

ORDINANCE NO. 1405

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, RELATING TO THE ADOPTION OF FINDINGS AND CONCLUSIONS TO SUPPORT AN EMERGENCY MORATORIUM ON THE ON THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES OR USES RELATING TO MARIJUANA PRODUCTION, MARIJUANA PROCESSING, OR MARIJUANA RETAILING, (SPECIFICALLY EXCLUDING MEDICAL MARIJUANA OR MEDICAL CANNABIS), TO BE IN EFFECT UNTIL THE CITY OF RUSTON ADOPTS ZONING REGULATIONS ADDRESSING SUCH MARIJUANA USES, AND TO SUPPORT AN EMERGENCY MORATORIUM ON THE SUBMISSION OF ANY BUSINESS LICENSE APPLICATIONS FOR SUCH USES, SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THESE MORATORIUM, TO ALLOW THE WASHINGTON STATE LIQUOR CONTROL BOARD AN OPPORTUNITY TO COMPLETE ITS RULEMAKING FOR THE LICENSING OF SUCH USES AND TO ALLOW THE CITY TO STUDY THE SECONDARY LAND USE IMPACTS OF SUCH USES, AND CONFIRMING THE MAINTENANCE OF THE MORATORIUM FOR SIX MONTHS AFTER INITIAL IMPOSITION AS THE EFFECTIVE PERIOD.

WHEREAS, the City Council of the City of Ruston may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permits or business license applications, as long as the City Council holds a public hearing on the proposed moratorium within sixty (60) days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, on April 2, 2013, the Ruston City Council passed Ordinance No. 1401 imposing an immediate moratorium on the acceptance of any development permit applications or business license applications for the siting, location or operation of any marijuana processor, marijuana producer, or marijuana retailer (specifically excluding medical marijuana or medical cannabis); and

WHEREAS, the City held a public hearing on the moratorium on May 7, 2013; and

WHEREAS, in accordance with Ordinance No. 1401, the City Council is required to adopt findings of fact on the subject of this moratorium after the public hearing and to either justify its continued imposition or cancel the moratorium; and

WHEREAS, on May 7, 2013 the City Council by super-majority voted to waive first reading of this Ordinance; and

WHEREAS, on May 7, 2013, the Council by super-majority adopted this Ordinance during its regular meeting; and

WHEREAS, the City Council desires to enter findings and conclusions in support of the continued maintenance of the moratorium for a period of six months after the adoption of the moratorium (which would be on or about October 2, 2013); **NOW, THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, ORDAINS
AS FOLLOWS:**

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

Marijuana Definitions.

A. “Cannabis or Marijuana” means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” 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.

B. “Marijuana processor” means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.

C. “Marijuana producer” means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

D. “Marijuana-infused products” means products that contain marijuana or marijuana extracts and are intended for human use. The term “marijuana-infused products” does not include useable marijuana.

E. “Marijuana retailer” means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.

F. “Retail outlet” means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.

G. “Usable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include marijuana-infused products.

General Definitions.

A. “Exempt development permits” shall include any permit application for a structure or use/operation of property for marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance, that is subject to the vested rights doctrine, and

that was submitted to the City and determined by the City staff to be complete on or before the effective date of Ordinance #1401.

B. “Non-Exempt development permits or Non-exempt business license” shall include any permit or business license application for a structure or use/operation of property for marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance, that is:

1. a permit application that is not subject to the vested rights doctrine and/or that was submitted to the City after the effective date of Ordinance #1401; and/or

2. a business license application for use/operation of property for marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance that was submitted to the City either before or after the effective date of Ordinance #1401.

Section 2. Purpose. The purpose of this moratorium is to allow the City adequate time to study the secondary land use impacts associated with the location and siting of structures and uses in which marijuana production, marijuana processing or marijuana retailing may take place. In addition, the moratorium will allow the City adequate time to study I-502, and to await the administrative rules that the Liquor Control Board will develop by December of 2013. The City’s goal is to ultimately draft zoning and business licensing regulations to address such developments and uses, to hold public hearings on such draft regulations and to adopt such regulations.

Section 3. Findings and Conclusions in Support of Moratorium. On May 7, 2013, the City Council held a public hearing on the moratorium imposed under Ordinance #1401 on April 2, 2013.

