

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2269

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, ESTABLISHING A PROHIBITION ON THE PERMITTING, LICENSING, AND OPERATION OF STATE-LICENSED PRODUCERS, PROCESSORS, AND RETAILERS OF RECREATIONAL MARIJUANA; AMENDING THE CITY'S DEVELOPMENT CODE, AS SET FORTH IN TITLE 14 OF THE SNOHOMISH MUNICIPAL CODE, BY AMENDING CHAPTER 14.207 SMC RELATING TO PERMITTED USES; REPEALING THE MORATORIUM ESTABLISHED BY ORDINANCE 2263 AS EXTENDED BY ORDINANCE 2270; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Initiative Measure No. 502 (I-502), approved by the voters of Washington state on November 6, 2012, provides for the possession and personal use of small amounts of marijuana by individuals and provides a framework for licensing and regulating the production, processing, and retail sale of recreational marijuana including definitions of terms; and

WHEREAS, WAC 314-55-020(11) promulgated by the Washington State Liquor Control Board under the authority of I-502 describes the license permit process and includes the following limitation:

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements;

and

WHEREAS, the cultivation, possession, or distribution of cannabis marijuana and marijuana products has been and continues to be a violation of federal law under the Federal Controlled Substances Act; and

WHEREAS, pursuant to Article 11, § 11 of the state Constitution, the general police powers granted to cities empower and authorize the City of Snohomish to adopt land use controls to provide for the regulation of land uses within the city and to provide that such uses shall be consistent with applicable law; and

WHEREAS, the Washington State Attorney General issued an opinion on January 15, 2014, that I-502, which establishes a licensing and regulatory system for marijuana producers, processors, and retailers, does not preempt counties, cities, and towns from banning such businesses within their jurisdictions, and local ordinances that do not expressly ban state-licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they property exercise the local jurisdiction's police power; and

WHEREAS, the City Council finds and determines that I-502 does not preempt the City of Snohomish from exercising and administering its constitutional and statutory land use regulatory authority to either allow and regulate land uses within the city limits, or to prohibit and ban such uses; and

WHEREAS, the City Council finds and determines that a prohibition within the City of Snohomish of the production, processing, and retailing of marijuana for recreational purposes, as set forth in I-502 and its implementing regulations, will not materially impact access to marijuana in areas outside of the city limits for marijuana production, processing and retailing and is consistent with the provisions of I-502 and its implementing regulations; and

WHEREAS, the City Council finds and determines that potential primary and secondary effects on the public health safety and welfare associated with the production, processing and retail sales of marijuana and marijuana-infused products have not had adequate time to be studied and measured and thereby assessed for potential risks and detrimental impacts to the health safety and welfare of the Snohomish community; and

WHEREAS, the City Council finds and determines that the prohibition of marijuana production, processing, and retail land uses within the City of Snohomish is the only effective means to minimize potential social and municipal costs associated with the production, processing, and retail sales of recreational marijuana as regulated under I-502; and

WHEREAS, the City Council has determined that recreational marijuana business uses are not addressed under existing City regulations, except that issuance of business licenses for activities that conflict with any City, State, or federal law is prohibited according to the provisions of Title 5 SMC; and

WHEREAS, the City Council finds and determines that Title 14 SMC containing the land use regulations of the City of Snohomish should be amended to specifically prohibit marijuana production, processing, and retailing, as defined in I-502 and its implementing regulations, within the City of Snohomish; and

WHEREAS, the City Council finds and determines that the prohibition of marijuana production, processing, and retailing is subject to the authority and general police power of the City to develop specific and appropriate land use controls regarding such uses, and the City Council reserves its powers and authority to appropriately amend, modify, and revise such prohibition to implement such land use controls in accordance with applicable law; and

WHEREAS, the City Council finds and determines that such amendments authorized herein are not intended to regulate the individual use of marijuana as authorized by I-502; and

WHEREAS, pursuant to Ordinance 2253, adopted April 15, 2013, the City Council adopted nuisance regulations regarding medical cannabis cultivation in collective gardens for which an affirmative defense is provided in RCW 69.51A; and

WHEREAS, the definitions in Ordinance 2253 exclude cannabis production, processing, and distribution facilities where such facilities are licensed by the State of Washington; and

WHEREAS, Ordinance 2253 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, which is different from the recreational use of cannabis as provided for by I-502; and

WHEREAS, pursuant to Ordinance 2263, adopted on November 5, 2013, the City Council established a six-month moratorium concerning the filing, acceptance, and processing of new land use applications or licensing for the establishment of, or operation of, any facility, building, or premises used for the production, processing, or retailing of recreational marijuana, to protect the health, safety, and welfare of the citizens of Snohomish; and

WHEREAS, pursuant to Ordinance 2270, adopted on April 15, 2014, the City Council extended the moratorium established under Ordinance 2263 an additional six months; and

WHEREAS, on April 2, 2014, following public notice as required by law, a public hearing on the proposed regulations regarding recreational marijuana was held before the Planning Commission and all persons wishing to be heard were heard; and

WHEREAS, following the public hearing, the Planning Commission evaluated issues related to the proposed regulations; and

WHEREAS, in its findings and recommendations, the Planning Commission recommended that, because recreational marijuana businesses, until recently, had no precedent in the state and had potentially negative impacts to the community, the City Council adopt a ban on all I-502 uses for a period of at least one year, or, if the City Council determines State-licensed marijuana uses should be allowed, that the City Council adopt certain regulations and amendments as reviewed and recommended by the Planning Commission; and

WHEREAS, pursuant to SMC 14.15.070 and RCW 36.70A.106, the City has notified the Washington State Department of Commerce of the City's intent to adopt regulations and amendments to the City's Development Code regarding recreational marijuana uses licensed under I-502; and

WHEREAS, acting as the City of Snohomish SEPA Responsible Official, the City Planning Director reviewed the proposed amendments and determined a formal land use prohibition that only continues a historic legal prohibition to be a text amendment resulting in no substantive changes respecting use or modification of the environment, and therefore to be categorically exempt from threshold determination and environmental impact statement requirements according to WAC 197-11-800(19)(b); and

WHEREAS, on April 15, 2014, and May 6, 2014, a public hearing on the proposed regulations and amendments was held by the City Council and all persons wishing to be heard were heard; and

WHEREAS, on August 19, 2014, issues related to the allowance for or prohibition of state-licensed recreational marijuana uses were discussed by the City Council and further public comments were heard; and

WHEREAS, in the event this Ordinance is adopted and becomes effective, it is necessary and appropriate that the six month moratoria as enacted pursuant to Ordinance 2263 and as extended for up to an additional six months pursuant to ordinance 2270 should be repealed and replaced by this Ordinance;

NOW THEREFORE, the City Council of the City of Snohomish, Washington, do ordain as follows:

Section 1. Adoption of Recitals as Findings. The City Council hereby adopts each of the recital paragraphs above as findings and hereby incorporates them by reference as though fully stated herein.

Section 2. Adoption of Planning Commission Findings. The Planning Commission findings are hereby adopted and incorporated by reference, including but not limited to the findings that the Development Code regulations and amendments adopted by this Ordinance are:

- a. Internally consistent with the City of Snohomish Comprehensive Plan;
- b. Consistent with the Washington State Growth Management Act;
- c. Consistent with the Washington State Environmental Policy Act (Chapter 43.21C RCW); and
- d. In the interest of the public health, safety, and welfare of Snohomish residents.

Section 3. Amendment of Chapter 14.207 SMC. SMC Chapter 14 is hereby amended to add a new Section 14.207.070 (*Scribner's error – should be 14.207.065*) as set forth in the attached **Exhibit A** and is incorporated herein by this reference.

Section 4. Termination and Repeal of Moratorium. Ordinance 2263 and Ordinance 2270 are each hereby repealed for the reason that they are replaced by this ordinance. The effective date of said repealer shall be the effective date of this Ordinance.

Section 5. 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 6. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

ADOPTED by the City Council and **APPROVED** by the Mayor this 7th day of October, 2014.

CITY OF SNOHOMISH

By _____
Karen Guzak, Mayor

ATTEST:

By _____
Torchie Corey, City Clerk

Approved as to form:

By _____
Grant Weed, City Attorney

Date of Publication: _____

Effective Date: _____

EXHIBIT A

14.207.070 Prohibited Uses *(Scribner's error – should be 14.207.065).*

Until such time as this chapter is amended to provide specific provisions and land use controls allowing and regulating the following uses, such uses shall be prohibited and not allowed in any zone within the city. No prohibition under this section shall be superseded by an administrative determination to allow a use pursuant to SMC 14.207.060 or by any other provision of this chapter.

- A. Production, processing, retail sale of marijuana and marijuana-infused products subject to, eligible for, or in receipt of, a license issued by the State of Washington, all as defined in Initiative Measure No. 502, as codified in the Revised Code of Washington, and implementing regulations in Chapter 314-55 of the Washington Administrative Code, as now existing or hereafter amended.