

CITY OF BLACK DIAMOND
WASHINGTON
ORDINANCE NO. 13-1012

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, ADOPTING A SIX-MONTH MORATORIUM WITHIN THE CITY OF BLACK DIAMOND ON THE ACCEPTANCE OR PROCESSING OF APPLICATIONS, OR ISSUANCE OF PERMITS AND APPROVALS, AND USES OR ACTIVITIES ASSOCIATED WITH PRODUCTION, PROCESSING, AND RETAILING OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER INITIATIVE MEASURE NO. I-502, OR ANY OTHER LAWS OF THE STATE OF WASHINGTON; PROVIDING FOR AN EFFECTIVE DATE; AND, PROVIDING FOR SEVERABILITY

WHEREAS, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

WHEREAS, representatives of the United States Department of Justice have stated that although state law may authorize the use and possession of cannabis, persons who are in the business of, or knowingly facilitate, the business of cultivating, selling or distributing marijuana are in violation of the Federal Controlled Substances Act, regardless of state law, and that, state laws and local ordinances are not a defense to criminal or civil enforcement of federal law with regard to such conduct; and

WHEREAS, in a guidance memo dated August 29, 2013 addressed to all United States Attorneys, Deputy Attorney General James Cole stated that, the Justice Department will continue to enforce the federal prohibition against the illegal distribution and sale of marijuana consistent with certain enforcement priorities; that states that have enacted laws that authorize marijuana production, distribution, and possession pursuant to regulatory schemes that implement strong and effective regulatory and enforcement mechanisms consistent with these enforcement priorities are less likely to threaten federal enforcement priorities but that, such regulatory schemes remain subject to challenge by the federal government; and, that although federal prosecutors have discretion not to take enforcement action against persons operating pursuant to a state regulatory scheme, the guidance memo does not alter the United States Department of

Justice authority to enforce federal laws and is not a defense to violation of federal law, including any civil or criminal violation of the Controlled Substances Act; and

WHEREAS, the recently approved Initiative Measure No. 502 does not to change the basis for the analysis by the U.S. Attorneys, and any State or local officials who undertake marijuana regulatory activities remain subject to federal prosecution; and

WHEREAS, despite such prohibition under federal law, the passage of Initiative 502 has legalized under Washington law the possession and private recreational use of marijuana and authorizes, subject to further promulgation of rules by the Washington State Liquor Control Board (WSLCB), the manufacture, packaging, distribution and retail sale of marijuana and marijuana infused products; and

WHEREAS the WSLCB has promulgated draft rules pertaining to licensing of the producers, processors, and retailers, and held public hearings throughout the state regarding the draft rules and has provided notice of the following schedule for adoption and implementation of the new rules, acceptance of license applications and commencement of issuance of licenses:

- October 9: Public hearing on proposed rules
- October 16: Board adopts proposed rules (CR 103)
- November 16: Rules become effective
- November 18: WSLCB begins accepting applications for all license types; and

WHEREAS, the City Council understands that although the voters have approved amendments to state law to permit the limited manufacture, packaging, distribution, retail sale, and recreational use and possession of cannabis, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession, distribution and use of cannabis is still a violation of federal law; and

WHEREAS, state law provides at RCW 69.51A.140 that cities may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: zoning requirements, business licensing requirements, health and safety requirements, and business taxes; and

WHEREAS, the City requires time to analyze and determine the impacts and requirements of the new rules to be effective November 16th, to analyze the potential liabilities and limitations under federal law upon the production, processing, or dispensing of cannabis or cannabis products within the City, and to determine an appropriate regulatory and land use framework for any new uses that are allowed upon implementation of I-502; and

WHEREAS, pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing, at the City Council's regular meeting, at 7:00 p.m. in Council Chambers, on the 19th day of September 2013, in order to take public testimony regarding the moratorium as set forth herein; and

WHEREAS, after having considered the public testimony and based upon the foregoing, the City Council believes a moratorium is needed to preserve the status quo until the WSLCB adopts rules as required by I-502 and to allow the City time to study and draft potential comprehensive plan amendments, zoning and development regulations, business licensing regulations, and other regulatory controls pertaining to marijuana producers, processors, and retailers who receive a license from the WSLCB; and

WHEREAS, the City is authorized pursuant to RCW 35A.63.220 and RCW 36.70A.390 to adopt moratoria to preserve the status quo while code or comprehensive plan amendments are developed, considered, and enacted; and

WHEREAS, a moratorium is needed because of the imminence of the WSLCB finalizing licensing rules and issuing licenses to producers, processors, and retailers of marijuana and marijuana-infused products; and

WHEREAS, a moratorium is in the best interests of the City and is needed to preserve the public health, safety and welfare of the residents of the City;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON DO 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 acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with production, processing, and retailing of marijuana and marijuana-infused products. For purposes of this ordinance, marijuana, marijuana-infused products, and the production, processing, and retailing of marijuana and marijuana-infused products shall be defined as provided for in Chapter 69.50 RCW as currently enacted or thereafter amended. 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. 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. 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; and ordinance numbering and section/subsection numbering.

Section 6. 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.

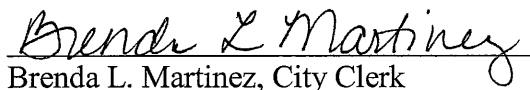
Section 7. Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

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



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, 2012
Ordinance No. 13-1012
Date of Publication: October 11, 2013
Effective Date: October 16, 2013