CITY OF SNOHOMISH
Snohomish, Washington

ORDINANCE 2253

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, AMENDING TITLE 9 OF THE SNOHOMISH MUNICIPAL CODE, "PUBLIC PEACE AND SAFETY", BY ADDING A NEW CHAPTER 9.100, "CANNABIS NUISANCES" AND REPEALING THE MORATORIUM ESTABLISHED BY ORDINANCE 2218 AS EXTENDED BY ORDINANCES 2232, 2238, AND 2247

WHEREAS, the City is granted authority under RCW 35A.11.020 and RCW 35.22.280 to declare what shall be a nuisance and to abate the same; and

WHEREAS, RCW 69.51A.140 authorizes cities to adopt and enforce health and safety requirements relating to cannabis, including medical cannabis, within their jurisdictions; and

WHEREAS, except under state license, the manufacturing or delivering of cannabis remains illegal under state law and the possessing, manufacturing, or delivering remains illegal under federal law; and

WHEREAS, the City acknowledges the needs of persons suffering from debilitating or terminal conditions and the benefits that some qualified patients experience from the medical use of cannabis; and

WHEREAS, Chapter 69.51A RCW provides affirmative defenses under state law for certain medical cannabis activities falling within the requirements of the Chapter; and

WHEREAS, medical cannabis activities outside the affirmative defenses contained in Chapter 69.51A RCW are not authorized under state law and therefore constitute nuisances per se; and

WHEREAS, other local jurisdictions within the state have experienced entities operating outside of the affirmative defenses contained in Chapter 69.51A RCW, operating dispensaries and conducting other illegal cannabis businesses, resulting in associated impacts to the community from such illegal cannabis activities; and

WHEREAS, illegal cannabis activities endanger the comfort, repose, health, and safety of the City's citizens and therefore constitute a nuisance; and

WHEREAS, the associated impacts of medical cannabis activities, even when consistent with the affirmative defenses contained in Chapter 69.51A RCW, are likely to present issues of public safety and odor for surrounding properties, as well as for the property on which such activities exist, and issues of public welfare and the protection of minors, both of which are minimized when such activities are located outside of designated residential areas; and

WHEREAS, the City wishes to minimize potential community impacts arising from the operation of collective gardens; and

WHEREAS, the City is precluded from licensing and/or permitting medical cannabis activities because the activities remain illegal under state and federal law and therefore cannot utilize typical land use regulatory tools; and

WHEREAS, unless regulations declaring certain activities a nuisance are adopted, the City lacks the necessary tools to address associated community impacts of medical cannabis activities and their effects on public health, safety, and welfare; and

WHEREAS, WAC 197-11-800(19) provides an exemption from review under the State Environmental Policy Act (SEPA) in Chapter 43.21C RCW for adoption of ordinances "relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment"; and

WHEREAS, this ordinance provides no license or approval for any land use or modification of the environment and therefore the City's SEPA Responsible Official has determined it exempt from SEPA review; and

WHEREAS, a public hearing was held before the City Council on April 16, 2013, regarding nuisance regulations for medical cannabis and all persons wishing to be heard were heard;

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

Section 1. Findings of Fact.

A. The "Whereas" clauses constituting findings of fact are fully incorporated into this Ordinance.

B. The City Council finds that the production, manufacture, processing, delivery, distribution, possession, or use of cannabis for medical purposes for which there is an affirmative defense under state law may be a nuisance by unreasonably annoying, injuring, or endangering the comfort, repose, health, or safety of others; by being unreasonably offensive to the senses; by being an unlawful act; or otherwise violating municipal regulations, federal law, or state law.

Section 2. Adoption of Chapter 9.100 SMC. Chapter 9.100 SMC is hereby adopted as set forth in the attached **Exhibit A** and is incorporated herein by this reference.

Section 3. Termination and Repeal of Moratorium. Ordinance 2218 as extended by Ordinance 2232, Ordinance 2238, and Ordinance 2247 are each hereby repealed on the effective date of this Ordinance.

Section 4. Severability. If any section, subsection, clause, phrase, and/or word of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity and/or unconstitutionality thereof shall not affect the validity and/or constitutionality of any other section, clause, and/or phrase of the Ordinance.

Section 5. **Effective Date**. This Ordinance shall take effect five (5) days after passage and publication of a summary of this Ordinance.

ADOPTED by the City Council and **APPROVED** by the Mayor this 16th day of April 2013.

CITY OF SNOHOMISH

By:_____
Karen Guzak, Mayor

ATTEST/AUTHENTICATED:

By:_____
Torchie Corey, City Clerk

APPROVED AS TO FORM:

By:_____
Grant K. Weed, City Attorney

Date of Publication: 4/20/13

Effective Date: 4/25/13

EXHIBIT A

Chapter 9.100

CANNABIS NUISANCES

Sections:

9.100.010 Cannabis Activities Deemed Nuisances. Producing, manufacturing, processing, delivering, distributing, possessing, and using cannabis are crimes under the Snohomish Municipal Code and federal law. Producing, manufacturing, processing, delivering, and distributing cannabis without a state license is illegal under state law. Except as provided in RCW Chapter 69.51A, possessing marijuana in excess of the quantities permitted under RCW Chapter 69.50 is illegal under state law.

The producing, manufacturing, processing, delivery, distribution, possession, or use of cannabis for medical purposes for which there is an affirmative defense under state law is hereby declared to be a nuisance by unreasonably annoying, injuring, or endangering the comfort, repose, health, or safety of others; by being unreasonably offensive to the senses; by being an unlawful act; by resulting in an attractive nuisance; or by otherwise violating the municipal code or state law.

9.100.020 Definitions. For the purposes of this chapter, the following words shall have the following meanings:

A. "Cannabis" or "marijuana" means all parts of the plant Cannabis, commonly known as marijuana, 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.

B. "Cannabis garden" means any place, area, or garden where cannabis is produced or processed and either (1) the person producing or processing the cannabis is not a qualifying patient or designated provider, (2) a copy or copies of the valid documentation of the qualifying patient(s) who own or share responsibility for the garden is not available at all times on the premises, or (3) the number of plants or useable cannabis on the premises exceeds the limits set forth in RCW 69.51A.040(1)(a), RCW 69.51A.040(1)(b), or RCW 69.51.A.085, or the garden is not otherwise in full compliance with RCW 69.51A.040(1)(a), RCW 69.51A.040(1)(b), or RCW 69.51.A.085. "Cannabis garden" does not include a place, area, or garden where cannabis is produced or processed if such activity is conducted pursuant to a license or permit issued by the state.

C. "Collective garden" means any place, area, or garden where qualifying patients (as defined in RCW 69.51A.010) share responsibility and engage in the production, processing, and/or delivery of cannabis for medical use, as set forth in RCW 69.51A.085, in full compliance with all limitations and requirements set forth in RCW 69.51A.085. "Collective garden" does not include any office, meeting place, or club associated with a collective garden which is not located within the same structure as the collective garden itself. "Collective garden" does not include a garden where members are replaced in less than 15 days or membership is otherwise manipulated to allow more than 10 qualifying patients to obtain cannabis from the same or substantially the same physical location, plants, operation, or enterprise. "Collective garden" does not include any garden where the cannabis has previously been part of another collective garden or part of a cannabis garden.

D. "Dispensary" means any place where cannabis is delivered, sold, or distributed or offered for delivery, sale, or distribution. "Dispensary" does not include a private residence where a designated provider delivers medical cannabis to his or her qualifying patient or a private residence where a member of a collective garden delivers medical cannabis to another member of the same collective garden. "Dispensary" does not include a collective garden, but does include any office, meeting place, club, or other place which is not located within the same structure as the collective garden itself where medial cannabis is delivered regardless of whether the delivery is made to another member of the collective garden. "Dispensary" does not include a place where cannabis is delivered, sold, or distributed or offered for delivery, sale, or distribution if such activity is conducted pursuant to a license or permit issued by the state.

E. "Medical cannabis garden" means any place, area, or garden where a qualifying patient or designated provider (as defined in RCW 69.51A.010) produces or processes cannabis for medical use as set forth in RCW 69.51A.040 and in full compliance with all limitations and requirements set forth in RCW 69.51A.040. "Medical cannabis garden" does not mean a site or building where the amount of cannabis exceeds the maximum for one qualifying patient and one designated provider as set forth in RCW 69.51A.040.

F. "Youth-oriented facility" means any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or individuals who regularly patronize, congregate, or assemble at the establishment are predominantly minors. "Youth-oriented facility" does not include public parks, public or private elementary or secondary schools, day care or preschool facilities, or bus stops.

G. The definitions contained in Chapter 69.50 RCW and Chapter 69.51A RCW shall be used to define any term not otherwise defined in this chapter.

9.100.030 Cannabis Nuisances Declared. The following acts, omissions, places, and conditions are declared to be a public nuisance, including, but not limited to, any one or more of the following:

A. Any cannabis garden is a nuisance per se.

B. Any collective garden located in any of the following land use designations: OS, PP, UH, SF, LDR, MDR, HDR, CO, NB, HB, MU, or PD.

C. Any dispensary is a nuisance per se.

D. Any collective garden where there is one or more exterior indications of the use such as outdoor storage, noise, vibration, odors, smoke, glare, or the display of cannabis or cannabis products visible from public areas or property owned or leased by another person or entity.

E. Except as provided by Chapter 69.50 RCW, any place where cannabis can be seen or smelled from public property or from private property owned or leased by another person or entity.

F. Any collective garden located closer than the distance below to any of the following whether in or out of the City:

1. Within 1,000 feet of any public or private elementary or secondary school;
2. Within 500 feet of any daycare and preschool;
3. Within 500 feet of any park;
4. Within 500 feet of any youth-oriented facility; or
5. Within 500 feet of any church, synagogue, temple, or mosque.

The separation required between the collective garden and any use identified in this subsection shall be measured from the nearest edge or corner of the property for each use. The establishment of a new use listed in this subsection within the offset radius of an existing collective garden shall not constitute exclusive grounds to determine the collective garden is a nuisance.

G. Any collective garden on a parcel or within a building that contains another collective garden, a medical cannabis garden, or a cannabis garden.

H. Any collective garden that is not fully enclosed within a structure.

I. Any collective garden within a mobile or portable structure.

J. Any collective garden where a person under 18 years of age is present or allowed to be present.

K. Any place where any violation of Chapter 69.50 RCW occurs and for which an affirmative defense created by Chapter 69.51A RCW would not apply.

L. Any place where any production, manufacture, processing, delivery, distribution, possession, or use of cannabis occurs for which there is not an affirmative defense under state law.

M. Any collective garden that does not comply with all other applicable City or state regulations, code requirements, and development standards, including, but not limited to, building, fire, utility, and electrical codes.

9.100.040 Civil Remedy. This chapter creates a civil remedy and does not alter or affect any criminal law governing the production, manufacture, processing, delivery, distribution, possession, or use of cannabis.

9.100.050 Enforcement. Any person, firm, corporation, their agents, or servants, who shall violate any of the provisions of this chapter has committed a civil violation for which civil penalties may be assessed for each day or part of day that the violation continues, pursuant to Chapter 1.14 SMC, except as otherwise provided therein. Each day or part of day the violation continues shall be subject to a monetary penalty of five hundred dollars ($500).

9.100.060 No Special Duty. It is expressly the purpose of this chapter to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. It is the specific intent of this chapter that no provision or any term used in this chapter is intended to impose any duty whatsoever upon the City or any of its officers or employees for whom the implementation or enforcement of this chapter shall be discretionary and not mandatory. Nothing contained in this chapter is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this chapter by its officers, employees, or agents.

9.100.70 Severability. The provisions of this chapter are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this chapter, or the application thereof to any person or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.