

**TOWN OF RUSTON
ORDINANCE NO. 1337**

AN ORDINANCE of the Town of Ruston, Washington, relating to the dispensing of medical marijuana or cannabis, establishing an immediate emergency moratorium on the licensing, establishment and operation of Medical Marijuana Dispensaries, for a period of six months, establishing the date of the public hearing, and declaring an emergency necessitating the adoption of a moratorium.

WHEREAS, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment", *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

WHEREAS, on November 3, 1998, Washington voters approved Initiative 692, the Medical Use of Marijuana Act (the "Act"), which created an affirmative defense to the violation of state laws relating to marijuana, if the individual possesses it for medicinal purposes; and

WHEREAS, the Act allows qualifying patients, or their designated providers, to establish the defense if they only possess the amount of marijuana necessary for their personal use and if they present valid documentation to law enforcement officers; and

WHEREAS, qualifying patients may grow medical marijuana for themselves or designate a provider to grow on their behalf, but designated providers may only provide medical marijuana to one patient at a time; and

WHEREAS, qualifying patients and their designated providers are limited to possession of an amount of marijuana that is necessary for the patient's personal medical use, and not exceeding fifteen (15) plants and twenty-four (24) ounces of useable marijuana; and

WHEREAS, there currently is no state-wide system for the regulation of medical marijuana dispensaries, and in fact, the Washington State Department of Health has opined that the law does not allow medical marijuana dispensaries; and

WHEREAS, medical marijuana dispensaries have opened in many local jurisdictions, and are operating with or without a business license; and

WHEREAS, the Washington State Legislature passed ESSB 5073, which established requirements for the licensure of medical marijuana dispensers, determining expiration dates and renewal requirements; providing for mandatory inspections of licensed dispensers' locations, establishing procedures governing the suspension and revocation of licenses of dispensers, establishing safety standards, storage requirements, license application and renewal fees, providing penalties for violations, etc.; and

WHEREAS, on April 29, 2011, the Governor partially vetoed ESSB 5073, eliminating the provisions that would have directed state employees to authorize and license commercial businesses that produce, process or dispense cannabis; and

WHEREAS, Section 1102 of the bill was not vetoed, and provides the ability to cities and towns 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 product within their jurisdiction; and

WHEREAS, at this point in time, the Town of Ruston does not have any regulations addressing Medical Marijuana Dispensaries, other than the requirement for a general business license; and

WHEREAS, a review of ordinances adopted by other cities in states that have adopted similar initiatives allowing the medical use of marijuana discloses that separation requirements have been imposed on the siting of such dispensaries (for example, the dispensary can't be located within 1,000 feet of a school), exterior building lighting and parking area lighting requirements are imposed, the dispensary must be monitored at all times by a web-based closed-circuit TV for security purposes; a burglar alarm is required, hours of operation are imposed, etc. (see, Ordinance 181069, adopted by the City of Los Angeles California, on January 26, 2010), or zoning classifications are adopted, together with business licensing requirements relating to background checks for the criminal history of the operators, and prohibitions on the sale of drug paraphernalia, etc. (see, Ordinance No. 5449, adopted by the City of Santa Barbara, adopted March 28, 2008); and

WHEREAS, until the Washington State Legislature adopts regulations addressing medical cannabis dispensaries, the Town of Ruston does not know whether it must adopt a comprehensive regulatory system for medical marijuana dispensaries or a lesser system (to avoid preemption by state law); and

WHEREAS, the Ruston Town Council therefore believes a moratorium to preserve the status quo is necessary, so that the Town can determine whether regulations are necessary, and if so, the scope of such regulations, and will need time to draft, consider and adopt the appropriate regulations; and

WHEREAS, Section 36.70A.390 Revised Code of Washington authorizes the Town Council to adopt an immediate moratorium for a period of up to six months without holding a public hearing on the proposal provided that a public hearing is held within at least sixty days of its adoption,

WHEREAS, the Town Council desires to impose an immediate six month moratorium on the acceptance of any business license application or development permit application for the siting or operation of any medical marijuana or cannabis dispensary; NOW, THEREFORE,

THE TOWN COUNCIL OF THE TOWN OF RUSTON DOES ORDAIN AS FOLLOWS:

SECTION 1. Definitions.

