



ORDINANCE NO. 3039

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, EXTENDING FOR SIX MONTHS 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; AMENDING SECTION 5 OF ORDINANCE NO. 2998; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the cultivation, possession or distribution of cannabis (marijuana) and marijuana products has been and continues to be a violation of federal law through 21 U.S.C. § 812(c), the Controlled Substances Act ("CSA"); and

WHEREAS, two United States Attorneys (Department of Justice) in Washington state have stated 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, and also that local governmental employees who conduct and engage in marijuana regulatory activities under Washington state law are subject to prosecution under the CSA; and

WHEREAS, in 2012, in response to an inquiry from the Clark County, Washington, Joseph Rannazzisi, Deputy Assistant Administrator, Office of Division Control, U.S. Department of Justice, Drug Enforcement Administration, stated that anyone who knowingly carries out marijuana activities that are inconsistent with the CSA but consistent with Washington state law, as well as anyone who facilitates such activities, or conspires to commit such activities, is subject to criminal prosecution under the CSA; and

WHEREAS, Initiative Measure No. 502 ("Initiative 502") was approved by the voters of Washington state on November 6, 2012, and became effective on December 6, 2012; and

WHEREAS, Initiative 502 authorizes adult recreational use of small amounts of marijuana, and authorizes and directs the Washington State Liquor Control Board ("LCB") to establish rules for the licensing of marijuana producers (growers), marijuana processors, and

marijuana retailers (collectively, “marijuana businesses”) and for the operation of such marijuana businesses; and

WHEREAS, the LCB issued initial draft rules, issued revised draft rules on July 3, 2013, and continued to seek public input on the draft rules in August and September, 2013; and

WHEREAS, on August 29, 2013, while the LCB was considering such rules, the United States Department of Justice issued a memorandum entitled “Guidance Regarding Marijuana Enforcement” (“Department of Justice Memorandum”, in which the Department advised that as long as states adopting laws governing marijuana have “sufficiently robust” regulatory and enforcement systems” (on paper and in practice) to address the federal government’s eight identified enforcement priorities (such as preventing the distribution of marijuana to minors, preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels, and preventing the diversion of marijuana from states where it is legal under state law in some form to other states, regardless of state law), then “enforcement of state laws by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity”; and

WHEREAS, in the Department of Justice Memorandum, the Department (1) emphasized that Congress has determined marijuana to be a dangerous drug, that the illegal distribution and sale of marijuana is a serious crime and that the Department is committed to enforcement of the federal Controlled Substances Act; and (2) warned that “if state enforcement efforts are not sufficiently robust to protect against [the harms mentioned in the eight enforcement priorities], the federal government may seek to challenge the regulatory system itself”; and

WHEREAS, on October 16, 2013, the LCB issued rules for marijuana businesses, which became effective on November 16, 2013; and

WHEREAS, acknowledging the lack of interaction and coordination between Initiative 502 and Chapter 69.51A RCW (relating to medical marijuana), the Legislature in Section 141(2) of 3ESSB 5034, the State operating budget for the fiscal biennium of July 1, 2013 through June 30, 2015 (“Marijuana Coordination Law”), directed the LCB to work with the Departments of Revenue and Health to develop recommendations for the Legislature by January 1, 2014 regarding the interaction of medical marijuana regulations and Initiative 502; and

WHEREAS, the Marijuana Coordination Law, among other things, directs the LCB and Departments to develop recommendations on issues that include collective gardens, possession amounts, location requirements, medical marijuana producing, processing and retail licensing requirements, and taxation of medical marijuana in relation to recreational marijuana; and

WHEREAS, the LCB prepared draft recommendations to the State legislature regarding possible amendments to the Marijuana Coordination Law, with a goal of finalizing the recommendations in December 2013; and

WHEREAS, on November 18, 2013, the LCB began accepting marijuana business license applications for an initial 30-day period, and pursuant to the final marijuana business regulations, beginning on December 19, 2013 the LCB will process said applications; and

WHEREAS, in addition to adopting final marijuana business rules, the LCB allocated two marijuana retail businesses to the City of Lynnwood; and

WHEREAS, Initiative 502 and the LCB's final marijuana business rules prohibit marijuana businesses within 1,000 feet of certain uses and buildings, such as child care centers, public parks and recreation centers or facilities, but does not define such uses and buildings, creating some uncertainty as to the application of these restrictions in the City; and

WHEREAS, neither Initiative 502 nor the LCB's final marijuana business rules expressly prohibit marijuana businesses from locating within a residential zoning district; and

WHEREAS, neither Initiative 502 nor the final marijuana business rules definitively address the issue of whether the LCB, in granting licenses to marijuana businesses, must comply with land use and zoning restrictions of local jurisdictions, such as the City; and

WHEREAS, on June 13, 2013, the LCB made a written statement available to interested parties, stating that potential marijuana business applicants should contact the pertinent local government to determine if there are local business license requirements or local zoning or other regulations that may apply to or restrict such businesses; and

WHEREAS, on June 19, 2013, the LCB held a public work session on the draft rules, and made similar statements directing potential license applicants to contact the pertinent local government; and

WHEREAS, more recently the LCB has indicated that it may not consider local zoning and business license requirements when deciding whether to approve applications for a state marijuana business license; and

WHEREAS, the LCB has submitted a request to the State Attorney General's Office for an opinion on issues relating to whether local jurisdictions are preempted from banning state licensed marijuana businesses from their jurisdiction, or whether local jurisdictions may establish land use regulations or licensing requirements that make it impractical for a state licensed marijuana business to locate in their jurisdiction; and

WHEREAS, the City has received a number of inquiries from parties interested in locating marijuana businesses in the City, including one interested party who spoke during the public comment period of the October 28, 2013 City Council meeting; and

WHEREAS, the regulation of marijuana businesses is a valid exercise of City police powers under Article XI, Section 11 of the State Constitution, and the establishment of land use

and zoning regulations is an exercise of the police power, and is specifically authorized by RCW 35.A.63.100; and

WHEREAS, RCW 69.51A.140 (enacted as part of Washington's medical marijuana law) authorizes the City to adopt and enforce zoning requirements, business licensing requirements and health and safety requirements pertaining to the production, processing or dispensing of marijuana and marijuana products; and

WHEREAS, the extent of the City's authority, if any, to enact and enforce zoning regulations and business license requirements for marijuana businesses remains uncertain; and

WHEREAS, the operation of marijuana businesses under Initiative 502 would be a violation of the CSA, and might be subject to the statements and conclusions of the United States Attorneys, the Rannazzisi letter, and the Department of Justice Memorandum; and

WHEREAS, due in part to the uncertainty surrounding the extent of the City's authority to regulate marijuana businesses and operations and possible conflicts with the federal CSA, the City has not implemented zoning and licensing regulations for marijuana businesses; and

WHEREAS, given the complexity of the relevant issues, the City needs time to carefully and thoroughly conduct appropriate research and analysis in order to understand the impact of Initiative 502 and the LCB's regulations, and determine the appropriate regulatory framework for the permitting, licensing and operation of marijuana businesses in the City, which work will include analysis of the extent of the City's authority and potential for liability, if any, monitoring existing relevant court cases and attorney general opinions, 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; and

WHEREAS, in Ordinance No. 2998, passed on June 24, 2013, the City Council deemed it to be in the best interests of the public, and necessary for the protection of the public health, safety, property or peace, to establish a zoning moratorium on marijuana businesses and marijuana operations under Initiative 502, pending consideration of land use regulations to address such marijuana businesses and marijuana operations; and

WHEREAS, on July 29, 2013, the City Council held a public hearing on the moratorium established in Ordinance No. 2998, at which time City staff and members of the public had the opportunity to present testimony and other evidence in support of or against the moratorium, and after considering all the evidence presented at the hearing, enacted Ordinance No. 3004, adopting findings of fact supporting the moratorium; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to renew or extend a moratorium on development or land use for a six-month period if a subsequent public hearing is held and findings of fact are made prior to the renewal; and

WHEREAS, on November 25, 2013, the City Council held a hearing on the extension for six months of the moratorium established in Ordinance No. 2998, at which time members of the public had the opportunity to present testimony and other evidence in support of or against the extension of the moratorium; and

WHEREAS, the City Council deems it to be in the best interests of the public, and necessary for the protection of the public health, safety, property or peace, to extend for six months the zoning moratorium on marijuana businesses and marijuana operations authorized or asserted to be authorized under Initiative 502 as established in Ordinance No. 2998, pending consideration of land use regulations to address such marijuana businesses and marijuana operations and 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. The recitals set forth above are hereby adopted as the City Council's findings in support of the extension for six months of the moratorium imposed by Ordinance No. 2998.

Section 2. Extension of Moratorium. Section 5 of Ordinance No. 2998 is amended to read as follows:

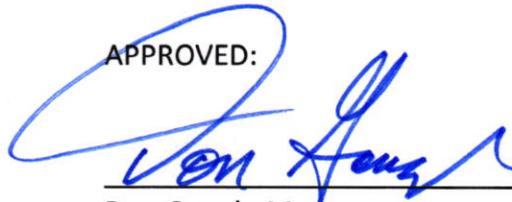
Duration. The moratorium established in Section 2 above shall be in effect until June 9, 2014, and shall automatically expire on that date unless repealed, modified, or extended after subsequent public hearing and entry of appropriate findings of fact as provided in RCW 35A.63.220 and RCW 36.70A.390.

Section 3. 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 4. 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 9th day of December, 2013, and sign in authentication of its passage this 16th day of December, 2013.

APPROVED:



Don Gough, Mayor

ATTEST/AUTHENTICATED:



Lorenzo Hines Jr., Finance Director

APPROVED AS TO FORM:



Rosemary Larson, City Attorney

Files with Administrative Services: 12/03/2013
Passed by Council: 12/09/2013
Published: 12/18/2013
Effective Date: 12/23/2013
Ordinance Number: 3039



On the 9th day of December, 2013, the City Council of the City of Lynnwood, Washington, passed Ordinance No. 3039. A summary of the content of said ordinance, consisting of the title, provides as follows:

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

DATED this 18th day of December, 2013.



Lorenzo Hines, Finance Director



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. 3039 of the City of Lynnwood, Washington, entitled as follows:

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That said ordinance was passed by the Council on December 9, 2013 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 December 17, 2013.

Lorenzo Hines, Jr., City Clerk of the
City of Lynnwood, Washington