

A RESOLUTION OF THE CITY OF MILLWOOD, WASHINGTON, ADOPTING FINDINGS OF FACT IN SUPPORT OF THE MORATORIUM ENACTED BY ORDINANCE NO. 476 RELATING TO SITING, ESTABLISHMENT, LOCATION, PERMITTING, LICENSING, OPERATION OR MAINTENANCE OF ANY STRUCTURES OR USES NOT CURRENTLY EXISTING OR OPERATING IN THE CITY OF MILLWOOD RELATING TO THE CULTIVATION OF MARIJUANA OR CANNABIS, PRODUCTION OF MARIJUANA OR CANNABIS OR MARIJUANA-INFUSED OR CANNABIS-INFUSED PRODUCTS, PROCESSING OF MARIJUANA OR CANNABIS OR MARIJUANA-INFUSED OR CANNABIS-INFUSED PRODUCTS, RETAIL OF MARIJUANA OR CANNABIS OR MARIJUANA-INFUSED OR CANNABIS-INFUSED PRODUCTS OR ANY OTHER ACTIVITIES PURPORTEDLY AUTHORIZED OR ACTUALLY AUTHORIZED UNDER STATE OF WASHINGTON INITIATIVE NO. 502, HB 2136 (2015) OR ANY OTHER LAWS OR REGULATIONS OF THE STATE OF WASHINGTON 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; AND PROVIDING FOR OTHER MATTERS RELATED THERETO.

WHEREAS, with the approval of Ordinance No. 476 by the City Council for the City of Millwood on September 8, 2015, 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 or uses not currently licensed with or not registered by the Washington State Liquor and Cannabis Board and not currently existing and/or operating and/or in existence as of the date of this Ordinance involving the cultivation, production, processing, sale or use of marijuana/cannabis or marijuana/cannabis-infused products, or any Marijuana Use (as defined in Ordinance No. 476) purportedly authorized or actually authorized under I-502 and HB 2136, any rules or regulations adopted or to be adopted by the Washington State Liquor and Cannabis Board pursuant to I-502, HB 2136, or any other laws or regulations of the state of Washington; 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. 476; and

WHEREAS, following the public notice published on September 25, 2015, as prescribed by applicable law, a public hearing was conducted before the City Council on October 13, 2015, 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. 476 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.

Section 3. Severability: If any section, sentence, clause, or phrase of this Resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Resolution.

Section 4. Repeal: All ordinances and resolutions, laws, regulations, or policies, or parts thereof in conflict with this Resolution are, to the extent of said conflict, hereby repealed.

Section 5. Effect: This Resolution shall be in full force and effect from and after its adoption by the City Council.

PASSED BY THE COUNCIL OF THE CITY OF MILLWOOD, WASHINGTON, THIS 13th DAY OF OCTOBER, 2015.


Kevin Freeman, Mayor

ATTEST:


Thomas G. Richardson, City Clerk

EXHIBIT A

Findings of Fact Supporting a Moratorium

1. In 1998 the Washington voters approved State of Washington Initiative 692 (“I-692”), codified as Chapter 69.51A RCW, which created an affirmative defense for certain persons who are in possession of medical marijuana/cannabis and who obtain or use medical marijuana/cannabis under limited, specific circumstances.

2. WHEREAS, in 2012 the Washington voters approved State of Washington Initiative 502 (“I-502”), codified in Chapter 69.50 RCW, which “authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older.”

3. I-502 allows the Washington State Liquor and Cannabis Board to license marijuana/cannabis producers “to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers” (RCW 69.50.325(1)).

4. I-502 allows the Washington State Liquor and Cannabis Board to license marijuana/cannabis processors to “process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers” (RCW 69.50.325(2)).

5. I-502 allows the Washington State Liquor and Cannabis Board to license marijuana/cannabis retailers to “sell usable marijuana and marijuana-infused products at retail in retail outlets” (RCW 69.50.325(3)).

6. I-502 establishes certain siting limitations on the Washington State Liquor and Cannabis 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. I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana/cannabis and marijuana/cannabis-infused products available for sale to adults 21 years of age or over (RCW 69.50.345(2)).

8. The City of Millwood (the “City”) is informed that during the public comment and hearing process and development of the chapter 314-55 WAC, the regulations developed pursuant to I-502, the Washington State Liquor and Cannabis Board consistently and publicly expressed that an important element of the implementation of I-502 was the access, availability and geographic dispersion of retail locations for regulated marijuana/cannabis.

9. I-502 decriminalizes, for purposes of state law only, the production,

manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana/cannabis, as long as such activities are in compliance with I-502.

10. Under I-502, before the Washington State Liquor and Cannabis 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)).

11. In 2015, the Washington legislature approved and Governor Jay Inslee signed 2E2SHB 2136 (“HB 2136”) and 2SSB 5052 (“SB 5052”), both of which amended both I-692 and I-502.

12. HB 2136 and SB 5052 significantly revised the legal and regulatory framework for production, processing and recreation and/or medical use of marijuana in Washington.

13. The cultivation, possession or distribution of marijuana/cannabis and marijuana/cannabis products has been and continues to be a violation of federal law through the Controlled Substances Act (“CSA”).

14. On January 16, 2014, the Washington State Attorney General issued an opinion (AGO 2014 No. 2) concluding that I-502 does not preempt counties, cities, and towns from banning marijuana production, processing and retail businesses within their jurisdictions, local ordinances that do not expressly ban state-licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction’s police power, and the issuance of a license from the Washington State Liquor and Cannabis Board does not entitle the licensee to locate or operate a marijuana processing, producing or retail business in violation of local rules or without necessary approval from local jurisdiction.

