



ORDINANCE 3061

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 AS AMENDED BY SECTION 2 OF ORDINANCE NO. 3039; 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 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 determined that it needed 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, 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, on December 9, 2013, the City Council adopted Ordinance No. 3039 extending for six months the moratorium established in Ordinance No. 2998; and

WHEREAS, on January 16, 2014, the Attorney General of Washington issued AGO 2014 No. 2, which concluded that Initiative 502 does not preempt local governments from licensing and regulating marijuana businesses, and that local governments may establish regulations that make it impractical for marijuana businesses to locate within their boundaries, as long as the regulations are a reasonable exercise of the police power (that is, they promote public safety, health, or welfare and bear a reasonable and substantial relation to accomplishing the propose pursued; and

WHEREAS, on April 7, 2014, at a City Council work session, direction was provided to the city staff regarding proposed regulation of recreational marijuana operations; and

WHEREAS, City staff have developed a framework of general approaches that the City could take to address marijuana business and marijuana operations in the City; and

WHEREAS, additional time is required to research, prepare, and consider ordinance(s) relating to marijuana businesses under Washington State Initiative 502, to understand the extent and impact of Initiative 502 and the LCB application processing scheme, make presentations to the public, Planning Commission and City Council, and conduct public hearings on the ordinance(s); 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, 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 and Ordinance No. 2039, 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 moratoriums imposed by Ordinance No. 2998 and Ordinance No. 3039

Section 2. Extension of Moratorium. Section 5 of Ordinance No. 2998 and Section 2 of Ordinance No. 3039 are amended to read as follows:

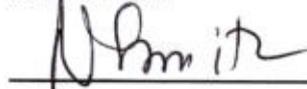
Duration. The moratorium established in Section 2 above shall be in effect until December 24, 2014, and shall automatically expire on that date unless repealed, modified, or extended after subsequent public hearing and entry of appropriate findings of fact as provided in RCW 35A.63.220 and RCW 36.70A.390.

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 27th day of May, 2014, and signed in authentication of its passage this 30th day of May

APPROVED:



Nicola Smith, Mayor

ATTEST/AUTHENTICATED:


Lorenzo Hines Jr., Finance Director

APPROVED AS TO FORM:


Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: 05/27/2014
PASSED BY CITY COUNCIL: 05/27/2014
PUBLISHED: 06/02/2014
EFFECTIVE DATE: 06/07/2014
ORDINANCE NUMBER: 3061



On the, 27th day of May, 2014 the City Council of the City of Lynnwood, Washington, passed ordinance 3061 . A summary of the content of these ordinances, consisting of the title, provides as follows:

ORDINANCE 3061

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 AS AMENDED BY SECTION 2 OF ORDINANCE NO. 3039; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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

DATED this 2nd day of June, 2014.



Lorenzo Hines Jr., Finance Director



LYNNWOOD
WASHINGTON

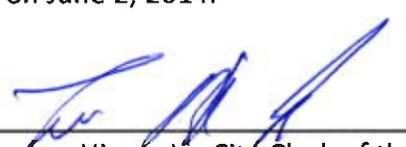
CERTIFICATE

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. 3061 of the City of Lynnwood, Washington, entitled as follows:

ORDINANCE 3061

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 AS AMENDED BY SECTION 2 OF ORDINANCE NO. 3039; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

That said ordinance was passed by the Council on May 27, 2014 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 June 2, 2014.



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

Everett Daily Herald

RECEIVED

JUN 16 2014

CITY OF LYNNWOOD
FINANCE DIRECTOR

Affidavit of Publication

State of Washington }
County of Snohomish } ss

Karen Van Horn being first duly sworn, upon oath deposes and says: that he/she is the legal representative of the Everett Daily Herald a daily newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a daily newspaper in Snohomish County, Washington and is and always has been printed in whole or part in the Everett Daily Herald and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Snohomish County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of 565984 Ordinance No. 3061 and 3062 EDH as it was published in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 06/02/2014 and ending on 06/02/2014 and that said newspaper was regularly distributed to its subscribers during all of said period.

The amount of the fee for such publication is \$48.40.

Karen Van Horn

Subscribed and sworn before me on this

2 day of June,
2014.

Susan L. Stoltz

Notary Public in and for the State of Washington.

City of Lynnwood - LEGAL ADS | 4127890
DEBBIE KARBBER
ORD 3061 & 3062

SUSAN L. STOLTZ
STATE OF WASHINGTON
NOTARY --- PUBLIC
My Commission Expires 12-20-2017

LYNNWOOD
WASHINGTON

On the, 27th day of May, 2014 the City Council of the City of Lynnwood, Washington, passed ordinances: 3061 and 3062. A summary of the content of these ordinances, consisting of the title, provides as follows:

ORDINANCE NO. 3061
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 502; AMENDING SECTION 5 OF ORDINANCE 3039 PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

ORDINANCE 3062
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 2999 AS AMENDING BY SECTION 2 OF ORDINANCE 3040; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be mailed upon request. DATED this 2nd day of June, 2014.

Published: June 2, 2014. Lorenzo Hines Jr., Finance Director