(a) "Cannabis or Marijuana" means all parts of the plant Cannabis, whether growing or not; 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. The term "cannabis" or "marijuana" includes cannabis products and usable cannabis.

(b) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis."

(c) "Designated provider" means a person who is:

1. eighteen years or older;
2. has been designated in a written document signed and dated by a qualifying patient to serve as a designated provider under this Ordinance;
3. is in compliance with the terms and conditions set forth in RCW 69.51A.040.

A qualifying patient may be the designated provider for another qualifying patient and be in possession of both patient's cannabis at the same time.

(d) "Dispense" means the selection, measuring, packaging, labeling, delivery, or retail sale of cannabis, cannabis products or marijuana to a qualifying patient or designated provider.

(e) "Exempt development permits" or "exempt business license applications" shall include all of the following permit applications for a structure or use of property proposed to be operated as a medical marijuana or cannabis dispensary, as defined in this Ordinance:

1. any permit application meeting the description in this subsection (e) that is subject to the vested rights doctrine, and that was submitted to the Town and determined by the Town staff to be complete on or before the effective date of this Ordinance; and/or
2. any business license application meeting the description in this subsection (e) that was submitted to the Town on or before the effective date of this Ordinance.

"Non-Exempt development permits or Non-exempt business license" shall include:

1. any permit application meeting the description in this subsection (e) that is not subject to the vested rights doctrine and that was submitted to the Town after the effective date of this Ordinance; and/or

2. any business license application meeting the description in this subsection (e) that was submitted to the City after the effective date of this Ordinance.

(f) "Medical marijuana dispensary" is hereby defined as any individual, business, corporation or other entity which:

1. sells or otherwise dispenses marijuana cannabis or cannabis products 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 the Act, or

2. maintains more than one one-month supply of marijuana, cannabis or cannabis products for one qualifying patient on the premises at any time, or
3. provides for the cultivation of more than 15 marijuana or cannabis plants by collective or cooperative ventures at a location.

The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana or cannabis or cannabis products, shall be presumed to be a sale. Any person or entity which sells or otherwise dispenses marijuana to more than one person and/or qualifying patient in any thirty (30) day period or cultivates marijuana for more than one person and/or qualifying patient, shall be presumed to be a "medical marijuana dispensary."

(g) "Medical use of cannabis or marijuana" means the manufacture, production, processing, possession, transportation, delivery, dispensing, ingestion, application or administration of cannabis or marijuana for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating medical condition.

(h) "Qualifying patient" means a person who:

1. is a patient of a health care professional;
2. has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
3. is a resident of the State of Washington at the time of such diagnosis;
4. has been advised by that health care professional that he or she may benefit from the medical use of marijuana or cannabis.

(i) "Useable cannabis" means dried flowers of the *Cannabis* plant having a THC concentration greater than three-tenths of one percent. Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For purposes of this subsection, "dried" means containing less than fifteen percent moisture content by weight. The term "useable cannabis" does not include cannabis products.

Section 2. Purpose. The purpose of this moratorium is to allow the Town adequate time to determine whether medical marijuana (cannabis) dispensaries are allowed by existing law, and if so, to determine whether the Town should adopt any regulations allowed by ESSSB 5073 on such dispensaries. If the Town determines that such regulations are needed, the Town needs adequate time to study the issue and determine whether its regulations need to be amended in order to address medical marijuana dispensaries, and to adopt those regulations.

