

## ORDINANCE NO. 2014-06

**AN ORDINANCE** of the City of Bainbridge Island, Washington, repealing interim zoning regulations adopted under Ordinance No. 2013-32; establishing zoning regulations relating to marijuana processing, producing/growing, retailing and collective gardens; amending Bainbridge Island Municipal Code Sections 5.04.055, 18.09.020, 18.09.030, and 18.36.030; and providing for severability and an effective date.

**WHEREAS**, in 2012 Washington voters approved Initiative 502 which authorizes certain production, processing and retailing of marijuana, codified in relevant part at RCW 69.50.325, *et seq.*, and directed the State Liquor Control Board to develop rules and regulations to:

1. Determine the number of retailers of marijuana by county and city;
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**, the State Liquor Control Board adopted such regulations promulgated at chapter 314-55 of the Washington Administrative Code effective November 21, 2013; and

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

**WHEREAS**, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998 and codified as chapter 69.51A RCW, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana (cannabis); and

**WHEREAS**, in April 2011 the Washington State Legislature passed a bill (E2SSB 5073) to provide qualifying patients with a new means of access to medical marijuana, authorizing "collective gardens" which would allow qualifying patients the ability to produce, grow, process, transport and deliver marijuana for medical use, and that provision was approved by Governor Gregoire, effective on July 22, 2011 and codified at RCW 69.51A.085; and

**WHEREAS**, on March 31, 2014, the Court of Appeals, Division 1, in *Cannabis Action Coalition v. City of Kent*, held that despite the authorizing language in RCW 69.51A.085, collective gardens are illegal uses; and

**WHEREAS**, the Planning Commission conducted study sessions on January 9 and 23 and February 13 and 27, 2014, and

**WHEREAS**, the Planning Commission conducted a public hearing on March 13, 2014 and forwarded their recommendation to the City Council; and

**WHEREAS**, the City Council conducted a public hearing on recreational and medical marijuana related uses on May 12, 2014; and

**WHEREAS**, notice was given on March 14, 2014 to the Office of Community Development at the Washington State Department of Commerce in conformance with RCW 36.70A.106; and

**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.** The interim zoning regulations and moratorium adopted under Ordinance No. 2013-32 are hereby repealed in their entirety.

**Section 2.** Section 5.04.055 of the Bainbridge Island Municipal Code relating to conduct associated with business licenses is amended as follows:

5.04.055 Standards of conduct.

Every licensee under this chapter shall:

A. Permit reasonable inspections of the business premises by governmental authorities for the purpose of enforcing the provisions of this chapter;

B. Comply with all ~~federal~~, state and city statutes, laws, ordinances and regulations relating to the business premises and the conduct of the business thereon;

**Section 3.** Section 18.09.020 of the Bainbridge Island Municipal Code is amended to add marijuana-related uses as shown in Exhibit A.

**Section 4.** Section 18.09.030 of the Bainbridge Island Municipal Code, Use Specific Standards, is amended to add the following subsection:

K. Marijuana-Related Uses

1. 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. Only

Washington State licensed marijuana producers, 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 enactment by Washington voters of Initiative 502 and state licensing procedures to permit, but only to the extent required by state law, marijuana processors, marijuana producers and marijuana retailers to operate in designated zones of the city.

2. 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.

3. No marijuana processor, marijuana producer or marijuana retailer shall locate within 1000 feet, measured in the manner set forth in WAC 314-55-050(10), from any of the following existing uses as defined in Section 314-55-010 WAC:

- a. Elementary or secondary school;
- b. Playground;
- c. Recreation center or facility;
- d. Childcare center;
- e. Public park;
- f. Public transit center;
- g. Library; or
- h. Game arcade.

4. Marijuana Retailer: Marijuana retailing is a permitted use in the Mixed Use Town Center, High School Road, and Neighborhood Service Center zoning districts. A marijuana retailer business is only allowed in the Island Center, Lynwood Center, and Rolling Bay NSC Special Planning Areas. A site plan and design review permit may be required, pursuant to Section 2.16.040.B, Site Plans and Design Review *Applicability*.

