

ORDINANCE NO. 1326

THE CITY OF WOODLAND, WASHINGTON

A ZONING ORDINANCE OF THE CITY OF WOODLAND, WASHINGTON, ADOPTING PERMANENT ZONING CONTROLS TO PROHIBIT MEDICAL MARIJUANA COLLECTIVE GARDENS WITHIN THE CITY OF WOODLAND CITY LIMITS.

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 medical 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;

During 2012 the City held two council workshops and staff spent time studying the issue of collective gardens. Staff and the Mayor attended training sessions, including webinars, on the collective garden issues. No clear direction was determined through these efforts.

In June 2012, the Planning Commission was presented with an interim zoning ordinance, based on a model ordinance from the Association of Washington Counties. The Commission unanimously voted to send the interim zoning ordinance to the City Council for review. The proposed ordinance failed during a City Council meeting in July 2012.

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;

On May 20, 2013, the City Council held a public meeting to further discuss and provide staff direction as to the regulation of collective gardens. The options considered still included an ordinance extending the existing moratorium, an ordinance banning collective gardens, or an ordinance prohibiting land uses inconsistent with State and Federal law;

On June 3, 2013, the City Council held a public meeting, which included a first and final reading of interim zoning regulations for collective gardens. The approach used was essentially prohibiting land uses inconsistent with State and Federal law. The proposed ordinance failed.

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 Court of Appeals decision for the City of Kent declared that collective gardens are illegal and that cities can ban them. This decision may go to the Washington Supreme Court for further review or the Legislature may make changes.

On January 20, 2015, the City of Woodland enacted interim zoning regulations banning collective gardens in all zoning districts within the City. These interim zoning regulations are valid for six months.

On January 9, 2015, the City transmitted the proposed regulations to the Department of Commerce. Permanent regulations cannot be adopted by a jurisdiction less than 60 days after transmittal to the Department of Commerce.

On February 19, 2015, the City of Woodland Planning Commission held a duly advertised public hearing for these permanent collective garden regulations.

Pursuant to RCW 35A.11.020 and the Constitution of Washington, Article 11, Section 11, cities have the power to enact regulations in the interest of the health, safety, and welfare of their residents.

All procedural requirements of the Woodland Municipal Code (WMC) for these amendments have been met.

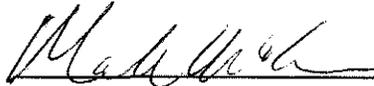
NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODLAND AS FOLLOWS:

1. Formal Repeal of Interim Regulations. Ordinance 1320, interim regulations for medical cannabis collective gardens, is hereby repealed.
2. Collective Gardens Defined. Collective Garden means those gardens authorized under RCW 69.51A.085, which allows qualifying patients to assume responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of garden cannabis plants (as limited below). Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:
 1. No more than ten qualifying patients may participate in a single collective garden at any time;
 2. A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;
 3. A collective garden may contain no more than twenty-four ounces of usable cannabis per patient up to a total of seventy-two ounces of usable cannabis; and
 4. A copy of each qualifying patient's valid documentation or proof of registration with the registry established in state law (now or in the future), including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and
 5. No usable cannabis from the collective garden may be delivered to anyone other than one of the qualifying patients participating in the collective garden.
3. Collective Gardens Prohibited: Collective gardens, as defined above and in RCW 69.51A.085, are prohibited in all zoning districts within the City of Woodland.
4. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, this 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. This ordinance or 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.

Adopted in an open public meeting this 6th day of April, 2015.

CITY OF WOODLAND, WA

Approved:



Marilee McCall, Mayor Pro Tem

Attest:



Georgina D. Anderson, Deputy Clerk-Treasurer

Approved as to form:



William J. Eling, City Attorney

**SUMMARY OF ORDINANCE NO. 1326
OF THE CITY OF WOODLAND, WASHINGTON**

On April 6, 2015 the City Council of the City of Woodland, Washington, approved Ordinance No. 1326 the main point which may be summarized by its title as follows:

AN ZONING ORDINANCE OF THE CITY OF WOODLAND, WASHINGTON, ADOPTING PERMANENT ZONING CONTROLS TO PROHIBIT MEDICAL MARIJUANA COLLECTIVE GARDENS WITHIN THE CITY OF WOODLAND CITY LIMITS.

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

APPROVED by the City Council at their meeting on 6th day of April, 2015.



Georgina D. Anderson, Deputy Clerk-Treasurer

Published: April 15, 2015

Effective: April 11, 2015