

**CITY OF ROSLYN
WASHINGTON**

ORDINANCE NO. 1105

AN ORDINANCE OF THE CITY OF ROSLYN, WASHINGTON, DECLARING AN EMERGENCY AND ADOPTING A SIX-MONTH MORATORIUM WITHIN THE CITY OF ROSLYN ON THE ESTABLISHMENT, LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MARIJUANA PRODUCERS, PROCESSORS AND RETAILERS AS REGULATED OR PROPOSED TO BE REGULATED PURSUANT TO WASHINGTON STATE INITIATIVE 502; SETTING A DATE FOR A PUBLIC HEARING; ESTABLISHING A WORK PLAN FOR THE CITY COUNCIL TO BRING CITY REGULATIONS INTO COMPLIANCE WITH STATE LAW; PROVIDING FOR SEVERABILITY; AND PROVIDING THAT THE MORATORIUM WILL TAKE EFFECT IMMEDIATELY UPON PASSAGE.

WHEREAS, the possession or distribution of cannabis (marijuana) has been and continues to be a violation of federal law, through the Controlled Substances Act (“CSA”); and

WHEREAS, on November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington; and

WHEREAS, as required by Initiative 502, the Washington State Liquor Control Board (LCB) adopted rules and regulations, effective November 16, 2013, to implement I-502’s licensing and other regulatory measures for the production, processing and retailing of recreational marijuana; and

WHEREAS, the application period for marijuana producers, processors and retail licenses closed in December, 2013, and the LCB has begun issuing marijuana producer, processor and retail licenses; and

WHEREAS, on August 29, 2013, Deputy United States Attorney General James Cole issued a memorandum providing guidance regarding federal marijuana enforcement in light of the adoption of state ballot initiatives such as I-502 that legalize under state law the possession and use of small amounts of marijuana; and

WHEREAS, Deputy Attorney General Cole’s memorandum indicates that the federal government would not now seek to preempt state laws such as I-502, or invest substantial federal resources in investigating and prosecuting individuals for possession and use of small amounts of marijuana, but instead would treat this as a matter left to the discretion of state and local law enforcement so long as the state implements a robust system of procedures and controls to ensure that federal interests concerning marijuana (*e.g.*, deterring distribution to minors, preventing revenue from marijuana sales from going to organized crime, and preventing marijuana sales from serving as a cover for other illicit activities) are not threatened; and

WHEREAS, Deputy Attorney General Cole's memorandum also indicates that if state enforcement efforts are not sufficiently robust to protect against the harms to federal interests outlined above, the federal government may seek to challenge the entire state regulatory structure; and

WHEREAS, on January 16, 2014, the state Attorney General's Office issued AGO 2014 No. 2, concluding that I-502 does not preempt counties, cities, and towns from banning recreational marijuana businesses – producers, processors, and retailers – within their jurisdictions; and

WHEREAS, a recent Washington State Court of Appeals decision upheld a local government's zoning authority to ban or otherwise regulate medical marijuana-related land uses, and such holding could reasonably be interpreted to apply to zoning or other police power regulation of recreational marijuana-related land uses; and

WHEREAS, the City of Roslyn has the authority to adopt a moratorium pursuant to RCW 35A.63.220; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's police power and is specifically authorized by RCW 35A.63.100; and

WHEREAS, Initiative 502 prohibits marijuana-related uses within 1,000 feet of certain uses and buildings, such as child care centers, public parks and recreation centers or facilities, but does not address whether LCB-licensed marijuana businesses must comply with land use and zoning restrictions of local jurisdictions; and

WHEREAS, the Roslyn Municipal Code does not currently have specific provisions addressing licensing, producing, processing or retailing of recreational marijuana; and

WHEREAS, the City must ensure that any proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities can be avoided and/or mitigated. Potential secondary impacts may include, but are not limited to, burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of these dispensaries; and

WHEREAS, unless the City acts immediately to address marijuana-related uses, such uses may be able to locate in the city without regulation and thereby have adverse impacts on the city and its citizens; and

WHEREAS, the City Council requires time to conduct appropriate research to understand the extent of the changes provided in the new law, to analyze impacts and potential liabilities under federal law and recent Washington State court decisions, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws; and

WHEREAS, the City deems it in the public interest to impose a moratorium upon zoning approvals, licensing and/or permitting of any marijuana-related businesses, for a period of six months, in order to investigate potential secondary effects further, obtain regulatory clarity and guidance from the LCB's rules, and determine whether any or all of those rules will be the subject of a federal challenge;

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

Section 1. Preliminary Findings. The recitals and findings set forth above are hereby adopted as the City Council's preliminary findings in support of the moratorium imposed by this ordinance. The

City Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 5 below.

Section 2. – Moratorium Imposed. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby enacted prohibiting within the City of Roslyn the establishment, location, operation, licensing, maintenance, or continuation of any marijuana producer, processor, and/or retailer operation, whether for profit or not for profit, asserted to be authorized or actually authorized under Washington Initiative No. 502 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 or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other 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 or effect. As used in this ordinance, the following terms have the meanings set forth below:

A. “Marijuana” or “Cannabis” 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 there from), 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 useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at 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 retailer” means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

E. “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.

F. “Useable marijuana” means dried marijuana flowers. The term “useable marijuana” does not include marijuana-infused products.

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

Section 3. – No Nonconforming Uses. No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Roslyn Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 4. – Effective Period for Moratorium. The moratorium 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 at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the City Council.

Section 5. – Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council will hold a public hearing, at the City Council’s regular meeting, at 7:00 p.m. at 109 S First Street in the Council Chambers, on Tuesday, July 10, 2014, or as soon thereafter as the business of the City Council shall permit in order to take public testimony and to consider adopting further findings.

Section 6. – Referral to Staff. The Planning Commission is hereby authorized and directed to develop appropriate land use regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Roslyn Municipal Code. The City Clerk is hereby authorized and directed to develop appropriate business licensing and other regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Roslyn Municipal Code.

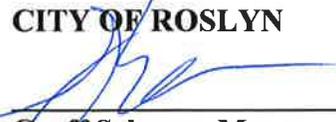
Section 7. – Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 8. – Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 9. – Effective Date. The City Council hereby finds and declares that there is a potential that persons seeking to engage in marijuana production, processing or retailing could claim vesting under I-502 and/or that the presence of any marijuana producer, marijuana processor and/or marijuana retailer operations in the City of Roslyn could have negative secondary effects if not first addressed by adequate and appropriate regulations, and that, therefore, 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 City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

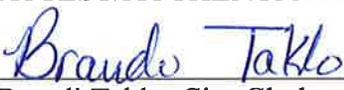
**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF
ON THE 10th DAY OF June, 2014.**

CITY OF ROSLYN



Geoff Scherer, Mayor

ATTEST/AUTHENTICATED:



Brandi Taklo, City Clerk

Approved as to form:

Ann Marie Soto, City Attorney

Filed with the City Clerk:

Passed by the City Council: 6-10-2014

Date of Publication: 6-19-2014

Effective Date: 6-24-2014