



CITY OF KIRKLAND
Planning and Community Development Department
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MEMORANDUM

To: Kurt Triplett, City Manager
From: Eric Shields, Planning Director
Date: October 6, 2014
Subject: Marijuana Zoning Regulations

RECOMMENDATION

- After conducting a public hearing, Council adopts the attached ordinance establishing an interim regulation to control odors from marijuana businesses.
- Council also provides direction on drafting of Zoning Code amendments to replace the interim regulations.

BACKGROUND DISCUSSION

Interim Regulations

At the September 16, 2014 Council meeting, the City Council adopted Ordinance O-4453 extending the interim regulations for retail marijuana sales for an additional six months. At that time, the City Council also expressed a desire for an interim regulation to assure the control of odors from all marijuana-related businesses. The proposed ordinance provides that marijuana retail, processing and production businesses must be equipped with ventilation systems that prevent marijuana odors from being detected beyond the premises of the business and that a ventilation plan, prepared by a licensed mechanical engineer, be submitted at the time of the building and mechanical permit applications for review and approval. If odors from operations are detected, even with an approved plan, the business is subject to code enforcement.

Preparing Code Amendments

At the September 16 Council meeting, the City Council also was asked to provide direction on the preparation of "permanent" Zoning Code regulations for marijuana sales, processing and production. Prior to Council review of the regulations, the Planning Commission is required to conduct a public hearing and submit recommendations. Availability of the Planning Commission and staff is currently limited due to the Comprehensive Plan update. For that reason, staff favor options that minimize preparation of new regulations or which defer work to a later time.

Processing and Production. With regard to marijuana processing and production, a majority of Council members at the September 16 meeting appeared to favor continuing to allow such activities to occur in all zones where general processing and production uses are allowed (LIT, TL 7, TL 9, TL 10B, TL 10D and TL 10E). Staff is asking Council to confirm this decision

Retail Sales. Concerning retail marijuana sales, staff presented three options, which are repeated below. Of the six Council members at the meeting, three were in favor of option 1, while three favored option 3. Assuming that all seven Council members will be in attendance at the October 21 meeting, staff asks that the Council revisit this issue and select a preferred option.

1. ***Prepare code amendments that reflect the current interim regulations.*** This would be a relatively straight forward task that would be accomplished prior to the expiration of the current interim regulations. Prior to the public hearing, public input could be solicited using existing groups such as the Kirkland Alliance of Neighborhoods and Chamber of Commerce Policy Committee.
2. ***Undertake a more in-depth study of appropriate locations.*** This option would entail significantly more work than the first option and could involve formation of an advisory committee addressing this particular topic. In order to accomplish this option prior to the expiration of the current interim regulations, it would be necessary to divert some staff from the Comprehensive Plan update work.
3. ***Plan to extend the interim regulations one additional time prior to drafting new code amendments.*** This option would allow staff and the Planning Commission to focus on completing the Comprehensive Plan update during the next six months. It would also allow time for the City to discuss potential changes to I-502 with the state legislature. Then, if legislative changes are made, City code amendments could reflect those changes.

SEPA Compliance

The adoption of interim regulations is subject to compliance with the State Environmental Policy Act (SEPA). A SEPA Determination of Nonsignificance Addendum was issued on October 6, 2014.

ORDINANCE O-4462

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE REGULATION OF ODORS FROM MARIJUANA RETAIL, PROCESSING AND PRODUCTION BUSINESSES.

WHEREAS, Initiative 502 (I-502) approved by Washington voters in November 2012, provides a framework for licensing and regulating the production, processing, and retail sale of recreational marijuana; and

WHEREAS, the Washington State Liquor Control Board has adopted rules pertaining to the licensing of marijuana producers, processors, and retailers and has accepted applications, and is beginning to issue licenses for these marijuana businesses; and

WHEREAS, current City interim regulations do not specifically regulate odors emanating from marijuana retail, processing and production businesses; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued a formal opinion which concluded that I-502 does not prevent local governments from regulating marijuana businesses; and

WHEREAS, the City Council has continued to review how to meet the needs of the residents and businesses of Kirkland with respect to the production, processing and retail sale of recreational marijuana in light of the rules promulgated by the Washington State Liquor Control Board; and

WHEREAS, the City Council believes that health, safety, and welfare of the community is best served by imposing interim regulations of odors from marijuana retail, processing and production businesses; and

WHEREAS, prior to adoption of this Interim Ordinance, the City Council conducted a public hearing to take public testimony on the adoption of interim regulations of odors from marijuana retail, processing and production businesses.

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

Section 1. Findings. The recitals set forth above are incorporated as findings of fact in support of the interim regulation imposed by this ordinance. The City Council further finds as follows:

a. The City Council wishes to exercise its police power authority granted under article XI, section 11 of the Washington Constitution to promote public safety, health, and welfare, but expressly disclaims any intent to exercise authority over marijuana uses in way that would conflict with the federal Controlled Substances Act; and

b. It is the intent of these interim zoning regulations to ensure that odors from marijuana businesses do not cause inappropriate off-site impacts; and

c. The City Council desires to create regulations that address the particular needs of the residents and businesses of Kirkland and coordinate with Initiative 502 and the rules promulgated by the Washington State Liquor Control Board regarding recreational marijuana; and

d. The City Council has previously determined that City staff shall draft permanent Zoning Code amendments for referral to the Planning Commission for review, public hearing, and recommendation by the Planning Commission. The City Council now directs that permanent Zoning Code amendments relating to odors emanating from marijuana businesses be included in that project.

Section 2. Marijuana retail, processing and production businesses must be equipped with a ventilation system that prevents marijuana odors from being detected beyond the premises of the business. Applicants for such businesses must submit a ventilation plan, prepared by a licensed mechanical engineer, at the time of the building and mechanical permit applications. The ventilation plan must be reviewed and approved by the City. Once operation of the facility commences, if odors are detected beyond the premises of the building, even with an approved ventilation plan, the facility shall be subject to Code Enforcement actions as outlined in KMC Chapter 1.12.

Section 3. Duration. The interim zoning regulations adopted by this Ordinance shall be in effect for a period of six months from the effective date of this Ordinance 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 4. Work Plan. The City staff is directed to draft permanent Zoning Code amendments relating to odors emanating from marijuana businesses to be included with the permanent marijuana regulations currently under development. The proposed amendments shall be referred to the Kirkland Planning Commission for review, public hearing, and recommendation for inclusion in the Kirkland Zoning Code.

Section 5. 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 _____, 2014.

Signed in authentication thereof this _____ day of _____, 2014.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney