

ACTION ITEM 6b

Date: July 5, 2011
To: City Council
From: Corbitt Loch, Planning Director
Subject: **Moratorium Relating to Medical Marijuana**

This agenda item is in response to Council direction provided during the June 21, 2011 meeting, and provides for a six-month moratorium on dispensaries and collective gardens relating to medical marijuana. The purpose of the moratorium is to preclude the potential citing of these types of facilities until the City has had an opportunity to evaluate potential community impacts and to determine whether regulations relating to these uses are necessary and appropriate.

Legislation recently signed by Governor Gregoire (ESSB 5073, with partial veto) could lead to requests from citizens to authorize dispensaries or collective gardens in Snohomish. Presently, the City does not have regulations for these types of uses. It is in the interest of the public's health, safety, and welfare that regulations for such uses be studied and considered.

State law (RCW 36.70A.309) allows local governments to enact moratorium or interim controls for land use matters. Moratoria are appropriate when a city or county wishes to preserve the status quo while it studies and considers the potential for new regulations. A moratorium must be enacted by ordinance. A public hearing on the moratorium must be held either before, or within 60 days following the enactment of the moratorium. In this instance, staff recommends that the moratorium become effective prior to July 22, 2011—the effective date of ESSB 5073—and that a public hearing concerning the moratorium be held within 60 days thereof. Staff recommends that the hearing be held on August 2, 2011.

STRATEGIC PLAN REFERENCE: None specifically.

RECOMMENDATION: That the City Council **ADOPT Ordinance 2218 and DIRECT staff to schedule a public hearing for the moratorium on August 2, 2011.**

ATTACHMENT: Ordinance 2218

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**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2218

AN INTERIM ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS, AND THE LICENSING AND PERMITTING THEREOF; DEFINING “MEDICAL MARIJUANA DISPENSARY;” PROVIDING FOR A PUBLIC HEARING; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for “qualifying patients” to the charge of possession of marijuana; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be “construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes;” and

WHEREAS, the Washington State Department of Health opines that it is “not legal to buy or sell” medical marijuana and further opines that “the law [Chapter 69.51.A RCW] does not allow dispensaries,” leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law; and

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 (“the bill”) was adopted with a partial veto of the Governor, and becomes effective July 22, 2011; and

WHEREAS, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under state law; and

WHEREAS, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a “designated provider” who can “provide” rather than sell marijuana to “only one patient at any one time;” and

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WHEREAS, the City Council finds that the secondary impacts associated with marijuana dispensaries and collective gardens include, but are not limited to, the invasion of the business, burglary, and robbery associated with the cash and drugs maintained on the site; and

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes on the production, processing, or dispensing of cannabis or cannabis products; and

WHEREAS, a public hearing will be held on August 2, 2011 before the Snohomish City Council;

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

Section 1. Pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Snohomish prohibiting licensing, permitting, establishment, maintenance, or continuation of any use consisting of or including the sale, provision, and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary, or creation of or participation in a “collective garden” as referenced and defined in Section 403 of ESSB 5073 – Chapter 181, Laws of 2011.

Section 2. “Medical marijuana dispensary” is hereby defined as any person, business, corporation, partnership, joint venture, organization, association, and/or other entity which: 1) sells, provides, and/or otherwise dispenses marijuana to more than one “qualifying patient” in any thirty (30) day period, or to any person who does not meet the definition of “qualifying patient” under the terms of Chapter 69.51A RCW; and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association, and/or entity which sells, provides, and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a “medical marijuana dispensary.”

Section 3. Until such time as the Snohomish Municipal Code may be amended to authorize such land uses, medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Snohomish, in accordance with the provisions of RCW 35A.82.020 and the Land Use Development Code, codified as Title 14 SMC. No business license, permit, zoning, or development approval shall be issued to a medical marijuana dispensary or collective garden.

Section 4. The City Council hereby directs that a work plan be developed by City staff to identify a process for review of medical marijuana dispensaries and collective gardens for potential regulation and inclusion in the Snohomish Municipal Code. Said work plan will be presented to the City Council for review before the sunset of this ordinance.

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Section 5. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim ordinance shall be transmitted to the Washington State Department of Commerce.

Section 6. Effective Date. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Snohomish City Council, this ordinance shall automatically expire six (6) months following its adoption.

ADOPTED by the City Council and **APPROVED** by the Mayor this 5th day of July, 2011.

CITY OF SNOHOMISH

By: _____
Karen Guzak, Mayor

ATTEST/AUTHENTICATED:

By: _____
Torchie Corey, City Clerk

APPROVED AS TO FORM:

By: _____
Grant K. Weed, City Attorney

Date of Publication:

Effective Date: