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City Council

Public Hearing: Approval of an Ordinance to Extend for an Additional Six Months the Moratorium on Medical Marijuana Collective Gardens (First and Final Reading)

Agenda Date: 4/15/2014
Agenda Item Number: 5.A
File Number: 14-0328

Type: ordinance **Version:** 1 **Status:** Passed

Title

Public Hearing: Approval of an Ordinance to Extend for an Additional Six Months the Moratorium on Medical Marijuana Collective Gardens (First and Final Reading)

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

- Hold the public hearing.
- After closing the Public Hearing and if Council has enough information for a decision, move to suspend Council's usual Guideline and approve on first and final reading the ordinance extending the moratorium on medical marijuana collective gardens for an additional 6 months, to a total of 547 days. [Two-thirds affirmative vote is needed for first and final reading = 5 members if all are present.]

Report

Issue:

Should the City Council extend the City's existing moratorium on new, non-Initiative 502 cannabis related land uses.

Staff Contact:

Chris Grabowski, Code Enforcement Officer, 360.753.8168
Darren Nienaber, Deputy City Attorney, 360.753.8044

Presenter(s):

Chris Grabowski, Code Enforcement Officer, 360.753.8168
Darren Nienaber, Deputy City Attorney, 360.753.8044

Background and Analysis:

In November of 2012, Washington State voters passed Initiative 502 legalizing the sale of recreational cannabis the Washington State. Subsequently, on May 7 2013, the Olympia City Council established a moratorium on all new cannabis related land uses. The moratorium was for one year and is scheduled to expire May 7, 2014.

Since the adoption of the moratorium, there have been no new cannabis related land uses in the City. The only complaints to the City's code enforcement division about the existing collective gardens have been nuisance smells, which have been dealt with under the City's existing nuisance laws. Anecdotal evidence suggests that there has been no reduction in the availability of medical cannabis to patients, and that they are amply served by the existing shops that hold themselves out as collective gardens. The City has no made determination that any of the existing shops that hold themselves out as collective gardens are in compliance with state law. Rather, the City has no significant evidence at this time that those shops do not meet the state legal requirements for collective gardens.

Interim regulations for I-502 recreational cannabis were adopted by Council in October of 2013, resulting in the lifting of the moratorium only on State licensed I-502 production, processing, and retail establishments. The moratorium on new medical collective gardens and other marijuana related uses remains in place. To date, the State has not issued any licenses for retail sales of recreational cannabis. These are expected to be issued in June or July of this year. It is unclear what effect, if any, the proposed two recreational outlets in the City will have on the medical collective gardens.

The 2014 Legislature did not pass any amendments to the current medical cannabis statutes, and Initiative 502 did not contain any amendments to the medical cannabis statutes, resulting in two separate regulatory systems: one dealing with medical cannabis and the other dealing with adult recreational use of cannabis. In January of 2014, the Legislature took up the challenge of merging the existing medical cannabis collective garden laws with the new Initiative 502 recreational laws. Washington House Bill 2149 and Washington Senate Bill 5887 both passed in their respective houses but unfortunately, in a short session, the Legislature was unable to send a combined bill to the Governor's office for his signature. Consequently, the medical marijuana collective gardens will continue in their current uncertain legal status until the next session of the Legislature, scheduled for January 2015.

In its August 29, 2013 memorandum (see Attachment #2) to all United States Attorneys, the Department of Justice outlined its expectation that those jurisdictions which allow the use of recreational cannabis do so with the "expectation that states and local governments...will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests." The medical marijuana market, acting through collective gardens, is at this point largely unregulated and thus may be a higher priority target for federal law enforcement. The state legislative attempts to regulate medical marijuana was partly in response to the Department of Justice memorandum.

Other Washington jurisdictions have responded in diverse ways in dealing with collective gardens (see Attachment #1). Seventy one (71) have moratoria. Twenty (20) have interim regulations, twenty three (23) have permanent regulations, and six (6) ban collective gardens outright. The City of Federal Way, for example, is continuing its moratorium while working on drafting interim regulations. By contrast, the City of Mukilteo has adopted permanent regulations which define a collective garden

as a “Marijuana Facility” and have allowed them only in Light Industrial zones, along with producing and processing of cannabis. In April of this year, the Washington State Court of Appeals upheld the City of Kent’s ban on medical marijuana collective gardens. Thus, cities are authorized to prohibit collective gardens outright.

Neighborhood/Community Interests (if known):

Anecdotal information indicates that the medical cannabis community is currently adequately served by the number of shops that hold themselves out as existing collective gardens that came into existence prior to the City’s moratorium.

Options:

1. Conduct public hearing, pass moratorium extension on first and final reading.
2. Conduct public hearing, first reading moratorium extension. Final reading on April 29th.
3. Conduct public hearing, do not extend moratorium, and let the moratorium expire on May 7, 2014.

Financial Impact:

None