ORDINANCE NO. 2653

AN ORDINANCE OF THE CITY OF MOSES LAKE EXTENDING 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 THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.

**Recitals:**

1. On September 27, 2011, the City Council passed Ordinance No. 2630 imposing a moratorium on the licensing, establishment, maintenance or continuation of any medical marijuana collective garden; and

2. Ordinance No. 2630 defined the medical marijuana collective gardens that were subject to the moratorium and adopted findings and conclusions supporting the moratorium; and

3. On September 27, 2011, the City Council conducted a public hearing to take public testimony on the imposition of the moratorium; and

4. Additional time is needed to allow the City to consider land use regulations to address medical marijuana collective gardens; and

5. RCW 35A.63.220 and RCW 36.70A.390 allow the City to extend a moratorium for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal; and

6. Because the moratorium was set to expire on September 13, 2012, the City Council considered the issue of whether the moratorium should be extended for an additional six-month period during its regular Council meeting on August 28, 2012, and;

7. The City Council desires to enter findings in support of extension of the moratorium;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON ORDAINS AS FOLLOWS:

Section 1. The recitals set forth above are hereby incorporated as findings of fact.

Section 2. The City Council further finds as follows:

A. 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; and

B. 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 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; and

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

D. The Governor signed the 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 laws; and

E. E2SSB 5073 because effective on July 22, 2011; and

F. 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

G. 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

H. Medical marijuana collective gardens are not currently addressed in the Moses Lake zoning code and under Section 1102 of E2SSB 5073 cities may adopt zoning requirements for collective gardens; and

I. Unless the moratorium imposed by Ordinance No. 2630 is extended, medical marijuana collective gardens may be located within the City of Moses Lake while the City lacks the necessary tools to ensure the location is appropriate and that the potential secondary impacts of collective gardens are minimized and mitigated; and

J. Initiative Measure No. 502, filed July 8, 2011 and on the ballot in November, 2012, proposes to legalize the production, possession, delivery, distribution and sale of marijuana subject to regulation by the State Liquor Control Board for both recreational and medicinal use; and

K. Should Initiative 502 pass, the State will issue licenses to marijuana producers, processors and retailers for locations and operations within city limits, and the State Liquor Board must adopt rules associated with the regulation of licensed marijuana producers, processors and retailers within city limits by December 1, 2013; and

L. The City cannot forecast whether Initiative 502 will pass and become law nor predict what rules the State Liquor Control Board will adopt in response thereto. Therefore, the City cannot presently anticipate what action may be necessary to respond to the effects of Initiative 502, should it pass;

M. The City Council deems it to be in the public interest to extend the moratorium imposed by Ordinance No. 2630 pending consideration of land use regulations to address medical marijuana collective gardens and pending the passage or failure of Initiative 502 in November, 2012.

Section 3. Pursuant to the provisions of RCW 35A.63.220 and RCW 37.70A.390, the moratorium enacted by Ordinance No. 2630 prohibiting the licensing, establishment, maintenance or continuation of any medical marijuana collective garden in the City of Moses Lake is extended for six months. A "medical marijuana collective garden" is an area or garden where qualifying patients engage in the production, processing, or transporting and delivery of marijuana for medical use as set forth in the E2SSB 5073 and subject to the limitations therein.

Section 4. Medical marijuana collective gardens as defined in Section 3 are hereby designated as prohibited uses in the City of Moses Lake. In accordance with the provisions of RCW 35A.82.020 and Moses Lake Municipal Code 5.04, no business license shall be issued to any person for a medical marijuana collective garden, which use is hereby defined to be a prohibited use under the ordinances of the City of Moses Lake.

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 Moses Lake 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 Moses Lake Planning Commission for review and recommendation for inclusion in the Moses Lake Zoning Code.

Section 7. If any provision of this ordinance or its application to any person or circumstance 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 take effect and be in force five (5) days after its passage and publication of its summary as provided by law.

Adopted by the City Council and signed by its Mayor on September 11, 2012.

Bill J. Ecret, Mayor

ATTEST:

W. Robert Taylor, Acting Finance Director

APPROVED AS TO FORM:

Katherine L. Kenison, City Attorney