREAS, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law; and

WHEREAS, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City Council finds that the secondary impacts associated with marijuana dispensaries and collective gardens include but are not limited to the invasion of the business, burglary, and robbery associated with the cash and drugs maintained on the site; and

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes on the production, processing, or dispensing of cannabis or cannabis products; and

WHEREAS, the City currently has no zoning, licensing, and/or permitting requirements and/or regulations that address the medical marijuana collective gardens; and

WHEREAS, marijuana/cannabis remains a Schedule I drug under the federal Controlled Substances Act and is considered by the federal authorities to be a drug with no medical value, and its manufacture, distribution, and/or possession are a violation of federal law; and

WHEREAS, there appears to be a conflict between state and federal law concerning the legal status of marijuana/cannabis and its manufacture, distribution, use, and possession; and

WHEREAS, on or about November 30, 2011, Washington State Governor Christine Gregoire and Rhode Island State Governor Lincoln Chaffee petitioned the United States Drug Enforcement Administration (DEA) to reclassify marijuana/cannabis as a Schedule II drug that has therapeutic value and that should be treated as a prescription drug; and

WHEREAS, this conflict between federal and state law was highlighted by a January 17, 2012 letter to the Clark County Board of Commissioners, in which Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, stated that anyone “who knowingly carries out the marijuana activities contemplated by Washington state law, as well as anyone who facilitates such activities, or conspires to commit such violations, is subject to criminal prosecution as provided in the [Controlled Substances Act]” (underlining added); and

WHEREAS, reclassification of marijuana/cannabis as a Schedule II drug by DEA would allow marijuana/cannabis to be prescribed by physicians with restrictions and dispensed by pharmacies, and would potentially eliminate the current legal and planning dilemma Snohomish and other Washington cities and towns are currently struggling with concerning regulation, permitting, and licensing issues surrounding medical marijuana/cannabis; and

WHEREAS, a number of initiatives have been filed with the Washington Secretary of State that if adopted would change the legal framework concerning medical marijuana once again; and

WHEREAS, the voters will vote on at least one initiative (Initiative 502) that if passed would legalize the production, possession, delivery, and distribution of marijuana/cannabis under State law; and

WHEREAS, on July 5, 2011, the City Council passed Ordinance 2218 that imposed a six (6) month moratorium on the establishment of medical marijuana dispensaries, collective gardens, and the licensing and permitting thereof; and

WHEREAS, on January 3, 2012, the City Council passed Ordinance 2232 that imposed a second six (6) month moratorium on the establishment of medical marijuana dispensaries, collective gardens, and the licensing and permitting thereof; and

WHEREAS, given the many complications, uncertainties, and impacts that exist and that are described above, additional time is necessary to engage in a meaningful planning process related to the development of regulations that address zoning, licensing, and/or permitting of medical marijuana and the impacts thereof; and

WHEREAS, a public hearing was held on June 19, 2012, before Snohomish City Council regarding an additional six (6) month moratorium concerning medical marijuana collective gardens and the licensing and permitting thereof; and

WHEREAS, the City Council finds it is in the best interest of the City of Snohomish and its citizens to extend the moratorium regarding the establishment of medical marijuana collective gardens and the licensing and permitting thereof for an additional six (6) month period;

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

Section 1. The above “Whereas” clauses constitute findings of fact in support of the moratorium established by this Ordinance and said findings are fully incorporated into this Ordinance.

Section 2. Pursuant to the provisions of RCW 36.70A.390, the zoning moratorium established by Ordinance 2218 and Ordinance 2232 in the City of Snohomish that prohibits licensing, permitting, establishment, maintenance, or continuation of any use consisting of or including the sale, provision, and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary, or creation of or participation in a medical marijuana/cannabis “collective garden” as referenced and defined in RCW 69.51A.085 is hereby extended for an additional six (6) month period from the date of adoption of this Ordinance and the findings, terms, and conditions of Ordinance 2218 and Ordinance 2232 and those set forth herein are incorporated herein by this reference, and Ordinance 2218 and Ordinance 2232 are hereby amended consistent herewith.

Section 3. “Medical marijuana dispensary” is hereby defined as any person, business, corporation, partnership, joint venture, organization, association, and/or other entity which: 1) sells, provides, and/or otherwise dispenses marijuana to more than one “qualifying patient” in any sixty (60) day period or to any person who does not meet the definition of “qualifying patient” under the terms of Chapter 69.51A RCW, and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with, or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association, and/or entity which sells, provides, and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a “medical marijuana dispensary.”

Section 4. Medical marijuana/cannabis dispensaries and medical marijuana/cannabis collective gardens are hereby designated as prohibited uses in the City of Snohomish, and in accordance with the provisions of RCW 35A.82.020, no business license, permit, zoning, or development approval shall be issued to be a medical marijuana dispensary or collective garden.

Section 5. This Ordinance shall be referred to the Snohomish Planning Commission for its review and recommendation for potential inclusion in the zoning and/or business and tax ordinances of the City of Snohomish.

Section 6. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 7. Severability. If any section, clause, and/or phrase of this Ordinance is held invalid by a court of competent jurisdiction, such invalidity and/or unconstitutionality shall not affect the validity and/or constitutionality of any other section, clause, and/or phrase of the Ordinance.

Section 8. Effective Date. This Ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Snohomish City Council, this Ordinance shall automatically expire six (6) months following its adoption.

ADOPTED by the City Council and **APPROVED** by the Mayor this 19th day of June 2012.

CITY OF SNOHOMISH

By: _____
Karen Guzak, Mayor

ATTEST/AUTHENTICATED:

By: _____
Torchie Corey, City Clerk

APPROVED AS TO FORM:

By: _____
Grant K. Weed, City Attorney

Date of Publication: _____

Effective Date: _____