

ORDINANCE NO. 1132-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, ADOPTING A SIX-MONTH EXTENSION OF THE MORATORIUM WITHIN THE CITY OF SULTAN ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS OR DISPENSARIES, ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER E2SSB 5073, CHAPTER 181, LAWS OF 2011, CHAPTER 69.51A REVISED CODE OF WASHINGTON, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; ESTABLISHING A WORK PLAN FOR THE CITY COUNCIL TO BRING CITY REGULATIONS INTO COMPLIANCE WITH STATE LAW; AND PROVIDING THAT THE EXTENSION OF THE MORATORIUM WILL TAKE EFFECT IMMEDIATELY UPON PASSAGE.

WHEREAS, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state (not federal) law, if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW; and

WHEREAS, In 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law, E2SSB 5073, Chapter 181, Laws of 2011, which took effect on July 22, 2011; and

WHEREAS, because the Governor vetoed 36 of the 58 sections of E2SSB 5073, Chapter 181 of the Laws of 2011 amending Chapter 69.51A RCW, the law, in its final form, understandably has inconsistencies and ambiguities; for example, certain sections that were not vetoed make reference to other sections that were vetoed; and

WHEREAS, The City Council determined that it needed additional time to conduct appropriate research to understand the effect of the new law and to analyze impacts and potential liabilities under federal law; and

WHEREAS, on July 28, 2011, the City Council of the City of Sultan, Washington, adopted Ordinance 1108-11 enacting a six-month moratorium on the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens and/or dispensaries; and

WHEREAS, the City Council held a public hearing on the moratorium on August 11, 2011; and

WHEREAS, potential additional changes to the State's laws regarding marijuana (medical and otherwise) may be imminent; and

WHEREAS, one or more state legislators has publicly stated his/her intention to propose and pursue to adoption additional amendments to Ch. 69.51A RCW, to address the ambiguities and inconsistencies resulting from the Governor's veto of several sections of E2SSB 5073, Chapter 181 of the Laws of 2011; and

WHEREAS, proponents of Initiative 502, an initiative to the Legislature to eliminate criminal and civil penalties under Washington state law for limited marijuana possession and use, have submitted 341,000 signatures, well in excess of the number required to place the measure before the Legislature; and

WHEREAS, if the Legislature declines to adopt I-502, the measure will be placed on the ballot in November, 2012; and

WHEREAS, the City needs additional time to research to determine the appropriate regulatory framework for any new uses that are currently allowed, or may soon be allowed, under Washington law; and

WHEREAS, the City has developed a work program to analyze potential changes to city zoning regulations that may be necessary to address changes in State law, and bring any amendments to the Sultan Municipal Code before the City Council for its consideration; and

WHEREAS, the City Council held a public hearing on the extension of the moratorium on January 12, 2011; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Preliminary Findings. The recitals set forth above, as well as those set forth in Ordinance 1108-11, are hereby adopted as the City Council's preliminary findings in support of the moratorium extended by this ordinance. The City Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 5 below.

Section 2. – Moratorium Imposed. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, the moratorium established by Ordinance 1108-11 is hereby enacted and extended for a term of six (6) months, during which the following is prohibited within the City of Sultan: the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A RCW, or any other laws of the state of Washington. Further, no building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the

moratorium are null and void, and without legal force or effect. As used in this ordinance, the following terms have the meanings set forth below:

A. "Medical marijuana dispensary" means any business, agency, organization, cooperative, network, consultation operation, or other group, or person, no matter how described or defined, including its associated premises and equipment, which has for its purpose or which is used to grow, select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) marijuana for medical use. One (1) individual person who is the designated provider for only one (1) qualified patient during any 15 day period and who complies with Chapter 69.51A RCW, shall not be deemed a medical marijuana dispensary for the purposes of this moratorium.

B. "Medical marijuana collective garden" means a group of qualifying patients that share responsibility for acquiring and supplying the resources required to produce and process marijuana for medical use. Examples of collective garden resources would include, without limitation, the following: property used for a collective garden; or equipment, supplies, and labor necessary to plant, grow and harvest marijuana; marijuana plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of marijuana plants. A medical marijuana collective garden shall satisfy the above definition regardless of its formation, ownership, management, or operation as a business, agency, organization, cooperative, network, consultation operation, group, or person. One (1) individual person who is the designated provider for only one qualified patient during any 15 day period and who complies with Chapter 69.51A RCW, or an individual person who is a qualified patient and who complies with 69.51A RCW, shall not be deemed a medical marijuana collective garden for the purposes of this moratorium.

Section 3. – No Nonconforming Uses. No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Sultan Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 4. – Effective Period for Extension of the Moratorium. The extension of the moratorium set forth in this ordinance shall be in effect for a period of six (6) months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

Section 5. – Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the city council held public hearing, at the city council's regular meeting, at 7:00 p.m. in Council Chambers, on January 12, 2012 in order to take public testimony and to consider adopting further findings.

