

ORDINANCE NO. 711

AN ORDINANCE of the Town of Naches, Washington, adding a new sections to the Naches Municipal Code prohibiting the cultivation, production, processing or retail sales of recreational marijuana within the Town of Naches.

WHEREAS, prior to 1988 both federal and state law prohibited the production, processing, and dispensing of medical cannabis and both prohibited the use of marijuana for recreational purposes;

WHEREAS, in 1988 then Governor Gary Locke signed into law the Medical Cannabis Act, which provides for the use of medical marijuana by patients with qualifying medical conditions;

WHEREAS, the Medical Cannabis Act created inconsistencies with federal law;

WHEREAS, in 2011 the Washington State Legislature passed ESSB 5073 in order to clarify issues with the Medical Cannabis Act; that bill authorized medical cannabis dispensaries, and allowed qualifying patients to participate in collective gardens to grow marijuana for medical use. The Bill specifically provided that cities could regulate and license the production, processing, and dispensing of medical marijuana within their local jurisdictions;

WHEREAS, ESSB 5073 also called for the state to regulate medical marijuana. Governor Gregoire at the time, however, vetoed all portions of the bill requiring any state regulatory action. The Governor expressed concern that state employees would be placed in a situation of violating federal law while performing the duties of their jobs;

WHEREAS, in November 2012 the citizens of the State of Washington approved Initiative I-502. I-502 legalizes the possession of limited amounts of marijuana by persons 21 years of age or older. I-502 had no effect on the Medical Cannabis Act;

WHEREAS, under I-502 the Washington State Liquor Cannabis Board (WSLCB) is authorized to license and regulate the cultivation, production, processing and retail sales of recreational marijuana;

WHEREAS, under its rulemaking authority granted under I-502 the WSLCB promulgated rules in the Washington Administrative Code (WACs) applicable to the cultivation, production and retail sales of recreational marijuana;

WHEREAS, the United States Congress previously passed the Comprehensive Drug Abuse and Prevention and Control Act of 1970. The Act created a comprehensive approach to the regulation of controlled substances and enforcement related to drugs. The Act is referred to as the Controlled Substances Act;

WHEREAS, Congress established 5 "schedules" or classifications for drugs. Drugs are placed into certain schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical or psychological consequences of abuse;

WHEREAS, the federal government has classified marijuana as a Schedule I controlled substance. To qualify as a Schedule I controlled substance there had to be a showing and it must be found that:

- (1) The substance has a "high potential for abuse;"
- (2) The substance has no currently accepted medical uses for treatment;
- (3) And that there is a lack of accepted safety for use of the drug under medical supervision;

WHEREAS, the Controlled Substance Act makes it illegal to knowingly or intentionally "manufacture, distribute, or dispense a controlled substance";

WHEREAS, the United States Supreme Court had occasion to consider the Controlled Substance Act and its interaction with state laws. The Supreme Court found that under the Commerce Clause of the Constitution, the federal government could properly regulate marijuana as a Schedule I controlled substance and that under the Supremacy Clause, the provisions of the federal Controlled Substances Act prevail over any conflicting state laws. *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed. 2d 1 (2005);

WHEREAS, the Washington State Attorney General issued Formal Opinion, AGO 2014 No. 2 finding that cities can regulate marijuana cultivation, production and retail sales through land use controls and other regulatory means. This includes the ability of cities to ban such uses within their jurisdictions;

WHEREAS, on April 24, 2015, Governor Inslee signed into law Second Substitute Senate Bill No. 5052, "The Cannabis Patient Protection Act", which aligns the medical marijuana system with the existing recreational marijuana system;

WHEREAS, the Washington State Constitution at Article 11, Section 11 provides general police powers to cities and authorizes cities to adopt land use controls and regulate land within their respective jurisdictions;

WHEREAS the Growth Management Act, RCW 36.70A, specifically empowers cities to develop and adopt land use controls within their jurisdictions;

WHEREAS, public safety officials have indicated that there will be secondary adverse impacts associated with the use, cultivation, production, processing, and retail sale of marijuana;

WHEREAS, a significant safety concern is presented because money generated by cultivators, producers, processors, or retailers of marijuana may not be easily deposited into federally insured banking institutions;

WHEREAS, large sums of money that may not easily be deposited into nearby banking institutions with appropriate safety and security measures in place presents a concern that armed robbery and/or burglary could take place within the premises of such establishments. This safety concern cannot be disregarded and the Town feels a responsibility to its citizenry to ensure that the banking issues are fully resolved prior to considering where, and under what conditions, if any, cultivators, producers, processors, or retailers of marijuana should be permitted within the Town;

WHEREAS, the Town Council cannot ignore the issues existing between the state law and federal laws (which take precedent over conflicting state laws), including among other concerns the banking concerns identified above;

WHEREAS, this Ordinance has been reviewed under the State Environmental Policy Act and a determination of non-significance was issued for it;

WHEREAS, after public notification as required, the Naches Planning Commission held a public hearing on the proposed Ordinance on August 1, 2016 and considered the zoning text amendment along with public testimony. All the public testimony favored the adoption of the proposed Ordinance and following the public hearing, the Planning Commission unanimously recommended approval of the proposed Ordinance to the Town Council;

[Incorporate recital regarding Town Council hearing]

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF NACHES, WASHINGTON AS FOLLOWS:

Section 1. Findings. The "whereas" recitals set forth above are hereby adopted as the Town Council's findings and are incorporated herein by this reference as if fully set forth.

Section 2. Chapter 17.44 of the Naches Municipal Code amended to add a section prohibiting illegal uses.

Chapter 17.44 of the Naches Municipal Codes is amended to add the following section, as follows:

17.44.060 Prohibited Uses.

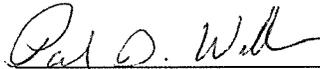
- A. General. Uses that are deemed illegal under local, state, or federal law are prohibited and not permitted within any zoning district within the Town of Naches.

- B. Marijuana-related businesses. Marijuana-related businesses, both medical and recreational, such as marijuana cultivation, production, processing, and retail sale and retail outlets for the sale of cannabis/marijuana as may be allowed by Chapter 69.50 RCW, as now existing or hereafter amended, are expressly prohibited and not permitted within any zoning district within the Town of Naches.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall be in full force and effect immediately after its passage, approval, and publication as provided by law.

BE IT ORDAINED by the Council of the Town of Naches this 8th day of August, 2016.



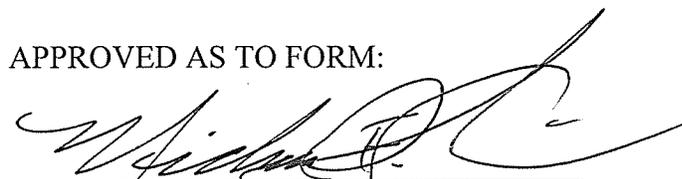
Paul Williams, Mayor

ATTEST:



Elvira Birrueta, Clerk/Treasurer

APPROVED AS TO FORM:



Michael F. Shinn, Town Attorney

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