Jennifer Robertson, Assistant City Attorney, provided the chronology of events and background for the Council's consideration of zoning and licensing recreational marijuana retailers and processors and the procedure for implementing I-502 passed by the voters in November 2012. Ms. Robertson provided the following information to the City Council:

The Washington voters approved Initiative 502 (hereinafter "I-502") in November of 2012, which decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502. She further shared that I-502 "authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and adds a new threshold for driving under the influence of marijuana". Initiative 502 allows the Washington State Liquor Control Board to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (I-502, Sec. 4(1)) and also allows the Washington State Liquor Control Board to license marijuana processors to "process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (I-502, Sec. 4(2)). Initiative 502 further allows the Washington State Liquor Control Board to license a marijuana retailer to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (I-502, Sec. 4(3)) and requires that before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the incorporated city, and the city has the right to file its written objections to such license within 20 days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license (I-502, Sec. 7(a)). Additionally, I-502 establishes certain siting limitations on the Washington State Liquor Control Board's issuance of such licenses for any premises that are within 1,000 feet of the perimeter of

the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Section 8). Ms. Robertson explained that due to the 1,000 foot distance for separation from parks and the small geographic size of Ruston that it is possible that the entire City of Ruston jurisdictional limits may be deemed an impermissible area for the locating and licensing of these retail marijuana businesses. Ms. Robertson also explained that the retail marijuana rules do not currently apply to medical marijuana collective gardens, which are allowed under the Ruston zoning code under Chapter 25.04 RMC. She further informed that Council that until the Washington State Liquor Control fulfills its obligations under I-502 to adopt rules to carry the provisions of I-502 into effect, which includes the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by which licensees may transport and deliver marijuana and marijuana products (among other things) (I-502, Sec. 9), that Ruston will not have the information it needs to draft either zoning regulations or business licensing requirements. Furthermore, the Washington State Liquor Control Board is required to adopt more rules on or before December 1, 2013 to determine the number of retail outlets that may be licensed in each county (among other things) (I-502, Sec. 10), for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (I-502, Sec. 13).

Ms. Robertson further stated that at this point in time, the City of Ruston does not have any regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license. Based on the licensing scheme in I-502, which prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board, the City of Ruston will not be issuing any business license for the purposes described in I-502 unless the applicant demonstrates that he/she has first received the appropriate license from the State. Finally, Ms. Robertson explained that the uses described in I-502 have never been allowed in any state or city in the United States, and she recommended that if Ruston is not fully exempted from any of these businesses from locating inside its jurisdictional limits due to the 1,000 foot separation requirement, that the City should take the necessary time to study the secondary land use impacts of these marijuana uses and the various development standards that should be addressed to mitigate these impacts before adoption of any regulatory ordinance or issuance of any business licenses.

City Planner Rob White also spoke and provided a visual review for council of how the 1,000 foot separation from public parks would exempt out the entirety of Ruston from this type of use. He concurred with Ms. Robertson's recommendation to study this issue after action by the Washington State Liquor Control Board.

On April 2, 2013, Ordinance 1401 was presented to the City Council as an emergency measure to impose a moratorium on the acceptance of any development permit application or business license application for the siting, location or operation of any marijuana processor, marijuana producer, or marijuana retailer, and the Council passed it to be effective immediately. A hearing was scheduled on Ordinance No. 1401, to take place on May 7, 2013.

On May 7, 2013, the Council held the public hearing. Two (2) members of the public asked to speak on the issue. Of the members of the public speaking at the hearing two (2) people spoke in favor of continuing the moratorium and no people spoke against continuing the moratorium. No written materials were received from the public on this issue prior to the close of the public hearing

B. After this testimony and staff reports, the City Council discussed the need for the moratorium.

C. The City Council determined to maintain the moratorium imposed by Ordinance No. 1401 for the six-month period allowed by state law, based on the above facts. The Council concluded that maintenance of the moratorium was required for the public health, safety and welfare, and without a moratorium, there was a risk that business licenses or development applications for the type of development and use could become vested under the existing codes and constructed, thereby thwarting the efforts of the Council.

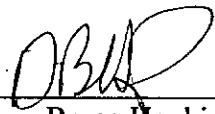
Section 4. Moratorium Maintained. A moratorium shall be maintained on all non-exempt development permit and business license applications which if submitted shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development permit applications, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved. This moratorium shall be maintained for six months, which began on the date of adoption of Ordinance No. 1401. The City Council hereby directs the City Clerk to schedule consideration of the moratorium prior to the expiration of this moratorium. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

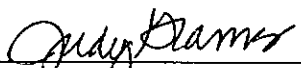
ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 7th day of May, 2013.

APPROVED by the Mayor this 7th day of May, 2013.



Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:



Judy Grams, City Clerk

APPROVED AS TO FORM:



Office of the City Attorney

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: 1405