

ORDINANCE NO. 631

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE WASHINGTON EXTENDING THE 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 FOR AN ADDITIONAL SIX (6) MONTHS, PROVIDING FOR SEVERABILITY, DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the cultivation, possession or distribution of cannabis, marijuana, and marijuana products is a criminal violation of federal law through the Controlled Substances Act ("CSA") which lists marijuana as a schedule one controlled substance because it is highly addictive and has no known medical value; and

WHEREAS, as a matter of law, the CSA wholly supersedes and preempts any conflicting state law regarding marijuana; 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 previous Washington state laws purported to legalize marijuana for "medical" use; and

WHEREAS, the activities purported to be legalized under Initiative Measure No. 502, and all other Washington state marijuana laws remain criminal violations of law under the Controlled Substances Act, and all persons, including local governmental employees, who conduct marijuana regulatory activities under Washington state law are subject to criminal prosecution and other enforcement under the CSA; 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 the federal CSA, the City had not previously studied or implemented zoning for uses involving the production or distribution of marijuana; and

WHEREAS, on May 6, 2013, by Ordinance 621 the City Council, after conducting a public hearing, enacted a six (6) month moratorium on 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 in order to allow 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 to be allowed under Initiative Measure No. 502; and

WHEREAS, the research conducted during the initial moratorium confirmed that I-502 and all other Washington state marijuana enactments are superseded and preempted by the federal CSA which is the law of the land, rendering I-502 legally unenforceable against local jurisdictions who do not wish to participate in zoning and licensing marijuana businesses; and

WHEREAS, Washington state's administration chose not to test the legal validity of I-502 in court prior to undertaking implementation of the measure, relying on the rebuttable presumption of validity accorded to any enactment by the legislature or initiative petition as justification for undertaking implementation activities which are criminal violations of federal law; and

WHEREAS, during the term of the initial moratorium, the Attorney General of the United States stated that the federal administration would not prosecute the State's administration over I-502 for now, which statement is an interim policy position that has no binding legal effect and may be reversed by the current federal administration or the next, at any time; and

WHEREAS, by overtly and knowingly violating the law of the land on marijuana, the State's administration has created a significant risk of liability for Washington residents because the law of the land classifies marijuana as a highly addictive substance, and scientific research indicates that there are adverse health impacts from marijuana use, yet the State is allowing it, and expects to profit from its illegal recreational use; and

WHEREAS, should recreational users of marijuana suffer adverse health effects, by promoting regulating and profiting from the illegal State authorized marijuana industry, the State may be the recipient of liability claims similar to those made against the tobacco industry; and

WHEREAS, in addition, the State's administration is encouraging and facilitating the investment of private dollars in an illegal industry which can be shut down at any time by the current federal administration or the next, including federal forfeiture of all assets of the State-licensed illegal businesses; and

WHEREAS, should the federal administration change its position and shut down the Washington marijuana industry, including potentially forfeiture of assets, by promoting, regulating and profiting from the illegal State authorized marijuana industry, the State may be the recipient of liability claims from those who invested in the industry and suffered financial losses as a result of federal action; and

WHEREAS, the price for such liability will ultimately fall on Washington taxpayers, and in the same manner, participation by the City may expose University Place taxpayers to additional liability beyond that created by the State; and

WHEREAS, an additional six (6) month moratorium is necessary to allow research and development to determine whether local zoning and regulations can be crafted for University Place which account for the fact that the marijuana industry authorized by I-502 remains a criminal violation of law which may be terminated at any time by the federal administration, and also account for the fact that marijuana, like tobacco, may have long-term adverse health effects on users, and which limit to the greatest extent possible the potential liability of the City and its residents as a result of allowing the illegal industry in University Place; and

WHEREAS, if such zoning and regulations can be developed, the Council will still have a final legislative decision at the end of the moratorium regarding whether the City will participate in implementing I-502, or if it will continue to enforce its existing zoning and ordinances which uniformly prohibit illegal businesses.

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

Section 1. Legislative Findings. The recitals and findings set forth above are hereby adopted as the City Council's legislative findings in support of the six (6) month extension of the marijuana moratorium imposed by this Ordinance.

Section 2. Moratorium Imposed. Pursuant to Washington state law, the moratorium is hereby extended for six (6) additional months 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 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, or unless terminated sooner, by ordinance.

Section 6. Public Hearing. The City Council held a public hearing on this extension of the marijuana moratorium at the regular City Council meeting of November 4, 2013.

Section 7. Work Program. The City Manager and his staff will research to determine whether local zoning and regulations can be crafted for University Place which account for the fact that the marijuana industry authorized by I-502 remains a criminal violation of law which may be terminated at any time by the federal administration, and also account for the fact that marijuana, like tobacco, may have long-term adverse health effects on users. The City Manager and staff will seek to limit to the greatest extent possible the potential liability of the City and its residents as a result of allowing the illegal marijuana businesses in University Place. If such regulations can be developed, they will be developed and presented for City Council review and consideration.

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.

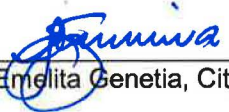
Section 9. Effective Date - Emergency. The City Council hereby finds and declares that an emergency exists because there is a potential that persons seeking to engage in marijuana activities could file applications with the City under the authority of Initiative Measure No. 502, and claim vesting before enactment of adequate and appropriate regulations, or before a City Council determination that the City will not participate in the implementation of I-502, this Ordinance shall become effective immediately upon passage in order to preserve the public health, safety and welfare.

PASSED BY THE CITY COUNCIL ON NOVEMBER 4, 2013.



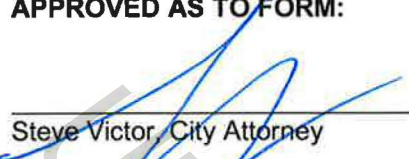
Ken Grassi, Mayor

ATTEST:



Emelita Genetia, City Clerk

APPROVED AS TO FORM:



Steve Victor, City Attorney

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