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

WHEREAS, Initiative Measure No. 692, approved by 59% of the voters
of Washington State on November 3, 1998, now codified as Chapter 69.51A
RCW, created an affirmative defense to marijuana charges under state, but not
federal law, if the person charged could demonstrate that he or she was a
qualifying patient or designated provider, as those terms are defined in
Chapter 69.51A RCW, 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
Cannabis 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 acknowledges the right of qualified health care
professionals to recommend the medical use of cannabis, acknowledges the
affirmative defense, under state law, available to qualifying patients from the
possession of cannabis, as well as the right of patients to designate a
"designated provider" who can "provide" rather than sell cannabis to "only one
patient at any one time," and

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WHEREAS, the City of Tacoma acknowledges federal prohibition but wants to respond to the changes in state law in a responsible manner that will minimize impacts on patients, providers, and the health, safety, and welfare of the community, and

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

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

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

WHEREAS Tacoma has seen the establishment of medical marijuana "dispensaries" within the City limits that offer marijuana and marijuana products to numerous persons, asserting that they are operating as designated providers
within the meaning of Chapter 69.51A RCW, and these businesses are variously
referred to as dispensaries, cooperatives, patient cooperatives, or patient
networks, both for profit and not for profit, and

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

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

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

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

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

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

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

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

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

WHEREAS, the production, processing, dispensing, and delivery of
medical cannabis, medical marijuana collective gardens or medical marijuana

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dispensaries present issues of public safety for surrounding properties as well as for the property on which the uses and/or facilities exist. Furthermore, the location of such medical marijuana collective gardens or medical marijuana dispensaries near schools, daycare facilities and other lawful uses presents issues relating to the public welfare and the protection of minors, and

WHEREAS the City must ensure that proposed locations for medical marijuana collective gardens or medical marijuana dispensaries are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized or mitigated, and

WHEREAS the Council finds that a zoning, licensing and permitting moratorium should be established pending local review of appropriate locations and other requirements for these operations, facilities and uses and the impacts of the newly amended law and its interaction with federal law, and

WHEREAS, unless a moratorium is imposed, medical marijuana dispensaries and medical marijuana collective gardens may be located within the City of Tacoma while the City lacks the necessary tools to ensure the location is appropriate and that the potential secondary impacts are minimized and mitigated, and

WHEREAS, pursuant to RCW 35.63.200 and RCW 36.70A.390, the City may adopt an immediate moratorium for a period of up to six months, provided that the City holds a public hearing on and adopts findings of fact related to the proposed moratorium within 60 days after its adoption; Now, Therefore

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BE IT ORDAINED BY THE CITY OF TACOMA:

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

Section 2. That pursuant to the provisions of RCW 36.70A.390, a moratorium is hereby enacted to prohibit within the City of Tacoma the establishment, location, operation, licensing, permitting, maintenance or continuation of any medical marijuana collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or whether actually authorized under those portions of E2SSB 5073 signed into law, or any other laws of the State of Washington. 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 the 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 and effect.

Section 3. That the City Council deems it to be in the public interest to establish an emergency moratorium pending consideration of changes to regulations, requirements and taxes to address medical marijuana collective
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

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

Section 5. That for the purposes of this moratorium, "medical
marijuana collective garden" means a group of qualifying patients that share
responsibility for acquiring and supplying the resources required to produce and
process marijuana for medical use of the 10 members of the collective garden.
Examples of a collective garden resource would include, without limitation, the
following: property used for a collective garden; equipment, supplies, and labor
necessary to plant, grow and harvest marijuana; marijuana plants, seeds, and
cuttings; and equipment, supplies and labor necessary for proper construction,
plumbing, wiring, and ventilation of a garden of marijuana plants. A medical
marijuana collective garden shall satisfy the above definition regardless of its
formation, ownership, management, or operation as a business, agency,
organization, cooperative, network, consultation operation, group, or person. A
person who is designated for only one qualified patient during any fifteen (15)
day period and who complies with Chapter 69.51A RCW, or a person who is a
qualified patient and who complies with Chapter 69.51A RCW, shall not be
deemed a medical marijuana collective garden for the purposes of this
moratorium.

Section 6. That no use that constitutes or purports to be a medical
marijuana dispensary or a medical marijuana collective garden, as those terms
are defined in this ordinance, that was engaged in dispensing prior to the
enactment of this ordinance shall be deemed to have been a legally
established use under the provisions of the Tacoma Municipal Code and that use shall not be entitled to claim legal nonconforming status.

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

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

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

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

Section 11. That the City Manager is hereby authorized to direct appropriate staff to review and develop appropriate business licensing requirements, health and safety requirements and business taxes regarding medical marijuana collective gardens or medical marijuana dispensaries pursuant to the newly amended law for inclusion in the Tacoma Municipal Code.

Section 12. The City Manager is hereby directed to work with staff to administer the City’s enforcement responsibilities under City, State, and Federal Law during the moratorium period in a manner that will continue to preserve legal access to medical cannabis for qualifying patients.

Section 13. That notice of and hearing on this ordinance, in the normal course, would undermine effective City planning by allowing the establishment of, or the submittal of permit applications between the time notice was published and the time the ordinance was passed to vest to City regulations which may be inadequate to protect the public health, safety, and general welfare. Therefore, for this reason, the City Council hereby finds and declares that an emergency exists and that the 180-day interim moratorium imposed by this ordinance shall become effective immediately upon passage of this ordinance and its publication, unless repealed, extended, or modified by the City Council after subsequent public hearings and entry of appropriate findings.
of fact pursuant to RCW 35.63.200. 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 Recitals above, all of which are adopted by reference as findings of fact, as if fully set forth herein. This Ordinance, and the moratorium established herein, shall expire and terminate on January 29, 2012.

Section 14. That if any one or more section, subsection, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any of the remaining section, subsection, sentence, clause or phrase of this ordinance and the same shall remain in full force and effect.

Passed ___ AUG _2_ 2011 ____________________
Mayor

Attest:

__________________________
City Clerk

Approved as to Form:

__________________________
City Attorney

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