

ORDINANCE NO. 026/2012

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, ADOPTING INTERIM ZONING REGULATIONS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390; ADOPTING A NEW CHAPTER 18.70 MMC MARIJUANA RELATED USES; PROHIBITING MEDICAL CANNABIS COLLECTIVE GARDENS IN ALL ZONING DISTRICTS OF THE CITY; PERMITTING THE PRODUCTION, PROCESSING AND/OR RETAILING OF MARIJUANA AS REGULATED PURSUANT TO WASHINGTON STATE INITIATIVE NO. 502 IN DESIGNATED ZONING DISTRICTS, AND ONLY AT FACILITIES THAT HAVE OBTAINED A VALID LICENSE ISSUED BY THE WASHINGTON STATE LIQUOR CONTROL BOARD; REPEALING ORDINANCE NOS. 032/2011 AND 012/2012; DIRECTING THE CITY CLERK TO SET A PUBLIC HEARING DATE; ENTERING PRELIMINARY LEGISLATIVE FINDINGS; DECLARING AN EMERGENCY; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, recent amendments to Chapter 69.51A RCW, relating to the medical use of cannabis, have expanded the scope of certain activities involving the use of cannabis for medical purposes that are permitted under state law, and

WHEREAS, Section 69.51A.085 RCW allows “qualifying patients” to create and participate in “collective gardens” for the purpose of producing, processing, transporting, and delivering cannabis for medical use, subject to certain conditions, and

WHEREAS, Section 69.51A.140 RCW delegates authority to cities and towns to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes as exercises of the City’s police powers, and

WHEREAS, the City Council understands that approved medical uses of cannabis may provide relief to patients suffering from debilitating or terminal conditions, but potential secondary impacts from the establishment of facilities for the growth, production, and processing of medical cannabis are not appropriate for any zoning designation within the City, and

WHEREAS, the City Council further understands that while the medical benefits of cannabis have been recognized by the state legislature, cannabis, also known as marijuana, remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession and use of cannabis is still a violation of federal law. The City Council wishes to exercise the authority granted pursuant to state law in order to clarify that the establishment of a collective garden will be deemed to be a violation of city zoning ordinances, but the City Council expressly disclaims any intent to exercise authority over collective gardens in a manner that would directly conflict with the CSA.

WHEREAS, Initiative 502 directs the State Liquor Control Board to develop rules and regulations to:

1. Determine the number of producers, processors and retailers of marijuana by county;
2. Develop licensing and other regulatory measures;
3. Issue licenses to producers, processors, and retailers at locations which comply with the Initiative's distancing requirements prohibiting such uses within one thousand feet of schools and other designated public facilities; and
4. Establish a process for the City to comment prior to the issuance of such licenses.

WHEREAS, while the production, processing, and retailing of marijuana remains in violation of the federal CSA, the City Council wishes to acknowledge the will of the Washington voters and the authority exercised by the state of Washington and the State Liquor Control Board to license such facilities, leaving all issues relating to the legality, licensing, siting and permitting of such facilities to be determined by the federal and state governments in the exercise of their lawful authority, as finally determined by a court of appropriate jurisdiction, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Title 18 of the Monroe City Code is amended to add a new Chapter 18.70 MMC Marijuana Related Uses to read as follows:

**Chapter 18.70
Marijuana Related Uses**

- 18.70.010** **Collective gardens.**
- 18.70.020** **Medical cannabis collective gardens.**
- 18.70.030** **State-licensed facilities - definitions.**
- 18.70.040** **Marijuana related uses.**

Section 18.70.010 **Collective gardens.**

“Collective garden” means the growing, production, processing, transportation, and delivery of cannabis, by qualifying patients for medical use, as set forth in Chapter 69.51A RCW, and subject to the following conditions:

A. A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

B. 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;

C. A copy of each qualifying patient's valid documentation, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden;

D. No usable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden;

E. A collective garden may contain separate areas for growing, processing, and delivering to its qualified patients, provided that these separate areas must be physically part of the same premises, and located on the same parcel or lot. A location utilized solely for the purpose of distributing cannabis shall not be considered a collective garden; and

F. No more than one collective garden may be established on a single tax parcel.

Section 18.70.020 Medical cannabis collective gardens.

