



**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 25, 2012  
**Subject:** Medical Marijuana Collective Gardens

**RECOMMENDATION**

Provide direction to staff on whether to prepare for Council consideration on December 11, 2012 either an ordinance renewing the existing medical marijuana collective gardens moratorium or an ordinance establishing interim zoning regulations for collective gardens. Staff recommends that the existing moratorium be allowed to expire and that interim regulations not be adopted.

**BACKGROUND DISCUSSION**

On June 19, 2012 the City Council adopted Ordinance 4358 (attachment 1) which extended a previously adopted moratorium on the establishment of medical marijuana collective gardens (collective gardens). The current moratorium will expire on December 29, 2012. The last regular Council meeting prior to expiration is December 11, 2012.

As the Council may recall, collective gardens were allowed by E2SSB 5073 which became effective in July 2011. Collective gardens are places where up to ten qualifying patients may join together to produce, grow and deliver up to 45 marijuana or cannabis plants for medical purposes.

**Options When Existing Moratorium Expires.**

If desired, the Council could (1) renew the moratorium, (2) adopt interim regulations, or (3) let the moratorium expire. In accordance with RCW 35A.63.220 and RCW 36.70.390, either option (1) or (2) would require a public hearing. Each of these options is discussed below.

Option 1: Renew the Moratorium. This option would continue to expressly prohibit medical marijuana collective gardens for up to another six months. The current moratorium has already been effect for a year. The moratorium was designed to preserve the status quo while the City considered new regulations to respond to new and changing circumstances relating to medical marijuana dispensaries and collective gardens not addressed in City codes. During the period of the moratorium, City staff researched the medical marijuana ordinances, land use impacts, and enforcement issues in other Washington cities.

Staff has conducted sufficient study to develop interim regulations without the extension of the moratorium. However, if the Council does select this option, it is recommended that Council also direct staff and the Planning Commission to prepare proposed zoning regulations for Council consideration prior to expiration of the further extended moratorium.

Option 2: Interim Regulations. As with the moratorium option, interim regulations would only be in effect for a six month period pending the preparation of permanent regulations. However, instead of an outright ban, interim regulations would establish where collective gardens are to be allowed and how they would be regulated.

If this option is selected, staff recommends that interim regulations allow collective gardens only in defined light industrial zones: Light Industrial Technology, Planned Area 6G and Totem Lake 7, as shown in light blue on the attached map. The collective gardens could be further restricted by prohibiting them within proximity to sensitive uses such as parks, schools or day care centers. The attached map also shows portions of the light industrial zones that are more than 1000 feet from the above uses.

This approach is similar to the permanent collective gardens regulations adopted by the City of Issaquah and is also similar to the way Kirkland regulates "adult activities." According to Issaquah's Planning Director, Issaquah chose this approach because the Issaquah City Council desired to provide places for collective gardens to locate. He also noted that two collective gardens are currently in operation in Issaquah and that he is unaware of any problems.

Using this approach for interim regulations would be appropriate if the City Council is interested in using the same approach for permanent regulations. If so, the Council should direct the staff and Planning Commission to prepare proposed zoning regulations for Council consideration prior to expiration of the interim regulations.

Option 3: Allow the Moratorium to Expire Without Adopting Interim Regulations. With this option, following the expiration of the current moratorium, collective gardens would be governed by existing zoning regulations. Those regulations do not allow collective gardens within any zone of the City. Kirkland's Zoning Code typically defines permitted uses using broad types of uses, for example dwelling units, retail establishments, office uses, wholesale trade and manufacturing. Collective gardens would not fall within any of the use types listed in the code.

However, collective gardens could be considered to be accessory to a permitted uses, particularly residential uses. Section 5.10.015 of the Zoning Code defines "accessory" as:

*A use, activity, structure or part of a structure which is subordinate and incidental to the main activity or structure on the subject property.*

Section 115.10 of the Zoning Code addresses accessory uses, facilities and activities and states that they must be clearly secondary to the permitted use. A small medical marijuana collective garden in a backyard shared by the property resident with a few others would seem to fit this definition, but not a garden of the maximum size allowed by state law, involving ten patients and up to 45 plants. Although residential uses are allowed in all but a few zones in the City, it is unlikely that gardens would be associated with multi-family uses due to limited land availability. The most likely locations, therefore, would be in single family residential zones.

### **Zoning Regulations**

Even if the City Council chooses not to renew the moratorium or adopt interim regulations, the Council could choose to initiate a process for Zoning Code amendments that would either codify a complete ban on collective gardens or conversely allow for and regulate collective gardens as free-standing uses not accessory to another use. For example, the City of Kent recently adopted an outright ban on collective gardens in its zoning code. The ordinance was challenged in superior court, but the judge found in favor of the city and upheld the ban. Seattle, on the other hand, has adopted regulations that are more permissive (and also allow dispensaries) in order to provide more generous opportunities for locating collective gardens.

