

ORDINANCE NO. 2011-16

**AN ORDINANCE OF THE CITY OF SUNNYSIDE, WASHINGTON,  
ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF  
MEDICAL MARIJUANA COLLECTIVE GARDENS, DEFINING  
“MEDICAL MARIJUANA COLLECTIVE GARDENS”; PROVIDING  
FOR A PUBLIC HEARING; ESTABLISHING AN EFFECTIVE  
DATE, AND PROVIDING THAT MORATORIUM, UNLESS  
EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF  
ADOPTION.**

**WHEREAS**, the possession or distribution of marijuana has been and continues to be a violation of state law pursuant to Chapter 69.50 RCW (Washington’s Uniform Controlled Substances Act), and federal law, through the Controlled Substances Act (“CSA”); and

**WHEREAS**, in 1998 the voters of Washington State approved initiative 692, now codified as Chapter 69.51A RCW, which created a limited defense to marijuana charges under state, not federal, law if that person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Chapter 69.51A RCW; and

**WHEREAS**, in 2011, the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073 making significant amendments to the medical marijuana law in Washington; and

**WHEREAS**, the Governor signed E2SSB 5073, but vetoed several portions expressing her reservations about provisions that involved state employees in activities that could be interpreted as in violation of federal law; and

**WHEREAS**, E2SSB 5073 became effective July 22, 2011; and

**WHEREAS**, E2SSB 5073 authorizes “collective gardens” where up to ten qualifying patients may join together to produce, grow and deliver up to 45 marijuana or cannabis plants for medical use; and

**WHEREAS**, under E2SSB 5073 there is no limit to the number of medical marijuana collective gardens that may be located at any site nor restrictions as to where collective gardens may be located in relation to other uses; and

**WHEREAS**, medical marijuana gardens are not currently addressed in the Sunnyside Municipal Code and under Section 1102 of E2SSB 5073 cities may adopt zoning requirements for collective gardens; and

**WHEREAS**, unless a zoning moratorium is imposed, medical marijuana collective

gardens may be located within the City of Sunnyside while the City lacks the necessary tools to ensure the location is appropriate and that potential secondary impacts of collective gardens are minimized and mitigated; and

**WHEREAS**, the City Council of the City of Sunnyside deems it to be in the public interest to establish a zoning moratorium pending consideration of land use regulations to address medical marijuana collective gardens; and

**WHEREAS**, under RCW 35A.63.220 and RCW 36.70A.390 a public hearing must be held within 60 days of passage of this Ordinance.

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

**Section 1.** The recitals set forth above are hereby adopted as the City Council's preliminary findings in support of the moratorium imposed by this Ordinance. The Sunnyside City Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 4 below.

**Section 2.** Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Sunnyside prohibiting the licensing, establishment, maintenance or continuation of any medical marijuana collective garden. A "medical marijuana collective garden" is an area or garden where qualifying patients engage in the production, processing, transporting and delivery of marijuana for medical use as set forth in E2SSB 5073 and subject to the limitations therein.

**Section 3.** Medical marijuana collective gardens as defined in Section 2 are hereby designated as prohibited uses in the City of Sunnyside. In accordance with the provisions of RCW 35A.82.020, no business license shall be issued to any person for a collective garden, which are hereby defined to be prohibited under the ordinances of the City of Sunnyside.

**Section 4.** As provided in RCW 35A.63.220 and RCW 36.70A.390, the City Council sets a public hearing for November 14, 2011 in order to take public testimony and to consider adopting further findings justifying the imposition of the moratorium set forth in Section 2 above.

**Section 5.** The moratorium set forth in this Ordinance shall be in effect for a period of six months from the date this Ordinance is passed and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Sunnyside City Council.

**Section 6.** The City Manager is hereby authorized and directed to develop draft regulations regarding collective gardens. The regulations shall be referred to the City of Sunnyside Planning Commission for review and recommendation for inclusion in the

Sunnyside Municipal Code.

**Section 7.** If any provision of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance, or the application of the provision to other persons or circumstances is not affected.

**Section 8.** This ordinance shall be in full force and effect five (5) days after its passage and publication as required by law.

**PASSED** this 10<sup>th</sup> day of October, 2011.



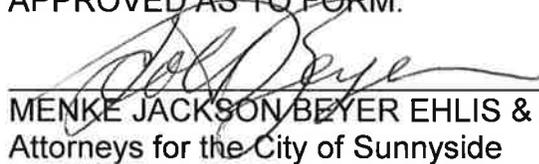
JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



MENKE JACKSON BEYER EHLIS & HARPER, LLP  
Attorneys for the City of Sunnyside