



DATE: December 3, 2013

TO: Mayor Boudreau, City Council, and Planning Commission

FROM: Rebecca Lowell, Community and Economic Development Department

SUBJECT: RECREATIONAL MARIJUANA AND COLLECTIVE GARDENS

INTRODUCTION/BACKGROUND:

With the approval of Initiative 502 in November of 2012 there has been much discussion focused on recreational marijuana. However, it is important to keep in mind that Medical Marijuana and their collective gardens are allowed in our State but are regulated differently, under a separate State statute, than recreational marijuana is.

With this in mind, following is a very brief summary and history of the legislative actions that eventually led to these two distinct State laws.

	MEDICAL MARIJUANA	RECREATIONAL MARIJUANA
SHORT SUMMARY:	Legalized the production and possession of marijuana for the exclusive benefit of a qualifying patient in the treatment of a terminal or debilitating illness ¹ .	Legalized the possession and private recreational use of marijuana for those 21 and over; and also authorizes the production, processing, and retail sales of marijuana and marijuana infused products.
APPROVAL PROCESS:	Originally approved in 1998 with Initiative 692. 2001 ESSSB 5073 adopted by Legislature authorizing dispensaries and collective gardens. April 2001 former Gov. Gregoire vetoed parts of ESSSB 5073 related to dispensaries, processing/production facilities but did not veto provisions related to cultivation for personal use and collective gardens.	Approved in November of 2012 with Initiative 502.
RCW:	RCW 69.51A WAC 246-75	RCW 69.50 WAC 314-55

The City is within the process of adopting development regulations to address both medical and recreational marijuana. As introduced above, State regulations pertaining to both categories of marijuana use are different.

The table below is provided to illustrate how the State is currently regulating these usesⁱⁱ. With this information, elements that may not be covered by State regulations can be identified, and City code can be drafted to address deficiencies.

	MEDICAL MARIJUANA	RECREATIONAL MARIJUANA
PERSONAL USE	<p>The qualifying patient can only possess:</p> <ul style="list-style-type: none"> - 15 marijuana plants. - No more than 24 ounces of usable marijuana. - No more cannabis product than what 24 ounces of usable cannabis would produce. - Combination of cannabis and cannabis product not to exceed 24 ounces. <p>But, if someone is a qualifying patient and a designated provider they can have 30 marijuana plants.</p>	<p>Those 21 or older can possess:</p> <ul style="list-style-type: none"> - Up to 1 ounce of marijuana. - 16 ounces of marijuana-infused product in solid form. - 72 ounces of marijuana-infused product in liquid form.
COLLECTIVE GARDENS	<p>Means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process marijuana for medical use.</p> <p>No more than 10 patients may participate in a single garden at any time.</p> <p>No more than 15 plants per patient up to a total of 45 plants total.</p> <p>No more than 24 ounces per patient up to a total of 72 ounces of usable marijuana may be on the premises at any time.</p> <p>No usable marijuana from the garden can be delivered to anyone other than the qualifying patients participating in the garden.</p>	<p>Not addressed in the Recreational Marijuana laws.</p>
DISPENSARIES	<p>Former Gov. Gregoire Vetoed this part of the Senate Bill.</p> <p style="text-align: center;">DISPENSARIES ARE NOT CURRENTLY ALLOWED</p>	<p>Not addressed in the Recreational Marijuana laws.</p>
RETAILER	<p>Not addressed in the Medical Marijuana laws.</p>	<p>Three (3) licensedⁱⁱⁱ retail outlets allowed in the City of Mount Vernon. These outlets will be allowed to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia in retail outlets to those 21 and older.</p> <p>Transactions limited to 1 ounce of usable marijuana, 16 ounces of marijuana-infused product in solid form, 7 grams of marijuana-infused extract for inhalation, and 72 ounces of marijuana infused product in liquid form.</p> <p>Only operate between the hours of 8 a.m. and 12 a.m.</p> <p>Not allowed to sell marijuana extracts (hash, hash oil) that are not infused into other products.</p>

		<p>Any entity/principals in any entity limited to three (3) retail licenses with no multiple location licensee allowed more than 33% of the allowed licenses in any City or County.</p> <p>Not allowed to be located within 1,000 feet of: schools, playgrounds, recreational centers, child care centers, public parks, public transit centers, libraries, or game arcades.</p> <ul style="list-style-type: none"> - Internet sales not allowed. - Cannot be located within another business, i.e., no commingling of products. - No consumption of marijuana or marijuana infused products allowed on the licensed premises. - Only allowed to have a maximum of four (4) months of their average inventory on premise at any time. - Security Required.^{iv} - Shipment Notifications Required.^v - Limited Signage.^{vi} - Traceability^{vii}
<p>PRODUCER</p>	<p>Not addressed in the Medical Marijuana laws.</p>	<p>Licensedⁱⁱⁱ producers are allowed to grow/produce marijuana for sale at wholesale to marijuana processors.</p> <p>Must grow within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof and doors; or if outdoors or in non-rigid greenhouses or other structures must be fully enclosed by a physical barrier and enclosed by a sight obscuring wall or fence at least eight (8) feet in height.</p> <p>Any entity and/or principals within any entity are limited to no more than three (3) producer licenses. Cannot have a financial interest in a marijuana retail operation.</p> <p>No consumption of marijuana or marijuana infused products allowed on the licensed premises.</p> <p>Not allowed to be located within 1,000 feet of: schools, playgrounds, recreational centers, child care centers, public parks, public transit centers, libraries, or game arcades.</p> <p>Outdoor grows no more than one and one-quarter of a year's harvest, and for indoor grows no more than six (6) months annual harvest is allowed on the premise at any time. The maximum amount of space for marijuana production to limited to 2 million square feet (~46 acres) State-wide.</p> <ul style="list-style-type: none"> - Security Required.^{iv} - Shipment Notifications Required.^v - Traceability^{vii}

<p>PROCESSOR</p>	<p>Not addressed in the Medical Marijuana laws.</p>	<p>Licensedⁱⁱⁱ processors are allowed to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.</p> <p>Any entity and/or principals within any entity are limited to no more than three (3) processor licenses.</p> <p>No consumption of marijuana or marijuana infused products allowed on the licensed premises.</p> <p>Not allowed to be located within 1,000 feet of: schools, playgrounds, recreational centers, child care centers, public parks, public transit centers, libraries, or game arcades.</p> <p>Only allowed to have six (6) months of their average useable marijuana and six (6) months average of their total production on their licenses premise at any time.</p> <ul style="list-style-type: none"> - Security Required^{iv} - Shipment Notifications Required^v - Cannot have a financial interest in a marijuana retail operation. - Traceability^{vii}
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Staff has compiled a variety of information to assist our decision makers in determining how best to regulate marijuana uses, both medical and recreational, in the City.

Once the Liquor Control Board (LCB) finalized their rules (found in WAC 314-55) Staff mapped all areas in the City that the State will mandate a 1,000-foot separation from. These areas include: schools, playgrounds, recreational centers, child care centers, public parks, public transit centers, libraries and game arcades.

Once this mapping was complete, staff identified residentially zoned areas and a 1,000 foot buffer from these areas. Residential areas are identified for several reasons including: i) the LCB will not issue a recreational marijuana license for a personal residence^{viii}; ii) the City’s zoning code does not allow intensive commercial uses likely to occur with medical and recreational marijuana uses within our residential zones; and iii) to minimize the secondary and direct negative impacts of marijuana uses.

After presenting the LCB rules and the above-referenced maps to the City Council and Planning Commission staff has prepared draft regulations for consideration relating medical and recreational marijuana uses within the City.

STAFF RECOMMENDATIONS:

Allow medical and licensed recreational marijuana uses that comply with the LCB’s rules (in the case of recreational marijuana) and their RCW and WAC regulations (in the case of medical marijuana) as a permitted use within the Commercial-Limited Industrial (C-L) zone with conditions.

These conditions are largely issues of concern for the City that are either not addressed or not addressed adequately through the State regulations. The proposed conditions are as follows.

1. Medical marijuana collective gardens and recreational marijuana producers, processors or retailers may not be located within one-thousand feet (1,000) of any of the following listed areas or uses. The measurement of this separation shall be taken in a straight line from the closest property line of the marijuana related use to the closest property line of the following listed uses:
 - a. Residentially zoned areas including the R-1, R-2, R-3, R-4, R-O, and residentially zoned districts within the City's Urban Growth Areas (UGAs).
 - b. Any other medical marijuana collective garden operator or delivery site;
 - c. Any marijuana processor, producer or retailer licensed by the Washington State liquor control board;
 - d. Properties owned or under contract by a public entity such as a school district or the City where a future primary or secondary school or park is planned.
2. Medical marijuana collective gardens shall comply with the 1,000 foot separation requirements mandated for recreational marijuana retailers, producers and processors as outlined within WAC 314-55 as it is currently written or as it may be amended in the future.
3. Marijuana plants, products and paraphernalia shall not be grown or on display in any location where the plants, products or paraphernalia are visible from the public right of way or a public place.
5. In no case shall a customer or patient pick up or drop off marijuana or marijuana related products through a drive-through opening in a structure. This regulation is not intended to apply to the transport of marijuana products from a producer to a processor; or a processor to a retail outlet.

