

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMAS, WASHINGTON, TERMINATING THE MORATORIUM ADOPTED BY ORDINANCE NO. _____ AND AMENDING THE CITY OF SUMAS MUNICIPAL CODE ADDING NEW DEFINITIONS AND NEW SECTIONS PROHIBITING ALL BUSINESS USES INVOLVING MARIJUANA, INCLUDING RETAIL, PRODUCTION AND PROCESSING, AND PROHIBITING MEDICAL MARIJUANA COLLECTIVE GARDENS AND MEDICAL MARIJUANA COOPERATIVES IN THE CITY

WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, codified in RCW Chapter 69.50, which "authorizes the Washington State Liquor Control Board to regulate and tax marijuana for persons twenty-one years of age and older," and license marijuana producers, processors, and retailers providing a framework within which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, on _____, pursuant to RCW 35A.63.100, the City of Sumas (the "City") City Council adopted Ordinance No. _____ establishing a moratorium on the acceptance and processing of applications for marijuana producers, processors, and retailers regulated pursuant to Initiative 502; then on _____, adopted Ordinance No. _____ extending the moratorium; then on _____, adopted Ordinance No. _____ extending the moratorium; then on _____, adopted Ordinance No. _____ extending the moratorium; and then on _____, adopted Ordinance No. _____ extending the moratorium, (collectively referred to as "Moratorium Ordinances"); and

WHEREAS, the Moratorium Ordinances called for the City staff to investigate the issue of regulating marijuana producers, processors, and retailers in the City ("Marijuana Businesses") and to obtain regulatory clarity as to the City's authority to regulate and impose potential land use and other official controls related to the Marijuana Businesses in the City; and

WHEREAS, the Washington State Attorney General has issued an opinion (AGO 2014 No.2 - Jan. 16, 2014) that Initiative 502 does not override a local governments preexisting authority to regulate local businesses, including marijuana-related businesses and operations, through zoning or otherwise, and specifically does not preempt a City from banning Marijuana Businesses from operating within the City; and

WHEREAS, it is unlawful to knowingly or intentionally manufacture, distribute, dispense or possess with intent to manufacture, distribute or dispense a controlled substance, such as marijuana, and the possession of marijuana is unlawful under the United States Comprehensive Drug Abuse Prevention and Control Act of 1970,

creating a comprehensive drug enforcement regime called the Controlled Substance Act, codified as 21 USC Section 801-971, except as may be allowed by the Controlled Substance Act; and

WHEREAS, the City Council finds and determines that documented secondary effects associated with the production, processing, and sale of marijuana have adverse effects on the community and are harmful to the public and community interests, health, safety and welfare, therefore, requiring prohibition by the City; and

WHEREAS, Washington Superior Court decisions upheld ordinances prohibiting Marijuana Businesses from operating within a City such as in the Chelan County Superior Court (a challenge to the City of Wenatchee Ordinance), and the Pierce County Superior Court (a challenge to a City of Fife Ordinance); and

WHEREAS, the Washington Supreme court upheld the City of Kent's ban on collective gardens under Cannabis Action Coalition et al., v. City of Kent, 183 Wn.2d 219, 351 P.3d 151 (2015); and

WHEREAS, effective July 1, 2016, collective gardens as that term is used in RCW 69.51A will no longer be authorized in Washington; and

WHEREAS, effective July 1, 2016, qualifying patients or designated providers as those terms are defined in RCW 69.51A, may form a cooperative for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of members of the cooperative; and

WHEREAS, effective July 1, 2016, pursuant to session law 2015 c 70 § 26, no marijuana cooperatives may be located where prohibited by a city, town, or county zoning provision; and

WHEREAS, marijuana production, processing, and retailing uses should be addressed in some form in the City's zoning code, but the land use and secondary impacts of these uses are still largely unknown with their impacts having potentially severe and adverse impacts to the health, safety, and welfare of the City, its citizens, children, and community; and

WHEREAS, the City staff has concluded its investigation related to the ability of the City to regulate or prohibit marijuana related businesses in the City, which included the review of the actions taken by other Cities, as well as litigation related to Initiative 502 in the State of Washington; and

WHEREAS, the City issued a SEPA Determination of Non-Significance related to this Ordinance on _____; and

WHEREAS, on _____, the City provided notification to the state pursuant to RCW 36.70A.106 regarding the proposed amendments to Title ____ of the City's development regulations and requesting expedited review thereof, and said request for expedited review having been subsequently granted; and

WHEREAS, on _____, following public notice, the _____ conducted a public hearing with regard to this proposed Ordinance and, after considering all comments and testimony received, forwarded a recommendation to the City Council to adopt regulations prohibiting retail sales of marijuana and marijuana- infused products in all zoning districts in the City; and

WHEREAS, on _____, following public notice, the City Council conducted a public hearing with regard to this proposed Ordinance; and

WHEREAS, the City Council finds it would not be in the best interest of the City to allow any business uses involving marijuana, including retail, production, and/or processing within any zoning designation within the City at this time; and

WHEREAS, the City Council also finds it would not be in the best interest of the City to allow medical marijuana collective gardens or medical marijuana cooperatives within any zoning designation within the City at this time; and

WHEREAS, the City Council finds the proposed amendments will promote the public health, safety, morals, and general welfare and be consistent with the goals and policies of the Comprehensive Plan;

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

Section 1. New Section. Sumas Municipal Code - Title ____ is hereby amended to add a new Chapter _____ - Marijuana producer, processor, retailer uses and activities, and medical marijuana prohibited - to read as follows:

Chapter _____--Marijuana producer, processor, retailer uses and activities, and medical marijuana prohibited –

Section _____ -Definitions Illegal Uses

1. "Marijuana" or "marihuana" 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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

2. "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration greater than 0.3 percent and no greater than 60 percent. The term "marijuana-infused products" does not include useable marijuana or marijuana concentrates.
3. "Marijuana processing" or "marijuana processor" means a person or business, processing marijuana into useable marijuana and/or marijuana-infused products, and/or packaging and labeling useable marijuana and/or marijuana-infused products for sale in retail outlets, and/or selling useable marijuana and marijuana-infused products at wholesale to marijuana retailers.
4. "Marijuana producing" or "marijuana producer" means a person or business producing and/or selling marijuana at wholesale to marijuana processors and other marijuana producers.
5. "Marijuana retailing" or "marijuana retailer" means a person or business, selling useable marijuana, marijuana concentrates, and/or marijuana-infused products in a retail outlet.
6. "Marijuana, useable" or "useable marijuana" means dried marijuana flowers. The term "marijuana, useable" does not include either marijuana concentrates or marijuana-infused products.
7. "Medical Marijuana Collective Garden" means the growing of medical cannabis by qualifying patients as provided in Chapter 69.51A RCW, now or hereafter amended, and subject to the provisions of this section. A collective garden may also include ancillary processing and distribution of medical cannabis to support the collective garden. Medical marijuana collective gardens are a prohibited land use in the City. In addition, a location used solely for processing or distributing medical cannabis, or not meeting the requirements of this section, shall not be considered a collective garden and is prohibited.
8. "Medical Marijuana Cooperative" means a cooperative formed by qualifying patients or designated providers that share responsibility for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of members of the cooperative pursuant to session law, 2015 c 70 § 26.

Section _____. -Illegal Uses Prohibited - Marijuana producer, processor, retailer, medical marijuana collective gardens and cooperatives.

- A. The production, processing and retail sales of marijuana and marijuana-infused products, all as defined in Initiative Measure No. 502, as codified in Title 69 RCW, and implementing regulations in Chapter 314-55 of the Washington Administrative Code, and the operation of Medical Marijuana Collective Gardens and Medical Marijuana Cooperatives are each prohibited and not allowed in any zone in the City of Sumas. Marijuana processing, marijuana producing, marijuana retailing, and the operation thereof, and medical marijuana collective gardens and medical marijuana cooperatives are each individually considered a prohibited use in all zones in the City. This prohibition is supplemental to and in no way limits the scope or effect of subsection (8) or (C) of this section.
- B. No person holding, or claiming to hold, a license from any state regulatory agency or county regulatory agency to produce, process, sell or distribute marijuana, marijuana-infused products, or any derivatives or resin-based derivatives of the Cannabis plant, including but not limited to licenses issued pursuant to Chapter 69.50 RCW and Chapter 314-55 WAC and Chapter 69.51A RCW, shall operate, maintain, cause or allow to exist any marijuana-based business or a Medical Marijuana Collective Garden or a Medical Marijuana Cooperative in any zoning district within the City. This prohibition is supplemental to and in no way limits the scope or effect of subsection (A) or (C) of this section.
- C. No use that is illegal under, or contrary to any City, State or Federal law or statute shall be allowed in any zoning district within the City of Sumas, unless otherwise specifically and expressly allowed for in the Sumas Municipal Code. This prohibition is supplemental to and in no way limits the scope or effect of subsection (A) or (B) of this section.

Section 3. Moratorium Terminated. The moratorium adopted by Ordinance No. _____ shall terminate upon the date that this ordinance goes into effect in accordance with Section 6, below.

Section 4. No Non-conforming Uses. No use that constitutes or purports to be a marijuana producer, processor, or 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 existing use under the provisions of the Sumas Municipal Code, and that use shall not be entitled to claim legal non-conforming status. Any use currently in operation as a marijuana producer, processor, or retailer without a valid City business license on the date of the passage of this Ordinance is not a legal non-conforming use.

Section 5. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance or its application to any other person or situation.

Section 6. Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 7. Effective Date. This Ordinance shall take effect and be in full force and effect five (5) days after passage, as consistent with law.

PASSED BY THE CITY COUNCIL OF THE CITY OF SUMAS, WASHINGTON, BY AN AFFIRMATIVE VOTE, _____ IN FAVOR AND _____ AGAINST AND SIGNED BY THE MAYOR on the ____ day of _____, 20__.

KYLE CHRISTENSEN, MAYOR

ATTEST:

SHELLEY SCHULTZ, CITY CLERK

APPROVED AS TO FORM

JAMES J. WRIGHT, CITY ATTORNEY