

ORDINANCE NO. 621

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE WASHINGTON ADOPTING A SIX (6) MONTH MORATORIUM WITHIN THE CITY OF UNIVERSITY PLACE ON THE ESTABLISHMENT, LOCATION, PERMITTING, LICENSING OR OPERATION OF MARIJUANA CULTIVATION, PRODUCTION OF MARIJUANA DERIVATIVES, AND THE SALE OF MARIJUANA OR MARIJUANA DERIVATIVES OR ANY OTHER ACTIVITIES ASSERTED TO BE AUTHORIZED OR ACTUALLY AUTHORIZED UNDER WASHINGTON STATE INITIATIVE NO. 502 OR ANY OTHER LAWS OF THE STATE OF WASHINGTON, AND SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, PROVIDING FOR SEVERABILITY, DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE

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

WHEREAS, Initiative Measure No. 502, approved by the voters of Washington state on November 6, 2012, legalizes the production, sale and use of marijuana products purchased from State licensed stores for adults age 21 and over; and

WHEREAS, the activities purported to be legalized under Initiative Measure No. 502 remain violations of federal law through the Controlled Substances Act, and the United States Supreme Court in Gonzales v. Raich, 545 U.S. 1, (2005) held that the CSA's categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes superseded a conflicting California State law, and in addition, two U.S. Attorneys (Federal Department of Justice) situated in Washington have gone on record stating that marijuana is a Schedule I controlled substance under federal law, and as such, growing, distributing and possessing marijuana in any capacity other than as part of a federally authorized research program is a violation of federal law, regardless of state laws permitting such activities, and also concluded publicly that local governmental employees who conducted marijuana regulatory activities under Washington State law are subject to prosecution under the CSA; and

WHEREAS, in 2012, the Board of Clark County Washington Commissioners requested a determination from the federal government whether such enforcement efforts would extend to local government activities implementing Washington state laws on marijuana, where those laws conflict with the CSA, and the responsive letter from Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Division Control, U.S. Department of Justice, Drug Enforcement Administration, states that anyone who knowingly carries out the marijuana activities contemplated by Washington state law which are inconsistent with the CSA, as well as anyone who facilitates such activities, or conspires to commit such violations of the CSA, is subject to criminal prosecution as provided in the CSA, including both local elected officials and local government staff; and

WHEREAS, the recently approved Initiative Measure No. 502 does not to change the basis for the analysis by the U.S. Attorneys, and any State or local officials who undertake marijuana regulatory activities remain subject to federal prosecution; and

WHEREAS, because prior to the passage of Initiative Measure No. 502, the possession or distribution of marijuana was a violation of both the Washington Uniform Controlled Substances Act and a violation of the federal CSA, the City has not studied or implemented zoning for uses involving the production or distribution of marijuana; and

WHEREAS, the City requires time to conduct appropriate research to understand the extent and validity of the changes provided in the new law to analyze impacts and potential liabilities under federal

law and to determine an appropriate regulatory framework for the uses and activities that are allowed under Initiative Measure No. 502; and

WHEREAS, in addition to the legal issues, the City must study, without limitation, the impacts of the location of uses and facilities for the production, sale and use of marijuana products and the siting of marijuana cultivation facilities, facilities for the creation of marijuana products, and State licensed marijuana stores in commercial and residential zones, as well as impacts arising from the proximity of these uses, activities and facilities to schools, day cares, parks, religious and cultural facilities, and accordingly the City Council finds that a zoning, licensing and permitting moratorium should be established pending local review of appropriate locations and design requirements of these operations and impacts of the newly amended law and its interaction with federal law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Preliminary Findings. The recitals and findings set forth above are hereby adopted as the City Council 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 6 below.

Section 2. Moratorium Imposed. Pursuant to Washington State law, a moratorium is hereby enacted prohibiting within the City of University Place the establishment, location, operation, licensing, or maintenance of facilities, businesses or any other activities involving the production, sale and use of marijuana and marijuana products asserted to be authorized or actually authorized under Washington State Initiative No. 502 or any other laws of the state of Washington (Marijuana Business). 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.

Section 3. Definition of Marijuana Use. As used in this ordinance the term Marijuana Use includes any store, agency, organization, dispensary, cooperative, network consultation, operation, or other business entity, group or person, no matter how described or defined, including any associated premises and equipment which has for its purpose or which is used to grow, select, measure, process, package, label, deliver, dispense, sell or otherwise transfer for consideration, or otherwise, marijuana in any form.

Section 4. No Nonconforming Uses. No use that constitutes or purports to be a Marijuana Use as that term is 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 University Place Municipal Code and that use shall not be entitled to claim legal nonconforming status.

Section 5. Effective Period for Moratorium. The moratorium set forth in this ordinance shall be in effect for a period of six (6) months from the date this ordinance is passed and shall automatically expire at the conclusion of that six (6) month period unless the same is extended as provided in State law or unless terminated sooner by ordinance.

Section 6. Public Hearing. The City Council will hold a public hearing at the regular City Council meeting of May 6, 2013 at 6:30 p.m. or as soon thereafter as the business of the City Council shall permit and which date is no more than sixty (60) days after the date of adoption herein in order to take public testimony and to consider adopting further findings.

Section 7. Work Program. The City Manager is hereby authorized to address issues related to determining the legality of Marijuana Uses as defined herein, including but not limited to review of the pending dispute between State and federal law enforcement authorities regarding the legality of

Marijuana Uses under any circumstances and notwithstanding the adoption of Initiative Measure No. 502. In the event that such uses are ultimately determined to be legal, the work program should also 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 University Place Municipal Code, including business licensing and other regulations for review for inclusion in the University Place Municipal Code.

Section 8. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

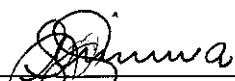
Section 9. Effective Date. The City Council hereby finds and declares that there is a potential that persons seeking to engage in Marijuana Uses, as defined herein, could file applications with the City under the authority of Initiative Measure No. 502, and claim vesting, and/or that the presence of any Marijuana Uses in the City of University Place could have negative secondary effects if not first addressed by adequate and appropriate regulations, and/or that prior to a resolution of the legal conflict between State and federal law, and/or the adoption and implementation of such Marijuana Use regulations could subject City officials to liability under federal law, 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.

PASSED BY THE CITY COUNCIL ON MAY 6, 2013.



Ken Grassi, Mayor

ATTEST:



Emelita Genetia, City Clerk

APPROVED AS TO FORM:



Steve Victor, City Attorney

Publication Date: 05/08/13
Effective Date: 05/06/13