



# City Council Agenda Bill

# 20044

Bill Number

**Subject:** Public hearing on a recently adopted emergency ordinance establishing interim zoning for the cultivation of medical marijuana for personal use and in collective gardens.

**Summary Statement:** On July 1, 2013, the City Council adopted an emergency ordinance and interim zoning regarding land use regulations related to the cultivation of medical marijuana for personal use and in collective gardens. RCW 36.70A.390 authorizes the City Council to adopt interim zoning 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 interim zoning, after which the City Council may rescind, modify or affirm the adopted ordinance. The twelve-month interim zoning ordinance will allow the City to preserve the status quo while it develops zoning and land use regulations related to the cultivation of medical marijuana.

**Previous Council Action:** 7/1/13 -Adoption of Ordinance No. 2013-07-048

**Fiscal Impact:** Existing staff resources will be used

**Funding Source:** General Fund

**Attachments:** Ordinance No. 2013-07-048  
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	JT	8-6-2013
Legal	AAm	8/6/13
Mayor	KLM	8/6/13

**Council Action:**

ORDINANCE NO. 2013-07-048

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO LAND USE AND ZONING, DECLARING AN EMERGENCY AND ADOPTING INTERIM ZONING REGULATIONS FOR THE CULTIVATION OF MEDICAL CANNABIS (MARIJUANA) FOR PERSONAL USE AND IN COLLECTIVE GARDENS AND SETTING TWELVE MONTHS AS THE EFFECTIVE PERIOD OF THE INTERIM ZONING REGULATIONS TO ALLOW THE CITY TO STUDY THE LAND USE IMPACTS OF SUCH USES.**

**WHEREAS**, since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq; and

**WHEREAS**, Initiative 692 (I-692), approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created an affirmative defense for "qualifying patients" to the charge of possession of marijuana (cannabis); and

**WHEREAS**, the intent of I-692 was that qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law (RCW 69.51A.005). However nothing in the law shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale or use of marijuana for non-medical purposes (RCW 69.51A.020); and

**WHEREAS**, the Washington State Legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073 in 2011, which provides that a qualifying patient or his/her designated provider are presumed to be in compliance, and not subject to criminal or civil sanctions, penalties, or consequences, if they possess no more than 15 cannabis plants and no more than 24 ounces of usable cannabis (other qualifications apply); and

**WHEREAS**, E2SSB 5073 also authorized the licensing of medical cannabis dispensaries, production facilities and processing facilities and the cultivation of cannabis for medical use by qualifying patients individually and in collective gardens; and

**WHEREAS**, on April 29, 2011, Washington's Governor vetoed the portions of E2SSB 5073 that would have provided the basis for legalizing and licensing medical cannabis dispensaries, production facilities and processing facilities, but left the provisions relating to the cultivation of marijuana for medical use by qualifying patients individually and in collective gardens; and

**WHEREAS**, RCW 69.51A.040 authorizes qualifying patients and designated providers to possess certain limited amounts of cannabis for medical use; and

**WHEREAS**, RCW 69.51A.085 authorizes qualifying patients to create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use subject to specific conditions set forth in RCW 69.51A.085; and

**WHEREAS**, the growing of cannabis, especially as the plants mature prior to harvest, may produce a distinctive and strong odor, which could be reduced by limiting growing and harvesting to specific geographic locations or zones and within enclosed structures; and

**WHEREAS**, the City has received complaints about the odor and location of collective gardens within certain mixed-use zones; and

**WHEREAS**, City Council believes that while staff studies the land use and other secondary impacts of the cultivation of cannabis, the health, safety and welfare of the community may be best served by excluding from certain zones any production, processing or selling of cannabis; 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 cannabis or cannabis products within their jurisdiction, and nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction; and

**WHEREAS**, RCW 36.70A.390 authorizes the City Council to adopt an interim zoning ordinance for a period of up to twelve months without holding a public hearing on the ordinance 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**, 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 interim zoning ordinances; and

