

**CITY OF GRANITE FALLS
GRANITE FALLS, WASHINGTON**

ORDINANCE NO. 835-2012

AN INTERIM ORDINANCE OF THE CITY OF GRANITE FALLS, WASHINGTON, ADOPTING AN EXTENSION OF A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES, COLLECTIVE GARDENS AND THE LICENSING AND PERMITTING THEREOF; DEFINING “MEDICAL MARIJUANA DISPENSARY”; PROVIDING FOR A PUBLIC HEARING; REFERRING THE MATTER TO THE PLANNING COMMISSION FOR REVIEW; ESTABLISHING AN EFFECTIVE DATE; AMENDING ORDINANCE NO. 825-2011 AND NO. 833-2012 AND PROVIDING THAT THE EXTENDED MORATORIUM WILL EXPIRE SIX (6) MONTHS FROM THE DATE OF ADOPTION.

WHEREAS, Initiative Measure No. 692, approved November 3, 1998, created an affirmative defense for “qualifying patients” to the charge of possession of marijuana; and

WHEREAS, the initiative and current Chapter 69.51A RCW are clear that nothing in its provisions are to be “construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes”; and

WHEREAS, the Washington State Department of Health opines that it is “not legal to buy or sell” medical marijuana and further opines that “the law [Chapter 69.51.A RCW] does not allow dispensaries”, leaving enforcement to local officials; and

WHEREAS, the City Council finds that the sale of marijuana, no matter how designated by dispensaries, is prohibited by federal and state law; and

WHEREAS, ESSB 5073 – Chapter 181, Laws of 2011 (“the bill”) was adopted with a partial veto of the Governor became effective July 22, 2011; and

WHEREAS, Governor Gregoire vetoed 36 of the 58 provisions of ESSB 5073 and this has created considerable uncertainties and ambiguities regarding the meaning and enforcement of the bill; and

WHEREAS, Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law; and

WHEREAS, Section 403 of the bill provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to compliance with specific statutory conditions; and

WHEREAS, the City acknowledges the right of qualified health care professionals to prescribe the medical use of marijuana as well as the right of patients to designate a “designated provider” who can “provide” rather than sell marijuana to “only one patient at any one time”; and

WHEREAS, the City Council finds that the secondary impacts associated with marijuana dispensaries and collective gardens include but are not limited to the invasion of the business, burglary and robbery associated with the cash and drugs maintained on the site; and

WHEREAS, pursuant to Section 1102 of the bill and under their general zoning and police powers cities are authorized to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes on the production, processing or dispensing of cannabis or cannabis products; and

WHEREAS, the City currently has no zoning, licensing, and/or permitting requirements and/or regulations that address the medical marijuana collective gardens; and

WHEREAS, marijuana/cannabis remains a Schedule I drug under the federal Controlled Substances Act (“CSA”) and is considered by the federal authorities to be a drug with no medical value, and its manufacture, distribution and/or possession are a violation of federal law; and

WHEREAS, there appears to be a conflict between state and federal law concerning the legal status of marijuana/cannabis and its manufacture, distribution, use and possession; and

WHEREAS, this conflict between federal and state law was highlighted by a January 17, 2012 letter to the Clark County Board of Commissioners, Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice, stated that anyone “who knowingly carries out the marijuana activities contemplated by Washington state law, as well as anyone facilitates such activities, or conspires to commit such violations, is subject to criminal prosecution as provided in the [Controlled Substances Act]” (underlining added); and

WHEREAS, on or about November 30, 2011, Washington State Governor Christine Gregoire and Rhode Island State Governor Lincoln Chaffee petitioned the United States Drug Enforcement Administration (DEA) to reclassify marijuana/cannabis as a Schedule II drug that has therapeutic value and that should be treated as a prescription drug; and

WHEREAS, reclassification of marijuana/cannabis as a Schedule II drug by DEA would allow marijuana/cannabis to be prescribed by physicians with restrictions and dispensed by pharmacies, and would potentially eliminate the current legal and planning dilemma Granite Falls and other Washington cities and towns are currently struggling with concerning regulation, permitting and licensing issues surrounding medical marijuana/cannabis; and

WHEREAS, a number of initiatives have been filed with the Washington State Secretary of State that if adopted would change the legal framework concerning medical marijuana once again; and

WHEREAS, Initiative 502 was approved by popular vote on November 6, 2012 and will take effect over the course of a year, beginning on December 6, 2012. Initiative 502 defined and distinguished marijuana from other parts of the cannabis plant, legalizing small amounts of marijuana-related products for most adults, to tax them, and designate the revenue for healthcare and substance-abuse prevention and education. Cannabis is still classified as a schedule I controlled substance under federal law and subject to federal prosecution under the doctrine of dual sovereignty. Possession by anyone younger than 21, possession of larger amounts, and the growing of unlicensed or unregulated marijuana remains illegal under state law; and

