

## ORDINANCE #486

### **AN ORDINANCE ADOPTING A MORATORIUM WITHIN THE TOWN OF YACOLT ON THE ESTABLISHMENT, LICENSING OR OPERATION OF NEW MEDICAL MARIJUANA DISPENSARIES AND DECLARING AN EMERGENCY.**

The Town Council adopts the following findings:

**Whereas**, Initiative Measure No. 692, approved November 3, 1998 and codified as RCW chapter 69.51A (the Act), provided for the use of cannabis (marijuana) for medical purposes and created an affirmative defense for "qualifying patients" to the charge of possession of cannabis;

**Whereas**, RCW chapter 69.51A is clear that nothing in its provisions are to be "construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of Cannabis for non-medical purposes";

**Whereas**, the Town Council acknowledges the right of qualified health care professionals to recommend the medical use of cannabis, acknowledges the affirmative defense available to qualifying patients from the possession of cannabis as well as the right of patients to designate a "designated provider" who can "provide" rather than sell cannabis to "only one patient at any one time" as provided by law but also recognizes that cannabis manufacture and use remains illegal under federal law for both medical and non-medical purposes;

**Whereas**, the 2011 Washington Legislature passed E2SSB 5073 (the Amendment), and the Governor signed the legislation but also vetoed 36 of the 58 sections of the bill, which has created ambiguities and inconsistencies as state and local governments attempt to interpret and implement the adopted portions of the Amendment;

**Whereas**, E2SSB 5073 became effective on July 22, 2011;

**Whereas**, the Amendment authorizes "collective gardens" which would permit qualifying patients to produce, grow and deliver up to 45 cannabis plants to serve no more than 10 qualifying patients for medical use;

**Whereas**, the Town may receive applications to establish medical marijuana dispensaries under the Amendment with the applicants asserting that such facilities are authorized to operate as designated providers of medical marijuana under the Act as Amended and that their applications vest their right to establish a medical marijuana dispensary notwithstanding any subsequently adopted state statutes or administrative rules or corresponding Town regulations;

**Whereas**, marijuana dispensaries are not authorized under either state or federal law;

**Whereas**, the Amendment authorizes cities to adopt zoning regulations and business taxes applicable to medical marijuana dispensaries. In particular, such regulations could address siting and operational requirements and impact mitigation for the location and operation of dispensaries;

**Whereas**, additional time is needed for Town staff to conduct appropriate research and to evaluate the extent of the changes provided in the Amendment, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for new uses permitted by the Amendment. The Town must ensure that locational and operational requirements for marijuana dispensaries are appropriate and that any potential secondary impacts arising from the operation of these facilities are minimized and mitigated. These secondary impacts include, but are not limited to, burglaries associated with the cash and marijuana maintained on a site or an increase of other illegal activities such as drug use, within the vicinity of dispensaries. In addition, studies may be conducted to analyze the impacts of allowing these uses and facilities in residential zones as well as the impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities;

**Whereas**, the Town Council deems it to be in the public interest to establish a zoning, licensing and permitting moratorium on the establishment of new medical marijuana dispensaries pending local review of the changes in the applicable law;

**Whereas**, the Town Council determines that a moratorium is necessary to allow additional time for this investigation and evaluation and for the Washington Legislature to adopt additional laws on the subject, the Council understands the needs of people suffering from debilitating or terminal conditions and the benefits that approved medical use of marijuana may provide these people. Nevertheless, given the complex legal and regulatory framework surrounding this issue and the uncertainties created by the Governor's partial veto of E2SSB 5073, a moratorium on new medical marijuana dispensaries is necessary to provide the Town the necessary additional time to address the issues described herein; and,

**Whereas**, each member of the Town Council has had notice of the time, place and purpose of this meeting:

**NOW THEREFORE**, be it Ordained by the Town Council of the Town of Yacolt, Washington:

**Section 1 - Incorporation of Recitals and Statutory Definitions.**

The Town Council adopts the foregoing recital clauses and incorporates them herein as preliminary findings in support of the moratorium adopted by this Ordinance.

**Section 2 - Definitions.**

The Town Council adopts from RCW chapter 69.51A the definitions of the operative terms used in this Ordinance. Additionally, the following definitions are adopted for terms used in this Ordinance that are not otherwise defined in RCW chapter 69.51A:

- (a) “Cannabis or Marijuana” means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, “cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seek of the plant which is incapable of germination. The term “cannabis” or “marijuana” includes cannabis products and usable cannabis.
- (b) “Dispense” means the selection, measuring, packaging, labeling, delivery, or retail sale of cannabis, cannabis products or marijuana to a qualifying patient or designated provider.
- (c) “Medical marijuana dispensary” is hereby defined as any individual, business, corporation or other entity that:
1. sells or otherwise dispenses marijuana cannabis or cannabis products to more than one “qualifying patient” in any 30-day period or to any person who does not meet the definition of “qualifying patient” under the terms of the Act, or
  2. maintains more than one one-month supply of marijuana, cannabis or cannabis products for one qualifying patient on the premises at any time, or
  3. provides for the cultivation of more than 15 marijuana or cannabis plants by collective or cooperative ventures at a location.
- The receipt of cash or other legal tender in exchange for, contemporaneously with or immediately following the delivery of marijuana or cannabis or cannabis products, shall be presumed to be a sale. Any person or entity which sells or otherwise dispenses marijuana to more than one person and/or qualifying patent in any 30-day period or cultivates marijuana for more than one person and/or qualifying patient, shall be presumed to be a “medical marijuana dispensary.”
- (d) “Medical use of cannabis or marijuana” means the manufacture, production, processing, possession, transportation, delivery, dispensing, ingestion, application or administration of cannabis or marijuana for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating medical condition.
- (e) “Qualifying patient” means a person who:
1. is a patient of a health care professional;
  2. has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
  3. is a resident of the State of Washington at the time of such diagnosis;
  4. has been advised by that health care professional that he or she may benefit from the medical use of marijuana or cannabis.

**Section 3 - Adoption of Moratorium.**

Pursuant to Ordinance #371 and the general power and authority of the Town to preserve and promote public health, safety and welfare, a zoning moratorium is hereby declared and established prohibiting the Town of Yacolt from any of the following until such time that the Town adopts rules and procedures relating to the following uses, permits and licenses:

- (a) The acceptance of any application for the licensing, establishment or location of a medical marijuana dispensary within the Town's corporate limits.
- (b) The issuance or approval of any building permit, business license, occupancy permit, site plan approval, development permit or any other discretionary approval to dispense medical marijuana or for a medical marijuana dispensary.

**Section 4 - Town Actions During the Pendency of the Moratorium.**

While this moratorium is pending Town staff shall review E2SSB 5073 in the context of RCW chapter 69.51A to determine what marijuana-related uses are allowed and under what circumstances, to determine the extent of the Town's regulatory authority under the new law, and to allow the State of Washington time to adopt additional laws and administrative rules. Town staff shall also review regulations from other jurisdictions that allow medical marijuana uses and prepare proposed regulations to implement the new law.

**Section 5 – Emergency.**

The Town Council hereby finds and declares that the risk of allowing new marijuana dispensaries or attempting to interpret and implement E2SSB 5073 in its current confused condition without a clear understanding of what medical marijuana uses are allowed, under what circumstances and the extent of the Town's authority to regulate those uses constitutes a threat to the public health safety and welfare. Emergency adoption and immediate effect of this moratorium is necessary to allow the Town adequate time to formulate and adopt suitable regulations that are consistent with state law before any new medical marijuana dispensaries can be established. The Town Council declares that an emergency exists that necessitates this Ordinance becoming effective immediately upon publication in order to preserve the public health, safety and welfare.

**Section 6 – Severability.**

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by a court of competent jurisdiction, the remaining portion of this Ordinance shall remain in full force and effect.

**Section 7 - Effective Date.**

This Ordinance shall take effect on September 28, 2011, following publication of the following summary, according to law.

Town of Yacolt - Summary of Ordinance #486

The Town Council of the Town of Yacolt adopted Ordinance #486 at its regularly scheduled Town Council meeting held on September 19, 2011. The content of the Ordinance is summarized in its title as follows:


AN ORDINANCE ADOPTING A MORATORIUM WITHIN THE TOWN OF YACOLT ON THE ESTABLISHMENT, LICENSING OR OPERATION OF NEW MEDICAL MARIJUANA DISPENSARIES AND DECLARING AN EMERGENCY. The effective date of the Ordinance is September 28, 2011.

A copy of the full text of the Ordinance will be mailed upon request to the undersigned at the Town of Yacolt Town Hall, P.O. Box 160, Yacolt, WA 98675: (360) 686-3922.

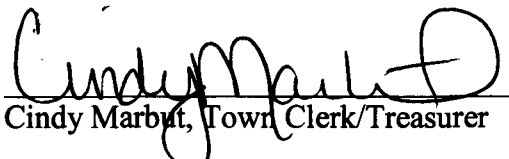
Published this 28<sup>th</sup> day of September, 2011.  
Cindy Marbut, Town Clerk/Treasurer

**PASSED** by the Town Council of the Town of Yacolt, Washington, at a regular meeting thereof this 19<sup>th</sup> day of September, 2011.

TOWN OF YACOLT

  
James Weldon, Mayor

Attest:

  
Cindy Marbut, Town Clerk/Treasurer

Approved as to Form:

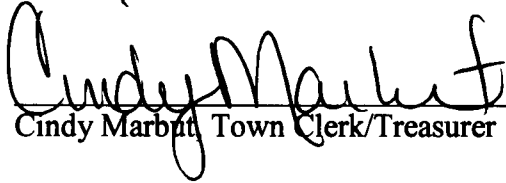
\_\_\_\_\_  
David W. Ridenour, Town Attorney

Ayes: Ayers, Hancock, Holyk, Robertson, Bengel  
Nays: \_\_\_\_\_  
Absent: \_\_\_\_\_  
Abstain: \_\_\_\_\_

**TOWN CLERK'S CERTIFICATION**

I hereby certify that the foregoing Ordinance is a true and correct copy of Ordinance #486 of the Town of Yacolt, Washington, entitled "AN ORDINANCE ADOPTING A MORATORIUM WITHIN THE TOWN OF YACOLT ON THE ESTABLISHMENT, LICENSING OR OPERATION OF NEW MEDICAL MARIJUANA DISPENSARIES AND DECLARING AN EMERGENCY", as approved according to law by the Town Council on the date therein mentioned. The Ordinance has been published or posted according to law.

Attest:

  
Cindy Marbut, Town Clerk/Treasurer

Published: 9/28/12  
Effective Date: 9/28/12  
Ordinance Number: #486