There are a number of additional sections of the municipal code that will also need to be amended should the policy decision be made to limit marijuana uses to the C-L zone. A summary of these amendments follows.

- MVMC Chapter 5.04, Business Licenses. Amended to reflect that the City shall not issue business licenses for activities that violate local, State, or Federal law due to potential civil or criminal liability.
- MVMC Chapter 8.08, Nuisances. A new sub-section that identifies and makes marijuana smells a nuisance that can be regulated under City code.
- MVMC Chapter 17.06, Definitions. To adopt definitions already created by the State, and to exclude marijuana from definitions including 'agricultural', 'crops', and 'gardening'.
- MVMC Chapter 17.12, Residential Agricultural District (R-A). Marijuana cannot be sold on premise as a home grown crop.

- MVMC Chapter 17.72, Provisions Applicable to all Districts. Marijuana and related products are not allowed at roadside stands, drive-throughs, sidewalk sales, farmers markets, mobile vendors, fairs and all other similar types of venues.
- MVMC Chapter 17.96, Home Occupation Permits. Marijuana related uses are not permitted as “home occupations”.

NEXT STEPS:

Following are the dates that staff would like to schedule public hearings before the Planning Commission and City Council on.

Planning Commission: January 7, 2014, this hearing could be continued to January 21, 2014.

City Council: February 12, 2014; this hearing could be continued to February 26, 2014.

ATTACHED:

- Map that identifies the portion of the C-L zone where marijuana uses could be allowed should staff’s recommendations outlined above (and within the attached) be approved.
- Draft municipal code sections that staff recommends be amended.
- Draft ordinance that contains all of the recitals and findings that support staff’s recommendations.

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- i A terminal or debilitating medical condition is defined as:
 - (a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or
 - (b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or
 - (c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or
 - (d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or
 - (e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
 - (f) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or
 - (g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.
 - ii Reform to reconcile the State medical marijuana laws with recreational laws has begun. On October 21st, a work group composed of staff from three state agencies – the Department of Health, the Department of Revenue, and the Liquor Control Board – issued their draft recommendations for regulating medical marijuana
 - iii Among other requirements the WSLCB will evaluate the following of applicants when considering issuing a license:
 - The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.
 - A criminal history investigation.
 - All applicants (including partnerships, employee cooperatives, associations, nonprofit corporations, corporations, LLC, managers and agents) applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license.
 - iv Security Requirements for retailers, producers and processors include:
 - All employees on the premises shall display identification badges.
 - A security alarm system must be installed on all perimeter entry points and perimeter windows.
 - A complete video surveillance system with a minimum camera resolution of 640 by 470 pixel must be installed that also must be internet protocol compatible and recording system for controlled areas within the premises and entire perimeter fencing and gates.
 - Must track marijuana from seed to sale.

^v Upon transporting any marijuana or marijuana product, a producer, processor or retailer shall notify the board of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, times of departure and expected delivery. This information must be reported in the traceability system – in addition:

- Upon receiving the shipment, the licensee receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.
- A complete transport manifest containing all information required by the board must be kept with the product at all times.
- Records of all transportation must be kept for a minimum of three years at the licensee's location.
- Marijuana or marijuana products that are being transported must meet the following requirements:
 - (a) Only the marijuana licensee or an employee of the licensee may transport product;
 - (b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;
 - (c) Sealed packages or containers cannot be opened during transport;
 - (d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartments of the vehicle transporting the marijuana or marijuana products;
 - (e) Any vehicle transporting marijuana or marijuana products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product.

^{vi} Signage can include business or trade name affixed or hanging in the windows or on the outside of the premises that can be seen the general public from the right-of-way and is limited to 1,600 square inches (~3.3 by 3.3 feet)

^{vii} To prevent diversion and promote public safety licensees must track marijuana from seed to sale. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts and infused products must be traceable from production through processing, and into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products.

^{viii} 314-55-015(5) WAC