**WHEREAS**, interim zoning controls 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 interim zoning ordinance 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 the cultivation of medical cannabis for personal use and in collective gardens; 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 cultivation of medical cannabis for personal use and in collective gardens; and

**WHEREAS**, the City Council has determined it needs additional time to conduct appropriate research to analyze the effects of current state law pertaining to the cultivation of medical cannabis for personal use and in collective gardens; and

**WHEREAS**, interim zoning 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 cultivation of medical cannabis for personal use and in collective gardens consistent with the provisions of Chapter 69.51A RCW; and

**WHEREAS**, interim zoning will also allow qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of cannabis, to cultivate medical cannabis for personal use and in collective gardens; and

**WHEREAS**, the City Council concludes that the City does have that authority to establish an emergency interim zoning ordinance and that the City must adopt emergency interim zoning concerning the establishment of medical cannabis collective gardens and the cultivation of medical cannabis by individual qualifying patients or designated providers to act as a stop-gap measure: (a) to provide the City with an opportunity to study the issues concerning the establishment of medical cannabis collective gardens and the cultivation of medical cannabis by individual qualifying patients or designated providers and prepare appropriate revisions to the City's codes and regulations; (b) to protect the health, safety, and welfare of the citizens of Bellingham by avoiding and ameliorating negative impacts and unintended consequences of additional medical cannabis collective gardens and the cultivation of medical cannabis by individual qualifying patients or designated providers and (c) to avoid applicants possibly establishing vested rights contrary to and inconsistent with any revisions

the City may make for its rules and regulations as a result of the City's study of this matter; 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. Interim Zoning for Medical Cannabis Collective Gardens.**

- A. Medical Cannabis Collective Garden means those gardens authorized under RCW 69.51A.085, which allows qualifying patients to assume responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use. Examples of collective garden resources includes, without limitation, the following: property used for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.
  
- B. Location - Medical Cannabis Collective Gardens shall only be established in those Industrial zoned areas as shown on **EXHIBIT A**. In addition, no medical cannabis collective garden may be established within one thousand (1,000) feet of the perimeter of the grounds of the following entities:
  - 1. Elementary or secondary school;
  - 2. Playground;
  - 3. Recreation center;
  - 4. Child care center;
  - 5. Public park;
  - 6. Public transit center;
  - 7. Library; or
  - 8. Any game arcade where admission is not restricted to persons age twenty-one or older.
  
- C. Establishment of medical cannabis collective gardens shall comply with all applicable Industrial development standards in BMC Chapter 20, unless modified by this Ordinance, and review processes in BMC Chapter 21.
  
- D. Operating Standards.
  - 1. Use of medical cannabis and operation of medical cannabis collective gardens shall be in conformance with RCW 69.51A except as modified by this Ordinance.
  - 2. Indoor Operation - Operation of a medical cannabis collective garden shall only be within a fully-enclosed and secure structure that complies with BMC Chapter 17.10, including but not limited to the International Building Code and

the Washington Cities Electric Code, and BMC Chapter 17.20, the City's Fire Code. Security alarm systems shall be professionally installed on all perimeter entry points and perimeter windows.

3. Visibility - Cannabis shall not be grown or on display in any location where the cannabis plants or products are visible from the public right-of-way or a public place.
  4. Signage - There shall be no exterior or window signage relating to the collective garden. Addresses of the building or tenant space are allowed.
  5. Sales of Paraphernalia - There shall be no on-site display or sale of paraphernalia used for the use or consumption of medical cannabis at the collective garden.
- E. Nuisance - Medical cannabis collective gardens shall not adversely affect the health or safety of the community and shall be operated in a manner as to not create or be considered a nuisance. Nothing in this section shall be construed as a limitation on the City's authority to abate any nuisance under BMC Chapter 10.28 which may exist from the cultivation of cannabis plants from any location, including from within a fully enclosed and secure building.
- F. Nonconforming Status - No use that constitutes or purports to be a medical cannabis collective garden, which was engaged in that activity prior to the adoption of this Ordinance, shall be deemed to have been a legally established use under the provisions of the Bellingham Municipal Code and that use shall not be entitled to claim legal nonconforming status.
- G. Enforcement and Violations - Violations of this Ordinance may be enforced as set forth in BMC Chapter 20.50, BMC Chapter 20.52, and RCW 69.51A.140, or as applicable, the Uniform Controlled Substances Act, Chapter 69.50 RCW.

### **Section 3. Interim Zoning for Medical Cannabis for Personal Use.**

- A. RCW 69.51A.040 allows an individual qualifying patient or designated provider to cultivate medical cannabis for personal use subject to quantity limitations and other standards listed in RCW 69.51A.040.
- B. Cultivation of medical cannabis for personal use under RCW 69.51A.040 shall be allowed only in areas zoned single-family residential and shall meet the following standards:
1. The medical cannabis cultivation area shall be contained within a main building that complies with BMC Chapter 17.10, including but not limited to the International Building Code and the Washington Cities Electric Code, and BMC Chapter 17.20, the City's Fire Code.
  2. The medical cannabis cultivation area shall not exceed fifty (50) square feet in area and not exceed ten (10) feet in height per residence.

3. Medical cannabis cultivation lighting shall not exceed 1200 watts.
  4. Use of gas products (CO2, butane, etc.) for medical cannabis cultivation or processing is prohibited.
  5. Medical cannabis cultivation and sale is prohibited as a Home Occupation. Medical cannabis cultivation and sale is not considered an accessory use in single-family residential zones.
  6. From a public right of way, there shall be no exterior evidence of medical cannabis cultivation either within or outside the residence.
  7. The qualified patient or designated provider shall reside in the residence where the medical cannabis cultivation occurs.
  8. The qualified patient or designated provider cultivating cannabis for personal use shall not participate in any Collective Garden or other medical cannabis cultivation in any other residential location.
  9. The residence shall maintain a kitchen, bathrooms, and primary bedrooms for their intended use and shall not be used primarily for medical cannabis cultivation.
  10. The medical cannabis cultivation area shall be in compliance with the City's Building Code provisions regarding natural ventilation or mechanical ventilation (or its equivalents).
  11. The medical cannabis cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, light, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
- C. Nuisance - Cultivation of medical cannabis for personal use under RCW 69.51A.040 shall not adversely affect the health or safety of the community and shall be done in a manner as to not create or be considered a nuisance. Nothing in this section shall be construed as a limitation on the City's authority to abate any nuisance under BMC Chapter 10.28 which may exist from the cultivation of cannabis plants from any location, including from within a fully enclosed and secure building.
- D. Enforcement and Violations - Violations of this Ordinance may be enforced as set forth in BMC Chapter 20.50, BMC Chapter 20.52, and RCW 69.51A.140, or as applicable, the Uniform Controlled Substances Act, chapter 69.50 RCW.

**Section 4. Duration of Interim Zoning.** This interim zoning 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 interim zoning before June 30, 2014.

**Section 5. 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 interim zoning.

**Section 6. Work Plan.** During the interim zoning period, City staff will study the issues concerning the cultivation of medical cannabis for personal use and in collective gardens. 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 7. 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. Without an immediate interim zoning ordinance establishing standards for the cultivation of medical cannabis for personal use and in collective gardens, qualifying patients or their designated care providers could become vested, leading to the development or use of property that is incompatible with the laws adopted by the City of Bellingham. Therefore, this interim zoning ordinance 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 medical cannabis collective garden in operation without a valid City business registration on the date of the passage of this Ordinance is not a legal non-conforming use.

**Section 8. 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 9. 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.

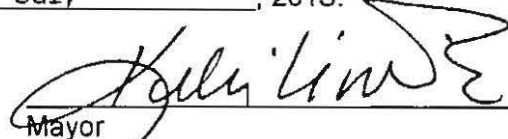
**Section 10. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

PASSED by the Council this 7<sup>ST</sup> day of JULY, 2013.

  
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Council President




APPROVED by me this 1st day of July, 2013.

  
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Mayor

ATTEST   
for Finance Director

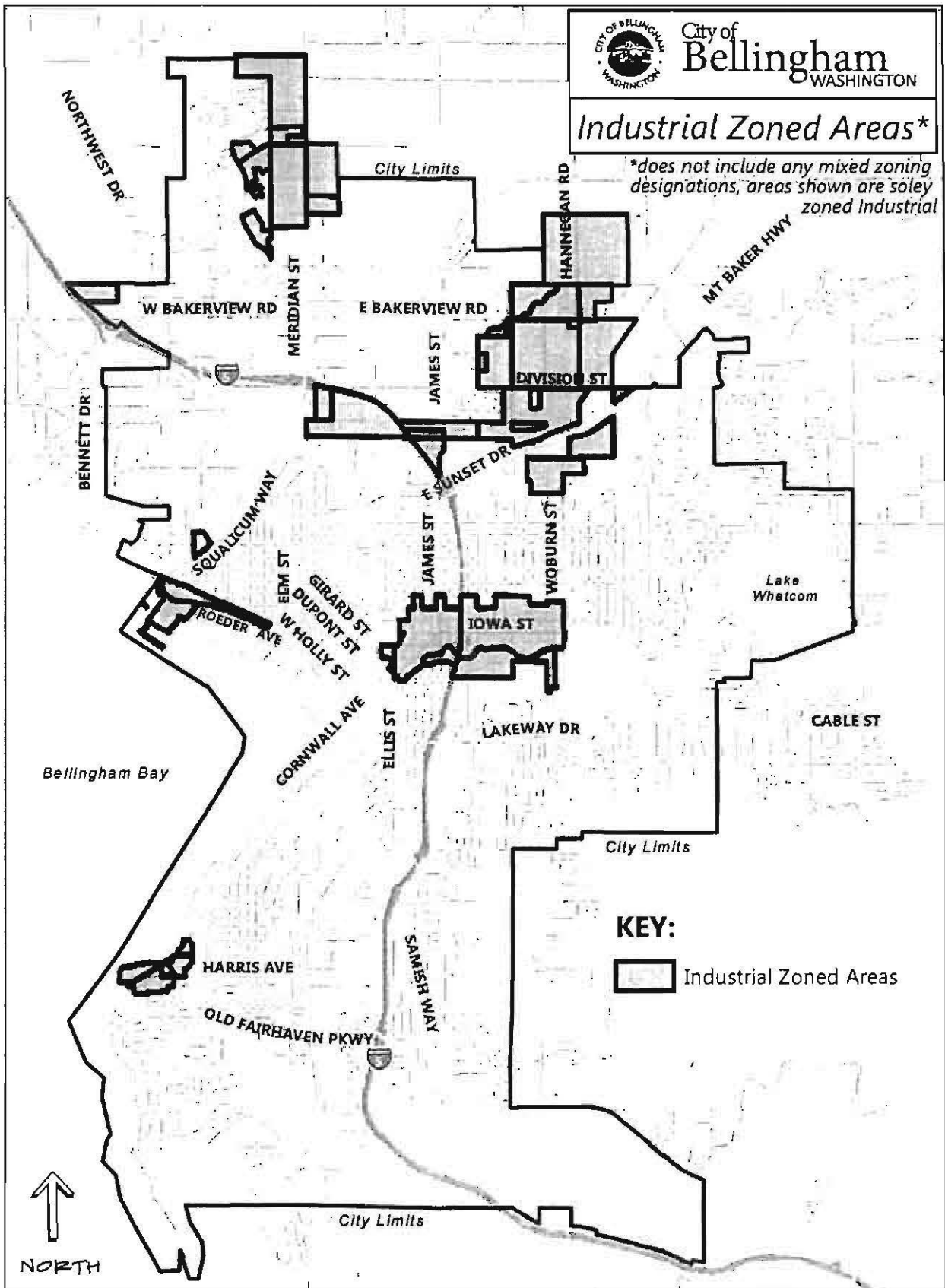
APPROVED AS TO FORM:

  
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Office of the City Attorney

Published:

July 5, 2013  
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# EXHIBIT A





## 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