



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425.587.3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Robin Jenkinson, City Attorney
Eric Shields, Planning Director

Date: June 4, 2012

Subject: Extension of Moratorium for Medical Marijuana Collective Gardens

RECOMMENDATION

Council conducts a public hearing and adopts the attached ordinance extending the moratorium on medical marijuana collective gardens for an additional six months.

BACKGROUND DISCUSSION

During the 2011 legislative session, Engrossed Second Substitute Senate Bill 5073 was enacted, legalizing medical marijuana collective gardens. A medical marijuana "collective garden" is an area or garden where qualifying patients engage in production, processing, transporting and delivery of marijuana for medical use as defined in state law (Ch. 69.51A RCW). Collective gardens may be operated by up to 10 qualified patients with a maximum of 15 marijuana plants per patient, and a maximum of 24 ounces of useable marijuana per patient, up to a total of 72 ounces. The legislation became effective on July 22, 2011. The new law delegates to cities the authority to implement zoning requirements, business licensing requirements, health and safety requirements, and business taxes on collective gardens. However, possession, use, growth, and distribution of marijuana, whether or not it is for medical use, remain illegal under federal law.

On July 19, 2011, the City Council adopted Ordinance 4316 imposing a six-month moratorium on the establishment, location, operation, licensing, maintenance or continuation of medical marijuana collective gardens. The City Council conducted a public hearing on the moratorium on August 2, 2011. On January 3, 2012, following another public hearing, the City Council adopted Ordinance 4344 and extended the moratorium for an additional six months. It is due to expire on July 3, 2012.

The purpose of the moratorium is to allow sufficient time to consider land use regulations to address medical marijuana collective gardens. Without the moratorium, medical marijuana collective gardens could be located within the City while the City lacks the necessary tools to ensure that the locations are appropriate and that the potential secondary impacts of medical

marijuana collective gardens are minimized and mitigated. During the current moratorium period city staff has been reviewing ordinances and actions from jurisdictions around Washington State. For instance, the Kent City Council recently passed an ordinance that prohibited medical marijuana in all zoning districts and was promptly sued by the Cannabis Action Coalition. Earlier this year, the Clark County Commissioners sought guidance from the Department of Justice concerning the potential liability of the Commissioners and County employees if the Commissioners enacted and the employees administered regulations that zoned medical marijuana collective gardens and required the review, permitting, and inspection of the facilities. The Drug Enforcement Administration responded that anyone who knowingly carries out or facilitates the marijuana activities contemplated by the Washington state law is subject to criminal prosecution as provided in the Federal Controlled Substances Act. (The letters are attached.)

In addition, Initiative to the Legislature 502 will be on the statewide ballot November 2012. Initiative 502 would authorize the State Liquor Control Board to regulate and tax marijuana for those 21 and older. Production, possession, delivery, distribution and sale of marijuana, in accordance with the provisions of the new law, would be decriminalized. Passage of Initiative 502 would likely result in legal challenges due to the conflicts with federal law. Staff believes it is prudent to extend the moratorium until the results of the ballot measure are known.

In accordance with RCW 35A.63.220 and RCW 36.70.390, in order to renew the moratorium, the City Council must first hold a public hearing to receive and consider public comment.

Attachments:

1. Letter from Clark County Board of Commissioners to Attorney General Holder
2. Letter from U. S. Department of Justice to Clark County Board of Commissioners

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BOARD OF CLARK COUNTY COMMISSIONERS

Tom Mielke • Marc Boldt • Steve Stuart



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CLARK COUNTY WASHINGTON

December 2, 2011

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

We request written guidance about the U.S. Department of Justice's position on enforcement of the Controlled Substances Act if county code, in accordance with state law, were to establish a regulatory system wherein county officials zone, review, permit and inspect facilities used to dispense, produce and process marijuana for medical use.

Engrossed Second Substitute Bill 5073 in part became Washington law on July 22, 2011. Section 403 of the new law allows qualified patients and designated providers "to create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use." Gov. Chris Gregoire, in her statement explaining a partial veto of the bill, wrote the gardens "should be conditioned on compliance with local government location and health and safety specifications."

The Board of Clark County Commissioners adopted an emergency resolution creating a temporary moratorium to preclude the siting and vesting of any "community garden" before proper planning is complete. The board also was required to adopt a work plan to make progress toward zoning and regulating this new use. Its first task is to request a Department of Justice opinion about potential liability Clark County and its employees could have if we move toward knowingly regulating this use.

Now faced with a tolling moratorium and need to begin drafting regulations, Clark County seeks advice. In an April 14 letter to Gov. Gregoire, your agency said "state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA." Specifically, the Board of Clark County Commissioners wants to know whether that also would be true if county employees are asked to knowingly zone, review, permit and inspect facilities for producing, processing, transporting and delivering medical cannabis. Would the Board of Clark County Commissioners or county employees be immune from arrest and liability when, in the course of their jobs, they do work related to zoning, review of permits and inspections of these facilities?

Thank you for your timely response.

Sincerely,

Tom Mielke, Chair

Marc Boldt

Steve Stuart

1300 Franklin Street • P.O. Box 5000 • Vancouver, WA 98666-5000 • tel: [360] 397-2232 • fax: [360] 397-6058 • www.clark.wa.gov



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FEB 2 2012

Board of Commissioners

RECEIVED BY
ALL COMMISSIONERSU.S. Department of Justice
Drug Enforcement Administration

www.dea.gov

8701 Morrisette Drive
Springfield, VA 22152

JAN 17 2012

Tom Mielke
 Marc Boldt
 Steve Stuart
 Board of Clark County Commissioners
 1300 Franklin Street
 P.O. Box 5000
 Vancouver, Washington 98666-5000

SUBJECT: Application of the *Controlled Substances Act (CSA)* to the Board of Clark County Commissioners and Clark County Employees

Dear Messrs. Mielke, Boldt, and Stuart:

Thank you for your December 2, 2011 letter addressed to Attorney General Eric Holder which was referred to the Drug Enforcement Administration (DEA) for a response.

The Department of Justice has stated that Congress has determined that marijuana is a schedule I controlled substance and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities. This is reflected in the text of the *CSA* and the decisions of the United States Supreme Court in *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), and *Gonzales v. Raich*, 545 U.S. 1 (2005). These federal law concepts are premised on the facts that marijuana has never been demonstrated in sound scientific studies to be safe and effective for the treatment of any disease or condition and, therefore, the Food and Drug Administration has never approved marijuana as a drug. As the Supreme Court stated, "for purposes of the Controlled Substances Act, marijuana has 'no currently accepted medical use' at all." *Oakland Cannabis Buyers' Cooperative*, 532 U.S. at 491.

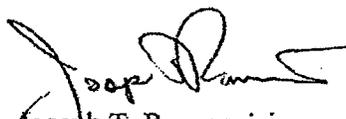
In your correspondence to the Attorney General you quote from an April 14, 2011 letter written to the Honorable Christine Gregoire, Washington State Governor by the U.S. Attorneys for both the Eastern and Western Districts of Washington in which they say that "state employees who conducted activities mandated by the Washington [medical marijuana] legislative proposals would not be immune from liability under the *CSA*." Although that letter pertained to the

Washington state medical marijuana law and Washington state employees, the principles expressed in that letter are useful in addressing any county "medical marijuana" ordinance or provision implementing state law. As that letter indicated, anyone who knowingly carries out the marijuana activities contemplated by Washington state law, as well as anyone who facilitates such activities, or conspires to commit such violations, is subject to criminal prosecution as provided in the CSA. That same conclusion would apply with equal force to the proposed activities of the Board of Clark County Commissioners and Clark County employees.

Such persons may also be subject to money laundering statutes. In addition, the CSA provides for forfeiture of real property and other tangible property used to facilitate the commission of such crimes, as well as the forfeiture of all money derived from, or traceable to, such activity.

Thank you for your inquiry regarding this important matter.

Sincerely,



Joseph T. Rannazzisi
Deputy Assistant Administrator
Office of Diversion Control

ORDINANCE O-4358

AN ORDINANCE OF THE CITY OF KIRKLAND 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.

WHEREAS, on July 19, 2011, the City Council passed Ordinance 4316, imposing a moratorium on the licensing, establishment, maintenance or continuation of any medical marijuana collective garden; and

WHEREAS, on August 2, 2011, the City Council conducted a public hearing to take public testimony on the imposition of the moratorium; and

WHEREAS, on January 3, 2012, the City Council, after conducting a public hearing, adopted Ordinance 4344 which extended the moratorium for an additional six months; and

WHEREAS, the moratorium enacted by Ordinance 4344 will expire on July 3, 2012; and

WHEREAS, Ordinances 4316 and 4344 defined the medical marijuana collective gardens that were subject to the moratorium and adopted findings and conclusions supporting the moratorium; and

WHEREAS, additional time is needed to allow the City to consider land use regulations to address medical marijuana collective gardens; and

WHEREAS, 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

WHEREAS, on June 3, 2012, a determination of nonsignificance was issued on the proposed extension of the medical marijuana collective gardens moratorium, pursuant to the State Environmental Policy Act; and

WHEREAS, the City Council desires to enter findings in support of the extension of the moratorium;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain 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 became 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 Kirkland Zoning code and under Section 1102 of E2SSB 5073 cities may adopt zoning requirements for collective gardens; and

i. The City's adoption of land use regulations applicable to medical marijuana collective gardens may be subject to federal or state preemption.

j. Additional time is needed to study the land use impacts of medical marijuana collective gardens.

k. Unless the moratorium imposed by Ordinance 4316 and extended by Ordinance 4344 is further extended, medical marijuana collective gardens may be located within the City of Kirkland 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

l. The City Council deems it to be in the public interest to further extend the moratorium imposed by Ordinance 4316, and extended by Ordinance 4344, pending consideration of land use regulations to address medical marijuana collective gardens.

Section 3. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, the moratorium enacted by Ordinance 4316 and extended by Ordinance 4344 prohibiting the licensing, establishment, maintenance or continuation of any medical marijuana collective garden in the City of Kirkland 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 Kirkland. In accordance with the provisions of RCW 35A.82.020 and Kirkland Municipal Code 7.02.290, 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 Kirkland.

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 Kirkland City Council.

Section 6. The City Manager is hereby authorized and directed to develop draft regulations regarding medical marijuana collective gardens. The regulations shall be referred to the Kirkland Planning Commission for review and recommendation for inclusion in the Kirkland 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 be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2012.

Signed in authentication thereof this ____ day of _____, 2012.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney