

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

AN ORDINANCE OF COUNTY OF LEWIS RELATING)
TO LAND USE AND ZONING AND IMPOSING A)
MORATORIUM ON RECEIPT OF APPLICATIONS FOR) ORDINANCE NO.1225
DEVELOPMENT OF COMMUNITY MEDICAL)
MARIJUANA GARDENS UPON DECLARATION)
OF EMERGENCY)

WHEREAS, the Board of Lewis County Commissioners makes the following findings:

- A. The Washington Legislature has enacted ESSSB5073 permitting the collective cultivation of marijuana for medical purposes. The legislation includes authorization, under terms and conditions outlined in state law, of community gardens to cultivate marijuana for the personal use of persons who are authorized under state law to use medical marijuana and who obtain and maintain the proper authorization.

- B. Strong pressure was applied to the Legislature to enact legislation approving the establishment, under state law, of community medical marijuana gardens. In many communities across Washington, people have indicated their interest in establishing community medical marijuana gardens. In this County, a number of people have publicly announced their intention to establish such gardens.

- C. Marijuana gardens raise several concerns, including whether they are legal under federal law, whether their proximity to schools, bus stops and other places frequented by children should be regulated, whether their construction and security should be regulated to ensure the plant does not escape into the natural environment, how to ensure the security of their operation, and generally whether and how their location and establishment should be regulated in the best public interest.

- D. ESSSB5073 creates a substantial risk that County employees working in good faith to implement the state law will incur federal criminal liability under federal drug laws. The State has not agreed to indemnify the County or its employees against this risk and the County, which is dealing with a punishing recession and falling tax revenues, is not in a position to incur additional liability.

- E. The County is particularly concerned that the public interest will be harmed if community gardens are sited near schools, bus stops or other locations

frequented by children or are operated in a manner that permits access by the public or that facilitates the escape of this non-native weed to the natural environment.

F. ESSSB5073 is set to become or has become law. There is tremendous interest in developing these gardens. Unless immediate action is taken, gardens will be established in locations and in modes of operation that threaten the public interest. An emergency exists requiring the County to act.

G. Consistent with the authority granted the County in RCW 36.70.790, RCW 36.70A.390 and RCW 35.63.200, and with the court's guidance as set forth in *Matson v. Clark Board of Commissioners*, 79 Wn.App. 641 (1995), the County has the authority to act in the best public interest.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners, as follows:

Section 1. The Board adopts and incorporates herein by reference the findings and recitals made by staff at the hearing in support of this enactment.

Section 2. A moratorium on the receipt and acceptance of applications for land use development of any kind requiring County review or approval for community medical marijuana gardens is hereby imposed.

Section 3. For purposes of this moratorium, "development" or "development applications" and "land use" shall mean any application or permitting submission or request for land use review, approvals or authorizations by the County or the Lewis County Board of Health, as those terms are applied in Chaps. 36.70A and 36.70B RCW and in Title 17 of the Lewis County Code.

Section 4. The Clerk of the Board is instructed to schedule a public hearing on this emergency enactment within sixty (60) days following the effective date of this Ordinance. The Department of Community Development and the Prosecuting Attorney's Office are requested to develop and schedule for presentation the County's efforts to propose and adopt development regulations in harmony with applicable federal and state laws governing the cultivation of marijuana and with the best public interest.

Section 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid at law, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 6. This enactment establishing a moratorium shall automatically expire sixty (60) days from its effective date unless the Board, following a public hearing, extends this Ordinance for such additional period(s) of time as provided for under the above-noted statutory provisions. The effective date of this Ordinance shall be the date of adoption.

PASSED IN REGULAR SESSION, upon the declaration of an emergency by the Board of County Commissioners, this ___ day of August, 2011.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON**

Clerk of the Board

Chairman

Member

Member

Approved As To Form:

JONATHAN L. MEYER, Prosecuting Attorney

By _____
Civil Deputy