

RESOLUTION NO. 1218

A RESOLUTION imposing a moratorium for six months upon the establishment of any collective garden for the purpose of producing, processing, transporting, and delivering Cannabis for medical use as otherwise authorized pursuant to Engrossed Second Substitute Senate Bill 5073, Section 403.

**A RESOLUTION** declaring an emergency and adopting a six-month moratorium within the City of Camas on the establishment, location, operation, licensing, maintenance or continuation of medical marijuana collective gardens or dispensaries, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A Revised Code of Washington, or any other laws of the state of Washington; setting a date for a public hearing on the moratorium, and providing that the moratorium will take effect immediately upon passage.

**WHEREAS**, Initiative Measure No. 692, approved November 3, 1998, 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;

**AND WHEREAS**, the Initiative and 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 cannabis for non-medical purposes;" and

**AND WHEREAS**, the City 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;

**AND WHEREAS**, the Legislature passed E2SSB 5073 (the Act) and the Governor has signed the legislation but also has vetoed thirty six (36) of the fifty eight (58) sections of the bill which has understandably created some ambiguities and inconsistencies;

**AND WHEREAS**, E2SSB 5073 is effective on July 22, 2011;

**AND WHEREAS**, the Act authorizes "collective gardens" which would permit qualifying patients to produce, grow and deliver up to forty five (45) cannabis plants to serve no more than ten (10) qualifying patients for medical use;

**AND WHEREAS**, other jurisdictions have seen the establishment of medical marijuana dispensaries and have received inquiries regarding the establishment of medical marijuana dispensaries also referred to as cooperatives, patient cooperatives or patient networks and other facilities, with some inquirers asserting that such dispensaries are authorized to operate as designated providers of medical marijuana within the meaning of Chapter 69.51A RCW;

**AND WHEREAS**, such dispensaries are not authorized under either state or federal law;

**AND WHEREAS**, the Act delegates to cities the authority to implement zoning requirements, and business taxes as those requirements and taxes relate to the production, processing, or dispensing of medical marijuana. Specifically, such regulations could address ambiguities concerning the location and operation of collective gardens;

**AND WHEREAS**, adequate time is needed to conduct appropriate research to understand the extent of the changes provided in the Act, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws. The City must ensure that proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and mitigated. These secondary impacts include, but are not limited to, burglaries associated with the cash and marijuana maintained on 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;

**AND WHEREAS**, the City Council deems it to be in the public interest to establish a zoning, licensing and permitting moratorium pending local review of the changes in the law on the subject of medical marijuana dispensaries and collective or co-operative grow operations;

**AND WHEREAS**, the City Council determines that a moratorium is necessary for the reasons stated herein, the Council understands the needs of the persons suffering from debilitating or terminal conditions, as well as the benefits that approved medical use of

marijuana may provide these persons. Nevertheless, given the complex legal and regulatory framework surrounding this issue, a moratorium remains necessary until the Council can adequately address the issues described herein;

**AND WHEREAS**, pursuant to RCW 36.70A.390 and 35A.63.220 a public hearing must be held within sixty (60) days of the passage of this Resolution .

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAMAS, WASHINGTON as follows:**

**Section I**

The City Council adopts the foregoing recital clauses herein as preliminary findings in support of the moratorium imposed by this resolution.

**Section II**

Pursuant to the provisions of RCW 36.70A.390 and RCW 35A.63.220, a zoning moratorium is hereby enacted prohibiting within the City of Camas, the application for and the licensing, establishment, location, operation, maintenance or continuation of any medical cannabis collective garden. A "collective garden" is an area or garden where qualifying patients engage in the production, cultivation, tending, processing, transporting and delivery of cannabis for medical use as set forth in the Act and subject to the limitations therein.

**Section III**

Collective gardens for the cultivation of cannabis as defined in Section

II are hereby designated as a prohibited use in the City of Camas. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed in Section II and no business license shall be issued to any person for a collective garden while this moratorium is in effect.

#### **Section IV**

Pursuant to the provisions of RCW 36.70A.390 and RCW 35A.63.220, a zoning moratorium is hereby enacted prohibiting within the City of Camas the application for and the licensing, establishment, location, operation, maintenance or continuation of any facility, program, or practice consisting of or including the sale of medical marijuana, the provision or distribution of medical marijuana to more than one person or the establishment of any medical marijuana dispensary. A "medical marijuana dispensary" is hereby defined as any individual, business, corporation, or entity which sells, distributes, or otherwise dispenses cannabis to more than one qualifying patient in any fifteen (15) day period or to any person who is not a qualifying patient under the terms of the Act. The receipt of cash or legal tender in exchange for the delivery of cannabis shall be presumed to be a sale. Any person or entity which sells, distributes, or otherwise dispenses cannabis to more than one (1) qualifying patient in any fifteen (15) day period shall be presumed to be a "medical marijuana dispensary". A medical marijuana dispensary as defined herein is hereby designated as a prohibited use in the City

of Camas. No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed herein and no business license shall be issued to any person for a medical marijuana dispensary while this moratorium is in effect.

#### **Section V**

No Nonconforming Uses. No use that constitutes or purports to be a medical marijuana dispensary or medial marijuana collective garden as those terms are defined in this resolution , that was engaged in that activity prior to the enactment of this resolution shall be deemed to have been a legally established use under the provisions of the Camas Municipal Code and that use shall not be entitled to claim legal nonconforming status.

#### **Section VI**

Public hearing. Pursuant to RCW36.70A.390 and RCW 35A.63.220, the City Council sets the Regular Meeting of September 6, 2011 at 7:00 p.m., as the date and time for a public hearing on this moratorium. The City Clerk is directed to cause appropriate notice of such hearing to be given.

#### **Section VII**

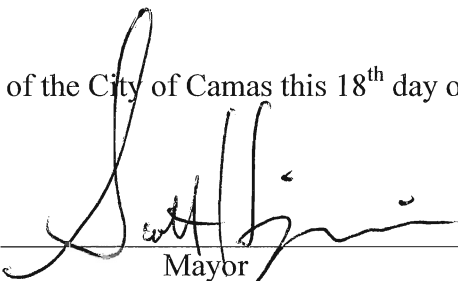
Severability. If any clause, sentence, paragraph, section, or part of this resolution or the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was

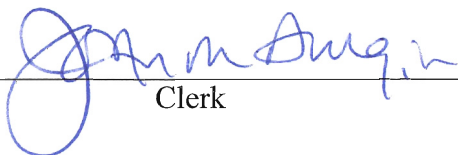
rendered and shall not effect or invalidate the remainder or any parts thereof to any person or circumstances and to this end, the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

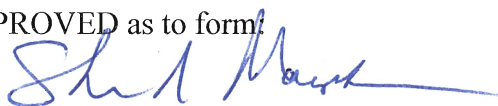
### Section VIII

Effective date and notice. The City Council hereby finds and declares that an emergency exists and this is a matter of urgency which necessitates that this Resolution become effective immediately in order to preserve the public health, safety and welfare. The Resolution shall become effective immediately upon passage.

ADOPTED at a regular meeting of the Council of the City of Camas this 18<sup>th</sup> day of July, 2011.

SIGNED:   
Mayor

ATTEST:   
Clerk

APPROVED as to form:  
  
City Attorney