

CITY OF BLACK DIAMOND

WASHINGTON

ORDINANCE NO. 13-1011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, RELATING TO A MORATORIUM; ADOPTING FINDINGS OF FACT AND A SIX-MONTH MORATORIUM WITHIN THE CITY OF BLACK DIAMOND UPON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS OR DISPENSARIES, ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER E2SSB 5073, CHAPTER 181, LAWS OF 2011, CHAPTER 69.51A REVISED CODE OF WASHINGTON, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the possession or distribution of cannabis (marijuana) has been and continues to be a violation of federal law, through the Controlled Substances Act (“CSA”); and

WHEREAS, initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state, not federal, law if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW; and

WHEREAS, in 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law, E2SSB 5073, Chapter 181, Laws of 2011, portions of which the Governor vetoed. The newly amended law took effect on July 22, 2011; and

WHEREAS, prior to issuing her partial veto, the Governor received a letter signed by Washington’s two U.S. Attorneys, Michael Ormsby and Jennifer Durkan. In their letter, they wrote that marijuana is a Schedule I controlled substance under federal law and, as such, “growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities”, and, concluded that “state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA”; and

WHEREAS, because the Governor vetoed 36 of the 58 sections of the Legislature's bill amending Chapter 69.51A RCW, the law, in its final form, understandably has inconsistencies and ambiguities. For example, certain sections that were not vetoed make reference to other sections that were vetoed; and

WHEREAS, the amendments to Chapter 69.51A RCW changed the scope and effect of the law. New sections affect the rights of qualifying patients and their designated providers. The law now allows "collective gardens" that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients. The law also provides other changes to the rights and responsibilities of medical marijuana patients and their designated providers; and

WHEREAS, the new law, however, clearly delegates to cities the authority to implement zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements and taxes relate to the production, processing, or dispensing of medical marijuana. In particular, local regulations could address ambiguities concerning the location and operation of collective gardens, and ensure that provisions related to designated providers are not used to establish a de facto dispensary when the authority for such uses was vetoed; and

WHEREAS, the City Council requires time to conduct appropriate research to understand the extent of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws; and

WHEREAS, the City must ensure that proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and mitigated. These secondary impacts may include, but are not limited to, burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of these dispensaries; and

WHEREAS, in particular, and without limitation, staff should analyze the impacts of allowing these uses and facilities in residential zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on the 19th day of September, 2013, and took and considered public testimony regarding whether or not the City should establish and implement a moratorium upon the zoning, licensing, and permitting of medical marijuana dispensaries and collective gardens; and,

WHEREAS, after having considered the public testimony and based upon the foregoing, the city council finds that a zoning, licensing, and permitting moratorium should be established, pending local review of appropriate locations and design requirements of these operations, and impacts of the newly amended law and its interaction with federal law; and

WHEREAS, although the City Council determines that a moratorium is necessary for the reasons established above, the City Council emphasizes that it understands the needs of persons suffering from debilitating or terminal conditions, as well as the benefits that approved medical use of marijuana may provide these persons. Nevertheless, given the complex legal and regulatory framework surrounding this issue, a moratorium remains necessary until the City Council can adequately address the competing interests at play;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals and findings set forth above are hereby adopted as the City Council's findings in support of the moratorium imposed by this ordinance.

Section 2. – Moratorium Imposed. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting within the City of Black Diamond the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A RCW, or any other laws of the state of Washington. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. As used in this ordinance, medical marijuana dispensary and medical marijuana collective garden shall be defined as provided for in Chapter 69.51A RCW as currently enacted or thereafter amended. The moratorium imposed hereunder shall constitute a regulation within the meaning of Section 8.02.020 of the Black Diamond Municipal Code.

Section 3. – No Nonconforming Uses. No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden 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 Black Diamond Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 4. – Effective Period for Moratorium. The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

Section 5. – Referral to Staff. The City Administrator and/or his/her designee is hereby authorized and directed to develop appropriate land use regulations for review by the Planning Commission and recommendation to the City Council for inclusion in the zoning regulations or other provisions of the Black Diamond Municipal Code. The City Administrator and/or his/her

designee is hereby authorized and directed to develop appropriate business licensing and other regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Black Diamond Municipal Code.

Section 6. – Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 7. – Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 8. – Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

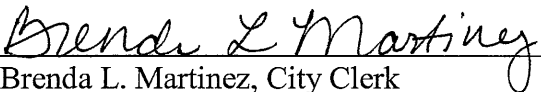
**ADOPTED BY THE CITY COUNCIL OF BLACK DIAMOND,
WASHINGTON THIS 3RD DAY OF OCTOBER, 2013.**

APPROVED:



Rebecca Olness, Mayor

ATTEST/AUTHENTICATED:



Brenda L. Martinez, City Clerk

APPROVED AS TO FORM:

Chris Bacha
Kenyon Disend, PLLC
City Attorney

Filed with the City Clerk: October 4, 2013
Passed by the City Council: October 3, 2013

Ordinance No. 13-1011
Date of Publication: October 11, 2013
Effective Date: October 16, 2013