

**CITY OF STANWOOD
ORDINANCE NO. 1307**

**AN INTERIM ORDINANCE OF THE CITY OF STANWOOD,
WASHINGTON, EXTENDING A MORATORIUM ON THE
ESTABLISHMENT OF “MEDICAL MARIJUANA COLLECTIVE
GARDENS” AND “MEDICAL MARIJUANA DISPENSARIES;
DEFINING “MEDICAL MARIJUANA DISPENSARIES AND
GARDENS”; ESTABLISHING AN EFFECTIVE DATE; AND
PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED,
WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF
ADOPTION.**

WHEREAS, the City of Stanwood acknowledges the needs of persons suffering from debilitation 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, 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 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

WHEREAS, the City Council finds that the sale of marijuana, is prohibited by federal and state law; 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, the City of Stanwood 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, Section 404 of E2SSB 5073 effectively eliminates medical marijuana dispensaries as a legally viable model of operation under state law; 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, E2SSB 5073 became effective on July 22, 2011; and

WHEREAS, the Stanwood Municipal Code does not currently address medical cannabis/marijuana, medical marijuana dispensaries and/or medical marijuana collective gardens; and

WHEREAS, the production, process, transport and delivery of medical marijuana and medical marijuana collective gardens present issues of public safety for surrounding properties as well as for the property on which the uses and/or facilities exist; and

WHEREAS, the location of such medical marijuana collective gardens or 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 are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and/or mitigated; and

WHEREAS, cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes on the production, processing, and dispensing of cannabis; and

WHEREAS, marijuana/cannabis remains a Schedule I drug under the federal Controlled Substances Act (“CSA”) and is considered by the federal authorities to be a drug with no medical value, and its manufacture, distribution and/or possession are a violation of federal law; and

WHEREAS, there appears to be a conflict between state and federal law concerning the legal status of marijuana/cannabis and its manufacture, distribution, use and possession; and

WHEREAS, on or about November 30, 2011, Washington State Governor Christine Gregoire and Rhode Island State Governor Lincoln Chaffee petitioned the United States Drug Enforcement Administration (DEA) to reclassify marijuana/cannabis as a Schedule II drug that has therapeutic value and that should be treated as a prescription drug; and

WHEREAS, reclassification of marijuana/cannabis as a Schedule II drug by DEA would allow marijuana/cannabis to be prescribed by physicians with restrictions and dispensed by

pharmacies, and would potentially eliminate the current legal and planning dilemma Stanwood and other Washington cities and towns are currently struggling with concerning regulation, permitting and licensing issues surrounding medical marijuana/cannabis; and

WHEREAS, a number of initiatives and referendum have been filed with the Washington State Secretary of State that if adopted would change the legal framework concerning medical marijuana once again; and

WHEREAS, it is anticipated that the State Legislature may again revisit the issues surrounding medical marijuana again during the 2012 legislative session; and

WHEREAS, the Stanwood City Council adopted Ordinance No. 1299 on October 20, 2012, establishing an emergency moratorium on the establishment of "medical marijuana gardens" and "medical marijuana dispensaries and establishing a termination date for the moratorium of March 5, 2012; and

WHEREAS, the Stanwood City Council referred a work program to the Planning Commission on October 20, 2012, directing the Commission to develop appropriate zoning regulations pursuant to the newly amended law regarding medical marijuana collective gardens and/or medical marijuana dispensaries.

WHEREAS, city staff and the Planning Commission have started research and review of this issue but not completed the recommendations;

WHEREAS, given the many complications, uncertainties and impacts that exist and that are described above, additional time is necessary to engage in a meaningful planning process related to the development of regulations that address zoning, licensing and/or permitting of medical marijuana and the impacts thereof; and

WHEREAS, a public hearing will be held on February 23, 2011 before Stanwood City Council;

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

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.

Section 2. That pursuant to the provisions of RCW 36.70A.390, a zoning moratorium is hereby extended in the City of Stanwood prohibiting licensing, establishment, maintenance or continuation of any use consisting of or including the establishment of a medical marijuana collective garden or 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 and/or activities listed above, and no business license shall be granted or accepted for any of the purposes and/or activities listed above while this moratorium is in effect. Any land use permits, business licenses and/or 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 it is in the public interest to extend 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) calendar 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) calendar 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) calendar day period and who 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 members of the collective garden. A medical marijuana collective garden may have no more than ten (10) members. 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) calendar 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, pursuant to RCW 35.63.200, and RCW 36.70A.390, a public hearing was held February 23, 2012 before the City Council in order to take public testimony and to consider adopting further findings justifying the extension of the moratorium set forth in Section 2 above.

Section 7. That the City Council hereby finds and declares that that the 180-day interim moratorium imposed by Ordinance No. 1299 shall be extended, after public hearing 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 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 extended herein, shall expire and terminate on August 21, 2012.

Section 8. That the Planning Commission is hereby directed to continue the work program developing appropriate zoning regulations pursuant to the newly amended law regarding medical marijuana collective gardens and/or medical marijuana dispensaries. In particular, and without limitation, the Commission should continue to analyze the impacts of allowing these uses and facilities in residential zones as well as commercial and industrial zones.

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

Section 10. Severability. That if any one or more section, subsection, sentence, clause and/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.

Section 11. Effective Date. This Ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

CITY OF STANWOOD

By: 

Dianne White, Mayor

ATTEST/AUTHENTICATED:

By: 

Melissa Collins, City Clerk

APPROVED AS TO FORM:

By: 

Grant Weed, City Attorney

Date of Publication:

Effective Date: