ORDINANCE NO. 1260

THE CITY OF WOODLAND, WASHINGTON

AN ORDINANCE OF THE CITY OF WOODLAND, WASHINGTON, RENEWING A MORATORIUM ON THE ESTABLISHMENT OF COLLECTIVE GARDENS, DEFINING "COLLECTIVE GARDENS," ADOPTING FINDINGS OF FACT AND CONCLUSIONS, AND ESTABLISHING AN EFFECTIVE DATE AND EXPIRATION DATE AND AUTHORIZING A PUBLICATION BY SUMMARY

FINDINGS

Since 1970, federal law has prohibited the manufacture and possession of marijuana, designating it a Schedule I drug. This prohibition is based on the federal government's finding that marijuana has a "high potential for abuse, lack of any accepted medial use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich,* 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq;

In 1998, the voters of the State of Washington approved Initiative 692 (later codified as RCW 69.51A in November 1998), an initiative to de-criminalize the use of medical marijuana;

The intent of Initiative 692 was to permit qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, to not be subject to state criminal sanction, RCW 69.51A.005. However the Initiative also stated that nothing in the law "shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes." RCW 69.51A.020; and, as a result, "medical marijuana" does not violate state criminal law if maintained in accordance with the statute. "Medical marijuana" violates federal criminal law because the Federal law does not characterize marijuana by its use;

The Federal Government has not issued formal assurances that local government officials and employees will be immune from prosecution for their roles in zoning, permitting and licensing collective gardens. In fact, the Department of Justice has given written notice that local government officials and employees could be subject to criminal charges;

The Washington legislature later took further action regarding medical marijuana in SB 5073. Washington's Governor, in her partial veto letter, of SB 5073, of April 29, 2011, indicated cooperative medical marijuana organizations should be exempted from state criminal penalties "conditioned on compliance with local government location and health and safety specifications", creating a need to balance the interests of federal law, Washington medical marijuana patients and the health, safety and welfare of the community. The un-vetoed Act authorizes "collective gardens" which would authorize certain qualifying patients the ability to produce, grow and deliver Cannabis for medical use;

RCW 69.51A.140 allows local jurisdictions to adopt regulations for zoning requirements, business license requirements, health and safety requirements, and business taxes, however only

"so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction";

The adoption of zoning regulations requires the study and identification of the land use impacts of collective gardens in the context of the legality;

The production, growth and delivery of Cannabis in collective gardens present issues of public safety for surrounding properties as well as for the property on which the collective gardens exist. Furthermore, the location of such collective gardens near schools, day care facilities and other lawful uses presents issues relating to the public welfare and the protection of minors;

In November 2012, voters passed Initiative 502 legalizing the recreational use of marijuana for people over 21 years of age. The Washington State Liquor Control Board has been tasked with establishing regulations for the sale of marijuana and to complete the regulatory and administrative process no later than December 1, 2013. Regulations may include siting criteria which could pre-empt local zoning of collective gardens. At this time no Washington legislative act reconciles Initiative 502 and RCW 69.51A. At this time no Washington legislative act reconciles Washington law with applicable Federal law;

The City has received no applications for the operation of a collective garden within the Woodland city limits. The City has held public hearings on previous moratoria and no person has given testimony objecting to a zoning moratorium on collective gardens;

On November 19, 2012, following the passage of Initiative 502 the Mayor met with department heads to discuss the status of the moratorium then in effect and to examine possible next steps. City Staff was directed to continue to research the question and review the responses of other cities;

On January 14, 2013, the City Council held a public workshop to discuss options for regulating collective gardens. The options considered included an ordinance extending the existing moratorium, an ordinance banning collective gardens as done by the City of Kent, or an ordinance similar to ordinances of the cities of Pasco and Kennewick prohibiting land uses inconsistent with State and Federal law;

The Washington Supreme Court has granted a stay of proceedings against the City of Kent ordinance. This judicial decision calls into question whether an ordinance that bans collective gardens is legally viable. An appeal hearing before the Court is forthcoming;

Given the convoluted status of the State and Federal Law and the unknown scope and breadth of potential regulations for the WSLCB, the Woodland City Council does not have sufficient information to consider the potential impacts from collective gardens, the regulations that should be enacted, or the legal implications of taking pre-mature action. The City of Woodland Council therefore believes that interim zoning regulations are necessary to address collective gardens and remain compliant with RCW 69.51A and Federal law while the City

considers the land use impacts of collective gardens and viable legal options under the State regulations process, Washington Supreme Court review and Federal criminal statutes;

The City of Woodland Council believes this action is taken in good faith;

As per RCW 35A.63.220, a moratorium may be renewed for one or more six-month periods; and

The required public hearing will occur at an open public Woodland City Council meeting the 4th day of February, 2013.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODLAND AS FOLLOWS:

1. Moratorium Enacted. Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Woodland prohibiting the licensing, establishment, maintenance or continuation of any medical Cannabis collective garden. A "collective garden" is an area or garden where qualifying patients engage in the production, processing, transporting and delivery of Cannabis for medical use as set forth in the Act and subject to the limitations therein.

2. Collective Gardens Prohibited. Collective gardens as defined in Section 1 are hereby not permitted uses in the City of Woodland. In accordance with the provisions of RCW 35A.82.020 and WMC 5.04, no business license shall be issued to any person for collective gardens, which are not permitted uses under the ordinances of the City of Woodland.

3. Public Hearing on Interim Zoning. Pursuant to RCW 35A.63.220, a moratorium may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. The required public hearing will take place the 4th day of February, 2013.

4. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, this interim Ordinance shall be transmitted to the Washington State Department of Commerce as required by law.

5. Findings and Conclusions Adopted. The City Council hereby adopts the recitals set forth above, as their Findings and Conclusions as required by RCW 36.70A.390.

6. 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 of constitutionality of any other section, sentence, clause or phrase of this Ordinance.

7. Effective Date/Termination of Moratorium. 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. Unless otherwise extended by the

Council, pursuant to RCW 36.70A.390, this Ordinance, and the moratorium established herein, shall expire and terminate six (6) months from its adoption on January 22, 2013.

Adopted in an open public meeting this 22nd day of January, 2013.

CITY OF WOODLAND, WA

Approved:

Grover B. Laseke, Mayor

Attest:

Mari E. Ripp, Clerk-Treasurer

Approved as to form:

William J. Eling, City Attorney

SUMMARY OF ORDINANCE NO. 1260
OF THE CITY OF WOODLAND, WASHINGTON

On January 22, 2013 the City Council of the City of Woodland, Washington, approved Ordinance No. 1260 the main point which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF WOODLAND, WASHINGTON, RENEWING A MORATORIUM ON THE ESTABLISHMENT OF COLLECTIVE GARDENS, DEFINING "COLLECTIVE GARDENS," ADOPTING FINDINGS OF FACT AND CONCLUSIONS, AND ESTABLISHING AN EFFECTIVE DATE AND EXPIRATION DATE AND AUTHORIZING A PUBLICATION BY SUMMARY.

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

APPROVED by the City Council at their meeting on 22nd day of January, 2013.

Mari E. Ripp

Mari E. Ripp, Clerk-Treasurer

Published: January 30, 2013
Effective: February 4, 2013