



City Council Agenda Bill

20043

Bill Number

Subject: Public hearing on a recently adopted emergency ordinance imposing a moratorium on the establishment of facilities producing, processing, and retailing recreational marijuana.

Summary Statement: On July 1, 2013, the City Council adopted an emergency ordinance imposing a moratorium on the establishment of facilities producing, processing, and retailing recreational marijuana. RCW 36.70A.390 authorizes the City Council to adopt a moratorium without holding a public hearing provided a public hearing is held within at least sixty days of its adoption. The purpose of this hearing is to take public testimony regarding the moratorium, after which the City Council may rescind, modify or affirm the adopted ordinance. The moratorium will allow the city time to consider the final Liquor Control Board's rules and land use regulations related to the establishment of facilities producing, processing and retailing recreational marijuana as authorized by I-502.

Previous Council Action: 7/1/13 -Adoption of Ordinance No. 2013-07-047

Fiscal Impact: Existing staff resources will be used

Funding Source: General Fund

Attachments: Ordinance No. 2013-07-047
Q & A: Recent City Actions on Medical and Recreational Marijuana

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Public Hearing Council Direction Requested	12-Aug-2013	Provide Direction to Staff	Alan A. Marriner	5 min.

Council Committee:

Agenda Bill Contact:

Kurt Nabbefeld, Senior Planner, 778-8351

Committee Actions:

Reviewed By	Initials	Date
Jeff Thomas, PCD Director	<i>JT</i>	8/6/13
Legal	<i>AAm</i>	8/6/13
Mayor	<i>KWB</i>	8/6/13

Council Action:

ORDINANCE NO. 2013-07-047

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO THE RECREATIONAL USE OF MARIJUANA, DECLARING AN EMERGENCY, ESTABLISHING AN IMMEDIATE EMERGENCY MORATORIUM ON THE SITING, ESTABLISHMENT AND OPERATION OF ANY STRUCTURES OR USES RELATING TO MARIJUANA PRODUCTION, MARIJUANA PROCESSING, OR MARIJUANA RETAILING (SPECIFICALLY EXCLUDING MEDICAL MARIJUANA OR MEDICAL CANNABIS) AND THE SUBMISSION OF ANY BUSINESS REGISTRATION OR LICENSE APPLICATIONS FOR SUCH USES, AND SETTING TWELVE MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM, TO ALLOW THE WASHINGTON STATE LIQUOR CONTROL BOARD AN OPPORTUNITY TO COMPLETE ITS RULEMAKING FOR THE LICENSING OF SUCH USES AND TO ALLOW THE CITY TO STUDY THE LAND USE IMPACTS OF SUCH USES.

WHEREAS, the Washington voters approved Initiative 502 (I-502) in 2012, which "authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana" (I-502, Sec. 1(3)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana producers "to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers" (I-502, Sec. 4(1)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana processors to "process, package and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers" (I-502, Sec. 4(2)); and

WHEREAS, I-502 allows the Washington State Liquor Control Board to license marijuana retailers to "sell usable marijuana and marijuana-infused products at retail in retail outlets" (I-502, Sec. 4(3)); and

WHEREAS, under I-502, before the Washington State Liquor Control Board issues a new or renewed license to an applicant, it must give notice of the application to the chief executive officer of the incorporated city, and the city has the right to file its written objections to such license within 20 days after transmittal of the notice of application, but the Board makes the final decision whether to issue a license (I-502, Sec. 6 (7)); and

WHEREAS, I-502 establishes certain siting limitations on the Washington State Liquor Control Board's issuance of such licenses for any premises that are within 1,000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center or library, or any game

arcade, admission to which is not restricted to persons aged twenty-one years or older (I-502, Sec. 6(8)); and

WHEREAS, I-502 contemplates that the Washington State Liquor Control Board will adopt rules to implement the provisions of I-502, which includes the equipment and management of retail outlets and premises where marijuana is produced and processed, and the inspection of same; methods of producing, processing, and packaging the marijuana and marijuana products; security requirements at such establishments; retail outlet locations and hours of operation; labeling requirements and restrictions on advertising of such products; licensing and licensing renewal rules; the manner and method to be used by licensees to transport and deliver marijuana and marijuana products (among other things), (I-502, Sec. 9); and

WHEREAS, I-502 contemplates that the Washington State Liquor Control Board will adopt procedures and criteria by December 1, 2013 for issuing licenses to produce, process and sell marijuana (among other things), (I-502, Sec. 10); and

WHEREAS, I-502 limits the number of retail outlets to be licensed in each county, for the purpose of making useable marijuana and marijuana-infused products available for sale to adults 21 years of age or over (I-502, Sec. 13); and

WHEREAS, I-502 decriminalizes, for purposes of state law, the production, manufacture, processing, packaging, delivery, distribution, sale or possession of marijuana, as long as such activities are in compliance with I-502; and

WHEREAS, at this point in time, the City of Bellingham does not have any regulations addressing the facilities or uses identified in I-502, other than the requirement for a general business registration; and

WHEREAS, based on the licensing scheme in I-502, which prohibits anyone from engaging in the activities identified in I-502 without first obtaining a license from the Washington State Liquor Control Board, the City will not be issuing any business registration for the purposes described in I-502 unless the applicant demonstrates that he/she has first received the appropriate license from the State; and

WHEREAS, the uses described in I-502 have never been allowed in any state or city in the United States, and City needs time to study the secondary land use impacts of these marijuana uses and the various development standards that should be considered to mitigate these impacts before adoption of any regulatory ordinance or issuance of any business registrations; and

WHEREAS, the Bellingham City Council therefore believes a moratorium to preserve the status quo is necessary, until the State Liquor Control Board definitively acts to establish a complete set of rules for the licensing of all of the new marijuana facilities and uses identified in I-502, and until the City can study, draft, hold public hearings and adopt the appropriate regulations to address these new uses; and

WHEREAS, RCW 36.70A.390 authorizes the City Council to adopt an immediate moratorium for a period of up to twelve months without holding a public hearing on the proposal provided that a public hearing is held within at least sixty days of its adoption and a work plan is developed for related studies providing for the twelve-month period; and

WHEREAS, the City Council desires to impose an immediate twelve month moratorium on the acceptance of any development permit application or business registration application for the siting, location or operation of any marijuana processor, marijuana producer, or marijuana retailer; and

WHEREAS, RCW 69.51A.140 authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of marijuana or marijuana products within their jurisdiction; and

WHEREAS, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed 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, 35.63.200 provides a similar process for adopting and extending land use moratoriums; and

WHEREAS, moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this emergency moratorium is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA) and future permanent zoning regulations will be reviewed in accordance with SEPA Rules; and

WHEREAS, the Bellingham Municipal Code does not currently have specific provisions addressing licensing, producing, processing or retailing of recreational marijuana; and

WHEREAS, in conformity with the responsibilities of the City of Bellingham to meet public health, safety and welfare requirements and provide zoning and land use regulations pursuant to state law, and the City's authority to regulate land use activity within its corporate limits, the City intends to develop appropriate public health, safety and welfare requirements and zoning and land use regulations for the establishment of facilities producing, processing and retailing of recreational marijuana; and

WHEREAS, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of the pending rules and regulations to be established by the Washington State Liquor Control Board pursuant to I-502; and

WHEREAS, a moratorium will provide the City with additional time to review and amend its public health, safety and welfare requirements and zoning and land use regulations related to the establishment of facilities producing, processing and retailing recreational marijuana as authorized by I-502; and

WHEREAS, the City Council concludes that the City does have that authority to establish a moratorium and that the City must adopt a moratorium concerning the filing, acceptance, and processing of new applications or registration and licensing for the establishment of, or operation of, any facility, building or premises used for the production, processing or retailing of recreational marijuana, to protect the health, safety and welfare of the citizens of Bellingham; and

WHEREAS, the City Council adopts the foregoing as its findings of facts justifying the adoption of this ordinance; and

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Findings of Fact. The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35.63.200.

Section 2. Marijuana Definitions.

- A. "Cannabis or Marijuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. For the purposes of this Ordinance, "cannabis" or "marijuana" does not include the mature stalks of the plant, fiber produced

from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- B. "Marijuana processor" means a person licensed by the State Liquor Control Board to process marijuana into useable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products as wholesale to marijuana retailers.
- C. "Marijuana producer" means a person licensed by the State Liquor Control Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
- D. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.
- E. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell usable marijuana and marijuana-infused products in a retail outlet.
- F. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.
- G. "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include marijuana-infused products.

Section 3: General Definitions.

