ORDINANCE NO. 4109

AN ORDINANCE of the City Council of the city of Kent, Washington, renewing, for another six-month period, the moratorium established through adoption of Ordinance No. 4094, prohibiting the establishment, location, operation, licensing, maintenance or continuation of marijuana processors, producers, and retailers claiming authorization under Chapter 69.50 RCW or any other law of the state of Washington, within the city of Kent, and adopting additional findings of fact.

RECITALS and PRELIMINARY FINDINGS

A. On November 19, 2013, the Kent City Council adopted Ordinance No. 4094, establishing a six-month moratorium prohibiting the establishment, location, operation, licensing, maintenance or continuation of marijuana processors, producers, and retailers claiming authorization under Chapter 69.50 RCW or any other law of the state of Washington, within the city of Kent. This ordinance took effect beginning November 27, 2013.

B. On January 7, 2014, the Kent City Council held a public hearing regarding the moratorium, as required by law, took additional
public testimony, and concluded the public hearing without adopting any additional findings of fact not already included within Ordinance No. 4094.

C. Since the adoption of the city’s current moratorium, approximately 53 different bills related to marijuana were raised for discussion during the 2014 state legislative session, ranging from revenue-sharing with local cities to proposed preemption of local regulation of marijuana businesses altogether. The legislative session ended on March 14, 2014, without any of these bills having been enacted.

D. On January 16, 2014, in response to a request from the State Liquor Control Board, the Washington State Office of the Attorney General issued a formal Opinion (AGO 2014 No. 2), reaffirming the city’s legal position that nothing in I-502 prohibits cities and other local governments from regulating state-licensed recreational marijuana businesses within their boundaries through imposition of reasonable land use and business licensing requirements.

E. The production, processing and sale of recreational marijuana has been taking place in Colorado pursuant to state law since January 1, 2014, and the Washington State Liquor Control Board has begun to issue its first licenses to producers and processors of recreational marijuana under the system established by I-502, thus increasing the availability of reliable land-use data related to such businesses.

F. The City Council has determined that prior to the adoption of permanent zoning regulations of marijuana-based businesses, the Planning Division should continue to thoroughly vet possible zoning options based on the best available data, and route proposed amendments to the city zoning ordinance through the Land Use and Planning Board (LUPB), as provided in KCC 2.57.040, for recommendation to the City Council.
G. City staff estimates that if zoning options are presented to the LUPB for consideration at a workshop meeting sometime in April, 2014, the LUPB would not hold the public hearing required prior to making a recommendation to the City Council until May, 2014. The Council’s Economic and Community Development Committee would then consider the matter in early June, 2014, and the full Council would not be poised to vote on a permanent zoning amendment until sometime in late June, 2014. This process is designed to be iterative and flexible, and it is possible that proposed revisions at any point during the process would push implementation of final zoning regulations out even further.

H. While no business could establish itself as a legal nonconforming use were the city’s current moratorium to expire prior to the adoption of permanent land use controls, the clearest way to allow the necessary time for the proper functioning of the city’s zoning apparatus is to extend the moratorium established by Ordinance No. 4094 for another six months, pursuant to RCW 35A.63.220 and RCW 36.70A.390, providing that the City Council may extinguish the moratorium sooner to conform with the passage of any permanent zoning regulations implemented through Council legislative action.

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, as well as those in Ordinance No. 4094, are hereby adopted as the city council’s preliminary findings in support of the moratorium renewed and extended by this ordinance, as if fully set forth herein. The Six-Month Moratorium Renewal
Marijuana
City council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 5 below.

**SECTION 2.** - *Moratorium Renewed.* Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, the moratorium enacted through passage of Ordinance No. 4094 prohibiting within the city of Kent the establishment, location, operation, maintenance, continuation, permitting or licensing of any producer, processor or retail seller of marijuana that is licensed by the state of Washington pursuant to I-502 and Chapter 69.50 RCW is hereby renewed and extended for another six-month period. 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 or authorizations 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.

**SECTION 3.** - *No Nonconforming Uses.* No use that constitutes or purports to be a use prohibited in Section 2 of this ordinance, that was engaged in prior to the enactment of Ordinance No. 4094 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 Renewal.* This renewal of this moratorium shall take effect beginning May 27, 2014, which is more than five (5) days from the date of passage of this ordinance and its publication, and shall be in effect for a period of six months thereafter, and shall automatically expire at the conclusion of that six-month period unless the
same is further extended as provided in RCW 35A.63.220 or 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 regarding the renewal of this moratorium at the city council’s regular meeting, at 7:00 p.m. in Council Chambers, Kent City Hall, on Tuesday, April 15, 2014, or as soon thereafter as the business of the city council permitted, in order to take public testimony and to consider adopting further findings.

**SECTION 6. – 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 7. – 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 8. – 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, provided that the effective date of the renewal of the existing moratorium as established by this ordinance shall be May 27, 2014, as noted in Section 4 above. The city clerk is directed to publish a summary of this ordinance at the earliest possible publication date.
I hereby certify that this is a true copy of Ordinance No. 4109 passed by the city council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

RONALD F. MOORE, CITY CLERK
(SEAL)