



CITY OF KIRKLAND

City Attorney's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3030

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Robin Jenkinson, City Attorney

Date: July 21, 2011

Subject: Hearing on Medical Marijuana Collective Garden Moratorium

RECOMMENDATION:

The City Council holds a public hearing on the medical marijuana collective garden moratorium authorized by Ordinance 4316 and then after conducting the hearing chooses among the following options:

- Take no action and allow the moratorium to continue for six months;
- Request additional findings of fact be prepared;
- Vote to end the moratorium imposed by Ordinance 4316

The staff recommendation is to take no action and allow the moratorium to continue for six months.

BACKGROUND DISCUSSION:

On July 19, 2011, the City Council passed Ordinance 4316 imposing a six-month moratorium within the City of Kirkland on the establishment, location, operation, licensing, maintenance or continuation of medical marijuana collective gardens. Under RCW 35A.63.220 and RCW 36.70A.390, the City Council must hold a public hearing on the adopted moratorium within 60 days of its adoption. Ordinance 4316 set August 2, 2011, as the date for a public hearing.

Under RCW 35A.63.220 and RCW 36.70A.390, the City Council must also adopt findings of fact justifying its action imposing the moratorium. Section 1 of Ordinance 4316 adopted preliminary findings in support of the moratorium. Based upon the public hearing, the City Council may request that additional findings be prepared and returned at the Council's next regular meeting.

Attachment – Ordinance 4316

ORDINANCE NO. 4316

AN INTERIM ORDINANCE OF THE CITY OF KIRKLAND ADOPTING 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, 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 ("CSA"); and

WHEREAS, 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

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

WHEREAS, 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

WHEREAS, E2SSB 5073 will be effective on July 22, 2011; and

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, unless a zoning moratorium is imposed, 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

WHEREAS, the City Council deems it to be in the public interest to establish a zoning moratorium pending consideration of land use regulations to address medical marijuana collective gardens; and

WHEREAS, under RCW 35A.63.220 and RCW 36.70A.390 a public hearing must be held within 60 days of the passage of this Ordinance,

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

The City Council of the City of Kirkland do ordain as follows:

Section 1. The recitals set forth above are hereby adopted as the Kirkland City Council's preliminary findings in support of the moratorium imposed by this Ordinance. The Kirkland City Council may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 4 below.

Section 2. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, a zoning moratorium is hereby enacted in the City of Kirkland prohibiting the licensing, establishment, maintenance or continuation of any medical marijuana collective garden. A "medical marijuana collective garden" is an area or garden where qualifying patients engage in the production, processing, transporting and delivery of marijuana for medical use as set forth in the E2SSB 5073 and subject to the limitations therein.

Section 3. Medical marijuana collective gardens as defined in Section 2 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 collective garden, which are hereby defined to be prohibited uses under the ordinances of the City of Kirkland.

Section 4. As provided in RCW 35A.63.220 and RCW 36.70A.390, the City Council sets a public hearing for August 2, 2011, which begins at 7:30 p.m. or as soon thereafter as the business of the City Council shall permit in order to take public testimony and to consider adopting further findings justifying the imposition of the moratorium set forth in Section 2 above.

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 collective gardens. The regulations shall be referred to the Kirkland Planning Commission for review and recommendation for inclusion in the Kirkland Zoning Code.

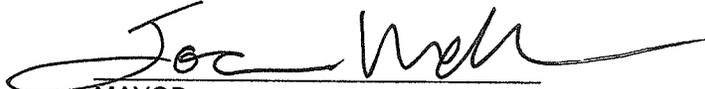
Section 7. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the

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 19th day of July, 2011.

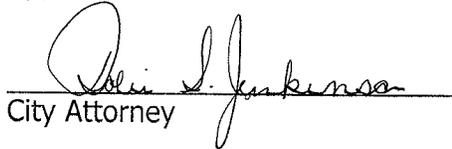
Signed in authentication thereof this 19th day of July, 2011.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney