

**ORDINANCE NO. 2013-010**

**AN ORDINANCE OF THE CITY OF ARLINGTON, WASHINGTON,  
AMENDING TITLE 20 OF THE ARLINGTON MUNICIPAL CODE TO  
CLARIFY THAT MEDICAL MARIJUANA DISPENSARIES AND  
COLLECTIVE GARDENS ARE NOT PERMITTED USES UNDER CITY  
ZONING LAW**

**WHEREAS**, the City Council on August 15, 2011 imposed a moratorium on the acceptance of certain development applications relating to medical marijuana gardens for a period of up to six months and further conducted a public hearing on the proposed regulations on October 3, 2011 in accordance with RCW 35A.63.220 and RCW 36.70A.390, and at that meeting, extended the moratorium for a full year; and

**WHEREAS**, the City Council adopted a work plan in October 2011; and

**WHEREAS**, the Planning Commission held a public hearing on June 19, 2012 to consider amendments to Title 20 – Land Use Code, with regards to new regulations for medical cannabis collective gardens; and

**WHEREAS**, on July 2, 2012, the City Council held a public hearing and adopted on July 16, 2012 ordinance number 2012-013 to extend the moratorium for an additional six months; and

**WHEREAS**, the City Council held a public hearing on February 4, 2013, after considering the public comment taken and information provided by staff, and due to continued uncertainty from the State Legislature regarding such uses deemed it to remain in the public interest to have the moratorium related to medical marijuana dispensaries, collective gardens and permitting extended for six months until the City can consider all of the land use impacts of collective gardens, draft regulations, hold hearings and adopt regulations on the subject in light of the new legislation, and adopted city ordinance 2013-002 to extend the moratorium; and

**WHEREAS**, the City Planning Commission held a public meeting on these amendments on June 18, 2013; and

**WHEREAS**, the City Council held a public hearing and considered this ordinance at its regular city council meeting on August 5, 2013;

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

**Section 1. Findings.** The City Council makes the following findings:

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

2. 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”.

3. The Washington State Department of Health has opined 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.

4. The City Council finds that the sale of marijuana, no matter how designated by dispensaries, remains prohibited by federal and state law.

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

6. Section 404 of the bill effectively eliminates medical marijuana dispensaries as a legally viable model of operation under State law.

7. 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.

8. 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”.

9. Based on the adopted ordinances of other jurisdictions, it appears that in some jurisdictions around the country where medical marijuana uses have been approved, those communities have experienced adverse land use impacts, such as:

- conversion of residential uses into marijuana cultivation and processing facilities, removing valuable housing stock in a community;
- degrading neighborhood aesthetics due to shuttered up homes, offensive odors, increased night-time traffic, parking issues, and loitering from potential purchasers looking to buy from a collective member;
- environmental damages from chemicals being discharged into surrounding and off-site soil and storm and sanitary sewer systems;
- serious risk of fire hazard due to overloaded service connections used to operate grow lights and fans;
- improper ventilation leading to high levels of moisture and mold;
- illegal structural modifications; and
- criminal issues such as home invasions, burglaries of medical marijuana facilities, theft and property damage.

10. 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.

12. The State Liquor Control Board is in the process of developing proposed regulations which may impact the production of marijuana with an approved state license, and the rule-making process is anticipated to take several additional months.

13. Former Governor Christine Gregoire filed a formal petition on behalf of the State seeking to have the federal government “declassify” marijuana as a controlled substance in late 2011, but that petition has not been acted upon.

14. Existing city codes, including AMC Chapter 5.28 pertaining to business licenses, require compliance with both state and federal law in the operation of businesses.

15. The City Council wishes to ban cannabis collective gardens and cannabis dispensaries within the city of Arlington unless federal law is changed to make such uses legal under federal law.

**Section 2.** Arlington Municipal Code section 20.08.010 shall be amended to add the following definitions:

"Cannabis" 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 definition, "cannabis" 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 there from, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

"Cannabis collective garden" means a garden where "qualifying patients" as described in Sec. 403 of Engrossed Second Substitute Senate Bill 5073 and Chapter 181, Laws (of the State of Washington) of 2011 may engage in the production, processing, and/or delivery of cannabis for medical use.

"Cannabis Dispensary" means any facility or location where cannabis is grown, produced, manufactured or made available and/or distributed.

**Section 3.** Arlington Municipal Code Table 20.40-1: Table of Permissible Uses, shall be and hereby is modified to add subsections 19.300 and 19.400 as set forth in Exhibit “A”, which is incorporated herein by this reference.

**Section 4. Severability.** Should any section, paragraph, sentence, clause, or phrase of

this ordinance be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance. Provided, however, that if any section, sentence, clause, or phrase of this ordinance, or any change in a land use designation is held to be invalid by a court of competent jurisdiction, or by the Growth Management Hearings Board, then the section, sentence, clause, phrase, or land use designation in effect prior to the effective date of this ordinance, shall be in full force and effect for that invalidated section, sentence, clause, phrase, or land use designation, as if this ordinance had never been adopted.

**Section 5. Effective Date.** A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days of the date of publication.

**Section 6. Copy to Commerce Department.** Pursuant to RCW 36.70A.106(3), the City Clerk is directed to send a copy of the amendments to the State Department of Commerce for its files within ten (10) days after adoption of this ordinance.

CITY OF ARLINGTON:

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Barbara Tolbert, Mayor

ATTEST:

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Kristin Banfield, City Clerk

APPROVED AS TO FORM:

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Steven J. Peiffle, City Attorney

## EXHIBIT “A”

Table 20.40-1: Table of Permissible Uses

USE DESCRIPTIONS	ZONES																
	SR	RLMD	RMD	RHD	OTR	N C	OTBD 1	OTBD 2	OTBD 3	GC	H C	BP	L I	G I	AF	MS	P/SP
<b>19.000 OPEN AIR MARKETS AND HORTICULTURAL SALES</b>																	
19.100 Open air markets (farm and craft markets, flea markets, produce markets) <sup>17</sup>						Z S	ZS	ZS	ZS	Z S	Z S						
19.200 Horticultural sales with outdoor display						Z S				Z S	Z S			Z S			
19.300 Cannabis collective gardens	<u>Prohibited in all zones</u>																
19.400 Cannabis dispensaries	<u>Prohibited in all zones</u>																