"Collective gardens" as defined in Section 18.70.020 are prohibited in the following zoning districts:

- A. All single-family and multi-family residential zones including R, SR, UR, and MR;
- B. All commercial/office zones, including GC, SC, DC, PO, MUC, MUNC and Mixed Use Neighborhood;
- C. All industrial zones, including light and general industrial;
- D. Public Service, Limited Open Space and Limited Open Space-Airport zones; and
- E. Any new zoning district established after December 6, 2012.

In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance per se, and may be abated by the City Attorney under applicable provisions of this code or state law, including but not limited to, the provisions of MMC Chapter 1.04.

Section 18.70.030 State-licensed facilities—definitions.

A. Unless the context clearly indicates otherwise, all terms used in Sections 18.70.030, et. seq. shall have the meanings established pursuant to RCW 69.50.101.

B. “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.

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

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

E. “Marijuana infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana infused products” does not include usable marijuana.

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

G. "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana infused products.

Section 18.70.040 Marijuana related uses.

A. The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Monroe is an authorization to circumvent federal law or provide permission to any person or entity to violate federal law. Only state-licensed marijuana producers, marijuana processors, and marijuana retailers may locate in the City of Monroe and then only pursuant to a license issued by the State of Washington. The purposes of these provisions is solely to acknowledge the enactment by Washington voters of Initiative 502 and a state licensing procedure and to permit to, but only to, the extent required by state law marijuana producers, marijuana processors, and marijuana retailers to operate in designated zones of the City.

B. Marijuana producers may be located only in the general industrial zone of the City. Such facilities and uses may be located only at designated sites licensed by the state of Washington and fully conforming to state law.

C. Marijuana processors may locate in light and general industrial zones of the City, but only at designated sites licensed by the state of Washington and fully conforming to state law.

D. Marijuana retailers may locate only in the GC and SC zones, at designated sites licensed by the state of Washington and fully conforming to state law.

E. In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance per se, and may be abated by the City Attorney under the applicable provisions of this code or state law, including but not limited to the provisions of MMC Chapter 1.04.

Section 2. Preliminary Findings. The City Council hereby adopts the above recitals as preliminary findings in support of this ordinance. The City Council also finds that adoption of this ordinance is necessary to ensure that applicants do not vest to the body of local land use regulations that would otherwise be in effect when the current moratorium established by Ordinance No. 032/2011, and extended by Ordinance No. 012/2012 expires on December 6,

2012. As such, a public emergency exists requiring that this ordinance take effect immediately upon passage.

Section 3. Public Hearing. The City Clerk is hereby authorized and directed to schedule a public hearing on the interim regulations set forth in this ordinance and to provide notice of said hearing in accordance with applicable standards and procedures. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council may adopt additional legislative findings in support of this ordinance at the conclusion of said hearing.

Section 4. 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 or constitutionality of any other section, sentence, clause or phrase of this ordinance.

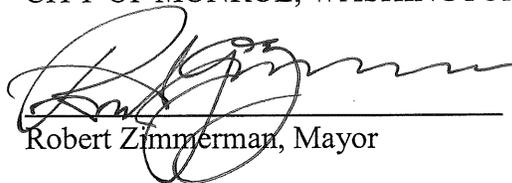
Section 5. Declaration of Emergency; Effective Date. Based upon the recitals and findings set forth above, the City Council hereby declares a public emergency requiring this ordinance to take effect immediately. This ordinance shall accordingly be in full force and effect immediately upon adoption, and shall remain effective for a period of six months unless terminated earlier or subsequently extended by the City Council. PROVIDED, that the City Council may, in its sole discretion, renew said moratorium for one or more six month periods in accordance with state law.

Section 6. Repealer. Ordinance Nos. 032/2011 and 012/2012 are hereby repealed in their respective entirety.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 4th day of December, 2012.

1st Reading: 12/04/2012
Published: 12/11/2012
Effective: 12/05/2012

CITY OF MONROE, WASHINGTON:



Robert Zimmerman, Mayor

ATTEST/AUTHENTICATED:



Eadye Martinson, Deputy City Clerk

APPROVED AS TO FORM:



J. Zachary Lell, City Attorney