

CITY OF DAYTON

ORDINANCE NO. 1839

AN ORDINANCE RELATING TO THE RECREATIONAL AND MEDICAL USE OF MARIJUANA, DECLARING AN EMERGENCY, ESTABLISHING AN IMMEDIATE MORATORIUM ON SITING, OPERATION, AND USE AND SUBMISSION OF ANY PERMITS OR APPLICATIONS FOR OPERATION OF ANY STRUCTURES OR USES RELATED TO MARIJUANA PRODUCTION, MARIJUANA PROCESSING, MARIJUANA RETAILING, MEDICAL MARIJUANA RELATED USES, INCLUDING COLLECTIVE GARDENS OR MEDICAL MARIJUANA DISPENSARIES, ENACTING INTERIM ZONING, AND SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM AND INTERIM ZONING; ALLOWING TIME TO REVIEW THE EFFECT OF THE LICENSING OF SUCH USES, AND TO STUDY THE SOCIAL HEALTH AND SAFETY AND LAND USE IMPACT OF SUCH USES.

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having 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; and,

WHEREAS, the voters of the State of Washington approved Initiative 692 (codified as RCW 69.51A in November 1998); and,

WHEREAS, the intent of Initiative 692 was that qualifying "patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law," (RCW 69.51A.005), but 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,

WHEREAS, the Washington State Legislature passed ESSSB 5073 in 2011, which provides that a qualifying patient or his/her designated care provider are presumed to be in compliance, and not subject to criminal or civil sanctions/penalties/consequences, if they possess no more than 15 marijuana (marijuana) plants and no more than 24 ounces of usable marijuana (other qualifications apply); and,

WHEREAS, Washington's Governor vetoed all provisions relevant to medical marijuana dispensaries in ESSSB 5073 but left the provisions relating to cultivation of marijuana for medical use by qualified patients individually and in collective gardens; and,

WHEREAS, the Governor's partial veto letter, dated April 29, 2011, stated that cooperative medical marijuana organizations should be exempted from state criminal penalties "conditioned on compliance with local government location and health and safety specifications" (page 3), creating a need to balance the interests of federal law, Washington medical marijuana patients and the health, safety and welfare of the community, (*id.*); and,

WHEREAS, RCW 69.51A.085 permits qualifying patients "to create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering [marijuana] for medical use," provided no more than ten qualifying patients participate, a collective garden does not contain more than 15 plants per patient up to a total of 45 plants per garden, and the garden does not contain more than 24 ounces of useable marijuana per patient and up to a total of 72 ounces of useable marijuana; and,

WHEREAS, under RCW 69.51A.060(1), it is a class 3 civil infraction to display medical marijuana in a manner or place which is open to view of the general public, which would include growing plants; and,

WHEREAS, RCW 69.51A.130 allows local jurisdictions to adopt zoning requirements, business license requirements, health and safety requirements, and impose business taxes on production, processing or dispensing of marijuana or marijuana products; and,

WHEREAS, the City Council of Dayton believes the Governor's veto of provisions in ESSSB 5073 on the subject of medical marijuana dispensaries should be interpreted to mean this use is prohibited by state law, and is already prohibited under federal law; and,

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which "authorizes the Washington State Liquor Control Board (WSLCB) to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana" (I-502, Sec. 1(3)); and,

WHEREAS, I-502 allows the WSLCB to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the WSLCB to license marijuana processors to "process, package and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the WSLCB to license marijuana retailers to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (I-502, Sec. 4(3)); and

WHEREAS, under I-502, before the WSLCB issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the city, and the city has the right to file its written objections to such license within 20 days after transmittal of the notice of application, but the Liquor Control Board makes the final decision whether to issue a license (I-502, Sec. 6 (7)); and,

WHEREAS, in conformity with the responsibilities of the City of Dayton to meet public health, safety and welfare requirements and to provide zoning and land use activity inside the incorporated city limits, the City intends to study the land use and other impacts of the production, processing and retail sales of marijuana, and the cultivation of marijuana, collective gardens and dispensaries associated with medical marijuana, prior to developing any appropriate public health, safety and welfare requirements and land uses related to marijuana activities; and,

WHEREAS, a moratorium and interim zoning will provide the City with additional time to study the land use and other secondary impacts on public health, safety and welfare, of cultivation of marijuana, collective gardens, and dispensaries associated with medical marijuana production and use, and the production, processing and retailing of marijuana; and,

WHEREAS, a moratorium and interim zoning will provide the City with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment of facilities producing, processing and retailing marijuana and related to medical marijuana, and collective gardens and dispensaries associated therewith; and,

WHEREAS, the WSLCB has indicated it will adopt rules for issuing licenses to recreational marijuana businesses by October 16, 2013, begin accepting applications on November 18, 2013, and expects to begin issuing license, December 1, 2013.

NOW THEREFORE, the City Council of the City of Dayton do ordain as follows:

Section I. The Dayton City Council Makes the Following Findings of Fact and Conclusions of Law.

A. Findings of Fact.

1. I-502 establishes certain siting limitations on the WSLCB's issuance of such license for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons age twenty-one years or older (I-502, Sec. 6(8)).
2. I-502 contemplates that the WSLCB will adopt rules to implement the provisions of I-502, including equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; manner and method to be used by licensee to transport and deliver marijuana and marijuana products (among other things), (I-502, Sec. 9).
3. I-502 contemplates that the WSLCB will adopt procedures and criteria by December to produce, process and sell marijuana (among other things) (I-502), Sec. 10).

4. On July 3, 2013, the WSLCB modified its draft regulations to allow for outdoor production (growing) of marijuana.
5. City of Dayton currently has no City ordinance specifically regulating marijuana.
6. The City of Dayton Municipal Code (DMC) identifies the following uses that may be associated with production, processing, and dispensing of marijuana:
 - a. DMC 5-12.110; identifies “General agriculture”, “Retail nurseries and greenhouses” and “Home business or occupation” as either outright permitted uses or as accessory uses in the Agricultural Residential and Urban residential zones”.
 - b. DMC 5-12.210 identifies “Specialty food shops...”, “Specialty retail that needs customer and delivery access ...”, “Light manufacturing and production”, “General warehouse ...”, and “...nurseries and greenhouses” as uses either outright permitted or as accessory uses allowed in the Central and Fringe Commercial zones.
 - c. DMC 5-12.310 identifies “Vegetable, fruit and grain processing”, “Production of food and beverages including baked goods, meat and dairy products”, “Sales and services of products produced in the industrial zone”, “Sales and services dependent on large warehouse space such ...nurseries and greenhouses”, “General warehouse” and “Production nurseries and greenhouses” as uses either outright permitted or as accessory uses allowed in the Industrial Zone.
7. I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (I-502, Sec. 13).
8. I-502 decriminalizes, for purpose of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502.
9. At this point in time, The City of Dayton does not have any regulations specifically addressing facilities or uses identified in I-502, other than general requirements for zoning and building permits. The City of Dayton does not have any regulations specifically addressing medical marijuana uses, collective gardens and dispensaries.
10. Prior to this year, uses described in I-502 and the WSLCB’s Rules have never been allowed in any state in the United States, although some local governments have adopted ordinances allowing such uses in the recent past. The City needs time to study the secondary land use impacts of these marijuana uses and the various development standards that should be considered to mitigate these impacts before adoption of any regulatory ordinance or issuance of any building or conditional use permits for these uses.

11. The City of Dayton is currently undergoing an update to the city's development regulations associated with implementation of the Dayton 2008 Comprehensive Plan adopted under Resolution 1145. Updates in part include new titles and revisions to the Dayton Municipal Code for zoning, critical areas and administration of development regulations. The city's SEPA threshold determination of non-significance issued August 21, 2013 and public hearings on September 12 and 17, 2013 for the development regulations did not include review and consideration of the uses legalized by the state under ESSSB 5073 and I-502.
12. Due to City of Dayton's proximity to the States of Oregon and Idaho, the possibility of marijuana purchased at retail outlets in Dayton unlawfully crossing state lines is likely.
13. The WSLCB regulates and enforces Washington State liquor and tobacco rules and laws. The WSLCB has 8 officers and 7 sergeants that cover all of central and eastern Washington State. One officer is assigned to enforce liquor and tobacco laws in the City of Dayton and does so approximately one time per month. This officer is located in Wenatchee, WA. The WSLCB will regulate and enforce laws associated with recreational marijuana.
14. The WSLCB's SEPA environmental checklist for the proposed rules did not appear to completely analyze the impact of outdoor growing of marijuana, but noted that "local land use regulations will avoid or minimize other impacts to sensitive areas." (SEPA Environmental Checklist dated June 3, 2013, page 5). The City needs to analyze local land use regulations, particularly zoning laws, to determine whether or how environmentally sensitive areas may need additional protection.
15. The WSLCB's SEPA Environmental Checklist stated, "the odor or growing or 'green' marijuana may alert malefactors to the location where marijuana is grown and creating (sic) the risk of burglary and robbery at that location." (SEPA Environmental Checklist dated June 3, 2013, page 4).
16. The WSLCB SEPA Environmental Checklist stated, "[d]ue to the high monetary value placed upon marijuana, areas can experienced (sic) a number of home invasion robberies, thefts and murders related to marijuana cultivation, which impacts local law enforcement." (SEPA Environmental Checklist dated June 3, 2013, page 6). The City of Dayton needs to analyze what zones, if any, are appropriate to allow such uses in order to mitigate or eliminate such impacts.
17. Moratoriums and interim zoning enacted under RCW 36.70A.390 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development.
18. A moratorium and interim zoning adopted under RCW 36.70A.390 "may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period." Should additional time be necessary for studies, renewal of the moratorium may occur for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

19. RCW 36.70A.390 requires that a city “hold a public hearing on the adopted moratorium, interim zoning ... within at least sixty days of its adoption.” The City of Dayton will schedule a public hearing as required by law regarding the adoption and effect of this moratorium.
20. The City of Dayton is utilizing the exemption provided by WAC 197-11-880 for this emergency moratorium to avoid an imminent threat to public health and safety, to prevent an imminent danger to public or private property, and to prevent an imminent threat of serious environmental degradation.

B. Conclusions of Law

1. The City has authority to establish a moratorium and interim zoning to protect the health, safety and welfare of the citizens of the City of Dayton and to ensure consideration of environmental impacts for the following:
 - a. Cultivation of marijuana for medical use in collective gardens and medical use dispensaries;
 - b. The filing, acceptance, and processing of new applications for project permits for the establishment of, or operation of, any facility and/or building; and,
 - c. Use of a premise for the production, processing or retailing of recreational marijuana.
2. A moratorium and interim zoning to preserve the status quo is necessary, until the effects of the WSLCB’s issuance of marijuana licenses can be reviewed and until the City can study, draft, hold public hearings, consider and adopt appropriate regulations to address these uses.
3. RCW 69.51A.140 (1) authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to production, processing, or dispensing of marijuana or marijuana products within their jurisdiction.
4. The proposed moratorium and interim zoning is consistent with RCW 36.70A 020 in that the city will have the opportunity to assure private property rights are protected and will encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts
5. The proposed moratorium and interim zoning is consistent with the Dayton Comprehensive Plan:
 - a. This Ordinance will allow the City to review which zones, if any can support these uses, ensuring that, if necessary, these uses will be located in areas that are able to support them without conflict with other uses (Objectives D.4., E.5., G.2., and H.3.1.)

- b. This Ordinance will allow the City to determine, if necessary, which types of marijuana-oriented business should be considered industrial uses, and allow the City to determine how to locate those uses in areas where environmental impacts and other hazards can be controlled and separated from other incompatible land uses, (Comprehensive Plan Objectives D.4. and E.5.
 - c. This Ordinance will allow the City to review the impact these uses may have on law enforcement services, and ensure public spending priorities for City services, Comprehensive Plan Page 48.
 - d. This Ordinance will allow the city time to involve citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts. Comprehensive Plan Objective H.1, Page 44.
- 6. The proposed moratorium and interim zoning meets a definable public need to maintain the status quo. Maintaining the status quo will allow the City to evaluate if, where and how these new uses should be allowed. Maintaining the status quo will also ensure existing land uses, including urban residential, agricultural residential, commercial, industrial, uses are not negatively impacted by these new uses. Maintaining the status quo will allow the City to determine, in a more detailed fashion than the WSLCB, what environmental impacts may be caused by these new uses and appropriate measures to mitigate such impacts.
 - 7. The proposed moratorium and interim zoning is in the long term interest of the City, as it ensures, to the extent these uses are to be allowed within the city limits of Dayton, the uses, if any, are sited appropriately.

