

ORDINANCE NO. 1323

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATED TO REGULATION OF MEDICAL AND RECREATIONAL MARIJUANA USES; REPEALING AND REENACTING CHAPTER 17.63 GHMC TO PROHIBIT THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES, PROPERTY OR USES RELATING TO MEDICAL OR RECREATIONAL MARIJUANA PRODUCTION, PROCESSING, RESEARCH, SALE OR CULTIVATION; TERMINATING THE MORATORIUM ESTABLISHED UNDER ORDINANCE NO. 1301; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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 Washington voters approved Initiative 502 (I-502) in 2012, which authorized the Washington State Liquor Control Board to regulate and tax marijuana for persons twenty-one years of age and older, and added a new threshold for driving under the influence of marijuana; and

WHEREAS, I-502 decriminalizes, for purposes 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; and

WHEREAS, the Liquor Control Board also adopted rules, promulgated at chapter 314-55 of the Washington Administrative Code, to implement I-502, which include, among other things: state licensing of premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the 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; the manner and method to be used by which licensees may transport and deliver marijuana and marijuana products (among other things); and

WHEREAS, on September 23, 2013, the City Council approved Ordinance No. 1271 regulating marijuana-related uses in the City, codified at chapter 17.63 of the Gig Harbor Municipal Code; and

WHEREAS, the Washington State Attorney General issued an opinion in January 2014 that determined municipalities have authority to prohibit state-licensed marijuana businesses within a city's boundaries or to impose zoning and other land use regulations pertaining to such businesses; and

WHEREAS, on March 31, 2014, the Court of Appeals, Division I, in *Cannabis Action Coalition v. City of Kent*, held that despite the authorizing language in RCW 69.51A.085, collective gardens are illegal uses; and

WHEREAS, discussions between the Office of the Superintendent of Public Instruction (OSPI), the Peninsula School District, the City of Gig Harbor, and the WSLCB brought to the City's attention areas of concern regarding non-traditional educational sites funded by OSPI but not recognized in the permitting of licenses by WSLCB; and

WHEREAS, as a result, on April 14, 2014, the City approved Ordinance No. 1290 adopting an immediate six-month moratorium on applications for marijuana uses while the City considered regulations to address the definition of "secondary school;" and

WHEREAS, in August, 2014, the Rocky Mountain High Intensity Drug Trafficking Area issued a report entitled: "The Legalization of Marijuana in Colorado – the Impact," noting that: as of June 19, 2014, 36 counties prohibited recreational marijuana businesses, 8 counties had a moratorium or temporary ban on recreational marijuana businesses, 174 cities had prohibited recreational marijuana and 45 cities had a moratorium on recreational marijuana businesses; and

WHEREAS, the City Council held several public meetings to discuss the appropriate provisions for regulation of marijuana uses in the City and during this period the Pierce County Superior Court, on August 29, 2014, upheld the City of Fife's ban on all marijuana uses within the City of Fife; and

WHEREAS, due to the changing legal landscape relating to marijuana uses, the City Council anticipated and desired additional guidance from the legislature and the courts; and

WHEREAS, on September 22, 2014 the City Council approved Ordinance No. 1301 adopting a 12-month moratorium on applications for marijuana uses, requiring all non-exempt development permit applications and business license applications to be rejected and adopting a work plan directing the planning commission to draft an ordinance amending definitions in chapter 17.63 GHMC and to make any other recommendations in response to changes in law, among other things; and

WHEREAS, in 2015 the legislature passed Second Substitute Senate Bill 5052 (SSSB 5052), which changed the name of the Liquor Control Board to the Liquor and Cannabis Board, provided for a phase-out of collective gardens by July 1, 2016 and authorized cooperatives, as defined (effective July 24, 2015) and Senate Bill 5121 which created a marijuana research license that permits a licensee to produce and possess marijuana for limited research purposes; and

WHEREAS, on June 4, 2015, the Planning Commission held a public hearing to consider a broad range of options, including an outright ban of marijuana related uses, changes to definitions, separation requirements, and changes in law, and issued its recommendation to the City Council dated June 24, 2015; and

WHEREAS, after the Planning Commission issued its recommendation, the legislature passed Second Engrossed Second Substitute House Bill 2136 (SESSHB 2136), effective July 24, 2015, which provides for sales tax distributions to jurisdictions that do not prohibit marijuana producers, processors, or retailers and also includes language acknowledging a local jurisdiction's right to prohibit or place additional restrictions on the location of cooperatives within the jurisdiction; and

WHEREAS, as part of its compliance with the State Environmental Policy Act (SEPA) for the adoption of the rules for recreational marijuana regulation, the State adopted one report on the environmental impacts associated with the cultivation of marijuana, and the City is not aware of any other analyses performed by the State of Washington or any other entity to determine the environmental or secondary land use impacts that a proliferation of medical and recreational marijuana uses would have on towns, cities and counties in Washington; and

WHEREAS, nothing indicates that the Liquor and Cannabis Board will perform any additional analyses under SEPA to determine the significant adverse environmental impacts associated with any individual licensee's operation of a marijuana business; and

WHEREAS, the City plans under the Growth Management Act ("GMA," chapter 36.70A RCW), and is required to perform SEPA in connection with adopting any comprehensive plan or development regulations; and

WHEREAS, given that the City has no environmental information upon which to make any determinations relating to marijuana uses, such as the traffic associated with retail outlets or the water demand for processors, the City must collect the same from either the experiences of other areas or by empirical knowledge (after the use has located in the City and the impacts are known); and

WHEREAS, prior to adoption of further regulations relating to marijuana uses, the City will take careful, deliberate steps to evaluate marijuana uses, and to perform the environmental analysis that the State omitted; and

WHEREAS, the City Council held a public hearing on July 27, 2015, to take public testimony relating to this ordinance; and

WHEREAS, after consideration of the recommendation of the Planning Commission, the information provided by staff and public testimony, the City Council deems it to be in the public interest to repeal the marijuana regulations set forth in chapter 17.63 GHMC and reenact chapter 17.63 GHMC to prohibit all marijuana land uses in the City to protect the health, safety and welfare of citizens of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings. In support of the actions taken by this ordinance, the Gig Harbor City Council hereby adopts the following as findings and conclusions the recitals set forth above and the following:

A. Marijuana remains illegal under federal law. A memorandum issued by the U.S. Attorney General's office on August 29, 2013 did not change the law, but only announced the decision of the U.S. Attorney's Office to exercise prosecutorial discretion with regard to enforcement of the federal law within the States of Colorado and Washington. The U.S. Attorney's Office reserved the power to prosecute in any instance where it felt the efforts of the states fell short of "robust regulation," where a threat exists for the illegal distribution to minors, or where a threat of interstate distribution of marijuana was encountered.

B. The Washington State Constitution at Article 11, Section 11, grants the City of Gig Harbor authority to enact legislation regulating land uses within its jurisdiction so long as such local legislation is consistent with the general laws.

C. Nothing in Initiative 502 decriminalizing certain possession, use and delivery of specified amounts of marijuana and authorizing the Washington State Liquor Cannabis Board to develop and implement regulations for the licensing of marijuana production, processing and retailing expressly or impliedly preempts the City of Gig Harbor from exercising its land use regulatory authority, including the ban of marijuana cultivation, production, processing and retailing within city limits.

D. Nothing in chapter 69.51.A RCW--Medical Use of Cannabis Act--expressly or impliedly preempts the City of Gig Harbor from exercising its land use regulatory authority, including the prohibition of collective gardens (which are to be phased out completely in Washington State by July 1, 2016).

E. SESSHB 2136, effective July 24, 2015, recognizes a City's authority to prohibit cooperatives, as defined in SSSB 5052, within its jurisdiction.

F. Initiative 502 (codified in chapter 69.50 RCW), chapter 69.51A RCW, SSSB 5052 and SESSHB 2136 do not *require* any city to allow the location of any marijuana production, processing or retailing facility, collective garden, or cooperatives within its jurisdiction. The City retains jurisdiction under the state constitution and state law to adopt and enforce land use regulations intended to preserve and promote the general health, safety and welfare of its community.

G. Prohibiting the cultivation, production, processing and retailing of marijuana as set forth in Initiative 502, collective gardens as set forth in chapter 69.51A RCW, and cooperatives under SSSB 5052 is not intended to regulate the individual use of marijuana as authorized by Initiative 502 and chapter 69.51A RCW.

Section 2. Termination of Moratorium. The Gig Harbor City Council hereby terminates the moratorium imposed by Ordinance No. 1301.

Section 3. Chapter 17.63 - Repeal and Reenactment. Chapter 17.63 of the Gig Harbor Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

CHAPTER 17.63

MARIJUANA LAND USES PROHIBITED

Sections.

17.63.010	Purpose.
17.63.020	Definitions.
17.63.030	Prohibited Activities.
17.63.040	Uses Not Permitted in Any Zone.
17.63.050	Violations.
17.63.060	Enforcement.

17.63.010. Purpose.

A. The purpose of this chapter is to enact a prohibition of all medical and recreational marijuana uses, including medical marijuana dispensaries, collective gardens, cooperatives, individual or group cultivation of marijuana, and all marijuana production, processing, research and retailing, including those marijuana businesses licensed by the Washington State Liquor and Cannabis Board.

B. It is also the purpose of this chapter to stem the negative impacts and secondary effects associated with all marijuana uses, whether medical or recreational, including but not limited to the extraordinary and unsustainable demands that have been or will be placed upon scarce City policing, legal, policy and administrative resources; neighborhood disruption, increased transient visitors and intimidation; the exposure of school-age children and other sensitive residents to marijuana, illegal sales to both minors and adults; fraud in issuing, obtaining or using marijuana prescriptions and murders, robberies, burglaries, assaults, drug trafficking and other violent crimes.

