

CITY OF BUCKLEY, WASHINGTON

ORDINANCE NO. 11-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON, ADOPTING A SIX-MONTH MORATORIUM ON THE ESTABLISHMENT, LOCATION, LICENSING OR PERMITTING OF MARIJUANA PRODUCTION OR PROCESSING FACILITIES AND OPERATIONS AND DECLARING AN EMERGENCY IN ORDER TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in November 2012, Washington State voters approved Initiative 502 (“I-502”), codified in Chapter 69.50 RCW, which “authorizes the Washington State Liquor Control Board (“LCB”) to regulate and tax marijuana for persons twenty-one years of age and older,” and license marijuana retailers, producers and processors; and

WHEREAS, the LCB has adopted an extensive set of regulations that address marijuana processing and production facilities; and

WHEREAS, based upon the regulatory role assumed by the LCB and the desire of Washington voters to legalize marijuana, the City Council determined that it did not need to adopt additional zoning restrictions for the production and processing of marijuana, such that the production and processing facilities would be treated the same as any other agricultural product under Buckley’s zoning regulations; and

WHEREAS, unlike Buckley, numerous other cities and counties across Washington have adopted moratoria or other zoning regulations that restrict and prohibit marijuana processing and production facilities altogether, leaving Buckley in a position where it may be accommodating a disproportionate share of Washington State’s marijuana production and processing facilities; and

WHEREAS, the City Council has learned that marijuana production and processing facilities generate impacts that are atypical and more adverse than common agricultural use, most notably the production of odor and noise; and

WHEREAS, noise is a problem with indoor marijuana production facilities because numerous fans are necessary to circulate air in greenhouses; and

WHEREAS, Buckley’s zoning regulations will likely compel a disproportionate amount of indoor production facilities and their associated fan noise because Buckley’s fence height regulations prevent producers from complying with fence requirements adopted by the LCB for outdoor production facilities; and

WHEREAS, some areas where marijuana production and processing would be allowed under current regulations are located near high density residential areas and the impacts associated with marijuana production and processing are not compatible with these areas; and

WHEREAS, the absence of adequate zoning regulation for marijuana production and processing in Buckley has drawn the attention of marijuana business operators, and unless the City Council acts immediately to adopt a moratorium there is a potential for marijuana producers and processors to vest to nonconforming use rights that are incompatible with surrounding residential uses;

NOW THEREFORE THE CITY OF BUCKLEY, PIERCE COUNTY, DOES ORDAIN AS FOLLOWS:

Section 1. That the Recitals above are hereby adopted by reference as the City Council's findings of fact, as if fully set forth herein. The City Council may, in its discretion, modify and/or adopt additional findings of fact at the conclusion of the public hearing set by this ordinance.

Section 2. That pursuant to the provisions of RCW 35A.63.220, a moratorium is hereby enacted to prohibit within the City of Buckley the establishment, location, licensing or permitting of any marijuana production or processing facility or operation authorized by I-502. 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 permit 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 and effect. This moratorium shall be liberally construed to prohibit the production and processing of recreational marijuana in all parts of the City, but is not intended to apply to retail sales within areas of the City where retail sales are currently authorized by the City's zoning regulations.

Section 3. This moratorium shall not apply to any marijuana processing or production to the extent that it is proposed in a previously filed and complete development permit or business license application, or to the extent that the City is legally required to grant the operation vested rights status under Washington law. Provided, that no material expansion or modification of such operations beyond what is authorized by the permit or approval granting vested status may occur after the effective date of this ordinance.

Section 4. The City Council deems it to be in the public interest to establish an emergency moratorium pending consideration of changes to regulation and requirements to address marijuana production and processing operations in order to preserve the public health, safety and welfare.

Section 5. As required by RCW 35A.63.220, the City Council hereby refers this moratorium to the Planning Commission to make a recommendation for permanent zoning regulations, if any, regulating marijuana processing and production facilities. The City Administrator shall investigate and recommend amendments to the City's licensing and other regulations not subject to Planning Commission jurisdiction on matters related to zoning of marijuana production and processing facilities.

Section 6. As required by RCW 35A.63.220, a public hearing shall be set within 60 days of the adoption of this ordinance in order to take public testimony and to consider adopting further findings to justify the imposition of the moratorium adopted by this ordinance.

Section 7. This ordinance shall be transmitted to the Washington State Department of Commerce, pursuant to RCW 36.70A.106.

Section 8. Declaration of Emergency and Immediate Effective Date. Notice of and hearing on this ordinance, in the normal course, would undermine effective City planning by allowing the establishment of, or the submittal of permit applications between the time notice was published and the time the ordinance was passed to vest to City regulations which may be inadequate to protect the public health, safety and general welfare. Therefore, for this reason, the City Council hereby finds and declares that an emergency exists and that the 180-day interim moratorium imposed by this ordinance shall become effective immediately upon passage of this ordinance and that an immediate effective date and this declaration of emergency is necessary for the protection of the public health, public safety, public property and public peace. The findings adopted by this ordinance are further adopted in support of this declaration of emergency.

Section 9. If any provision of this ordinance is held invalid, such invalidity shall not affect any other provision, or the applications thereof, which can be given effect without the invalid

provision or application, and to this end the provisions of this Ordinance are to be declared severable.

Introduced, passed, and approved by at least five members of the Buckley City Council on May 12, 2015.



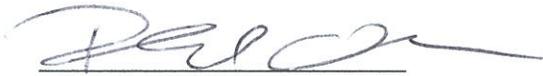
Mayor Pat Johnson

Attest:



Joanne Starr, City Clerk

APPROVED AS TO FORM:



Phil Olbrechts, City Attorney

PUBLISHED: May 27, 2015

EFFECTIVE: Immediately