

A RESOLUTION OF THE CITY OF MILLWOOD, WASHINGTON, ADOPTING FINDINGS OF FACT IN SUPPORT OF THE MORATORIUM ENACTED BY ORDINANCE NO. 445 RELATING TO THE SITING, ESTABLISHMENT, LOCATION, PERMITTING, LICENSING, OPERATION OR MAINTENANCE OF ANY STRUCTURES OR USES RELATING TO THE CULTIVATION OF MARIJUANA, PRODUCTION OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS, PROCESSING OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS, RETAIL OF MARIJUANA OR MARIJUANA-INFUSED PRODUCTS OR ANY OTHER ACTIVITIES PURPORTEDLY AUTHORIZED OR ACTUALLY AUTHORIZED UNDER STATE OF WASHINGTON INITIATIVE NO. 502 OR ANY OTHER LAWS OF THE STATE OF WASHINGTON (SPECIFICALLY EXCLUDING MEDICAL MARIJUANA OR MEDICAL CANNABIS) AND THE SUBMISSION OF ANY BUSINESS LICENSE OR LICENSE APPLICATIONS FOR SUCH USES; AND APPROVING A WORK PLAN TO ADDRESS REGULATING SUCH MATTERS IN MILLWOOD.

WHEREAS, with the approval of Ordinance No. 445 by the City Council on August 13, 2013, a six-month moratorium within the City of Millwood was enacted on the siting, establishment, location, permitting, operation, licensing or maintenance of facilities, businesses or other activities involving the cultivation, production, processing, sale or use of marijuana or marijuana-infused product, or any other use or activity purportedly authorized or actually authorized under I-502, any rules or regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, or any other laws or regulations of the state of Washington (specifically excluding medical marijuana or medical cannabis); and

WHEREAS, RCW 36.70A.390 requires that the City Council conduct a public hearing and adopt findings of fact supporting the moratorium enacted by Ordinance No. 445; and

WHEREAS, following the public notice as prescribed by applicable law, a public hearing was conducted before the City Council on September 10, 2013, and all persons wishing to be heard were heard;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Millwood, Washington:

Section 1. Adoption of Findings of Fact. The Preliminary Findings of Fact adopted in Ordinance No. 445 are hereby affirmed. Additional Findings of Fact attached hereto as Exhibit A are incorporated herein and are hereby adopted.

Section 2. Adoption of Work Plan. The Work Plan attached hereto as Exhibit B is incorporated herein and is hereby approved.

PASSED by the City Council and APPROVED by the Mayor of the City of Millwood at a regular meeting held on the 10th day of September, 2013.

DATED this 10 day of September, 2013.



Dan Mork, Mayor

ATTEST:



Thomas G. Richardson, City Clerk

EXHIBIT A

Findings of Fact Supporting a Moratorium on Recreational Marijuana

1. The Washington voters approved State of Washington Initiative 502 ("I-502") in 2012, which "authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana" (2013 c 3 § 1 (Initiative Measure No. 502, approved November 6, 2012, codified in chapter 69.50 RCW)).
2. I-502 allows the Washington State Liquor Control Board to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (RCW 69.50.325(1)).
3. I-502 allows the Washington State Liquor Control Board to license marijuana processors to "process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (RCW 69.50.325(2)).
4. I-502 allows the Washington State Liquor Control Board to license marijuana retailers to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (RCW 69.50.325(3)).
5. Under I-502, before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the City, and the City has the right to file written objections to such license, although the Board has the final decision regarding whether to issue a license (RCW 69.50.331(7)).
6. I-502 establishes certain siting limitations on the Washington State Liquor Control Board's issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game arcade, admission to which is not restricted to persons aged twenty-one years or older (RCW 69.50.331(8)).
7. On July 3, 2013, the Washington State Liquor Control Board filed official draft rules to implement the provisions of I-502, and communicated its intent to adopt such rules on or around August 14, 2013, communicated its intent to begin accepting applications for all license types on or around September 14, 2013, after such rules have become effective, and begin issuing all license types after December 1, 2013.
8. On August 13, 2013 after five (5) public hearings in the State of Washington to solicit input on the official draft rules to implement the provisions of I-502, the Washington State Liquor Control Board communicated its intent to revise such official rules, re-file

such official rules on September 4, 2013, hold at least one (1) public hearing on October 9, 2013, adopt such official rules on October 16, 2013, and begin accepting applications for all license types on November 18, 2013 after such rules have become effective, and begin issuing all license types after December 18, 2013.

