

RESOLUTION NO. 750

AN INTERIM POLICY RESOLUTION OF THE BOARD OF COMMISSIONERS
OF BIRCH BAY WATER AND SEWER DISTRICT,
WHATCOM COUNTY, WASHINGTON GOVERNING
MARIJUANA PRODUCERS ~~AND PROCESSORS~~

WHEREAS, pursuant to RCW 57.08.005, the Birch Bay Water Sewer District ("District") has the duty to regulate and control the use, content, distribution, and price of water supply to the district and inhabitants thereof and any other persons, both within and without the District in a manner not in conflict with general law; and

WHEREAS, the District does not have broad authority to adopt local police, sanitary and other regulations and has no zoning or law enforcement authority; and

WHEREAS, Washington State Initiative 502 codified in RCW 69.50, authorizes the Washington State Liquor Control Board to regulate and tax marijuana and license marijuana producers and processors, and provides a framework within which marijuana producers and processors can become licensed by the State of Washington; and

WHEREAS, qualifying patients or designated providers as those terms are defined in RCW 69.51A, may form a cooperative for the production and processing of marijuana only for the medical use of members of the cooperative. These cooperatives must be registered with the Washington State Liquor Control Board; and

WHEREAS, the Washington State Liquor Control Board does not notify the District of new or renewed licenses issued in the recreational marijuana industry or the registration of cooperatives for medicinal marijuana uses; and

WHEREAS, it is unlawful to knowingly or intentionally manufacture, distribute, dispense or possess with intent to manufacture, distribute or dispense a controlled substance, such as marijuana, and the possession of marijuana is unlawful under the United States Comprehensive Drug Abuse Prevention and Control Act of 1970, creating a comprehensive drug enforcement regime called the Controlled Substance Act, codified as 21 USC Section 801-971, except as may be allowed by the Controlled Substance Act; and

WHEREAS, on August 29, 2013, the United States Department of Justice, Office of the Attorney General ("DOJ"), released updated guidance regarding marijuana enforcement. The guidance reiterates that the DOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats to public safety related to marijuana crimes in "the most effective, consistent, and rational way." The guidance directs federal prosecutors to review potential marijuana-related charges on a case-by-case basis and weigh all information and evidence, including whether the operation is demonstrably in compliance with a strong and effective state regulatory system and if the conduct at issue implicates one or more of the eight

stated federal enforcement priorities. The DOJ appears to not differentiate application of the guidance between medical and recreational marijuana; and

WHEREAS, the District desires to set an interim policy on water supply to marijuana producers ~~and processors~~; and

WHEREAS, the District adopts this interim policy pending further investigation and review of the topic by the District Board and adoption of a final policy;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Birch Bay Water and Sewer District, Whatcom County, Washington as follows:

Section 1: The District Will Not Knowingly Provide Water Service to Recreational Marijuana Producers ~~and Processors~~.

The District will not intentionally or knowingly supply water for irrigation, ~~fire flow or any other purposes~~ to recreational marijuana producers ~~or processors~~. However, the District does not have a duty to request information pertaining to the nature or purpose of the irrigation, ~~or the occupancy rating of a structure for fire code, building code or for fire protection purposes~~. Prior to service, the District will generally confirm that the use is for irrigation, and the instantaneous and annual quantities of water and the consumptive effects of the water, but otherwise will not usually request information about the crops irrigated nor evaluate in advance whether the agricultural use is consistent with zoning. ~~The District will inquire as to the number of plumbing fixtures of a business prior to service.~~ By allowing water for irrigation use, ~~fire flow or any other purpose~~, the District does not knowingly or intentionally participate, aid or abet or endorse or regulate any particular conduct of its customers and no such inference shall be taken from this interim policy. If the District learns that a potential customer is a marijuana producer ~~or processor~~, it will deny water service.

Section 2: The District Will Not Knowingly Provide Water Service for Production ~~or Processing~~ of Marijuana for Medicinal Use.

The District will not intentionally or knowingly supply water for irrigation, ~~fire flow or any other purposes~~ to cooperatives formed for qualifying patients or designated providers under RCW 69.51A. However, the District does not have a duty to request information pertaining to the nature or purpose of the irrigation, ~~or the occupancy rating of a structure for fire code, building code or for fire protection purposes~~. Prior to service, the District will generally confirm that the use is for irrigation, and the instantaneous and annual quantities of water and the consumptive effects of the water, but otherwise will not usually request information about the crops irrigated nor evaluate in advance whether the agricultural use is consistent with zoning. ~~The District will inquire as to the number of plumbing fixtures of a business prior to service.~~ By allowing water for irrigation use, ~~fire flow or any other purpose~~, the District does not knowingly or intentionally participate, aid or abet or endorse or regulate any particular conduct of its customers and no such inference shall be taken from this interim policy. If the District learns that a potential customer is a cooperative formed under RCW 69.51A, it will deny water service.

Section 3: The District May Terminate Service to Marijuana Producers, ~~Providers and Cooperatives.~~

The District may terminate water supply service if it learns that a customer is using the District's service for marijuana production ~~or processing~~, whether for recreational or medicinal use, or in the following circumstances:

1. A request by a federal, state or local agency is made to the District to cease water service to a District customer whose use violates applicable law.
2. A court order directs the District to discontinue water service to a customer.
3. A written request, demand, threat of criminal prosecution, or actual criminal prosecution is made or initiated against the District, its officials, employees, agents or assigns for delivery of water service to a customer whose use of the water service violates the law.
4. There is a change in the law or the federal Controlled Substances Act is found to preempt state law, requiring termination of water service.

Section 4: This interim policy provides no limitation on the exercise of the District's discretion to deny or discontinue water service.


Section 5: The District shall have no duty to defend a lawsuit brought to enjoin water service to a customer and shall comply with any such court order.

Section 6: BE IT FURTHER RESOLVED that any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

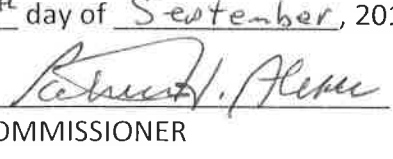
Section 7: If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Board hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this Resolution should be declared invalid, or unconstitutional, then the original Resolution shall be in full force and effect.

Section 8: This Resolution shall be effective immediately.

PASSED by the Board of Commissioners of Birch Bay Water & Sewer District, Whatcom County, Washington, at a regular meeting held the 28th day of September, 2017.



COMMISSIONER



COMMISSIONER

COMMISSIONER

THIS IS TO CERTIFY that the above is a true and correct copy of Resolution No. 750 of Birch Bay Water & Sewer District, Whatcom County, Washington, adopted at the regular meeting of the Board of Commissioners on September 28, 2017.



SECRETARY