

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing on Interim Regulations and Moratorium on Medical Marijuana Collective Gardens and Adoption of Ordinance No. 614, Amending the Interim Regulations
DEPARTMENT:	Planning and Community Development; City Attorney
PRESENTED BY:	Flannary Collins, Assistant City Attorney
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

On July 18, 2011, the Council adopted Ordinance No. 611 establishing interim regulations and a six -month moratorium on the submittal or processing of development permits or business license applications for medical marijuana collective gardens that did not satisfy the interim regulations. Ordinance No. 611 also scheduled a public hearing for September 12, 2011, on the moratorium and interim regulations.

RCW 35A.63.220 and the Growth Management Act, RCW 36.70A.390 authorize interim regulations and moratoria. These statutes feature adoption of an ordinance without public hearing notice or recommendation from the Planning commission so long as a public hearing is scheduled within 60 days from initial passage. The moratorium or interim regulations may remain in effect for up to six months, and may be extended after a second hearing and a showing of necessity for more time to complete permanent regulations.

Staff placed Ordinance No. 611 on the Council July 18, 2011, agenda with notice to the public since collective gardens were not permitted under state law until July 22, 2011. Several comments were received at the July 18th public meeting. Planning staff has scheduled development of permanent regulations before the Planning Commission in the fall of 2011 and the public will be invited to provide oral or written comment as part of the Planning Commission's public hearings on these regulations.

Staff proposes amendments to the interim regulations to reduce the dispersal distance between gardens to 1,000 feet and an amendment clarifying the replacement of collective garden members where fees are charged for providing marijuana.

RESOURCE/FINANCIAL IMPACT:

There is no financial impact to the City as a result of the adoption of Ordinance No. 614. Clarification provided in the moratorium will avoid potential legal expenses over enforcing the intent of SB 5073 regarding the collective gardens.

RECOMMENDATION

Based on public comment Council may propose amendments to Ordinance No. 611. Staff recommends adoption of Ordinance No 614, amending interim regulations, to provide a reduction in the distance between collective gardens from 2,000 to 1,000 feet and to clarify that members may not be substituted within fifteen days where fees are paid to another member or designated provider.

Approved By: City Manager gm City Attorney ____

INTRODUCTION

Ordinance No. 611 adopted a moratorium and interim regulation of collective gardens that may be operated by qualified medical marijuana patients under state law. This activity was newly created in SB 5073 and took effect on July 22, 2011. Proposed Ordinance No. 614 clarifies the collective garden use allowed in Shoreline and reduces the required distance between gardens from 2,000 to 1,000 feet.

BACKGROUND

In 1998 Washington voters approved Initiative 692 providing an affirmative defense to criminal prosecution of state laws prohibiting use and possession of marijuana for limited amounts possessed by individuals that are qualified for medical use or for a provider designated by a single patient. The initiative lacked authorization for large scale distribution of marijuana for patients who were unable to grow their own medical marijuana. However, dispensaries have proliferated in some areas under the argument that a commercial dispensary could dispense to one patient and then another as quickly as transactions could occur. In a July 2010 Inquiry as to whether dispensaries were legal, Municipal Research Services Center (MRSC) responded they were not under a reasonable interpretation of the statutes.¹ General Counsel for the City's risk pool, WCIA, issued a Bulletin to member cities reaching the same conclusion in December of 2010. Hearing Examiners have reached the same conclusion in denying license to dispensaries.

The 2011 legislature adopted a comprehensive scheme of licensing and regulating dispensaries to better address patient needs in SB 5073. However, marijuana possession continues to be a criminal offense under the federal Controlled Substances Act, and all provisions relating to dispensaries were vetoed by the Governor due to a perceived potential for federal prosecution of state regulators participating in the regulation of commercial dispensaries as well as the dispensaries themselves. The earlier argument used to expand the designated provider into a dispensary was expressly curtailed in the final bill by prohibiting providers from changing their qualified patient more frequently than every fifteen days.

While dispensaries are now clearly unlawful, SB 5073 provides a limited model for cooperative efforts by patients in production and distribution through collective gardens run by up to 10 qualified patients and containing up to 45 marijuana plants. The bill allowed local government to zone and regulate this new land use. It is likely that a collective garden can hire a designated service provider or lease a site that would include multiple collective gardens.

ALTERNATIVES ANALYSIS

Total Ban. Shoreline follows several cities that have adopted moratoria regarding collective gardens. From discussions with other cities, more are anticipated. Some cities have adopted an absolute moratorium on any collective garden. Staff does not

¹ "The statutes may be a little fuzzy, but to interpret the statutes as allowing a provider to provide marijuana to multiple patients one after another in a retail setting is stretching the law to an extreme degree."

recommend this for two reasons. First, medical marijuana has been a comprehensive state legislative scheme for patient rights from the passage of Initiative 692 and prohibiting a right granted to patients to act collectively rather than regulate that use as expressly allowed to cities in the statute may bring a challenge, even where a moratorium is declared under existing law. Second, regulations, including moratoria, should be narrowly drawn to address a public harm, and not extend to activity or rights where harm is unlikely. Staff believes the gardens that meet the interim regulations are an important benefit to patients who cannot provide marijuana themselves or through a single provider, particularly since the popular dispensary model is now untenable. Staff recommends that interim regulations be provided rather than a total ban.

Permitted Zones and Dispersal. Even with the state law prohibiting public display of marijuana, staff believes that a fully developed garden is not an appropriate residential use and the land use zones where gardens are permitted are appropriate as designated in the interim regulations. The July 18th interim regulations include MUZ zones as permitted locations. However, as of July 25th the Council adopted the Town Center zones that replace MUZ zoning in that district. Please note that the new dispersal map excludes the Town Center zoning from the list of permitted zones primarily because of its residential potential and its draw for major redevelopment.

The dispersal rules from schools (1,000') and other gardens or delivery sites (2,000') received the most discussion on July 18th. School routes were removed as too limiting to gardens since they are transitory and could unexpectedly conflict with a long term garden lease. Route stops are also used by students for a short time. The adopted interim regulations require that collective gardens be separated by 2,000 feet. This requirement did cause one pending application on 145th to be denied because it was approximately 1,500 feet from an existing garden on Aurora. Staff proposes a reduction of this standard to 1,000 feet since it will not significantly increase the number of gardens that can locate in Shoreline. The current Collective Garden locator map is attached as Attachment B.

Rules of Operation. There are definitions of the collective garden that staff recommends should be incorporated into the interim regulations to clarify these uses as they will be allowed in Shoreline. State law is clear that a marijuana patient may also serve as a provider to another patient and possession limits in this case are doubled. The City Attorney reads SB 5073 to allow a patient to now assist other patient members of a collective garden rather just one other patient, with marijuana limits again increased. However, there is no reason to abandon the fifteen-day waiting period adopted in SB 5073 for replacing a designated provider that now operates as a collective garden member's provider or a patient/provider who is a member of the garden. This restriction eliminated the quick designation and resignation of the patient's provider which some dispensaries argued prior to SB 5073 to justify a retail outlet to any authorized patient. To allow a garden member to pay a fee for receiving marijuana, resign and be immediately replaced by another garden member that can pay the same fee perpetuates the scheme intended to be ended by SB 5073. As staff mentioned at the July 18th meeting, we do not believe the legislature intended medical marijuana dispensaries to continue under a different name after SB 5073. Ordinance No. 614 clarifies Council's intent that the restriction on changing patients served by a designated

provider by requiring a fifteen day waiting period continues to apply to patients who are members of a garden who are charged for delivery of medical marijuana.

Development of Permanent Regulations

The Planning Commission has scheduled two meetings to study permanent regulations on November 3 and hold a public hearing on November 17. Staff would like to return to Council by the end of 2011 with the Commission's recommendations and again in early January 2012 for adoption. The 6-month moratorium ends in mid January 2012.

RECOMMENDATION

Based on public comment Council may propose amendments to Ordinance No. 611. Staff recommends adoption of Ordinance No 614, amending interim regulations, to provide a reduction in the distance between collective gardens from 2,000 to 1,000 feet and to clarify that members may not be substituted within fifteen days where fees are paid to another member or designated provider.

ATTACHMENTS

- A. Ordinance No. 614.
- B. Medical Marijuana Collective Garden Locator Map, 2000 ft
- C. Medical Marijuana Collective Garden Locator Map, 1000 ft
- D. Collective Garden Rules of Operation

ORDINANCE NO. 614

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, AMENDING INTERIM REGULATIONS FOR COLLECTIVE GARDENS REDUCING THE DISTANCE PERMITTED BETWEEN COLLECTIVE GARDENS AND RESTRICTING SUBSTITUTION OF GARDEN MEMBERS WHERE FEES ARE CHARGED FOR DELIVERY OF MEDICAL MARIJUANA.

WHEREAS, E2SSB 5073 (the Act) effective on July 22, 2011 authorizes "collective gardens" which would authorize certain qualifying patients the ability to produce, grow and deliver cannabis for medical use; and

WHEREAS, the Act authorizes local municipalities to exercise local location, health and safety controls for the regulation of collective gardens; and

WHEREAS, the City Council established interim regulations with passage of Ordinance No.611 on July 18, 2011 and held a public hearing on September 12, 2011 on these interim regulations; and

WHEREAS, based on comment received since the adoption of Ordinance No. 611 the Council now wishes to amend interim collective gardens to reduce the space required between gardens and to clarify that intent of Council that restrictions on substituting patients served by designated providers continues to apply to collective gardens operating in Shoreline; now therefore

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 2 of Ordinance No. 611 is amended to read as follows:

A moratorium is adopted upon the filing of any application or issuance of any permit or business license for the establishment of a collective garden as defined in E2SSB 5073 that does not meet the following criteria:

- A. There shall be no more than one collective garden permitted on a property tax parcel.
- B. Collective gardens may only be located in the NB, O, CB, NCBD, MUZ, and I zones.
- C. A collective garden or facility for delivery of cannabis produced by the garden may not be located within 1000 feet of schools and not within 1000~~2000~~-feet of any other collective garden or delivery site.
- D. Any transportation or delivery of cannabis from a collective garden shall be conducted by the garden members or designated provider so that quantities of medical cannabis allowed by E2SSB 5073 §403 are never exceeded.

E. No substitution of members of a collective garden in less than fifteen days is allowed where any fee or charge is paid to the garden or a garden member for the delivery of medical marijuana.

Section 2. Publication. This ordinance shall take effect five days after publication of the title of this ordinance as an approved as a summary of the ordinance in the official newspaper of the City.

PASSED BY THE CITY COUNCIL ON SEPTEMBER 12, 2011.

Mayor Keith A. McGlashan

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of publication: , 2011
Effective date: , 2011

Collective Garden & 1000 Foot Buffers From School Perimeter

- Collective Garden
- 2000' from Collective Garden
- Park Boundary
- 1000' from School
- School
- Commercial Zoning
- City Boundary

0 385770 1,540 2,310 3,080 Feet

No warranties of any sort, including accuracy, fitness, or merchantability, accompany this product.



Date: 8/3/2011

Path: J:\GIS\Maps\CMO\CollectiveGardenReview.mxd

Woodway

Edmonds

Lake
Ballinger

Mountlake Terrace

Puget
Sound

Seattle

56

Woodway

Edmonds

Attachment C

Mountlake Terrace

Lake
Ballinger

City of Shoreline
Geographic Information System

1000 Foot Collective Garden Buffers & 1000 Foot School Perimeter Buffers

- Collective Garden
- 1000' from
Collective Garden
- Park Boundary
- 1000' from School
- School
- Commercial Zoning
- City Boundary

0 375 750 1,500 2,250 3,000 Feet

No warranties of any sort,
including accuracy,
fitness, or merchantability,
accompany this product.



Date: 9/2/2011

Path: J:\GIS\Maps\CMO\CollectiveGardenReview\1000.mxd

Seattle

Puget
Sound

Lake
Forest
Park

NOTICE TO COLLECTIVE GARDEN BUSINESSES

Applicants for a Shoreline business license for any commercial activity in support of a Collective Garden producing, transporting or distributing medical marijuana pursuant to E2SSB 5073 and Shoreline Ordinance No. 611 must meet the following qualifications to establish a defense to arrest and prosecution under state law:

1. **Planting, Growing or Harvesting.** The business may provide services for the planting, growing and harvesting for one or more medical marijuana Collective Gardens, but no more than one Garden may be located on a single tax parcel. Collective Gardens may have up to ten qualifying medical marijuana patients as members and copies of each patient's valid documentation and proof of identity must be available at all times for inspection by law enforcement by the business providing services.
2. **Distribution of Useable Cannabis.** If the business includes transportation or delivery of cannabis for a Collective Garden either from the Garden or a separate delivery location,
 - 1) Delivery of useable cannabis may only be to the qualified patients of one Collective Garden at any business location;
 - 2) Documentation for qualifying patients shall be available at any point of transportation or distribution of useable cannabis;
 - 3) A delivery location, if separate from the Collective Garden, must comply with the zoning and other location restrictions under Shoreline Ordinance No. 611 (see attached map for school zones, permitted land use zones, and existing Collective Garden locations). The business may not provide for delivery for more than one Collective Garden's members;
 - 4) Since the business is acting as a designated provider to a Garden's members in transporting or delivery, it may not provide either service to a new member that replaces a former Garden member for fifteen days after the former member leaves the Garden;
3. **Quantity Limits.** Total cannabis at the Collective Garden and any separate delivery location used by the business may not exceed fifteen plants and 24 ounces of useable cannabis per qualifying patient up to a maximum of 45 plants and 72 ounces of useable cannabis for both locations (Shoreline Ord. No. 611, Sec 2 (D)). Only useable cannabis may be transported or delivered for the Collective Garden; no Cannabis product or any product containing THC may be possessed by the business or delivered to Garden members.
4. **No Public Display.** No cannabis may be open to public view at any location of the business.