



LYNNWOOD
WASHINGTON

ORDINANCE NO. 3003

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING FINDINGS OF FACT SUPPORTING THE CITY'S MORATORIUM ON THE ACCEPTANCE AND FILING OF APPLICATIONS FOR, AND THE LICENSING, ESTABLISHMENT, LOCATION, OPERATION, MAINTENANCE AND CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, certain possession or distribution of cannabis (marijuana) is a violation of state law pursuant to Chapter 69.50 RCW (Washington's Uniform Controlled Substances Act) and of federal law pursuant to the Controlled Substances Act; and

WHEREAS, in 1998 the voters of Washington State approved Initiative 692, now codified as Chapter 69.51A RCW, which created a limited defense to marijuana charges under state law (but not federal law) where the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Chapter 69.51A RCW; and

WHEREAS, in 2011, the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073, which made significant amendments to the state medical cannabis law and which was codified in Chapter 69.51A RCW; and

WHEREAS, Chapter 69.51A RCW authorizes medical cannabis collective gardens ("collective gardens") where up to ten qualifying patients may join together to produce, grow and deliver up to 45 cannabis plants for medical use; and

WHEREAS, Chapter 69.51A RCW does not limit the number of collective gardens that may be located at any site and does not restrict the location of collective gardens in relation to other uses; and

WHEREAS, pursuant to RCW 69.51A.140 cities may adopt zoning requirements for collective gardens; however, collective gardens are not addressed in the Lynnwood Zoning Code; and

WHEREAS, unless a zoning moratorium is imposed, collective gardens could be located within the City while the City lacks the necessary tools to ensure the appropriate location of and minimize and mitigate the potential impacts of collective gardens; and

WHEREAS, the establishment of collective gardens have raised questions of land use compatibility and appropriate siting, and that other jurisdictions have identified concerns about location, dispersion, membership controls, security, utility provision, informed consent of property owners, and hours of operation, among other things; and

WHEREAS, the City of Seattle's zoning and licensing regulations for collective gardens have been challenged in Superior Court on the basis that there are alleged constitutional issues concerning license applications; and

WHEREAS, the Superior Court granted the City of Seattle's Motion for Summary Judgment, and dismissed the lawsuit on procedural grounds, stating specifically that the substantive issues in the lawsuit were not addressed; and

WHEREAS, the plaintiffs in the Seattle lawsuit did not appeal the Summary Judgment order, but have not yet pursued the substantive issues in the lawsuit; and

WHEREAS, federal prohibitions on profiting from drug sales raise issues regarding the ability to charge and collect license fees for collective gardens; and

WHEREAS, the City of Kent adopted a total ban on collective gardens, which is one viable option for regulating collective gardens that a number of cities in Washington have adopted; and

WHEREAS, the City of Kent's total ban on collective gardens was upheld by the Superior Court, but the decision was appealed and is being considered by the Washington Supreme Court; and

WHEREAS, Initiative 502 was approved by the voters at the November 2012 election and took effect on December 6, 2012; and

WHEREAS, Initiative 502 legalizes, taxes and regulates the use and possession of specified amounts of marijuana in Washington by persons twenty-one (21) years of age and older; and

WHEREAS, Initiative 502 does not address the State's medical cannabis rules, but raises additional questions regarding the role of the federal government in marijuana possession enforcement and the appropriate location and regulation of marijuana producers, processors, and retailers ("marijuana businesses") under Initiative 502; and

WHEREAS, Initiative 502 requires the Liquor Control Board (LCB) to establish criteria for licensing marijuana businesses by December 1, 2013; and

WHEREAS, on July 3, 2013, the LCB issued revised draft rules and anticipates adopting final rules in mid-August 2013, with an effective date in mid-September; and

WHEREAS, the LCB has indicated that beginning on the effective date of the final rules, it will accept marijuana business license applications for an initial 30-day period, and may issue licenses for marijuana businesses in December 2013; and

WHEREAS, federal enforcement of the Controlled Substances Act is still uncertain, as the Justice Department has not taken a position on federal preemption by the Controlled Substances Act of Chapter 69.51A RCW and Initiative 502; and

WHEREAS, given the complexity of the relevant issues and the recent developments on this topic, the City needs additional time to carefully and fully consider the appropriate location and regulation of collective gardens in the City (if any), in order to appropriately mitigate and minimize any impacts of such collective gardens; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to adopt a moratorium on development for six (6) months, and hold a public hearing on the moratorium within sixty (60) days of the initial adoption of the moratorium; and

WHEREAS, on June 24, 2013, the City Council passed Ordinance No. 2999, imposing a moratorium on the acceptance and filing of applications for, and the licensing, establishment, location, operation, maintenance and continuation of medical cannabis collective gardens; and

WHEREAS, on July 29, 2013, the City Council held a public hearing on the moratorium imposed in Ordinance No. 2999; and

WHEREAS, the City Council has determined that it is in the best interests of the City, and is necessary for the protection of public health, safety, property or peace, including land use policies embodied in the City's Comprehensive Plan and zoning code, to enter the findings set forth in this Ordinance supporting the moratorium described above, in accordance with RCW 35A.63.220 and 36.70A.390; now, therefore

THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. **Establishment of Findings.** Section 1 of Ordinance No. 2999 is amended to read as follows:

Findings. Based on the public testimony and other evidence submitted at the public hearing held on July 29, 2013, the City Council enters the following Findings of Fact to support the moratorium described in Section 2 of Ordinance No. 2999.

1. On July 29, 2013, the City Council held a public hearing on the moratorium on the acceptance and filing of applications for, and the licensing, establishment, location, operation, maintenance and continuation of medical cannabis collective gardens, as imposed in Ordinance No. 2999 ("Moratorium").

2. The City Council considered testimony and other evidence from staff regarding the Moratorium submitted at the July 29, 2013 hearing, including the materials and information provided in a City staff report. At the hearing, members of the public had the opportunity to present testimony and other evidence regarding the imposition of the Moratorium.

3. Certain possession or distribution of cannabis (marijuana) is a violation of state law pursuant to Chapter 69.50 RCW (Washington's Uniform Controlled Substances Act) and of federal law pursuant to the Controlled Substances Act.

4. In 1998 the voters of Washington State approved Initiative 692, now codified as Chapter 69.51A RCW, which created a limited defense to marijuana charges under state law (but not federal law) where the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Chapter 69.51A RCW.

5. In 2011, the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073, which makes significant amendments to the state medical cannabis law. The Governor signed E2SSB 5073, but vetoed several portions, expressing her reservations about provisions that would involve state employees in activities that could be interpreted as a violation of federal laws.

6. E2SSB 5073 became effective on July 22, 2011 and was codified in Chapter 69.51A RCW. Chapter 69.51A RCW authorizes medical cannabis collective gardens ("collective gardens") where up to ten qualifying patients may join together to produce, grow and deliver up to 45 cannabis plants for medical use. Chapter 69.51A RCW does not limit the number of collective gardens that may be located at any site and does not restrict the location of collective gardens in relation to other uses.

7. Pursuant to RCW 69.51A.140, cities may adopt zoning requirements for collective gardens. However, collective gardens are not addressed in the Lynnwood Zoning Code. Unless a zoning moratorium is imposed, collective gardens could be located within the City while the City lacks the necessary tools to ensure the appropriate location of and minimize and mitigate the potential impacts of collective gardens.

8. The establishment of collective gardens have raised questions of land use compatibility and appropriate siting, and that other jurisdictions have identified concerns about location, dispersion, membership controls, security, utility provision, informed consent of property owners, and hours of operation, among other things.

9. The City of Seattle's zoning and licensing regulations for collective gardens have been challenged in Superior Court on the basis that there are alleged constitutional issues concerning license applications. The Superior Court granted the City of Seattle's Motion for Summary Judgment, and dismissed the lawsuit on procedural grounds, stating specifically that the substantive issues in the lawsuit were not addressed. The plaintiffs in the Seattle lawsuit did not appeal the Summary Judgment order, but have not yet pursued the substantive issues in the lawsuit.

10. Federal prohibitions on profiting from drug sales raise issues regarding the ability to charge and collect license fees for collective gardens.

11. The City of Kent adopted a total ban on collective gardens, which is one viable option for regulating collective gardens that a number of cities in Washington have adopted. The City of Kent's total ban on collective gardens was upheld by the Superior Court, but the decision was appealed and is being considered by the Washington Supreme Court.

12. Initiative 502 was approved by the voters at the November 2012 election and took effect on December 6, 2012. Initiative 502 legalizes, taxes and regulates the use and possession of specified amounts of marijuana in Washington by persons twenty-one (21) years of age and older.

13. Initiative 502 does not address the State's medical cannabis rules, but raises additional questions regarding the role of the federal government in marijuana possession enforcement and the appropriate location and regulation of marijuana producers, processors, and retailers ("marijuana businesses") under Initiative 502; and

14. Initiative 502 requires the Liquor Control Board (LCB) to establish criteria for licensing marijuana businesses by December 1, 2013.

15. The LCB issued initial draft rules, recently issued revised draft rules on July 3, 2013, and anticipates adopting final rules in mid-August 2013, with an effective date in mid-September. The LCB has indicated that beginning on the effective date of the final rules, it will accept marijuana business license applications for an initial 30-day period, and may issue licenses for marijuana businesses in December 2013.

16. Federal enforcement of the Controlled Substances Act is still uncertain, as the Justice Department has not taken a position on federal preemption by the Controlled Substances Act of Chapter 69.51A RCW and Initiative 502.

17. Since the LCB has issued its initial draft rules regarding the licensing of marijuana businesses, the City has received a number of inquiries about establishing marijuana businesses under I-502 in the City, as well as establishing collective gardens in the City. Further, City staff has learned that persons and businesses have also inquired to other cities about establishing collective gardens in those cities.

18. Given the complexity of the relevant issues and the recent developments on this topic, the City needs additional time to carefully and fully consider the appropriate location and regulation of collective gardens in the City (if any), in order to appropriately mitigate and minimize any impacts of such collective gardens. This work will involve analysis of the extent of the City's authority and potential for liability, if any, reviewing regulations proposed or adopted by other local jurisdictions, drafting appropriate regulations, if any, conducting State Environmental Policy Act review, and conducting Planning Commission and City Council hearings.

19. On June 24, 2013, the City Council passed Ordinance No. 2999, imposing the Moratorium on the acceptance and filing of applications for, and the licensing, establishment, location, operation, maintenance and continuation of medical cannabis collective gardens. This Moratorium is necessary to preserve the integrity of the City's zoning code and related land use designations and other policies in the City's Comprehensive Plan.

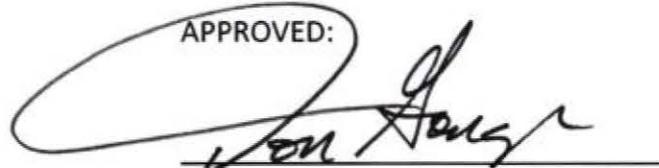
20. The City Council has determined that it is in the best interests of the City, and is necessary for the protection of public health, safety, property or peace, and the general welfare, including land use policies embodied in the City's Comprehensive Plan and zoning code, to adopt these Findings of Fact and to impose the Moratorium described above.

Section 2. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance should be held to be invalid or unconstitutional or inapplicable by a court of competent jurisdiction, such invalidity or unconstitutionality or inapplicability thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this Ordinance.

Section 3. Effective Date and Summary Publication. This Ordinance, or a summary thereof consisting of the title, shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

PASSED BY THE CITY COUNCIL, this 29th day of July, 2013, and signed in authentication of its passage this 5th day of August, 2013

APPROVED:



Don Gough, Mayor

ATTEST/AUTHENTICATED:



Lorenzo Hines Jr., Finance Director

APPROVED AS TO FORM:



Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: 07/24/2013
PASSED BY THE CITY COUNCIL: 07/29/2013
PUBLISHED: 08/02/2013
EFFECTIVE DATE: 08/07/2013
ORDINANCE NUMBER: 3003



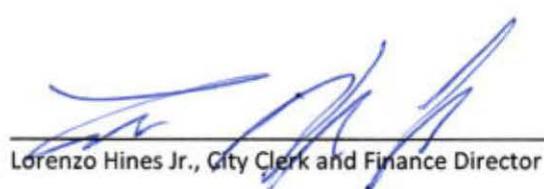
On the 29th day of July 2013, the City Council of the City of Lynnwood, Washington, passed Ordinance No. 3003. A summary of the content of said ordinance, consisting of the title, provides as follows:

ORDINANCE NO. 3003

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING FINDINGS OF FACT SUPPORTING THE CITY'S MORATORIUM ON THE ACCEPTANCE AND FILING OF APPLICATIONS FOR, AND THE LICENSING, ESTABLISHMENT, LOCATION, OPERATION, MAINTENANCE AND CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be mailed upon request or may be previewed at www.ci.lynnwood.wa.us.

DATED this 2nd day of August, 2013


Lorenzo Hines Jr., City Clerk and Finance Director

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.

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

Ordinance Summaries:

3003, 3004, 3005, 3006,

3007, 3008, 3009

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:

August 02, 2013

and that said newspaper was regularly distributed to its subscribers during all of said period.

Karen E. Zolner

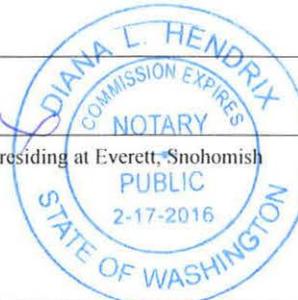
Principal Clerk

Subscribed and sworn to before me this

2nd

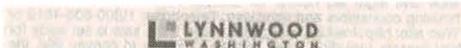
day of August, 2013

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



Account Number: 127890

Order Number: 0001828704



On the, 29th day of July, 2013 the City Council of the City of Lynnwood, Washington, passed the following ordinances: 3003 and 3009. A summary of the content of these ordinances, consisting of the title, provides as follows:

ORDINANCE NO. 3003
AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING FINDINGS OF FACT SUPPORTING THE CITY'S MORATORIUM ON THE ACCEPTANCE AND FILING OF APPLICATIONS FOR, AND THE LICENSING, ESTABLISHMENT, LOCATION, OPERATION, MAINTENANCE AND CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.
ORDINANCE NO. 3004

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING FINDINGS OF FACT SUPPORTING THE CITY'S MORATORIUM ON THE ACCEPTANCE AND FILING OF APPLICATIONS FOR, AND THE LICENSING, ESTABLISHMENT, LOCATION, OPERATION, MAINTENANCE AND CONTINUATION OF MARIJUANA BUSINESSES AND MARIJUANA OPERATIONS UNDER WASHINGTON STATE INITIATIVE NO. 502; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.
ORDINANCE NO. 3005

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING SECTION 17.02.230 AND DELETING SECTION 17.02.250 OF THE LYNNWOOD MUNICIPAL CODE RELATING TO ENVIRONMENTAL REVIEW CATEGORICAL EXEMPTIONS AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.
ORDINANCE NO. 3006

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING THE 2012 EDITIONS OF THE INTERNATIONAL BUILDING CODE, THE INTERNATIONAL ENERGY CONSERVATION CODE, THE INTERNATIONAL RESIDENTIAL CODE, THE INTERNATIONAL SWIMMING POOL AND SPA CODE, THE INTERNATIONAL PROPERTY MAINTENANCE CODE, THE INTERNATIONAL MECHANICAL CODE, AND THE UNIFORM PLUMBING CODE; AMENDING THE CITY'S REGULATIONS FOR THE ABATEMENT OF UNSAFE STRUCTURES; AMENDING AND REPLACING CHAPTERS 16.04, 16.05, 16.08, 16.09, 16.24, 16.44, 15.04, AND 15.08 OF THE LYNNWOOD MUNICIPAL CODE; REPEALING CHAPTER 16.32 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.
ORDINANCE NO. 3007

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE INTERNATIONAL FIRE CODE AS ADOPTED BY THE CITY; AMENDING TITLE 9 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.
ORDINANCE NO. 3008

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ESTABLISHING PROJECT FUNDING FOR THE 48TH AVENUE W SIDEWALK PROJECT; AND SUPERCEDING ORDINANCE 2988, AND SUPERCEDING ORDINANCE 2945, AND SUPERCEDING ORDINANCE 2914, AND SUPERCEDING ORDINANCE 2892, AND AUTHORIZING EXPENDITURES IN PROJECT FUND 312, AND AUTHORIZING FUNDING TRANSFERS, ALLOCATIONS, AND REIMBURSEMENTS FROM FUND 150, 411, 419, AND FUND 441; AND CONSISTENT WITH THE PROJECT FINANCIAL PLAN; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.
ORDINANCE NO. 3009

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ESTABLISHING PROJECT FUNDING FOR THE SCRIBER CREEK FLOOD REDUCTION STUDY PROJECT; AND AUTHORIZING EXPENDITURES IN FUND 411; AND AS CONSISTENT WITH THE PROJECT FINANCIAL PLAN; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.
The full text of these ordinances will be mailed upon request.
DATED this 2nd day of August, 2013.

Lorenzo Hines Jr., Finance Director

Published: August 2, 2013.



LYNNWOOD
WASHINGTON

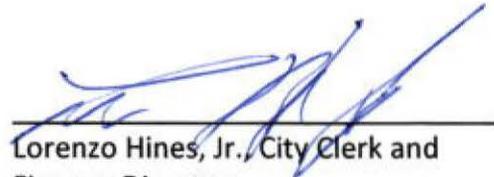
CERTIFICATE

I, the undersigned, Lorenzo Hines Jr., the duly appointed City Clerk of the City of Lynnwood, Washington, hereby certify that the Ordinance hereto attached is a full, true and correct copy of Ordinance No. 3003 of the City of Lynnwood, Washington, entitled as follows:

ORDINANCE NO. 3003

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING FINDINGS OF FACT SUPPORTING THE CITY'S MORATORIUM ON THE ACCEPTANCE AND FILING OF APPLICATIONS FOR, AND THE LICENSING, ESTABLISHMENT, LOCATION, OPERATION, MAINTENANCE AND CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

That said ordinance was passed by the Council of said City and was published and posted according to law; that said ordinance was duly published in the official newspaper of said City on August 2, 2013.


Lorenzo Hines, Jr., City Clerk and
Finance Director