WHEREAS, on December 14, 2011, the City Council passed Ordinance No. 825-2011 that imposed a six (6) month moratorium on the establishment of medical marijuana dispensaries, collective gardens and the licensing and permitting thereof; and

WHEREAS, on June 6, 2012, the City Council passed Ordinance No. 833-2012 that extended and imposed an additional six (6) month moratorium on the establishment of medical marijuana dispensaries, collective gardens and the licensing and permitting thereof;

WHEREAS, Ordinance No. 833-2012 will expire on or about December 5, 2012 (180 days from the date of adoption of Ordinance No. 833-2012); and

WHEREAS, given the many complications, uncertainties and impacts that exist and that are described above, additional time is necessary to engage in a meaningful planning process related to the development of regulations that address zoning, licensing and/or permitting of medical marijuana and the impacts thereof; and

WHEREAS, a public hearing is scheduled and will be held on December 5, 2012, before Granite Falls City Council; and

WHEREAS, the City Council finds it is in the best interest of the City of Granite Falls and its citizens to extend the moratorium regarding the establishment of medical marijuana collective gardens and the licensing and permitting thereof for an additional six (6) month period;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GRANITE FALLS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The above “Whereas” clauses constitute findings of fact in support of the moratorium established by this Ordinance and said findings are fully incorporated into this Ordinance.

Section 2. Pursuant to the provisions of RCW 36.70A.390, the zoning moratorium established by Ordinance No. 825-2011, and extended by Ordinance No. 833-20-12, in the City of Granite Falls that prohibits licensing, permitting, establishment, maintenance or continuation of any use consisting of or including the sale, provision and/or dispensing of medical marijuana to more than one person, the establishment of a medical marijuana dispensary or creation of or participation in a “collective garden” as referenced and defined in Section 403 of ESSB 5073 – Chapter 181, Laws of 2011, is hereby extended for an additional six (6) month period from the date of adoption of this Ordinance and Ordinance No. 825-2011 and Ordinance 833-2012 is hereby amended consistent herewith.

Section 3. “Medical marijuana dispensary” is hereby defined as any person, business, corporation, partnership, joint venture, organization, association and/or other entity which: 1) sells, provides and/or otherwise dispenses marijuana to more than one “qualifying patient” in any sixty (60) day period or to any person who does not meet the definition of “qualifying patient” under the terms of Chapter 69.51A RCW, and/or 2) maintains and/or possesses more than one sixty-day supply of marijuana for one qualifying patient at any time. The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana to a qualifying patient shall be presumed to be a sale. Any person, business, corporation, partnership, joint venture, organization, association and/ or entity which sells, provides and/or otherwise dispenses marijuana to more than one qualifying patient in any sixty (60) day period should be presumed to be a “medical marijuana dispensary.”

Section 4. Medical marijuana dispensaries and collective gardens are hereby designated as prohibited uses in the City of Granite Falls, and in accordance with the provisions of RCW 35A.82.020, no business license, permit, zoning or development approval shall be issued to be a medical marijuana dispensary or collective garden.

Section 5. This Ordinance shall be referred to the Granite Falls Planning Commission for its review and recommendation for potential inclusion in the zoning and development code of the City of Granite Falls Municipal Code.

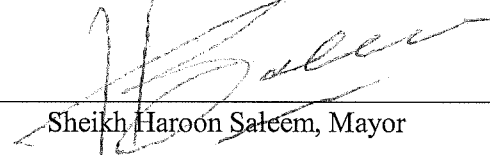
Section 6. Ordinance to be Transmitted to Department. Pursuant to RCW 36.70A.106, a copy of this interim Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 7. Severability. If any section, clause, and/or phrase of this Ordinance is held invalid by a court of competent jurisdiction, such invalidity and/or unconstitutionality shall not affect the validity and/or constitutionality of any other section, clause and/or phrase of the Ordinance.


Section 8. Effective Date. This Ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title, PROVIDED, HOWEVER, that unless extended by the act of the Granite Falls City Council, this Ordinance shall automatically expire six (6) months following its adoption.

ADOPTED by the City Council and APPROVED by the Mayor this 5th day of Dec., 2012.

CITY OF GRANITE FALLS

By: 
Sheikh Haroon Saleem, Mayor

ATTEST/AUTHENTICATED:

By: 
Darla Reese, CMC, City Clerk

APPROVED AS TO FORM:

By: 
Cheryl L. Beyer, City Attorney

Ordinance No. 835-2012

Date of Publication: 12/8/2012

Effective Date: 12/13/2012