

ORDINANCE NO. 3960

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO COLLECTIVE GARDENS AND THE RECREATIONAL USE OF MARIJUANA, EXTENDING A MORATORIUM ON THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES OR USES RELATING TO COLLECTIVE GARDENS, MARIJUANA PRODUCTION, MARIJUANA PROCESSING, OR MARIJUANA RETAILING, TO BE IN EFFECT UNTIL THE CITY OF EDMONDS ADOPTS ZONING REGULATIONS ADDRESSING SUCH MARIJUANA USES, AND EXTENDING A MORATORIUM ON THE SUBMISSION OF ANY BUSINESS LICENSE APPLICATIONS FOR SUCH USES, SETTING THREE MONTHS AS THE EFFECTIVE PERIOD OF THE EXTENDED MORATORIUM ESTABLISHING THE DATE OF THE PUBLIC HEARING ON THE EXTENDED MORATORIUM.

WHEREAS, the Washington State legislature passed Engrossed Second Substitute Senate Bill (ESSSB) 5073, Medical Cannibas, to become effective on July 22, 2011; and

WHEREAS, the Governor vetoed 36 of the 58 sections of this bill; and

WHEREAS, Initiative Measure No. 692, approved by the voters of the State of Washington on November 3, 1998, and now codified as Chapter 69.51A RCW, created a limited affirmative defense to criminal marijuana charges under state (not federal) law if the person demonstrates that he or she is a qualifying patient or a designated provider as defined in Chapter 69.51A RCW; and

WHEREAS, the state legislature has amended the law three times, with the most recent amendment occurring during the 2011 legislative session as set forth in ESSSB 5073; and

WHEREAS, the U.S. Attorneys for Washington wrote a letter dated April 14, 2011 to Governor Gregoire that reiterated that marijuana possession, production and distribution is a federal criminal offense and that State workers would not be immune from prosecution under federal law even if state law decriminalized the use, possession and production for medical purposes; and

WHEREAS, Section 1102 of ESSSB 5073 provides that a city may adopt zoning requirements, business licensing requirements, health and safety requirements and business taxes as those requirements relate to the production, processing, or dispensing of medical marijuana; and

WHEREAS, the Washington voters approved Initiative 502 in 2012, which

“authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana”; and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (I-502, Sec. 4(1)); and

WHEREAS, I-502 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” (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license a marijuana retailer to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (I-502, Sec. 4(3)); and

WHEREAS, Under I-502, 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 objections to such license within 20 days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license (I-502, Sec. 7(a)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor Control Board’s issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or 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 years or older (I-502, Section 8); and

WHEREAS, I-502 contemplates that the Washington State Liquor Control Board will adopt rules to carry the provisions of I-502 into effect, which includes 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 which licensees may transport and deliver marijuana and marijuana products (among other things), (I-502, Sec. 9); and

WHEREAS, I-502 contemplates that the Washington State Liquor Control Board will adopt more rules on or before December 1, 2013 to determine the number of retail outlets that may be licensed in each county (among other things), (I-502, Sec. 10); and

WHEREAS, I-502 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 21 years of age or over (I-502, Sec. 13); 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 Washington State Liquor Control Board is required to establish rules necessary to implement I-502 by December 1, 2013; and

WHEREAS, the Washington State Liquor Control Board will begin accepting applications for the production, processing and retail sale of marijuana after the rules are implemented; and

WHEREAS, at this time, no Washington legislative act reconciles Initiative Measure No. 502 and RCW 69.51A; and

WHEREAS, federal law, as set forth in 21 U.S.C. S.841(a), makes it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance and pursuant to 21 U.S.C. S.812, marijuana is a Schedule I controlled substance; and

WHEREAS, at this time, no Washington legislative act or court decision reconciles Washington law with applicable Federal law; and

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

WHEREAS, based on the licensing scheme in I-502, which prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board, the City will not be issuing any business license for the purposes described in I-502 unless the applicant demonstrates that he/she has first received the appropriate license from the State; 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 addressed to mitigate these impacts before adoption of any regulatory ordinance or issuance of any business licenses; and

WHEREAS, the Edmonds City Council therefore believes a moratorium to preserve the status quo is necessary, until the State Liquor Control Board definitively acts to establish a complete set of rules for the licensing of all of the new marijuana facilities and uses identified in I-502, and until the Edmonds City Council can study, draft, hold public hearings and adopt the appropriate regulations to address these new uses; and

WHEREAS, at this time, the Edmonds City Council does not have sufficient information to consider the potential secondary impacts from collective gardens or recreational marijuana

facilities, the regulations that should be enacted or the legal implications of taking pre-mature action; and

