

ORDINANCE 1433

AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, ADOPTING A TWELVE MONTH MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA OR CANNABIS DISPENSARIES, PRODUCTION FACILITIES, AND PROCESSING FACILITIES WITHIN THE CITY; DEFINING TERMS; PROVIDING FOR A PUBLIC HEARING ON THE MORATORIUM; AUTHORIZING A WORK PLAN; DIRECTING TRANSMITTAL TO THE WASHINGTON STATE DEPARTMENT OF COMMERCE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY

WHEREAS, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998 and now codified as Chapter 69.51A RCW, creates an affirmative defense for “qualifying patients” to the charge of possession of marijuana, and provides that such patients can, as an alternative to growing marijuana for their own use, designate a “designated provider” who can “provide” (not sell) medical marijuana to “only one patient at a time”; and

WHEREAS, many jurisdictions have recently seen the establishment of “medical marijuana dispensaries” within their boundaries, which offer marijuana and marijuana products in exchange for “donations” and which claim to be operating as designated providers within the meaning of Chapter 69.51A RCW; and

WHEREAS, the Washington State Department of Health has opined that “the law [current Chapter 69.51A RCW] does not allow dispensaries” and that it is “not legal to buy or sell marijuana,” but the Department of Health has left enforcement of the law to local officials; and

WHEREAS, litigation is pending against several jurisdictions that have decided to oppose the location of such facilities within their boundaries; and

WHEREAS, the Washington State Legislature considered but failed to enact legislation during the 2011 session that would legalize and license medical marijuana or cannabis dispensaries, production facilities, and processing facilities, and that would allow cities to enact reasonable zoning, licensing, and taxation regulations regarding these uses; and

WHEREAS, given the uncertainty of the legal status of dispensaries and other facilities under the current law and given the Legislature’s inaction on the subject, the City of North Bend requires time to consider zoning, licensing, and taxation regulations for

marijuana or cannabis dispensaries, processing facilities, and production facilities, and the City Council has therefore determined that a zoning moratorium should be established pending further review of the issue; and

WHEREAS, unless a zoning moratorium is imposed, medical marijuana or cannabis dispensaries, production facilities, and processing facilities may seek to locate within the City of North Bend while the City lacks the necessary tools to ensure that the location is appropriate and that the reported secondary impacts of such facilities, which include but are not limited to, invasion of the business, burglaries, and robberies associated with the cash and drugs maintained on the site, are minimized and mitigated;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Moratorium Established: A moratorium is hereby enacted prohibiting the location, establishment, licensing, maintenance, or continuation of any medical marijuana or cannabis dispensary, any medical marijuana or cannabis production facility, or any medical marijuana or cannabis processing facility within the North Bend city limits. No building permit, occupancy permit, or other development approval shall be issued and no business license or registration shall be granted or accepted while this moratorium is in effect. As used in this Ordinance, the following terms have the meanings set forth below:

- A. “Marijuana” or “cannabis” means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; any every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” or “cannabis” 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. The terms “marijuana” and “cannabis” include cannabis products and useable cannabis.
- B. “Medical marijuana or cannabis dispensary” means premises and equipment used to select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) marijuana or cannabis for medical use to more than one qualifying patient with any thirty (30) day period.
- C. “Medical marijuana or cannabis processing facility” means premises and equipment where marijuana and cannabis products are manufactured, processed, handled or labeled for sale, delivery, or transfer (for consideration or otherwise) to a medical marijuana or cannabis dispensary or to more than one qualifying patient within any thirty (30) day period.
- D. “Medical marijuana or cannabis production facility” means premises and equipment where cannabis is planted, grown, harvested, processed, stored, handled, packaged or labeled for sale, delivery, or transfer (for consideration or otherwise) to a medical marijuana or cannabis processing facility, a medical marijuana or cannabis dispensary, or to more than one qualifying patient within any thirty (30) day period.

- E. “Cannabis products” means products that contain cannabis or extracts thereof, have a measureable tetrahydrocannabinol (THC) concentration greater than three-tenths of one percent per weight or volume, and are intended for human consumption or application, including but not limited to, edible products, tinctures, and lotions. The term “cannabis products” does not include useable cannabis.
- F. “Useable cannabis” means dried flowers of the *Cannabis* plant having a tetrahydrocannabinol (THC) concentration greater than three-tenths of one percent per weight or volume. Useable cannabis excludes stems, stalks, leaves, seeds and roots. For purposes of this subsection, “dried” means containing less than fifteen percent moisture content by weight. The term “useable cannabis” does not include cannabis products.

In addition to the definitions in this Section, and as necessary to interpret or apply this Ordinance, the City hereby adopts those definitions set forth in RCW 69.51A, as the same now exist or as they may hereafter be amended.

Section 2. Effective Period of Moratorium: The moratorium established by this Ordinance shall become effective as set forth in Section 6 below, and shall continue in effect for twelve months thereafter unless repealed, renewed, or modified by the City Council after a subsequent public hearing and entry of findings of fact.

Section 3. Work Program: The Mayor is authorized to allocate the necessary resources to prepare a work program to address issues related to determining the legality of medical marijuana or cannabis dispensaries, production facilities and processing facilities, including but not limited to review of the pending dispute between state and federal law enforcement authorities regarding the legality of medical marijuana use under any circumstance and notwithstanding the enactment by the Legislature of RCW 69.51A. In the event that such uses are ultimately determined to be legal, the work plan should also review and research the most appropriate zoning districts in the City for such medical marijuana or cannabis uses, and develop related development regulations and performance standards applicable to medical marijuana or cannabis uses in the City as may be necessary.

Section 4. Public Hearing to be Held: A public hearing on the issue of the moratorium shall be held no later than sixty (60) days after the date of adoption herein.

Section 5. 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.

Section 6. Effective Date: This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App . 641, 904 P.2d 317 (1995), underlying facts

necessary to support this emergency declaration are included in the “WHEREAS” clauses, above, all of which are adopted by reference as findings of fact as if fully set forth herein.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 7TH DAY OF JUNE, 2011.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Kenneth G. Hearing, Mayor

Michael R. Kenyon, City Attorney

ATTEST/AUTHENTICATED:

Published: June 15, 2011

Effective: June 7, 2011

Susie Oppedal, City Clerk