15. The Washington State Supreme Court issued a decision in *Cannabis Action Committee et al. v. City of Kent* (May 21, 2015) that upheld a city’s authority to ban medical marijuana/cannabis, collective gardens and dispensaries under the general police powers reserved for cities, including but not limited to zoning authority.

16. The City is informed that Superior Courts in the State of Washington have upheld a city’s authority to regulate or ban recreational marijuana/cannabis under the general police powers reserved for cities, including but not limited to zoning authority, including regulations by the City of Fife in Pierce County (*MMH, LLC v. City of Fife*, (August 2014)) and by the City of Wenatchee in Chelan County (*SMP Retail, LLC v. City of Wenatchee* (October 2014)), with both cases currently on appeal with the State of Washington Court of Appeals.

17. The City is located within Spokane County, is approximately three-quarters of one (1) square mile (467 acres), and has a population of 1,786 according to the 2010 Population Census.

18. The City falls within the “Spokane County At-Large” classification set by the Washington State Liquor and Cannabis Board, which historically allowed for a maximum number of seven (7) marijuana/cannabis retail locations in Spokane County (excluding the City of Spokane and City of Spokane Valley).

19. The City currently has two (2) of the seven (7) licensed marijuana/cannabis retail locations located in City boundaries, which are less than 800 feet (0.15 miles) apart in distance, and is informed there is at least one (1) unlicensed or unregistered medical marijuana/cannabis collective or dispensary is located in City boundaries, with all activities within one (1) mile in travelling distance.

20. Pursuant to RCW 69.50.331(7), the City has filed a written objection with the Washington State Liquor and Cannabis Board regarding multiple marijuana/cannabis retail locations that are “clustered” or otherwise in close proximity to each retail location located in the City, which the City believes was given little or no consideration by the Washington State Liquor and Cannabis Board.

21. The City is informed that additional marijuana/cannabis retail locations and/or medical marijuana/cannabis cooperatives licensed by or registered with the Washington State Liquor and Cannabis Board may desire to locate in the boundaries of the City.

22. On September 23, 2015, the Washington State Liquor and Cannabis Board, issued, effectively immediately, its Emergency Rules #15-18 to amend chapter 314-55 to provide that (1) the Washington State Liquor and Cannabis Board will begin accepting marijuana retail license applications on October 12, 2015 and, at the present time, it will not set a limit on the number of marijuana retail licenses, (2) the Washington State Liquor and Cannabis Board will begin accepting applications for medical marijuana endorsements, and (3) the cap on maximum marijuana production space is removed and will be set a later date.

23. On September 23, 2015, the Washington State Liquor and Cannabis Board also issued its Emergency Rules #15-17, which will be subject to public comment, wherein the Washington State Liquor and Cannabis Board stated it will not set a limit on the number of marijuana retail licenses or a cap on marijuana production space at the present time.

24. The City is informed that on or around August 3, 2015, a marijuana/cannabis retail business in the City located at 10309 E. Trent Avenue, was robbed at gunpoint by people armed with guns, handcuffs and zip ties, with business employees and a customer bound inside the business while undisclosed amounts of cash and marijuana were stolen from the marijuana/cannabis retail business.

25. Law enforcement in the City is provided under contract with the Spokane County Sheriff's Department, with costs to the City determined generally based on the historical number and severity of criminal acts committed in Unincorporated Spokane County District 8, the district in which the City is located.

26. At this point in time, the City is uncertain whether it has sufficient resources and regulations in place addressing the marijuana/cannabis facilities or uses identified in HB 2136 and SB 5052.

27. 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 first holding a public hearing on the proposal, provided that a public hearing is subsequently held within at least sixty (60) days of its adoption.

28. 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.

29. 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.

30. The Council needs additional time to conduct appropriate research to analyze and review the effects of I-502, HB 2136, SB 5052, and the rules and regulations adopted or to be adopted by the Washington State Liquor and Cannabis Board pursuant to such laws, and the effect on the City and City resources as a result thereto.

31. 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, and to determine an appropriate regulatory framework, if any, for the uses and activities not licensed or registered by the Washington State Liquor and Cannabis Board and not currently existing and/or in operation in the City that purport to be authorized or are actually authorized under I-502, HB 2136 and/or SB 5052.

EXHIBIT B

Work Plan – Regulations for Recreational Marijuana

	Task	Schedule
1.	Evaluate recent legislation, emergency regulations, and propose regulations in Washington.	September 2015
2.	Evaluate legislation enacted by other jurisdictions in Washington.	September 2015
3.	Evaluate legislation enacted by other jurisdictions in other states.	September 2015
4.	Identify primary goals and objectives for Millwood’s regulations.	September 2015
5.	Review cost and law enforcement impacts to Millwood based on medical and/or recreational marijuana	
6.	Identify appropriate authority or mechanism for regulation of marijuana (i.e., land use, business license, special permit, etc.).	October 2015r
7.	Identify appropriate measures (regulations) to achieve goals and objectives.	November 2015
8.	Prepare draft legislation.	November/December 2015
9.	City Council review of draft legislation. Refer to advisory board/commission if desired.	December 2015
10.	Solicit early input from interested citizens/groups, if desired.	December 2015
11.	Complete environmental review, notification of state agencies, public notice, etc. if required.	January 2016
12.	Identify and evaluate advantages and disadvantages of the draft legislation. Identify City resources needed to administer legislation if adopted. Develop administrative procedures as necessary.	January 2016
13.	Second City Council review of draft legislation.	January 2016
14.	Revise as necessary.	February 2016
15.	Possible public hearing on draft legislation.	February 2016
16.	Adoption of legislation.	March 2016
17.	Notification of state agencies and interested citizens as required.	March 2016

Note: The moratorium enacted by Ordinance No. 476 expires on March 8, 2016, unless otherwise extended.