C. No part of this chapter is intended to or shall be deemed to conflict with federal law, including but not limited to, the Controlled Substances Act, 21 U.S.C. Section 800 *et seq.*, the Uniform Controlled Substances Act (chapter 69.50 RCW).

17.63.020. Definitions. For purposes of this chapter, the following definitions apply:

“Collective Garden” means any place, area, or garden where qualifying patients engage in the production, processing, and delivery of marijuana for medical use as set forth in chapter 69.51A RCW and subject to the limitations therein, and to be phased-out effective July 1, 2016.

“Cooperative” means an entity with up to four members located in the domicile of one of the members, registered with the Washington State Liquor and Cannabis Board, and meeting the requirements under chapter 69.51A RCW.

“Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

“Dispensary, Medical Marijuana” means: any location that does not meet the definition of a “collective garden” and does not have a license from the Washington State Liquor and Cannabis Board for a marijuana producer, processor or retailer pursuant to I-502, where marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell, barter, trade or give away marijuana.

“Marijuana” means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than zero point three percent (0.3%) on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its

seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plants, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant which is incapable of germination.

“Marijuana concentrates” means products consisting wholly or in part of the resin extracted from any part of the plant cannabis and having a THC concentration greater than sixty percent.

“Marijuana infused products” means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration no greater than ten percent (10%). The term “marijuana infused products” does not include either usable marijuana or marijuana concentrates.

“Marijuana processor” means a person licensed by the Washington State Liquor and Cannabis Board to process marijuana into usable marijuana, marijuana infused products, and marijuana concentrates, package and label usable marijuana, marijuana infused products, and marijuana concentrates for sale in retail outlets, and sell usable marijuana, marijuana infused products, and marijuana concentrates at wholesale to marijuana retailers.

“Marijuana producer” means a person licensed by the Washington State Liquor and Cannabis Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Marijuana researcher” means a person licensed by the State Liquor and Cannabis Board to produce and possess marijuana for limited research purposes.

“Marijuana retailer” means a person licensed by the Washington State Liquor and Cannabis Board to sell usable marijuana, marijuana infused products, and marijuana concentrates in a retail outlet.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

“Useable Marijuana” means dried marijuana flowers. The term “useable marijuana” does not include either marijuana-infused products or marijuana concentrates.

17.63.030. Prohibited Activities.

A. It is unlawful to own, establish, site, operate, use or permit the establishment, siting, operation, or use of a medical marijuana dispensary, collective garden, cooperative or marijuana production, processing, research or retail facility, regardless of whether it has a license from the Washington State Liquor and Cannabis Board.

B. It is unlawful to perform any individual or group marijuana cultivation activities anywhere in the City, regardless of whether such individual or group cultivation is addressed in chapter 69.51A RCW or other state law.

C. It is unlawful to lease to, rent to, or otherwise allow the operation of any medical marijuana dispensary, collective garden, cooperative, marijuana production, processing, research, or retailing business, whether it is located outdoors, indoors, in any building, structure, premises, location or on land in the City and regardless of whether the activity has been licensed by the Washington State Liquor and Cannabis Board.

D. The City shall not issue any business license for any marijuana businesses regardless of whether the business has been licensed by the Washington State Liquor and Cannabis Board. Any business license obtained in error or through misrepresentation of the activities conducted by the individual business shall be invalid and of no force and effect.

17.63.040. Use Not Permitted In Any Zone.

The use of any building, structure, premises, location or land for a medical marijuana dispensary, collective garden, cooperative, marijuana production, processing, research, or retailing is not allowed in the City, and such uses and activities are not permitted uses in any zone.

17.63.050. No Vested or Nonconforming Rights.

Neither this chapter nor any other City ordinance, City action or failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any marijuana business, collective garden, cooperative or marijuana producer, processor, researcher or retailer, even if licensed by the Washington State Liquor and Cannabis Board.

17.63.060. Violations.

Any violations of this chapter may be enforced as set forth in chapter 17.07 or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW. In addition, violations of this chapter may be deemed to be a public nuisance and may be abated by the City under the procedures set forth in state law for the abatement of public nuisances.

Section 4. Transmittal to Department. Pursuant to RCW 36.70A.106, this Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 7. Effective Date. This Ordinance shall be published and shall take effect and be in full force five (5) days after the date of publication.

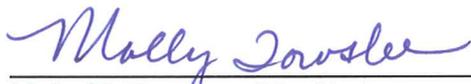
PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 10th day of August, 2015.

CITY OF GIG HARBOR



Mayor Jill Guernsey

ATTEST/AUTHENTICATED:



Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



Angela G. Summerfield

FILED WITH THE CITY CLERK: 07/22/15
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