Section II. The following definitions, moratorium, and interim zoning are enacted within the City of Dayton:

A. Definitions.

- 1. The City herein adopts the definitions of RCW 69.50.101 and 2013 c 12 s 2 and as may be further amended by State legislative action.
- 2. The City herein adopts the definitions of RCW 69.51A.010 and 2010 c 284 § 2 and as may be further amended by State legislative action.
- 3. "Project permit" or "project permit application" means any land use or environmental permit or license required from the City of Dayton for a project action, including but not limited to building permits, installation permits, emergency permits, conditional use permits, development permits, subdivisions, site plans, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones, or road access permits. For the purpose of this Ordinance, permits and

license issued by the Columbia County Health Department for property within the City of Dayton and the Dayton Public Works Department are included in this definition.

B. Moratorium and interim zoning regulation.

1. Any project permit for a structure or use or for the operation of property for the use by a marijuana producer for marijuana production and growing activities shall not be accepted nor granted during the pendency of this moratorium and interim zoning ordinance. All such applications shall be rejected and returned to the applicant.
2. Any project permit for a structure or use or for the operation of property for the use by a marijuana processor for marijuana processing activities shall not be accepted nor granted during the pendency of this moratorium and interim zoning ordinance. All such applications shall be rejected and returned to the applicant.
3. Any project permit for a structure or use or for the operation of property for the use by a marijuana retailer for marijuana retailing activities shall not be accepted nor granted during the pendency of this moratorium and interim zoning ordinance. All such applications shall be rejected and returned to the applicant.
4. Recreational marijuana production, marijuana processing and marijuana retailing; and also, medical marijuana collective gardens and use dispensaries shall not be permitted or allowed as a use during the pendency of this moratorium and interim zoning ordinance.

Section III. Purpose. The purpose of this moratorium and interim zoning ordinance is to allow the City adequate time to study secondary land use impacts associated with medical marijuana production and use and collective gardens and dispensaries associated therewith and the location and siting of structures and uses in which marijuana production, marijuana processing or marijuana retailing may take place. The City's goal is to ultimately draft zoning and other possible regulations to address such developments and uses, to hold public hearings on such draft regulations and to adopt such regulations.

Section IV. Duration of Moratorium and interim zoning. This moratorium and interim zoning Ordinance shall be in effect for six (6) months, beginning on September 23, 2013 and ending on March 23, 2014, unless an ordinance is adopted rescinding the moratorium and interim zoning. This moratorium and interim zoning may be extended by the Dayton City Council following a public hearing prior to such extension.

Section V. Work Plan. The City will develop a work plan and during the six-month period will study the issues concerning the establishment and operation of producing, processing and retailing facilities allowed under I-502 and concerning medical marijuana and collective gardens and dispensaries associated therewith.

Section VI. Declaration of Emergency. The Dayton City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by the Council, and that the same is not subject of a referendum (RCW 36.70A.390). This Ordinance is

necessary to ensure that marijuana uses, to the extent that they are allowed in the within the City of Dayton, are sited appropriately. The interim requirements must be imposed as an emergency measure to protect het public health, safety and welfare.

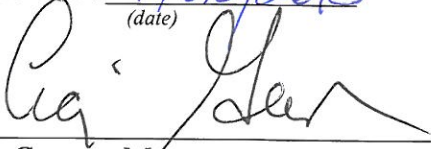
Section VII. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon its adoption.

Section VIII. Conflict with other City of Dayton Code Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the City of Dayton Municipal Code, this Ordinance shall control.

Section IX. Severability. IF any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

Section X. Publication. This Ordinance will be published by an approved summary consisting of the title.

Passed by the City Council, City of Dayton, this 23RD day of September, 2013, by a vote of 7 for, 0 against, and 0 abstaining.

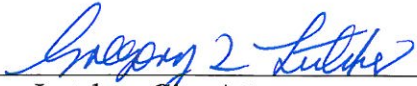
APPROVED: 9/23/2013
(date)


Craig George, Mayor

ATTEST:


Trina Cole, City Clerk.

APPROVED AS TO FORM:



Greg Lutch, City Attorney