If the Council decides not to renew the moratorium or adopt interim regulations for collective gardens but is interested in considering new zoning regulations, it is not necessary to start this project immediately. To allow full consideration of other potentially desirable planning projects, it is recommended that a decision to begin work on collective gardens zoning regulations be considered when the Council reviews the 2013 Planning Work Program in early 2013.

### **Public Safety Committee Review**

The Public Safety Committee discussed this issue on October 18, 2012. Members were in general agreement to not renew the moratorium or enact interim regulations. There was interest, however, in finding out more about why Issaquah and Seattle made the regulatory choices they did (briefly noted above). There was also interest in understanding more about how enforcement would work under our existing code (see below).

### **Enforcement**

As noted above, medical marijuana collective gardens are not an allowed use in any zone under the Kirkland Zoning Code, but a small scale collective garden could be considered an accessory to a residential use. If collective gardens were to be established in violation of the regulations, the City would follow normal enforcement procedures:

- An investigation is initiated upon receipt of a complaint;
- A code enforcement officer (CEO) investigates and contacts the alleged violator;
- If a violation is found, the CEO asks the violator to cease the violation;
- If the violator agrees, a voluntary compliance agreement is negotiated;
- If the violator does not agree, the CEO issues a notice of civil violation which stipulates fines of \$100/ day. A hearing is scheduled before the Hearing Examiner;
- The Hearing Examiner holds a hearing and issues a decision within ten days of

the hearing. If the Hearing Examiner finds for the City, she will require cessation of the violation and payment of the fines. Fines will continue to accrue until the violation is ceased.

- If fines are not paid, the matter will be referred to collection.

The police department would also be able to enforce upon any criminal activity.

### **Concerns of the Police Department in Allowing Collective Gardens**

From a law enforcement perspective the police are sworn to uphold the Constitution and the Laws of the United States of America as well as the laws of the State of Washington and the City of Kirkland. Marijuana is still illegal under Federal law. By allowing "collective gardens" the City of Kirkland would place its Law Enforcement Officers in a difficult grey area as there is so much conflict between the Federal and State laws. The Kirkland police participate in several "Task Force" operations such as the Secret Service and Eastside Narcotics Task Force with the Federal Government and other local law enforcement agencies that have brought resources to our citizens they would not otherwise be able to access. By participating in those Task Force operations, KPD may or may not encounter "collective gardens" and be required to enforce Federal Law.

The Kirkland Police also receive grant funding from the Federal Government such as Byrne Grants and Department of Justice grants that could be jeopardized.

In addition, there is always the concern about public health issues, increased potential for criminal behavior with others trying to buy, steal, or otherwise get the product from the collective gardens or the participant gardeners.

### **Changing Policy Landscape**

Initiative 502, which legalizes and regulates marijuana for adults in the State of Washington, is on the November 6, 2012 election ballot. This memo is being written prior to the election but the Council meeting will occur the day after the election. If the Initiative passes it is unclear how it will impact medical marijuana dispensaries or collective gardens. I-502 is silent on medical marijuana but marijuana could be purchased at retail stores, and state and local criminal penalties for possession and use would be eliminated. If I-502 is approved, private stores, producers, and processors would be licensed to sell marijuana. The Liquor Control Board would establish the maximum number of retailers per county and the maximum amount of marijuana a retailer and producer could have on the premises. The State Legislature may also once again take up the issue of medical or legalized marijuana during the 2013 session. Given the shifting policy landscape around the issue of medical marijuana, it is prudent for the City to continue to be patient and flexible in its approach to the issue.

### **Recommendation**

Staff therefore recommends that the existing moratorium be allowed to expire and that interim regulations not be adopted. This will effectively ban collective gardens except possibly as accessory uses in residential zones. If Council concurs, staff from the City Manager's office, Police, Planning and the City Attorney's office would continue to monitor the situation, identify any negative community impacts, and come back to the Council as issues emerge that need policy direction.

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.

O-4358

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 19th day of June, 2012.

Signed in authentication thereof this 19th day of June, 2012.

  
MAYOR

Attest:

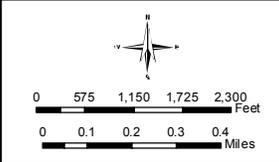
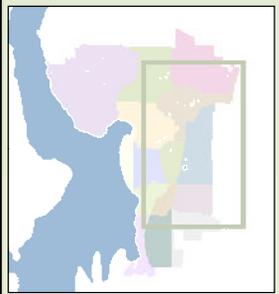
  
City Clerk

Approved as to Form:

  
City Attorney

# Potential Medical Marijuana Collective Gardens Locations

-  LIT, PLA 6G, TL 7 & TL 9A
-  Zoning Area Outside 1000 Foot Facility Radius
-  Day Care Facility
-  Parks
-  School
-  Railroads
-  Major Streets
-  City Limits
-  Lakes



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