Section 3. Moratorium Imposed. The Town Council imposes an immediate six-month moratorium on the acceptance of all non-exempt development permit applications and non-exempt business license applications defined in Section 1(e) of this Ordinance. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the Town's acceptance of any exempt development permit application or exempt business license application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. Duration of Moratorium. The moratorium imposed by this Ordinance shall commence on the date of the adoption of this Ordinance. As long as the Town holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 5 herein), the moratorium shall not terminate until six (6) months after

the date of adoption, or at the time all of the events described in Section 2 have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the Town Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or before October 13, 2011. The Council hereby schedules this hearing for September 5, 2011. During the next Council meeting immediately following, the Town Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful 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 7. Declaration of Emergency. The Town Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum.. Without an immediate moratorium on the Town's acceptance of non-exempt development applications or non-exempt business licenses, such applications could become vested or the operation of the business could become otherwise allowed, leading to development or operation of a use that is incompatible with the laws eventually adopted by the Washington State Legislature or the Town of Ruston. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of applications to the Town in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights. Any use in operation as a medical marijuana or cannabis dispensary without a valid Ruston business license on the date of the passage of this Ordinance is not a legal non-conforming use.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council.

PASSED by the Town Council of Ruston this 15th day of August, 2011.



Mayor

ATTEST:

Judy Barnes

Town Clerk.

APPROVED AS TO FORM:

Office of the Town Attorney

J
Town Attorney

PUBLISHED:

EFFECTIVE DATE:

INFORMATION / BACKGROUND

Rationale: For the history and rationale behind adoption of these ordinances (moratorium on medical marijuana dispensaries and the interim zoning ordinance on collective gardens), see the "whereas" sections in the attached ordinances.

History: On August 22, 2011, the City Council adopted the moratorium on medical marijuana dispensaries and interim zoning on collective gardens as an emergency measure, under the procedures in RCW 36.70A.390. No advance notice or public testimony was required for such emergency adoption.

Public Hearing. Under RCW 36.70A.390, if a moratorium or interim zoning ordinance is adopted, the Council must hold a public hearing on the same within 60 days after adoption. During this hearing, the Council will accept public testimony and determine whether to continue the moratorium and interim zoning for a six month period, or repeal the ordinance(s).

Staff Recommendations: Staff may provide their comments at the public hearing. To date, the following comments have been received from department heads as to the secondary impacts of these medical marijuana uses:

1. **Zoning issues:** Some issues to consider with regard to zoning are:
 - A. Under RCW 69.51A.060(1), it is a class 3 civil infraction to display medical cannabis in a manner or place open to the general public.
 - B. The City can prohibit the uses in certain zones, allow them in only one zone, allow them in all zones, require that the uses be separated from other sensitive uses such as churches, schools, etc. The moratorium maintains the status quo and so medical marijuana dispensaries are not allowed during the period of the moratorium. The interim zoning ordinance allows collective gardens (as defined in the ordinance) in all zones, but the collective gardens must be indoors. Also, under Section 3(B) of the ordinance, the collective gardens must be located 300 feet from schools, churches, youth-oriented facilities, libraries or residential treatment facilities.
2. **Safety issues:** Research shows that the following safety issues have been associated with medical marijuana uses¹:
 - A. **Violence:** Criminals and criminal elements may want to steal the large amounts of cash that may be available where marijuana plants are grown. This has prompted growers to arm themselves or place "booby traps" to protect their investments. This can be a risk for first responders. However, there shouldn't be large amounts of cash available at collective gardens because the plants must be grown in limited quantities by those persons who need the cannabis for their own medical use. The cannabis is not sold from collective gardens to others. As for medical cannabis dispensaries, they would not be allowed under the moratorium.

¹ Most of this information has been taken from *Marijuana: A Growing Hazard on the Fireground*, by August Vernon and Rick Hetzel, in *Firehouse.com*.

B. Fire: Fire hazards could include exposed live wires associated with grow lights, wire bundles, wires exposed to water or in contact with water and a large number of high-intensity light bulbs. Hydroponic grows combine two incompatibles: water and electricity. Some grows may utilize several extra exhaust fans which can aggravate the spread of fire in a residence. A residence in which indoor grows are operating can use three to 10 times the power of an average residence. Some growers will attempt to "bypass" the normal distribution of power and steal additional power for their operations.² This is not a problem with medical marijuana dispensaries, because they will not be allowed during the period of the moratorium. As for collective gardens, the issue of electrical load is addressed in the permit process (see, Section D(9) of the ordinance).

C. Odor. Ozone generators may be used to reduce or eliminate the odor of an indoor grow, and ozone is a known carcinogen.

