

## ORDINANCE NO. 2013-32

**AN ORDINANCE** of the City of Bainbridge Island, Washington, establishing a moratorium on the siting, establishment and operation of any structures or uses related to marijuana production and on the submission of land use development permit applications and business license applications for such use for a period of six months; adopting interim zoning regulations relating to marijuana processing and retailing and collective gardens for a period of six months; providing for severability; declaring an emergency and establishing an immediate effective date.

**WHEREAS**, recent amendments to Chapter 69.51A RCW, relating to the medical use of cannabis, have expanded the scope of certain activities involving the use of cannabis for medical purposes that are permitted under state law; and

**WHEREAS**, RCW 69.51A.085 allows “qualifying patients” to create and participate in “collective gardens” for the purpose of producing, processing, transporting, and delivering cannabis for medical use, subject to certain conditions; and

**WHEREAS**, RCW 69.51A.140 delegates authority to cities and towns to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes as exercise of the City’s police power; and

**WHEREAS**, the City Council understands that while the medical benefits of cannabis have been recognized by the state legislature, cannabis, also known as marijuana, remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession and use of cannabis is still a violation of federal law; and

**WHEREAS**, in 2012 Washington voters approved Initiative 502 which authorizes certain production, processing and retailing of marijuana and directs the State Liquor Control Board to develop rules and regulations to:

1. Determine the number of producers, processors and retailers of marijuana by county;
2. Develop licensing and other regulatory measures;
3. Issue licenses to producers, processors, and retailers at locations which comply with the Initiative’s distancing requirements prohibiting such uses within one thousand feet of schools and other designated public facilities; and
4. Establish a process for municipalities to comment prior to the issuance of such licenses; and

**WHEREAS**, while the processing, and retailing of marijuana remains in violation of the federal CSA, the City Council wishes to acknowledge the will of Washington voters and the authority exercised by the state of Washington and the State Liquor Control Board to license such facilities; and

**WHEREAS**, as part of the process for the adoption of zoning regulations, the land use impacts of collective gardens and marijuana related uses must be identified; and

**WHEREAS**, because the land use impacts relating to marijuana have been experienced in other jurisdictions, the City of Bainbridge Island may look to the experiences of those jurisdictions in drafting zoning regulations for marijuana related uses; and

**WHEREAS**, many jurisdictions around the country that have approved medical marijuana uses have experienced impacts, such as:

- Conversion of residential uses into cannabis cultivation and processing facilities, removing valuable housing stock from the community;
- Degrading neighborhood aesthetics due to shuttered up homes, offensive odors, increased night-time traffic, parking issued, and loitering from potential purchasers looking to buy from a collective member;
- Environmental damages from chemicals being discharged into surrounding and off-site soil, and into storm and sanitary sewer systems;
- Serious risk of fire hazard do to overloaded service connections used to operate grow lights and fans;
- Improper ventilation leading to high levels of moisture and mold;
- Illegal structural modifications; and
- Criminal issues such as home invasions and burglaries at medical cannabis facilities, theft, and property damage; and

**WHEREAS**, the Bainbridge Island City Council believes a moratorium in relation to marijuana production is necessary to preserve the status quo until the City Council can study, draft, hold public hearings and adopt the appropriate regulations to address such use; and

**WHEREAS**, if the moratorium related to marijuana production and interim zoning regulations related to marijuana processing, retailing and collective gardens are not adopted, marijuana related uses could become established before the City adopts the necessary tools to ensure that the location is appropriate and that the secondary impacts of such facilities are minimized and mitigated; and

**WHEREAS**, the Bainbridge Island City Council deems it to be in the public interest to adopt a moratorium related to marijuana production and interim zoning regulations related to the location, establishment, licensing, and permitting of marijuana processors and retailers and collective gardens, so that the City can consider all of the land use impacts of these uses; and

**WHEREAS**, RCW 35A.63.220 and RCW 36.70A.390 provide that a moratorium and interim zoning regulations may be adopted as long as a public hearing is held within sixty days after adoption; and

**WHEREAS**, the Bainbridge Island City Council conducted a public hearing on November 25, 2013, in order to take public testimony regarding the moratorium and interim zoning regulations and to consider adopting further findings justifying the imposition of the moratorium and interim regulations set forth in Sections 4 and 5 below.

WHEREAS, nothing in this ordinance is intended nor shall be construed to authorize or approve of any violation of federal or state law; Now, therefore,

**THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND,  
WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. Purpose.** The purpose of this ordinance is to enact a moratorium on land use development permit applications and business licenses applications relating to marijuana production to allow the City adequate time to study the land use impacts associated with the location and siting of structures and uses in which marijuana production may take place, and to enact minimum zoning regulations relating to collective gardens and marijuana processors and marijuana retailers and to provide notice to those intending to operate and participate in such uses that the City is considering additional and more comprehensive zoning regulations on the subject.

**Section 2. Preliminary Findings.** The Bainbridge Island City Council hereby adopts the recitals set forth above as its preliminary findings in support of this ordinance. The Bainbridge Island City Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 7 below.

**Section 3. Definitions.** Unless the context clearly indicates otherwise, all terms used in this ordinance shall have the meanings established pursuant to RCW 69.50.101 and WAC 314-55-010, as the same existing now or as they may later be amended.

**Section 4. Moratorium Imposed - Marijuana Production.** The City Council imposes an immediate six-month moratorium on the acceptance of land use development permit applications for marijuana production and business license applications for marijuana producers. All such land use development permit applications and business license applications shall be rejected and returned to the applicant.

**Section 5. Interim Zoning Regulations.**

A. The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing herein or as provided elsewhere in the ordinances of the City of Bainbridge Island is an authorization to circumvent federal law or to provide permission to any person or entity to violate federal law. In addition to collective gardens, only Washington State licensed marijuana processors, and marijuana retailers may locate in the City of Bainbridge Island and then only pursuant to a license issued by the State of Washington. The purposes of these provisions is solely to acknowledge the authority for collective gardens set forth in RCW 69.51A.085 and enactment by Washington voters of Initiative 502 and state licensing procedures to permit, but only to the extent required by state law, collective gardens, marijuana processors, and marijuana retailers to operate in designated zones of the city.

**B.** Collective gardens may locate only in the Business Industrial (BI) zoning district. Collective gardens are subject to the following additional conditions:

1. A collective garden must be in a permanent structure designed to comply with the City Building Code and constructed under a building permit from the City regardless of the size or configuration of the structure.
2. Outdoor collective gardens are prohibited.
3. No production, processing, or delivery of cannabis may be visible to the public.
4. A collective garden must meet all requirements under RCW 69.51A.085, including but not limited to limitations on the number of members, number of plants, amount of useable cannabis on site, maintenance of each member's valid documentation of qualifying patient status.
5. In addition to the separation requirements in Section 5(D) below, no collective garden may be located within 500 feet of the perimeter of any existing collective garden, marijuana producer, marijuana processor, marijuana retailer or residential zoning district.

**C.** Marijuana processors and marijuana retailers may locate only in the Business Industrial (BI) zoning district. Such facilities and uses may be located only at designated sites licensed by the state of Washington and fully conforming to state law and this ordinance.

**D.** No collective garden, marijuana processor, or marijuana retailer shall locate within 1000 feet, measured from the exterior perimeter, from any of the following existing uses as defined in Section 3 above:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Childcare center;
5. Public park;
6. Public transit center;
7. Library; or
8. Game arcade.

**E.** In addition to any other applicable remedy and/or penalty, any violation of this section is declared to be a public nuisance *per se*, and may be abated by the city attorney under the applicable provisions of this code or state law, including but not limited to the provisions of Chapter 1.24 BIMC, Chapter 1.26 BIMC and Chapter 9.40 BIMC.

**Section 6. Effective Period for Moratorium and Interim Regulations.** The moratorium and interim regulations set forth in this ordinance shall be in effect for a period of six months from the date this ordinance is passed and shall automatically expire on that date

unless either or both are extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Bainbridge Island City Council.

**Section 8. Transmittal to Department.** Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce.

**Section 9. Severability.** If any section, 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 of any other section, sentence, clause or phrase of this ordinance.

**Section 10. Effective Date.** For the reasons set forth in the recitals of this ordinance, the Bainbridge Island City Council hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare. This ordinance shall become effective immediately upon passage. The Bainbridge Island City Clerk is directed to publish the attached summary of this ordinance at the earliest possible date.

PASSED BY THE CITY COUNCIL this 25<sup>th</sup> day of November, 2013.

APPROVED BY THE MAYOR this 25<sup>th</sup> day of November, 2013.



Steven Bonkowski, Mayor

ATTEST/AUTHENTICATED:



Rosalind D. Lassoff, CMC, City Clerk

FILED WITH THE CITY CLERK:	September 27, 2013
PASSED BY THE CITY COUNCIL:	November 25, 2013
PUBLISHED:	December 6, 2013
EFFECTIVE DATE:	November 25, 2013
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