Section 6. – Referral to Staff. The Community Development Director and/or his/her designee is hereby authorized and directed to develop appropriate land use regulations pursuant to Washington law, as it now exists or as it may be amended during the term of this moratorium, for review and recommendation for inclusion in the zoning regulations or other provisions of the Sultan Municipal Code. The Deputy Finance Director and/or his/her designee is hereby authorized and directed to develop

appropriate business licensing and other regulations pursuant to Washington law, as it now exists or as it may be amended during the term of this moratorium, for review and recommendation for inclusion in the zoning regulations or other provisions of the Sultan Municipal Code.

Section 7. – Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 8. – Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 9. – Effective Date. The City Council hereby finds and declares that there is a potential that persons seeking to engage in marijuana collective garden or dispensary uses could claim vesting under E2SSB 5073 and/or that the presence of any marijuana collective gardens in the City of Sultan could have negative secondary effects if not first addressed by adequate and appropriate regulations, and that, therefore, an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare. This ordinance shall become effective immediately upon passage. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

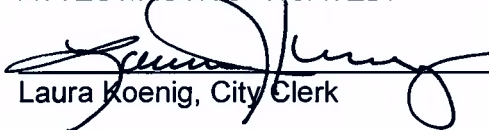
ADOPTED BY THE CITY COUNCIL OF SULTAN, WASHINGTON THIS 12TH DAY OF JANUARY, 2012.

APPROVED:



Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED: -



Laura Koenig, City Clerk

APPROVED AS TO FORM:



Margaret King, City Attorney

Published: 2-6-12

Effective: 2-11-12

Public

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-7
DATE: January 12, 2012
SUBJECT: Adoption of Ordinance 1132-12
Medical Cannabis Collective Gardens and Dispensaries,
6-Month Extension of Moratorium
CONTACT PERSON: Robert Martin, Community Development Director

ISSUE:
The issue before the City Council is to consider the public testimony provided in the Public Hearing on this topic, and determine whether to extend the current six-month moratorium on medical cannabis collective gardens and dispensaries for an additional six months through adoption of Ordinance 1132-12.

PLANNING BOARD RECOMMENDATION:
The Planning Board, after a public hearing on December 6, 2011, recommends that the City Council continue the current moratorium for an additional six (6) months to allow time for the State Legislature to address legal issues with the recently adopted Chapter 69.51A RCW.

COUNCIL ACTION:
To implement the recommendation of the Planning Board and extend the moratorium for six months, the Council should make a motion to:

Adopt Ordinance 1132-12, an Ordinance extending the current moratorium, originally adopted by Ordinance 1108-11, on medical cannabis collective gardens and dispensaries for an additional six months based on the recitals included in Ordinance 1108-11 and the additional recitals in Ordinance 1132-12.

SUMMARY:
On July 28, 2011, the Council adopted Ordinance No. 1108-11, an emergency moratorium on establishment of medical cannabis collective gardens and dispensaries in the City of Sultan. The emergency moratorium was affirmed after a public hearing on August 11, 2011, and became effective for six months.

The public hearing conducted at this meeting meets the requirements of RCW 35A.63.220 and RCW 36.70A.390 so that the Council, if it determines to proceed, may extend the existing moratorium for an additional six months through adoption of Ordinance 1132-12.

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RECITALS FROM ORDINANCE 1108-11

The recitals are excerpted from Ordinance 1108-11. They constitute the basis upon which the City Council adopted Ordinance 1108-11, implementing a moratorium on medical cannabis collective gardens and dispensaries.

The possession or distribution of medical cannabis (marijuana) has been and continues to be a violation of state law pursuant to Chapter 69.50 Revised Code of Washington (Washington's Uniform Controlled Substances Act), and federal law, through the Controlled Substances Act ("CSA").

Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state, not federal, law if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW. In 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law, ESSB 5073, Chapter 181, Laws of 2011, portions of which the Governor vetoed. The newly amended law took effect on July 22, 2011.

1. Prior to issuing her partial veto, the Governor received a letter signed by Washington's two top U.S. Attorneys, Mike Ormsby and Jenny Durkin. In their letter, they wrote 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 regardless of state laws permitting such activities." These U.S. Attorneys also concluded, "state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA."
2. Because the Governor vetoed 36 of the 58 sections of the legislature's bill amending Chapter 69.51A RCW, the law, in its final form, understandably has inconsistencies and ambiguities. For example, certain sections that were not vetoed make reference to other sections that were vetoed.
3. The recent amendments to Chapter 69.51A RCW change the scope and effect of the law. New sections affect the rights of qualifying patients and their designated providers. The law now allows "collective gardens" that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients. The law also provides other changes to the rights and responsibilities of medical marijuana patients and their designated providers.
4. The new law, however, clearly delegates to cities the authority to implement zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements and taxes relate to the production, processing, or dispensing of medical marijuana. In particular, local regulations could address ambiguities concerning the location and operation of collective gardens, and ensure that provisions related to designated providers are not used to establish a de facto dispensary when the authority for such uses was vetoed.