



ORDINANCE NO. 28010

BY REQUEST OF MAYOR STRICKLAND AND COUNCIL MEMBER
WOODARDS

AN ORDINANCE adopting an immediate six-month moratorium on the establishment, location, operation, licensing, permitting, maintenance or continuation of medical marijuana collective gardens or medical marijuana dispensaries that are asserted to be authorized, or actually authorized, under Chapter 69.51A Revised Code of Washington (RCW), or any other laws of the state of Washington; defining "medical marijuana collective gardens" and "medical marijuana dispensaries"; referring the moratorium to the Planning Commission to hold a public hearing to develop findings of fact and recommendation by September 7, 2011, including the need for and the duration of the moratorium; setting September 27, 2011 as the date for a public hearing on the moratorium; declaring an emergency in the passage of this ordinance providing that the moratorium will take effect immediately upon adoption and publication and, unless extended, will sunset within six (6) months of the date of adoption; and providing for severability.

WHEREAS, the City of Tacoma acknowledges the needs of persons suffering from debilitating or terminal conditions and the benefits that approved medical use of marijuana may provide these persons and believes that the medical use of cannabis should be conducted in a safe and fair manner for the health, safety, and welfare of the community, and

WHEREAS it is the policy desire of the City Council to continue to preserve legal access to medical cannabis for qualifying patients through the City's administration of its enforcement responsibilities under City, State and Federal Law during the moratorium period, and

WHEREAS, the possession or distribution of marijuana has been, and continues to be, a violation of state law pursuant to Chapter 69.50 RCW (Washington's Uniform Controlled Substances Act), and federal law, through



1 the Controlled Substances Act ("CSA"); and strict sentencing guidelines
2 enhance the penalties for violations within 1,000 feet of a school, and

3 WHEREAS, Initiative Measure No. 692, approved by 59% of the voters
4 of Washington State on November 3, 1998, now codified as Chapter 69.51A
5 RCW, created an affirmative defense to marijuana charges under state, but not
6 federal law, if the person charged could demonstrate that he or she was a
7 qualifying patient or designated provider, as those terms are defined in
8 Chapter 69.51A RCW, and

9 WHEREAS, the initiative and current Chapter 69.51A RCW are clear
10 that nothing in its provisions are to be "construed to supersede Washington
11 state law prohibiting the acquisition, possession, manufacture, sale or use of
12 Cannabis for non-medical purposes," and

13 WHEREAS, the Washington State Department of Health opines that it is
14 "not legal to buy or sell" medical marijuana, and further opines that "the law
15 (Chapter 69.51.A RCW) does not allow dispensaries," leaving enforcement to
16 local officials, and

17 WHEREAS, the City acknowledges the right of qualified health care
18 professionals to recommend the medical use of cannabis, acknowledges the
19 affirmative defense, under state law, available to qualifying patients from the
20 possession of cannabis, as well as the right of patients to designate a
21 "designated provider" who can "provide" rather than sell cannabis to "only one
22 patient at any one time," and
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1 WHEREAS, the City of Tacoma acknowledges federal prohibition but
2 wants to respond to the changes in state law in a responsible manner that will
3 minimize impacts on patients, providers, and the health, safety, and welfare of
4 the community, and

5 WHEREAS, in 2011, the state legislature passed significant
6 amendments to the law, Engrossed Second Substitute Senate Bill 5073
7 ("E2SSB 5073") and the Governor signed E2SSB 5073, but vetoed several
8 portions expressing her reservations about provisions that involved state
9 employees in activities that could be interpreted as being in violation of federal
10 laws, and

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12 WHEREAS, prior to issuing her partial veto, the Governor received a
13 letter signed by Washington's top two U.S. Attorneys, Mike Ormsby and Jenny
14 Durkin, dated April 14, 2011, in which they wrote that marijuana is a Schedule 1
15 controlled substance under federal law, and as such, "growing, distributing and
16 possessing marijuana in any capacity, other than as a part of a federal
17 authorized research program, is a violation of federal law regardless of state
18 laws permitting such activities." Further, the U.S. Attorneys concluded, "state
19 employees who conducted activities mandated by the Washington legislative
20 proposals would not be immune from liability under the CSA," and

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22 WHEREAS, E2SSB 5073 became effective on July 22, 2011, and

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24 WHEREAS Tacoma has seen the establishment of medical marijuana
25 "dispensaries" within the City limits that offer marijuana and marijuana products
26 to numerous persons, asserting that they are operating as designated providers



1 within the meaning of Chapter 69.51A RCW, and these business are variously
2 referred to as dispensaries, cooperatives, patient cooperatives, or patient
3 networks, both for profit and not for profit, and

4 WHEREAS Section 404 of E2SSB 5073 effectively eliminates medical
5 marijuana dispensaries as a legally viable model of operation under state law,
6 and

7 WHEREAS these businesses are illegal under both state and federal
8 law, and the City provided notice to these businesses that they are to cease
9 illegal activity, and

10 WHEREAS persons or entities operating these purported medical
11 marijuana dispensaries interpreted the law prior to E2SSB 5073 to allow
12 storefront operation of distribution centers for medical marijuana and many of
13 these dispensaries obtained business licenses to operate their business using
14 false, misleading or vague statements and the City continues to receive new
15 requests and inquiries from persons interested in operating additional
16 dispensaries in Tacoma, and

17 WHEREAS E2SSB 5073 amends Chapter 69.51A RCW, changing the
18 scope and effect of the law and the rights of qualifying patients and their
19 designated providers, and operators of medical dispensaries are already
20 interpreting the newly amended law to assert that they are permitted to
21 continue to operate, and

22 WHEREAS the recent amendments authorize "collective gardens" where
23 up to ten qualifying patients may join together to produce, process, transport,
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1 and deliver up to 45 marijuana or cannabis plants for their own medical use and
2 there is no limit set to the number of medical marijuana collective gardens that
3 may be located at any site, nor any restrictions as to where collective gardens
4 may be located in relation to other uses, and

5 WHEREAS many persons and entities who formerly represented
6 themselves as "dispensaries" have notified the City that they will now operate
7 as collective gardens with a business or administrative office at the same
8 location where the dispensary was located and the City believes that marijuana
9 will be delivered at these locations, and

10 WHEREAS the recent amendments clearly delegate to cities the
11 authority to adopt and enforce zoning requirements, business licensing
12 requirements, health and safety requirements and business taxes on the
13 production, processing, dispensing, and delivery of medical cannabis, and

14 WHEREAS the Tacoma Municipal Code does not currently address
15 medical cannabis or medical marijuana and the Municipal Code could be
16 changed to address ambiguities in the state law, and

17 WHEREAS the City requires time to conduct appropriate research to
18 understand the extent of the changes provided in the new law; to analyze
19 impacts and potential liabilities under federal law; and to determine the
20 appropriate regulatory framework for any provision that is allowed under these
21 laws, and

22 WHEREAS, the production, processing, dispensing, and delivery of
23 medical cannabis, medical marijuana collective gardens or medical marijuana
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1 dispensaries present issues of public safety for surrounding properties as well
2 as for the property on which the uses and/or facilities exist. Furthermore, the
3 location of such medical marijuana collective gardens or medical marijuana
4 dispensaries near schools, daycare facilities and other lawful uses presents
5 issues relating to the public welfare and the protection of minors, and

6 WHEREAS the City must ensure that proposed locations for medical
7 marijuana collective gardens or medical marijuana dispensaries are appropriate
8 and that any potential secondary impacts arising from the operation of these
9 uses or facilities are minimized or mitigated, and
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11 WHEREAS the Council finds that a zoning, licensing and permitting
12 moratorium should be established pending local review of appropriate locations
13 and other requirements for these operations, facilities and uses and the
14 impacts of the newly amended law and its interaction with federal law, and
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16 WHEREAS, unless a moratorium is imposed, medical marijuana
17 dispensaries and medical marijuana collective gardens may be located within
18 the City of Tacoma while the City lacks the necessary tools to ensure the
19 location is appropriate and that the potential secondary impacts are minimized
20 and mitigated, and

21 WHEREAS, pursuant to RCW 35.63.200 and RCW 36.70A.390, the City
22 may adopt an immediate moratorium for a period of up to six months, provided
23 that the City holds a public hearing on and adopts findings of fact related to the
24 proposed moratorium within 60 days after its adoption; Now, Therefore
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1 BE IT ORDAINED BY THE CITY OF TACOMA:

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3 Section 1. That the Recitals above are hereby adopted by reference
4 as the City Council's preliminary findings of fact, as if fully set forth herein. The
5 City Council may, in its discretion, modify and/or adopt additional findings at the
6 conclusion of the public hearing referenced in Section 7 below.

7 Section 2. That pursuant to the provisions of RCW 36.70A.390, a
8 moratorium is hereby enacted to prohibit within the City of Tacoma the
9 establishment, location, operation, licensing, permitting, maintenance or
10 continuation of any medical marijuana collective garden or any medical
11 marijuana dispensary, whether for profit or not for profit, asserted to be
12 authorized or whether actually authorized under those portions of E2SSB 5073
13 signed into law, or any other laws of the State of Washington. No building
14 permit, occupancy permit or other development permit or approval shall be
15 issued for any of the purposes or activities listed above, and no business
16 license shall be granted or accepted while this moratorium is in effect. Any land
17 use permits, business licenses or the permits for any of these operations that
18 are issued as a result of error or by use of vague or deceptive descriptions
19 during the moratorium are null and void, and without legal force and effect.
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22 Section 3. That the City Council deems it to be in the public interest to
23 establish an emergency moratorium pending consideration of changes to
24 regulations, requirements and taxes to address medical marijuana collective
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gardens and dispensaries in order to preserve the public health, safety and welfare.

Section 4. That for the purposes of this moratorium, "Medical marijuana dispensary" means any person, business, corporation, partnership, joint venture, organization, association, agency, cooperative network, consultation operation and/or other entity or person no matter how described or defined, including its associated premises and equipment, which has for its purpose or which is used to grow, sell, provide, select, measure, package, label, dispense, deliver and/or otherwise transfer (for consideration or otherwise) marijuana for medical uses to more than one "qualifying patient" in any fifteen (15) 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 maintains and/or possesses more than the amounts of marijuana permitted to be possessed under RCW 69.51A.040 and Section 401 of E2SSB 5073. 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 fifteen (15) day period is presumed to be a "medical marijuana dispensary," unless as part of a "collective garden." A person who is the designated provider for only one qualified patient during any fifteen (15) day period and who



1 complies with Chapter 69.51A RCW, shall not be deemed a medical marijuana
2 dispensary for purposes of the moratorium.

3 Section 5. That for the purposes of this moratorium, "medical
4 marijuana collective garden" means a group of qualifying patients that share
5 responsibility for acquiring and supplying the resources required to produce and
6 process marijuana for medical use of the 10 members of the collective garden.
7 Examples of a collective garden resource would include, without limitation, the
8 following: property used for a collective garden; equipment, supplies, and labor
9 necessary to plant, grow and harvest marijuana; marijuana plants, seeds, and
10 cuttings; and equipment, supplies and labor necessary for proper construction,
11 plumbing, wiring, and ventilation of a garden of marijuana plants. A medical
12 marijuana collective garden shall satisfy the above definition regardless of its
13 formation, ownership, management, or operation as a business, agency,
14 organization, cooperative, network, consultation operation, group, or person. A
15 person who is designated for only one qualified patient during any fifteen (15)
16 day period and who complies with Chapter 69.51A RCW, or a person who is a
17 qualified patient and who complies with Chapter 69.51A RCW, shall not be
18 deemed a medical marijuana collective garden for the purposes of this
19 moratorium.
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22 Section 6. That no use that constitutes or purports to be a medical
23 marijuana dispensary or a medical marijuana collective garden, as those terms
24 are defined in this ordinance, that was engaged in dispensing prior to the
25 enactment of this ordinance shall be deemed to have been a legally
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1 established use under the provisions of the Tacoma Municipal Code and that
2 use shall not be entitled to claim legal nonconforming status.