D. Mold. Molds present a very unique health hazard in an indoor marijuana grow. Without respiratory protection, mold exposure to an officer conducting operations in an indoor grow can cause allergic reactions, sinus and respiratory distress, even death in some cases. Large amounts of fungicides, pesticides, acids and bases may be stored and disposed of improperly, including being poured down drains and sewers.

E. Structural Factors. Homes used for indoor marijuana growing operations can be altered. These alterations are implemented to produce the maximum growing environment for the plants and to disguise the growing location. Walls may be moved to make room. The high levels of humidity will lead to growth of dangerous fungus and molds, causing damage to insulation, walls and ceilings. Some grows have been discovered in underground rooms and tunnels.

F. Inspections for Fire Dangers. Although these two ordinances do not address inspection of the structure where the collective garden will operate (after the Collective Garden Land Use Permit issues), the Town may adopt a business license ordinance to address the need for the collective garden to obtain a business license. In order to obtain an annual license, an inspection must be performed by the Town departments affected, such as Planning, Building and Fire.

Public Testimony. Although the Council needs to accept public testimony on the issues presented by these two ordinances, it should be noted that the State of Washington has legalized collective gardens as defined in the ordinance. The legal status of medical marijuana dispensaries is doubtful at this time, therefore, the Town Attorney recommends adoption of a moratorium to maintain the status quo until the Washington State Legislature adopts additional regulations for medical marijuana dispensaries (or prohibits them).

² This was also reported in *A Growing Danger: The Risks Posed by Marijuana Grow-Ops*, by Francis Bradley of the Canadian Electricity Association. He notes that a large number of residential operations use electrical diversions or bypasses to circumvent utility meters in order to steal electricity. Bypasses are used to avoid the suspicion of utility companies and to conceal high electricity usage. In order to perform a bypass, holes are often drilled through the concrete foundation or walls to tap into the power lines. Through this bypass, the current generally does not go through fuses or circuit breakers, thereby removing safety controls on unsafe or excessive energy consumption.

Adoption of Findings. After the Council takes public testimony, the Council must adopt findings to support its decision (either to maintain the ordinances as written for the proposed periods of time), to modify them, or to repeal them.

Ordinance incorporating Findings. At the next Council meeting, the Town Attorney will present findings for the Council to adopt, incorporating its decision.

FISCAL CONSIDERATION

There are no costs associated with the medical marijuana dispensaries ordinance at this time, but staff will need to research the issues to be able to make a recommendation to the Council at the end of the moratorium period. With regard to the ordinance on collective gardens, there will be additional costs (staff time administering the permits) to the Town, and the Town needs to establish a permit fee to recover its administrative costs.

BOARD OR COMMITTEE RECOMMENDATION

The Town Attorney has asked for the input of all department heads in formulating this agenda bill, and some department heads may present additional information at or before the hearing.

RECOMMENDATION / MOTION

That the moratorium and interim zoning ordinances be maintained.

Move to:

Continue maintenance of the moratorium and interim zoning as described in the attached ordinances, and adopting findings to support the same as follows:

(Include information in this agenda bill)

(Include information from public testimony)

Town of
Rust
WASHINGTON

Business of the Town Council
Town of Ruston, WA

Subject: Public Hearing on
Interim Zoning for Collective
Gardens – Medical Marijuana and
Moratorium on Medical Marijuana
Dispensaries

Proposed Council Action:

Hold a Public Hearing on the adopted
Ordinances, take public testimony,
Consider whether to continue maintenance
Of the moratorium and interim zoning and
Make findings of fact to support the
Final decision(s).

Dept. Origin: Town Attorney
Prepared by: Town Attorney
For Agenda of: September 6, 2011
Exhibits: Attached ordinances
Concurred by Mayor: _____
Approved/form by Town Atty: _____
Approved by _____ Director: _____
Approved by Department Head: _____
Initial & Date

| Expenditure Required | Amount Budgeted | Appropriation Required |
|-------------------------|--------------------|---------------------------|
| \$0 | \$0 | \$0 |