



LYNNWOOD
WASHINGTON

ORDINANCE NO. 3106

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, EXTENDING FOR SIX MONTHS THE CITY'S INTERIM ZONING CONTROLS PROHIBITING MARIJUANA BUSINESSES, FACILITIES AND LICENSES IN SINGLE FAMILY AND MULTIFAMILY RESIDENTIAL AREAS; AMENDING SECTION 4 OF ORDINANCE NO. 3072; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City of Lynnwood has the authority to adopt interim zoning controls pursuant to RCW 35A.63.220 and RCW 36.70A.390; and

WHEREAS, on November 6, 2012, Initiative-502 was passed by the voters of the State of Washington, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, Initiative 502 prohibits marijuana-related uses within 1,000 feet of the perimeter of certain uses and buildings, such as child care centers, public parks and recreation centers or facilities, but representatives of the Washington State Liquor Control Board (WSCLB) have confirmed that the zoning and business regulations of the local agency will not be a substantive factor in the issuance of licenses relating to marijuana; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's police power and is specifically authorized by RCW 35A.63.100; and

WHEREAS, RCW 69.51A.140, enacted as part of Washington's medical cannabis act, delegates authority to cities and towns to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes related to marijuana production, processing, and dispensing as exercises of the City's police power and not necessarily limited to medical marijuana-related uses; and

WHEREAS, WAC 314-55-015(5) precludes the issuance of any marijuana license for a location where law enforcement access, without notice or cause, is limited and specifically references personal residences, but does not preclude the issuance of a marijuana license within residential areas; and

WHEREAS, the Lynnwood Municipal Code does not currently have specific provisions addressing recreational marijuana or medical marijuana; and

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WHEREAS, operations associated and resulting from a marijuana-related license can be expected to result in land use and other impacts equal to or greater than other commercial or industrial land uses; and

WHEREAS, direct and indirect impacts generated by marijuana-related businesses or activities may adversely impact sensitive land uses such as single family and multifamily residences, and pose a potential threat to the health, safety, and welfare of the persons and property in the residential area; and

WHEREAS, marijuana production, processing, and retailing uses must be addressed in the City's land use code and/or business licensing regulations, but the land use and other impacts of these uses are still largely unknown and regulations that the City will need to address them are still uncertain; and

WHEREAS, unless the City acts immediately to address marijuana-related uses within residential areas, such uses may be authorized by the WSLCB to locate and operate within areas of Lynnwood where other commercial and industrial activities are prohibited by Lynnwood's zoning code and business license regulations; and

WHEREAS, on February 24, 2014, following a public hearing and receipt of public testimony, the City Council adopted Ordinance No 3045, which established interim zoning regulations to prohibit operations in the residential zones while the City developed regulations regarding medical and recreational marijuana; and which had a six month term ending on August 24, 2014; and

WHEREAS, on July 28, 2014, the City Council held a hearing on an extension for six months of the interim zoning regulations adopted in Ordinance No. 3045, 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 interim zoning regulations, and after considering all the evidence presented at the hearing, enacted Ordinance No. 3072, adopting findings of fact supporting the extension of the interim zoning regulations to February 24, 2015; 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;

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 permanent zoning and licensing regulations for marijuana businesses yet; 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, 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, in August 2014, the Pierce County Superior Court issued its decision in *MMH, LLC v. City of Fife*, holding that the City of Fife's ordinance prohibiting I-502 marijuana businesses within that city was a valid exercise of municipal police power zoning authority, in accordance with the January 16, 2014 Attorney General Opinion; and

WHEREAS, in October 2014, the Chelan Superior Court issued its decision in *SMP Retail LLC v. City of Wenatchee*, also holding that the City of Wenatchee's regulations which prohibiting I-502 marijuana businesses within that city were a valid exercise of municipal police power zoning authority, in accordance with the January 16, 2014 Attorney General Opinion; and

WHEREAS, both Superior Court decisions have been appealed to the pertinent Court of Appeals, but neither case has been set for hearing yet; and

WHEREAS, in November 2014, a lawsuit was filed in King County Superior Court challenging the City of Bellevue's I-502 marijuana business zoning regulations, which impose a 1000 foot separation requirement for such businesses, among other restrictions; and

WHEREAS, the City has held hearings before the Planning Commission and before the City Council on the topic of permanent zoning regulations regarding recreational marijuana businesses within the City; and

WHEREAS, City staff are continuing to develop a framework of general approaches that the City could take to address marijuana business and marijuana operations in the City on a permanent basis, based in part on comments received at the public hearings and on the judicial cases and decisions described above; and

WHEREAS, additional time is required to research, prepare, and consider ordinance(s) relating to permanent zoning regulations for marijuana businesses under Washington State Initiative 502, to understand the extent and impact of Initiative 502 and the LCB application processing scheme, make additional presentations to the public and the City Council, and conduct public hearings on the ordinance(s); and

WHEREAS, on February 9, 2015, following public notice as required by applicable law, the City Council conducted a public hearing on the extension of the interim zoning regulations for six months, and all persons wishing to be heard were heard; and

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

WHEREAS, the City deems it in the public interest to extend the interim zoning controls for a period of six months in order to investigate this issue further and to prepare permanent land use and/or business licensing controls in order to protect single family and multifamily neighborhoods from adverse impact;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD DOES ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The City Council adopts the above recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35A.63.220. The Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 2. Extension of Interim Zoning Controls. Section 4 of Ordinance No. 3072 is amended to read as follows:

Duration. The interim zoning regulations established herein shall be in effect until August 24, 2015, 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. Effective Date. This Ordinance shall take effect and be in full force five (5) days after publication.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional 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.

PASSED BY THE CITY COUNCIL, the 9th day of February, 2015 and signed in authentication of its passage this 13th day of February, 2015.

APPROVED:



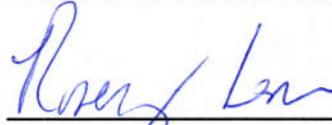
Nicola Smith, Mayor

ATTEST/AUTHENTICATED:



Chris Johnson, Interim Finance Director

APPROVED AS TO FORM:



Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES:	02/13/2015
PASSED BY THE CITY COUNCIL:	02/09/2015
PUBLISHED:	02/17/2015
EFFECTIVE DATE:	02/22/2015
ORDINANCE NUMBER:	3106



On the 9th day of February, 2015 the City Council of the City of Lynnwood, Washington, passed ordinance 3106. A summary of the content of this ordinance, consisting of the title, provides as follows:

ORDINANCE NO. 3106

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, EXTENDING FOR SIX MONTHS THE CITY'S INTERIM ZONING CONTROLS PROHIBITING MARIJUANA BUSINESSES, FACILITIES AND LICENSES IN SINGLE FAMILY AND MULTIFAMILY RESIDENTIAL AREAS; AMENDING SECTION 4 OF ORDINANCE NO. 3072; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

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

DATED this 17th day of February, 2015

A handwritten signature in blue ink, appearing to read 'Chris Johnson', is written over a horizontal line.

Chris Johnson, Interim Finance Director

Everett Daily Herald

Affidavit of Publication

State of Washington }
County of Snohomish } ss

Deb Grigg 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 EDH615883 ORDINANCE NO. 3106 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 02/17/2015 and ending on 02/17/2015 and that said newspaper was regularly distributed to its subscribers during all of said period.

The amount of the fee for such publication is \$31.84.

Deb Grigg

Subscribed and sworn before me on this 19 day of February, 2015.

Aubrey Knapp

AUBREY KNAPP
Notary Public
State of Washington
My Commission Expires
July 30, 2018

Notary Public in and for the State of Washington.



CITY OF LYNNWOOD

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

DATED this 17th day of February, 2015

Chris S. Johnson, Interim Finance Director
EDH615883

Published: February 17, 2015.



LYNNWOOD
WASHINGTON

CERTIFICATE

I, the undersigned, Chris S. Johnson, the duly appointed Interim 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. 3106 of the City of Lynnwood, Washington, entitled as follows:

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, EXTENDING FOR SIX MONTHS THE CITY'S INTERIM ZONING CONTROLS PROHIBITING MARIJUANA BUSINESSES, FACILITIES AND LICENSES IN SINGLE FAMILY AND MULTIFAMILY RESIDENTIAL AREAS; AMENDING SECTION 4 OF ORDINANCE NO. 3072; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

That said ordinance was passed by the Council on February 9, 2015 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 February 17, 2015.

Chris S. Johnson,
Interim City Clerk of the City of Lynnwood WA