9. On September 4, 2013, the Washington State Liquor Control Board approved filing of proposed supplemental official draft rules and indicated one (1) or more public hearings will be held regarding such proposed rules
10. I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (RCW 69.50.345(2)).
11. I-502 decriminalizes, for purposes of state law only, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502.
12. 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”).
13. As indicated in Ordinance No. 429 of the City, the Council is aware that in January 2012, the U.S. Department of Justice Drug Enforcement Administration advised a jurisdiction in Washington, in connection with that jurisdiction’s attempt to implement E2SSB 5073, that “anyone who knowingly carries out the marijuana activities contemplated by Washington state law, as well as anyone who facilitates such activities, or conspires to commit such violations, is subject to criminal prosecution as provide in the CSA,” including the elected officials and employees of that jurisdiction.
14. By way of memorandum dated August 29, 2013, issued “for all United States Attorneys” from James Cole, Deputy Attorney General, the U.S. Department of Justice provided certain guidance regarding marijuana enforcement under the CSA “in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing and sale.” Specifically, the U.S. Department of Justice identified “certain enforcement priorities that are particularly important to the federal government” and that “will continue to guide the Department’s enforcement of the CSA against marijuana-related conduct.” The U.S. Department of Justice advised United States Attorneys that, in exercising prosecutorial discretion regarding marijuana-related conduct and the CSA, “prosecutors should continued to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system.” The

U.S. Department of Justice further advised that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [targeted by the federal government enforcement priorities], the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.” Finally, the U.S. Department of Justice advised that the “memorandum does not alter in any way the Department’s authority to enforce federal law, including federal laws relating to marijuana, regardless of state law,” does not create any rights that may be relied upon, and does not provide “a legal defense to a violation of federal law, including any civil or criminal violation of the CSA.”

15. The uses described in I-502 have never been allowed in the State of Washington or the City.
16. At this point in time, the City does not have any regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business license; and
17. RCW 36.70A.390 and RCW 35.63.200 authorize the Council to adopt an immediate moratorium for a period no longer than six (6) months, unless extended, without holding a public hearing on the proposal, provided that a public hearing is held within at least sixty (60) days of its adoption.
18. Moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development.
19. Pursuant to WAC 197-11-880, the adoption of this emergency moratorium is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA) and future permanent zoning regulations will be reviewed in accordance with SEPA Rules.
20. The Council has determined it needs additional time to conduct appropriate research to analyze the effects of I-502 and the rules and regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502.
21. A moratorium will preserve the status quo that is necessary to allow the City a reasonable opportunity to study the extent and validity of the changes in the law, to analyze the impacts and potential liability under the CSA to City officials and employees who implement and administer a City regulatory system consistent with I-502 and the rules and regulations to be adopted by the Washington State Liquor Control Board pursuant to I-502, and to determine an appropriate regulatory framework, if any, for the uses and activities that purport to be authorized or are actually authorized under I-502.

EXHIBIT B

Work Plan – Regulations for Recreational Marijuana

	Task	Schedule
1.	Evaluate legislation enacted by other jurisdictions in Washington.	October
2.	Evaluate legislation enacted by other jurisdictions in other states.	October
3.	Identify primary goals and objectives for Millwood’s regulations.	October
5.	Identify appropriate authority or mechanism for regulation of marijuana (i.e., land use, business license, special permit, etc.).	November
6.	Identify appropriate measures (regulations) to achieve goals and objectives.	November
7.	Prepare draft legislation.	November
8.	City Council review of draft legislation. Refer to advisory board/commission if desired.	November
9.	Solicit early input from interested citizens/groups, if desired.	December
10.	Complete environmental review, notification of state agencies, public notice, etc. if required.	December
11.	Identify and evaluate advantages and disadvantages of the draft legislation. Identify City resources needed to administer legislation if adopted. Develop administrative procedures as necessary.	December
12.	Second City Council review of draft legislation.	December
13.	Revise as necessary.	January, 2014
14.	Possible public hearing on draft legislation.	January, 2014
15.	Adoption of legislation.	February, 2014
16.	Notification of state agencies and interested citizens as required.	February, 2014

Note: The moratorium enacted by Ordinance No. 445 expires on February 13, 2014, unless otherwise extended.