

ORDINANCE NO. 1473

AN ORDINANCE OF THE CITY OF OTHELLO AMENDING SECTION 170 OF CHAPTER 17.56 TITLED "PROHIBITED USES"

WHEREAS, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 ("I-502"), now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 RCW, which, among other things, authorized the possession and recreational use of limited amounts of marijuana, and promulgation of regulations and issuance of licenses by the Washington State Liquor Control Board ("LCB") for the production, processing and retailing of marijuana.

WHEREAS, WAC 314-55-020(11) promulgated by the LCB under the authority of I-502 describes the license permit process and includes the following limitation: "(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements."

WHEREAS, pursuant to Article 11, § 11 of the Washington State Constitution, the general police powers granted to cities empower and authorize the City of Othello to adopt land use controls to provide for the regulation of land uses within the City and to provide that such uses shall be consistent with applicable law.

WHEREAS, the Attorney General for the State of Washington issued an advisory opinion (AGO 2014 No. 2) on January 16, 2014, wherein the Attorney General concluded that I-502 does not prevent municipalities from regulating the retailing, processing, and production of marijuana within City limits, including placing reasonable restrictions on location as well as prohibiting such land uses altogether.

WHEREAS, I-502 does not preempt the City of Othello from exercising and administering its constitutional and statutory land use regulatory authority to either allow and regulate land uses within the limits of the City of Othello, or to prohibit and ban such uses.

WHEREAS, the prohibition of marijuana production, processing, and retailing is subject to the authority and general police power of the City to develop specific and appropriate land use controls regarding such uses.

WHEREAS, the Planning Commission was directed by the City Council to hold a public hearing on marijuana-related land uses in the City of Othello and recommend to the City Council land use controls regarding the production, processing and retailing of marijuana within the City.

WHEREAS, the Planning Commission is authorized under Othello Municipal Code 2.21.030 to conduct such a public hearing and make such recommendations.

WHEREAS, on April 18, 2016, the Planning Commission held a public hearing on marijuana-related land uses within the City, after first providing appropriate public notice of the

meeting and agenda, took public testimony, and considered reports provided by City staff, including City Administrator Wade Farris, Community Development Director Travis Goddard, and City Attorney Kelly E. Konkright of Lukins & Annis, P.S.

WHEREAS, the Planning Commission (1) found that the prohibition of marijuana production, processing, and retailing within the City limits protects the health, safety, and welfare of residents within the City of Othello, and (2) based on that finding, recommended that the City Council prohibit individuals from using land within Othello City limits for marijuana retail sales, marijuana processing, or marijuana production as those terms are defined in I-502.

WHEREAS, on May 9, 2016, after first providing appropriate public notice of the meeting and agenda, the City Council held a public hearing on marijuana-related land uses within the City, took public testimony, and considered staff reports provided by Travis Goddard and Chief of Police Phil Schenck.

WHEREAS, based upon the recommendation of the Planning Commission, information provided by City staff, and public comments received at the hearing, the City Council found that the prohibition of marijuana production, processing, and retailing within the City limits protects the health, safety, and welfare of residents within the City of Othello

THEREFORE, THE CITY COUNCIL OF THE CITY OF OTHELLO, WASHINGTON
ORDAINS AS FOLLOWS:

Section 1. Amendment. Othello Municipal Code Section 170 of Chapter 17.56 titled “Prohibited Uses” is hereby amended as follows:

17.56.170 Prohibited uses.

The following uses are prohibited in all zones except as specifically allowed below:

- (a) Portable toilets except for emergency or construction use with permission from the city public works director obtained prior to placement.
- (b) Electric fences or any device designed to give an electric shock to any person coming in contact therewith except within the open space zone subject to:
 - (1) No electric fence shall be placed closer than twenty-five feet to the property boundary.
 - (2) Where the property boundary is adjacent to a residential zone, appropriate signage in both English and Spanish shall be posted indicating that an electric fence is in operation and to keep away.
 - (3) All equipment used in conjunction with the electric fence shall be UL approved and properly maintained.

(4) Electric fencing material shall be considered temporary and in use only when animals are present.

(c) Boats and water craft used for habitation purposes.

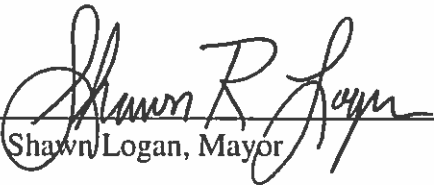
(d) The use of any vehicle or trailer as a dwelling.

(e) Any signs, except as permitted by this code, or other city or state regulation.

(f) The production, processing, and/or retailing of marijuana or products containing marijuana are prohibited within the City of Othello. However, nothing herein shall be interpreted to prevent persons from possessing or using marijuana for personal consumption if and as allowed by the Revised Code of Washington.

Section 2. Effective date. This ordinance shall be in full force and effect five days after its passage and publication of its summary as provided by law.

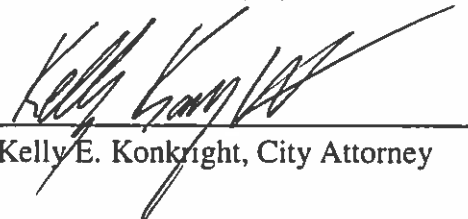
PASSED by the City Council of Othello, Washington this 23rd day of May, 2016.

By: 
Shawn Logan, Mayor

ATTEST:

By: 
Debbie L. Kudrna, City Clerk

APPROVED AS TO FORM:

By: 
Kelly E. Konkright, City Attorney

PASSED the 23rd day of May, 2016
APPROVED the 23rd day of May, 2016
PUBLISHED the 2nd day of June, 2016