

City of Sultan
Sultan Washington
ORDINANCE NO. 1108-11

AN ORDINANCE of the City Council of the City of Sultan, Washington, declaring an emergency and adopting a six-month 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; setting a date for a public hearing on the moratorium; and providing that the moratorium will take effect immediately upon passage.

WHEREAS, 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"); and

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. 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, portions of which the Governor vetoed. The newly amended law took effect on July 22, 2011; and

WHEREAS, 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." ; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the city council requires time to conduct appropriate research to understand the extent of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws; and

WHEREAS, the city must ensure that proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and mitigated. These secondary impacts may include, but are not limited to, burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of these dispensaries; and

WHEREAS, in particular, and without limitation, staff should analyze the impacts of allowing these uses and facilities in residential zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses. Accordingly, the city council finds that a zoning, licensing, and permitting moratorium should be established, pending local review of appropriate locations and design requirements of these operations, and impacts of the newly amended law and its interaction with federal law; and

WHEREAS, although the city council determines that a moratorium is necessary for the reasons established above, the city council emphasizes that it understands the needs of persons suffering from debilitating or terminal conditions, as well as the benefits that approved medical use of marijuana may provide these persons. Nevertheless, given the complex legal and regulatory framework surrounding this issue, a moratorium remains necessary until the city council can adequately address the competing interests at play.

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

SECTION 1. – Preliminary Findings. The recitals and findings set forth above are hereby adopted as the city council’s preliminary findings in support of the moratorium imposed

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, a moratorium is hereby enacted prohibiting 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. 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. An 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, 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. An 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 City Code and that use shall not be entitled to claim legal nonconforming status.

SECTION 4. – *Effective Period for Moratorium.* The moratorium set forth in this ordinance shall be in effect for a period of six 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 will hold a public hearing, at the city council's regular meeting, at 7:00 p.m. in Council Chambers, Sultan Community Center, on Thursday, August 11 2011, or as soon thereafter as the business of the city council shall permit in order to take public testimony and to consider adopting further findings.

SECTION 6. – *Referral to Staff.* The planning director is hereby authorized and directed to develop appropriate land use regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Sultan City Code. The finance director is hereby authorized and directed to develop appropriate business licensing and other regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Sultan City Code.

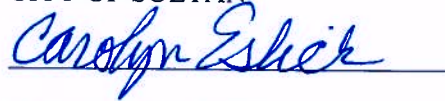
SECTION 7. – *Severability.* If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

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 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.

PASSED by the Sultan City Council and APPROVED by the Mayor this 28th day of July 2011.

CITY OF SULTAN



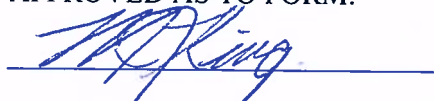
Carolyn Eslick, Mayor

ATTEST:



Laura Koenig, City Clerk

APPROVED AS TO FORM:



Margaret King, City Attorney

Passed by the City Council: 7-28-11

Published: 8-2-11

Effective Date: 8-7-11