WHEREAS, Section 36.70A.390 of the Revised Code of Washington authorizes the City Council to adopt an immediate moratorium for a period of up to six months without holding a public hearing on the proposal provided that a public hearing is held within at least sixty days of its adoption, and

WHEREAS, the City Council adopted Ordinance 3938 on August 20, 2013, to establish a moratorium of six months on the acceptance of any development permit application or business license application for the siting, location or operation of any collective garden, marijuana processor, marijuana producer, or marijuana retailer, and

WHEREAS, the moratorium should be extended or cancelled before February 20, 2014, and

WHEREAS, the Planning Board will be holding a public hearing on related zoning provisions on February 12, 2014, and

WHEREAS, given the timing of the Planning Board's action, and the fact that the Council has not yet reviewed proposed licensing amendments to the City Code, an extension of the existing moratorium for a short time is appropriate, and

WHEREAS, the City Council desires to extend the moratorium for an additional three months to allow the Planning Commission and City Council to finish their work; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS DOES ORDAIN AS FOLLOWS:

Section 1. Moratorium Extended. The City Council hereby extends, for three additional months, the six-month moratorium on the acceptance of all non-exempt development permit and business license applications, as imposed by Ordinance 3938 and as those terms are defined in that same ordinance. All such non-exempt development permit and business license applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development permit applications, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 2. Duration of Moratorium. The three-month moratorium extension imposed by this Ordinance shall commence on the effective date of this Ordinance. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium extension (as contemplated by Section 3 herein), the moratorium shall not terminate until three (3) months after the effective date, or at the time all of the events described in Section 3 of Ordinance 3938 have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

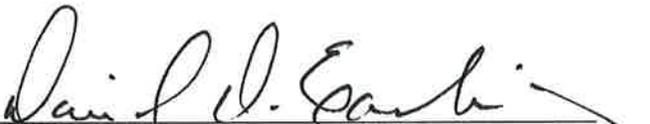
Section 3. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption. During the next Council meeting immediately following the hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

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

Section 5. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, 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 of Edmonds this 4th day of February, 2014.

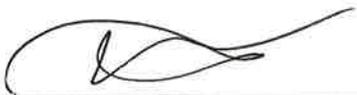
APPROVED:


MAYOR DAVE EARLING

ATTEST/AUTHENTICATED:


CITY CLERK, SCOTT PASSEY

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
JEFF TARADAY

FILED WITH THE CITY CLERK:	January 31, 2014
PASSED BY THE CITY COUNCIL:	February 4, 2014
PUBLISHED:	February 11, 2014
EFFECTIVE DATE:	February 16, 2014
ORDINANCE NO.	3960

SUMMARY OF ORDINANCE NO. 3960
of the City of Edmonds, Washington

On the 4th day of February, 2014, the City Council of the City of Edmonds, passed Ordinance No. 3960. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, RELATING TO COLLECTIVE GARDENS AND THE RECREATIONAL USE OF MARIJUANA, EXTENDING A MORATORIUM ON THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES OR USES RELATING TO COLLECTIVE GARDENS, MARIJUANA PRODUCTION, MARIJUANA PROCESSING, OR MARIJUANA RETAILING, TO BE IN EFFECT UNTIL THE CITY OF EDMONDS ADOPTS ZONING REGULATIONS ADDRESSING SUCH MARIJUANA USES, AND EXTENDING A MORATORIUM ON THE SUBMISSION OF ANY BUSINESS LICENSE APPLICATIONS FOR SUCH USES, SETTING THREE MONTHS AS THE EFFECTIVE PERIOD OF THE EXTENDED MORATORIUM ESTABLISHING THE DATE OF THE PUBLIC HEARING ON THE EXTENDED MORATORIUM.

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

DATED this 5th day of February, 2014.



CITY CLERK, SCOTT PASSEY

Everett Daily Herald

Affidavit of Publication

STATE OF WASHINGTON }
COUNTY OF SNOHOMISH } ss

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice is a true copy of City Ordinances - Ordinance No. 3960 543249 a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:
1 issue(s), such publication commencing on 02/11/2014 and ending on 02/11/2014 and that said newspaper was regularly distributed to its subscribers during all of said period. The amount of the fee for such publication is \$ 43.00.

Karen E Zoman

Subscribed and sworn before me on this

11 day of February, 2014

Diana Hendrix

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

City of Edmonds EDH101416 - PO: ORD 3960
ORDERED BY: SCOTT PASSEY



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DATED this 5th Day of February, 2014.
CITY CLERK, SCOTT M. PASSEY
Published: February 11, 2014.