



ORDINANCE NO. 3040

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 MEDICAL CANNABIS COLLECTIVE GARDENS; AMENDING SECTION 5 OF ORDINANCE NO. 2999; 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, throughout 2013, the LCB considered draft rules, and in October 2013, the LCB issued final marijuana business regulations; 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, on August 29, 2013, 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, federal enforcement of the Controlled Substances Act is still uncertain; 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 conduct appropriate research and analysis in order to determine the appropriate regulatory framework for the permitting, licensing and operation of medical marijuana uses, and to 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, in Ordinance No. 2999, 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 moratorium on the acceptance and filing of applications for, and the licensing, establishment, location, operation, maintenance and continuation of medical cannabis collective gardens, pending consideration of regulations to address such medical marijuana uses; and

WHEREAS, on July 29, 2013, the City Council held a public hearing on the moratorium established in Ordinance No. 2999, 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. 3003, adopting findings of fact supporting the moratorium imposed in Ordinance No. 2999; 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 November 25, 2013, the City Council held a hearing on the extension for six months of the moratorium established in Ordinance No. 2999, 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 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, to extend for six months the moratorium established in Ordinance No. 2999, pending consideration of regulations to address such medical marijuana uses 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. 2999.

Section 2. Extension of Moratorium. Section 5 of Ordinance No. 2999 is amended to read as follows:

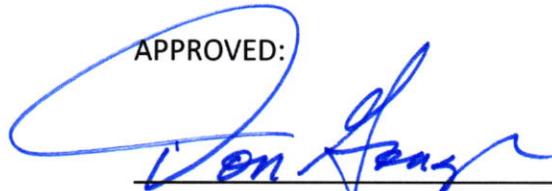
Duration. The moratorium established in Section 2 above shall be in effect until June 9, 2014, and shall automatically expire on that date unless repealed, modified, or extended after subsequent public hearing and entry of appropriate findings of fact as provided in RCW 35A.63.220 and RCW 36.70A.390.

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 signed 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

Filed with Administrative Services: 12/03/2013
Passed by City Council: 12/09/2013
Published: 12/18/2013
Effective Date: 12/23/2013
Ordinance Number: 3040



On the 9th day of December, 2013, the City Council of the City of Lynnwood, Washington, passed Ordinance No. 3040. 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. 3040 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 18, 2013.

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