5. Marijuana Processors: Marijuana processing is a permitted use in the Business/Industrial zoning district. A site plan and design review permit is required and must be approved prior to any city approval of business licenses or other required permits.

6. Marijuana Producers: Indoor marijuana production is a permitted use in the Business/Industrial zoning district subject to the following conditions:

- a. A site plan and design review permit is required and must be approved prior to any city approval of business licenses or other required permits;
- b. The business must integrate a system that reuses at least 25 percent of wastewater within two years of initial crop planting;

- c. The business must reduce the use of fossil-fuel based electricity as described below:
  - i. At least 25 percent of business electricity consumption from Island-generated reusable energy within nine months of initial crop planting;
  - ii. At least 50 percent of business electricity consumption from Island-generated reusable energy within two years of initial crop planting; and
  - iii. The city may request documentation or a monitoring report to ensure that the renewable energy and water reuse standards are being met.

7. No marijuana-related uses are allowed on city-owned property.

**Section 5.** Section 18.36.030 of the Bainbridge Island Municipal Code is amended to add the following definitions in alphabetical order in the section and re-number the existing definitions:

50. "Collective Gardens" means a type of medical marijuana use described in RCW 69.51A.085.

149. "Marijuana" or "marihuana" 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. The term 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.

150. "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than sixty percent.

151. "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana, marijuana-infused products, and marijuana concentrates, package and label useable marijuana, marijuana-infused products, and marijuana concentrates for sale in retail outlets, and sell useable marijuana, marijuana-infused products, and marijuana concentrates at wholesale to marijuana retailers.

152. "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.

153. "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration greater than 0.3

percent and no greater than sixty percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

154. "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana, marijuana-infused products, and marijuana concentrates in a retail outlet.

155. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

**Section 6. 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 7. Effective Date.** This ordinance shall take effect and be in force five (5) days from its passage, approval, and publication as required by law.


**Section 8. Expiration Date.** The regulations in this ordinance shall expire and be automatically repealed effective November 12, 2014.

PASSED BY THE CITY COUNCIL this 12<sup>th</sup> day of May, 2014.

APPROVED BY THE MAYOR this 15<sup>th</sup> day of May, 2014.

  
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Anne S. Blair, Mayor

ATTEST/AUTHENTICATED:

  
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Rosalind D. Lassoff, CMC, City Clerk

FILED WITH THE CITY CLERK:	April 1, 2014
PASSED BY THE CITY COUNCIL:	May 12, 2014
PUBLISHED:	May 16, 2014
EFFECTIVE DATE:	May 21, 2014
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**Table 18.09.020 Use Table**

“P” = Permitted Use  
 “C” = Conditional Use  
 Blank = Prohibited Use  
 “CA” = Conditional Accessory Use  
 “T” = Temporary Use

“A” = Accessory Use

Additional Use restrictions for BIMC 16.12 and 16.20 may apply to shoreline or critical area properties

ZONING DISTRICT	R-0.4	R-1	R-2	R-2.9	R-3.5	R-4.3	R-5	R-6	R-8	R-14	Winslow Mixed Use Town Center					HSR 1 & 2	NSC	B/I	WD-I	USE SPECIFIC STANDARDS 18.09.030
											CC	MA	EA	GATE	FRY					
<b>MARIJUANA RELATED USES</b>																				

<u>Marijuana Retailer</u>															<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u> <sup>2</sup>			<u>K</u>	
<u>Marijuana Processor</u>																							<u>P</u>		<u>K</u>
<u>Marijuana Producer</u>																							<u>P</u>		<u>K</u>
<u>Collective Garden</u>																									

<sup>2</sup> A marijuana retailer business is only allowed in the Island Center, Lynwood Center, and Rolling Bay NSC Special Planning Areas.