3 Section 7. That, pursuant to Section 13.02.055 of the Tacoma
4 Municipal Code, the City Council hereby refers the moratorium to the Planning
5 Commission for its review at its next available meeting on August 17, 2011 and
6 to hold a public hearing on September 7, 2011; to develop findings of fact and
7 recommendation, including the need for and duration of the moratorium.

8 Section 8. That, under TMC 13.02.055, RCW 35.63.200, and
9 RCW 36.70A.390, a public hearing must be held within 60 days of the passage
10 of this Ordinance and September 27, 2011 is hereby set as the date for the
11 public hearing in order to take public testimony and to consider adopting further
12 findings justifying the imposition of the moratorium set forth in Section 2 above.

13 Section 9. That this Ordinance shall be transmitted to Washington
14 State Department of Commerce, pursuant to RCW 36.70A.106.

15 Section 10. That the Planning Commission is hereby directed to
16 develop appropriate zoning regulations pursuant to the newly amended law
17 regarding medical marijuana collective gardens and/or medical marijuana
18 dispensaries. Further, the Commission should evaluate secondary impacts of
19 these uses and facilities which may include, but are not limited to, burglaries
20 associated with cash and marijuana maintained on the site, or an increase of
21 other illegal activities, such as drug use, within the vicinity of these uses and
22 facilities. In particular, and without limitation, the Commission should analyze
23 the impacts of allowing these uses and facilities in residential zones as well as
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1 impacts arising from the proximity of these uses and facilities to schools,
2 daycare facilities, parks, religious and cultural facilities, jails, courthouses and
3 drug and alcohol rehabilitation facilities.

4 Section 11. That the City Manager is hereby authorized to direct
5 appropriate staff to review and develop appropriate business licensing
6 requirements, health and safety requirements and business taxes regarding
7 medical marijuana collective gardens or medical marijuana dispensaries
8 pursuant to the newly amended law for inclusion in the Tacoma Municipal
9 Code.
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11 Section 12. The City Manager is hereby directed to work with staff to
12 administer the City's enforcement responsibilities under City, State, and
13 Federal Law during the moratorium period in a manner that will continue to
14 preserve legal access to medical cannabis for qualifying patients.

15 Section 13. That notice of and hearing on this ordinance, in the normal
16 course, would undermine effective City planning by allowing the establishment
17 of, or the submittal of permit applications between the time notice was
18 published and the time the ordinance was passed to vest to City regulations
19 which may be inadequate to protect the public health, safety, and general
20 welfare. Therefore, for this reason, the City Council hereby finds and declares
21 that an emergency exists and that the 180-day interim moratorium imposed by
22 this ordinance shall become effective immediately upon passage of this
23 ordinance and its publication, unless repealed, extended, or modified by the
24 City Council after subsequent public hearings and entry of appropriate findings
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1 of fact pursuant to RCW 35.63.200. Pursuant to Matson v. Clark County Board
2 of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts
3 necessary to support this emergency declaration are included in the Recitals
4 above, all of which are adopted by reference as findings of fact, as if fully set
5 forth herein. This Ordinance, and the moratorium established herein, shall
6 expire and terminate on January 29, 2012.

7 Section 14. That if any one or more section, subsection, sentence,
8 clause or phrase of this ordinance should be held to be invalid or
9 unconstitutional by a court of competent jurisdiction, such invalidity or
10 unconstitutionality shall not affect the validity or constitutionality of any of the
11 remaining section, subsection, sentence, clause or phrase of this ordinance
12 and the same shall remain in full force and effect.
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15 Passed AUG - 2 2011


16 Mayor

17 Attest:

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City Clerk *ACTING*

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22 Approved as to Form:

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24 City Attorney
25 *Acting*
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