- A. "Exempt development permits" shall include any permit application for a structure or use/operation of property for marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance, that is subject to the vested rights doctrine, and that was submitted to the City and determined by the City staff to be complete on or before the effective date of this Ordinance.
- B. "Non-Exempt development permits shall include any permit application or business license or registration application for a structure or use/operation of property for marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance, that is:
 - 1. A permit application that is not subject to the vested rights doctrine and/or that was submitted to the City after the effective date of this Ordinance; and/or

2. A business license or registration application for use/operation of property for marijuana production, marijuana processing or marijuana retailing, as defined in this Ordinance that was submitted to the City either before or after the effective date of this Ordinance.

Section 4. Purpose. The purpose of this moratorium is to allow the City adequate time to study the secondary land use impacts associated with the location and siting of structures and uses in which marijuana production, marijuana processing or marijuana retailing may take place. In addition, the moratorium will allow the City adequate time to study I-502, and to await the administrative rules that the Liquor Control Board will develop by December of 2013. The City's goal is to ultimately draft zoning and business registration and licensing regulations to address such developments and uses, to hold public hearings on such draft regulations and to adopt such regulations.

Section 5. Moratorium Imposed. The City Council imposes an immediate twelve-month moratorium on the acceptance of all non-exempt development permit and business license or registration applications, as defined in this Ordinance. All such non-exempt development permit and business license or registration applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development permit applications, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 6. Duration of Moratorium. This moratorium shall be in effect for twelve (12) months, beginning on July 1, 2013 and ending on June 30, 2014, unless an ordinance is adopted amending the Bellingham Municipal Code and rescinding the moratorium before June 30, 2014.

Section 7. Public Hearing Required. As required by RCW 36.70A.390 and RCW 35.63.200, within sixty (60) days of passage of this Ordinance the City Council will hold a public hearing on this moratorium.

Section 8. Work Plan. During the moratorium period, City staff will study the issues concerning the establishment and operation of producing, processing and retailing facilities allowed under I-502. Staff will prepare appropriate revisions to the City's codes and regulations and conduct the public review process as required for amendments to the Bellingham Municipal Code.

Section 9. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.12.130. Without an immediate moratorium on the City's acceptance of non-exempt development applications, such applications could become vested, leading to development or a use of property that is incompatible with I-502, the rules that will be adopted by the Liquor Control Board, or the laws adopted by the City of Bellingham. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested

rights. Any use currently in operation as a marijuana producer, marijuana processor or marijuana retailer without a valid City business registration on the date of the passage of this Ordinance is not a legal non-conforming use.

Section 10. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth herein, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

Section 11. Conflict with other BMC Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Bellingham Municipal Code, this Ordinance shall control.

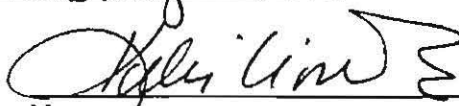
Section 12. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

PASSED by the Council this 1st day of July, 2013.



Council President

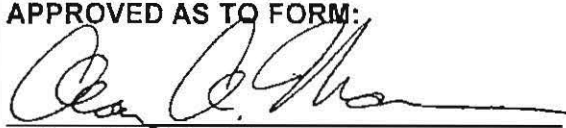
APPROVED by me this 2nd day of July, 2013.



Mayor

ATTEST: 

Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published:
July 5, 2013



City actions balance new marijuana laws with public safety and welfare



By City Attorney Peter Ruffatto, Police Chief Cliff Cook, Planning and Community Development Director Jeff Thomas

While popular among potential users, the legalization of marijuana with the passage of I-502 last fall left Washington state and local governments with legal gray areas that still are being sorted out. These gray areas are coupled with ambiguities left over from the 1998 provisions for medical marijuana and the Governor's 2011 veto of portions of a bill that would have led to a system for regulating and licensing dispensaries. This has cities and counties statewide grappling with how best to allow marijuana-related activities without adversely affecting people who live and work nearby.

For example, marijuana operations can produce strong smells and noise. We've received numerous complaints about marijuana operations, such as a production and distribution facility located on the first floor of a mixed-use building, where residents living on the second and third floors can smell strong marijuana odors emanating from below. Should this be allowed, or should these operations be restricted to certain areas, such as industrial or commercial zones? We've received complaints about traffic, noise and increases in criminal behaviors around facilities that claim to be collective gardens. As our communities anticipate new businesses setting up to grow, process and sell marijuana, how and where should they be allowed to operate?

These are among the many questions elected officials in Bellingham and throughout Washington are considering. And for the time being, local governments find themselves in an evolving landscape, as state regulations await final approval and implementation and the drug remains illegal at the federal level.

It is in light of these ambiguities and challenges that the Bellingham City Council enacted temporary regulations regarding marijuana. Two ordinances were approved on July 1. One adopted interim zoning for the cultivation of medical marijuana for personal use and in collective gardens. The other imposed a 12-month moratorium on cultivation and distribution of marijuana for uses apart from medical prescription. These actions were approved as a temporary measure to establish rules and prevent significant unintended consequences later, especially so that businesses cannot become established in inappropriate places.

Several cities in Washington have enacted temporary regulations, intended to be in place only until new rules can be considered in tandem with new state processes still being developed. Below we answer some frequently asked questions about the temporary measures recently enacted by the Bellingham City Council:

Q: What has the City of Bellingham done recently with respect to marijuana regulation?

On July 1, 2013, the Bellingham City Council passed two separate ordinances that went into effect immediately. One ordinance, 2013-07-047, relates to recreational marijuana as allowed under I-502 and establishes a temporary moratorium on development permits and business registrations for structures and operations involving marijuana production, processing, or retailing. The other ordinance, 2013-07-048, relates to land use and zoning regulations for the cultivation of medical marijuana for personal use and in collective gardens as allowed under RCW 69.51A. It is important to think about these ordinances separately because they address different marijuana uses.

Q: What happens next?

The City Council will hold two separate public hearings on August 12 to take public testimony on each ordinance. Based on this feedback, the Council can rescind, modify or take no action and allow the ordinances to remain in effect as they were approved in July. The City is continuing to study impacts and the most appropriate rules for our community and neighborhoods. The City will consider replacing the current moratorium on recreational marijuana business activity with interim rules so that we can better align with the state's licensing process. Shortly after the City Council approved the two marijuana-related ordinances, it was announced that the Liquor Control Board will start accepting I-502 license applications on September 16, 2013.

Q: Why were they adopted as emergency ordinances?

Normal ordinances require three public readings and, once approved by Council, only take effect after 15 days. State law allows the City to adopt moratoria and interim zoning ordinances pending the adoption of final permanent ordinances. An emergency ordinance takes effect immediately and must pass with at least five Council votes. Emergency ordinances were necessary to preserve the status quo so that new plans and rules will not be rendered meaningless by development that occurs or businesses that are established while new requirements are being considered.

Q: Why were these actions taken now?

We don't want marijuana businesses and collective gardens to become established without logical, predictable planning and rules. It is the City's responsibility to balance the interests of those wishing to engage in these activities with the needs of public safety, health and welfare.

Q: What is the purpose and effect of the moratorium on permits and applications related to recreational marijuana production, processing and retailing (Ord. #2013-07-047)?

The moratorium allows the City adequate time to study the impacts associated with recreational marijuana production, processing and retailing. The City will use this time to draft zoning and business registration rules, hold public hearings and adopt final rules. As with any proposed land use or business, it is important to understand how this newly legalized industry will affect our community and neighborhoods and to adopt appropriate rules. Most rules regarding recreational marijuana are set by I-502 and the upcoming rules to be issued by the Liquor Control Board, but cities are allowed to set their own zoning policies for the location of recreational marijuana businesses. The moratorium will also allow the City adequate time to study I-502, and to evaluate the administrative rules issued by the Liquor Control Board, which will become effective in mid-September of 2013. During the moratorium, the City will not accept applications for development permits or business registrations for recreational marijuana businesses.

Q: What is the purpose and effect of the interim zoning rules related to medical marijuana (Ord. # 2013-07-048)?

As with the moratorium on recreational marijuana business activity, the interim zoning rules related to medical marijuana provide the City with an opportunity to study the impacts of collective gardens and the cultivation by individual qualifying patients and to prepare appropriate revisions to the City's codes. The City seeks to mitigate negative impacts and unintended consequences to our community. During the interim period, collective gardens are allowed only in industrial zoned areas and cannot be established within 1000 feet of structures such as schools, playgrounds, recreation centers, child care centers, public parks and the like. Cultivation of medical marijuana for personal use is allowed inside homes located in residential single-family zones.

Q: Do these ordinances change how the federal government will approach marijuana in Bellingham?

No. All marijuana operations in the State of Washington are still subject to restrictions under federal law, and we have not been given clear indications on how the federal government will approach enforcement.

Q: If I want to see something changed in these ordinances, is there still time to comment?

Yes. You can testify at the public hearings scheduled for August 12, 2013. Additionally, once the City has studied the potential land use impacts associated with marijuana, draft final rules will be presented and additional public commenting opportunities will be available at future hearings in front of the Planning Commission and City Council.

Published: August 2, 2013