ORDINANCE NO. 4037

AN ORDINANCE of the City Council of the City of Kent, Washington, adopting and reenacting a six-month moratorium within the city of Kent on the establishment, location, operation, licensing, maintenance or continuation of medical marijuana collective gardens or dispensaries, asserted to be authorized or actually authorized under Chapter 69.51A Revised Code of Washington, or any other laws of the state of Washington.

RECITALS and PRELIMINARY FINDINGS

A. The possession or distribution of marijuana has been and continues to be a violation of state law pursuant to Chapter 69.50 Revised Code of Washington (Washington’s Uniform Controlled Substances Act), and federal law, through the Controlled Substances Act (“CSA”).

B. Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state, not federal, law if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW. In 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law,
C. The U.S. Department of Justice continues to view all activity involving the use of marijuana, whether for medical purposes or not, as potentially in violation of the CSA, given that marijuana continues to be a Schedule I controlled substance under federal law. Washington’s two top U.S. Attorneys, Mike Ormsby and Jenny Durkin, have both carried out raids and other enforcement actions in the past six months against operations that purport to conduct their activities under the guise of state and local permission.

D. Because the Governor vetoed 36 of the 58 sections of the legislature’s bill amending Chapter 69.51A RCW, the law, in its final form, understandably has inconsistencies and ambiguities. For example, certain sections that were not vetoed make reference to other sections that were vetoed.

E. Further, as these legislative amendments developed, Kent saw the establishment of medical marijuana “dispensaries” within city limits. These dispensaries offer marijuana and marijuana products to numerous persons, asserting that they are operating as designated providers within the meaning of Chapter 69.51A RCW as it currently exists. These businesses are variously referred to as dispensaries, cooperatives, patient cooperatives, or patient networks, both for profit and not for profit. These businesses are illegal under both state and federal law, and the city has provided notice to these businesses that they are to cease illegal activity.

F. Persons or entities operating these purported medical marijuana dispensaries interpreted the current law to allow storefront...
operation of distribution centers for medical marijuana. Many of these dispensaries obtained business licenses to operate their businesses using false, misleading, or vague statements. The city continues to receive requests and inquiries from persons interested in operating additional dispensaries in Kent.

G. The recent amendments to Chapter 69.51A RCW change the scope and effect of the law. New sections affect the rights of qualifying patients and their designated providers. The law now allows "collective gardens" that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients. The law also provides other changes to the rights and responsibilities of medical marijuana patients and their designated providers. In Kent, businesses that formerly described their operations as dispensaries are now claiming that they are operating collective gardens. One of these businesses, for example, now declares it is operating as an "access point" for a number of off-site collective gardens.

H. RCW Section 69.51A.140 delegates to cities the authority to implement zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements and taxes relate to the production, processing, or dispensing of medical marijuana. In particular, local regulations could address ambiguities concerning the location and operation of collective gardens.

I. As other jurisdictions begin to grapple with the imposition of permanent land use controls related to medical marijuana uses, legal pushback from both the federal government and from medical marijuana proponents averse to local regulation have highlighted the potential conflict between local regulatory schemes and the federal CSA, particularly where
local regulations amount to “positive conflict” with provisions of the CSA. This is an area of the law that is still evolving.

J. On July 5, 2011, the Kent city council, after holding a public hearing, established a moratorium on the establishment, location, operation, licensing, maintenance, or continuation of any medical marijuana collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under Chapter 69.51A RCW, or any other laws of the state of Washington. This moratorium is set to expire on or about January 5, 2012. During the period this moratorium was in effect, city staff collaborated with the city’s economic and community development committee to develop proposed zoning regulations for the medical marijuana activities affected by the city’s moratorium. However, to date, the full council has not yet adopted these proposed land use and zoning controls.

K. After holding a public hearing on December 12, 2011, the city council has determined it appropriate to reenact this moratorium until the city council adopts final land use, zoning, and other regulatory controls for medical marijuana activities. The city council requires more time to conduct appropriate research to understand the extent of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, to monitor ongoing litigation and state and local governmental responses, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws. The city must ensure that proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and mitigated. These secondary impacts may include, but are not limited to, burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of these dispensaries. In particular,
and without limitation, staff should analyze the impacts of allowing these uses and facilities in residential zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses.

L. Although the city council determines that a moratorium is necessary for the reasons established above, the city council emphasizes that it understands the needs of persons suffering from debilitating or terminal conditions, as well as the benefits that approved medical use of marijuana may provide these persons. Nevertheless, given the complex legal and regulatory framework surrounding this issue, a moratorium remains necessary until the city council can adequately address the competing interests at play.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Preliminary Findings. The recitals and findings set forth above are hereby adopted as the city council’s preliminary findings in support of the moratorium imposed by this ordinance.

SECTION 2. - Moratorium Established. Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, a moratorium is hereby adopted, reenacting the prohibition within the city of Kent on the establishment, location, operation, licensing, maintenance, or continuation of any medical marijuana collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under Chapter 69.51A RCW, or any other laws of the state of Washington.
No building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect.

As used in this ordinance, the following terms have the meanings set forth below:

A. "Medical marijuana dispensary" means any business, agency, organization, cooperative, network, consultation operation, or other group, or person, no matter how described or defined, including its associated premises and equipment, which has for its purpose or which is used to grow, select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) marijuana for medical use. A person who is the designated provider for only one qualified patient during any 15 day period and who complies with Chapter 69.51A RCW, shall not be deemed a medical marijuana dispensary for the purposes of this moratorium.

B. "Medical marijuana collective garden" means a group of qualifying patients that share responsibility for acquiring and supplying the resources required to produce and process marijuana for medical use. Examples of collective garden resources would include, without limitation, the following: property used for a collective garden; or equipment, supplies, and labor necessary to plant, grow and harvest marijuana; marijuana plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of marijuana plants. A medical marijuana collective garden shall satisfy the above definition regardless of its formation, ownership,
management, or operation as a business, agency, organization, cooperative, network, consultation operation, group, or person. A person who is the designated provider for only one qualified patient during any 15 day period and who complies with Chapter 69.51A RCW or a person who is a qualified patient and who complies with 69.51A RCW, shall not be deemed a medical marijuana collective garden for the purposes of this moratorium.

SECTION 3. - No Nonconforming Uses. No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of the Kent City Code and that use shall not be entitled to claim legal nonconforming status.

SECTION 4. - Effective Period for Moratorium. The moratorium set forth in this ordinance shall be in effect for a period of six months from the date this ordinance takes effect and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

SECTION 5. - Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the city council held a public hearing to allow public input on this moratorium at the city council economic and community development committee’s regular meeting, at 5:30 p.m. in Council Chambers, Kent City Hall, on Monday, December 12, 2011.

SECTION 6. - Referral to Staff. The planning director is hereby authorized and directed to coordinate with the council’s economic and
community development committee to develop appropriate land use regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Kent City Code. The finance director is hereby authorized and directed to develop appropriate business licensing and other regulations pursuant to the newly amended law for review and recommendation for inclusion in the zoning regulations or other provisions of the Kent City Code.

**SECTION 7. - Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 8. - Corrections by City Clerk or Code Reviser.** Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**SECTION 9. - Effective Date.** This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law. The city clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

SUZETTE COOKE, MAYOR
ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 3 day of January, 2012.

APPROVED: 3 day of January, 2012.


I hereby certify that this is a true copy of Ordinance No. 4027 passed by the city council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK

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STATE OF WASHINGTON, COUNTY OF KING

AFFIDAVIT OF PUBLICATION

PUBLIC NOTICE
Linda M Mills, being first duly sworn on oath that she is the Legal Advertising Representative of the

Kent Reporter

a weekly newspaper, which newspaper is a legal newspaper of general circulation and is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a weekly newspaper in King County, Washington. The Kent Reporter has been approved as a Legal Newspaper by order of the Superior Court of the State of Washington for King County.

The notice in the exact form annexed was published in regular issues of the Kent Reporter (and not in supplement form) which was regularly distributed to its subscribers during the below stated period.

The annexed notice, a:

Public Notice

was published on January 6, 2012.

The full amount of the fee charged for said foregoing publication is the sum of $85.30.

Linda M. Mills
Legal Advertising Representative, Kent Reporter
Subscribed and sworn to me this 6th day of January, 2012.

Kathy Dalsey
Notary Public for the State of Washington, Residing in Covington, Washington
P. O. Number: