

ORDINANCE NO. 1462

**AN ORDINANCE OF THE CITY OF LYNDEN, WASHINGTON,
ESTABLISHING A SIX-MONTH MORATORIUM ON THE
ESTABLISHMENT, LOCATION, OPERATION, LICENSING,
MAINTENANCE OR CONTINUATION OF MARIJUANA
PRODUCERS, PROCESSORS, AND RETAILERS AS REGULATED
PURSUANT TO WASHINGTON STATE INITIATIVE 502;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN
EFFECTIVE DATE**

WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, Initiative 502 (“Initiative”) directs the Washington State Liquor Control Board (LCB) 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, the LCB recently issued initial draft rules, and was expected to adopt final rules in mid-August 2013 to begin issuance of marijuana producer, processor and retail licenses to qualified applicants in December, 2013; and

WHEREAS, after receiving public input regarding the proposed rules, the LCB postponed adoption of final rules to allow more time to clarify certain aspects of the I-502 implementation including, but not limited to, limits or caps on the amount of marijuana that will be grown and the number of retail stores to be licensed; and

WHEREAS, now the final rules are not scheduled to take effect until November of 2013; and

WHEREAS, Initiative 502 prohibits marijuana-related uses within 1,000 feet of the perimeter of certain uses and buildings, such as child care centers, public parks and recreation centers or facilities, but does not address whether LCB-licensed marijuana businesses must comply with land use and zoning restrictions of local jurisdictions; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City’s police power and is specifically authorized by RCW 35A.63.100; and

WHEREAS, Section 69.51A.140 RCW, enacted as part of Washington's medical cannabis act, delegates authority to cities and towns to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes related to marijuana production, processing and dispensing as exercises of the City's police powers and not necessarily limited to medical marijuana-related uses; and

WHEREAS, on January 16, 2014, the State Attorney General has issued an opinion that Initiative 502 did not preempt cities from banning such businesses within their jurisdictions and the City of Lynden desires additional time to explore options relating to the opinion; and

WHEREAS, the Lynden Municipal Code does not currently have specific provisions addressing licensing, producing, processing or retailing of recreational marijuana; and

WHEREAS, marijuana production, processing, and retailing uses must be addressed in the City's zoning code, but the land use and secondary impacts of these uses are still largely unknown and the regulations that the City will need to address them are uncertain pending the LCB's adoption of its licensing regulations and procedures; and

WHEREAS, unless the City acts immediately to address marijuana-related uses, such uses may be able to locate in the City without regulation and thereby have adverse impacts on the City and its citizens; and

WHEREAS, although the Washington state electorate as a whole voted to approve I-502, the City has not heard from the citizens of Lynden regarding their opinions on the implementation of recreational marijuana-related land uses; and

WHEREAS, the City deems it in the public interest to impose a moratorium for a period of six months in order to investigate this issue further and obtain regulatory clarity and guidance from the LCB's rules and Lynden's citizens;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35A.63.220. The Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 2. Moratorium Established. The City hereby establishes a moratorium on the location and establishment of marijuana producers, processors, and retailers that are licensed by the State of Washington under Initiative No. 502 and the regulations promulgated pursuant thereto for a period of six months, or until the City adopts a replacement moratorium ordinance, whichever comes first.

Section 3. Duration. The interim zoning regulations established herein shall be in effect until six-months from the effective date noted below, unless extended by the City Council, pursuant to State law.

Section 4. Definitions. As used in this ordinance, the following terms have the meanings set forth below:

1. "Marijuana" or "Cannabis" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent 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 plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
2. "Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.
3. "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.
4. "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 useable marijuana.
5. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell useable marijuana and marijuana-infused products in a retail outlet.
6. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.
7. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

Section 5. No Non-conforming Uses. No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Lynden Municipal Code and that use shall not be entitled to claim legal non-conforming status.

Section 6. Effective Date. This Ordinance shall take effect and be in full force and effect five days after the publication of the adopted ordinance.

Section 7. Conflict. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 8. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND APPROVED BY THE MAYOR on the 18 day of February, 2014.



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY