

CLARK COUNTY STAFF REPORT


FROM: Axel Swanson, senior policy analyst, Board of Clark County Commissioners

TO: Planning Commission

DATE: April 30, 2013

REQUEST: Consider ordinances to allow the limited siting of Collective Gardens, as defined in RCW 69.51A.085, within some zoning districts, or alternately, the prohibition of Collective Gardens throughout the unincorporated area, and make a recommendation to the Board of County Commissioners.

BACKGROUND

Under the federal Controlled Substance Act, marijuana is classified as a Schedule I drug. Accordingly, possessing, growing or distributing marijuana, even for medical use, is a violation of federal law, regardless of individual state statutes permitting such uses.

In 1998, Washington voters approved Initiative 692. It decriminalized the possession and limited use of medical marijuana for patients under a physician's care and suffering from a terminal or debilitating illness. In 2007, the Legislature expanded the law to allow patients to receive assistance from designated providers and broadened the definition of diseases and conditions for which medical marijuana could be prescribed.

In 2011, concerned primarily by a lack of safe, sufficient medical marijuana for patients, the Legislature passed SB 5073. The bill would have put into place a state structure to license and regulate the use, distribution and processing of medical marijuana. However, concerned the new state law was in conflict with existing federal law and required the involvement of state employees, the Governor requested a legal opinion from the U.S. Department of Justice. She received an opinion saying, "State employees who conduct activities mandated by the Washington Legislative proposals would not be immune from liability under the Controlled Substance Act." The opinion prompted the Governor to veto many sections of the bill.

In doing so, she chose not to veto Section 403, which allows for 10 "qualifying patients to create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use."

Section 403 of SB 5073 became state law on July 22, 2011. It allows a total of 45 plants and 72 ounces of medical marijuana to be at any one location at any given time. In a statement, the Governor explained the partial veto of SB 5073 saying medical cannabis nonprofit cooperative organizations "should be conditioned on compliance with local government location and health and safety specifications." Because Clark County does not have specifications for the use of medical marijuana, staff proposed the Board of County Commissioners adopt a temporary moratorium by emergency resolution. The board adopted Resolution 07-04 on July 12, 2011, and has decided since to extend it. The county's most recent moratorium expires June 10, 2013.

COMMUNITY OUTREACH

Staff has fielded calls and received input from neighborhood associations and members of law enforcement as well as patients and providers of medical marijuana. The board has held several hearings and work sessions regarding this issue.

BUDGET

Staff expects to be able to complete this work within approved budget resources.

POLICY CONSIDERATIONS

Local jurisdictions have responded in many ways to the passage of this law, resulting in inconsistencies across the state. Some jurisdictions have ignored collective gardens and therefore, by default, allowed them without local involvement, zoning or standards. Some jurisdictions have zoned and regulated collective gardens as any other business, adding standards aimed to protect public health and safety. Other jurisdictions have banned the use altogether, and litigation is pending regarding this approach.

Largely because of the statewide inconsistency, Senate Bill 5887 was introduced this legislative session. The bill would have imposed taxes on medical cannabis, tightened rules on dispensaries and medical authorizations, and put medical cannabis under the same regulatory agency, Washington State Liquor Control Board, as recreational marijuana. The bill was defeated, but most likely will come forward again next session.

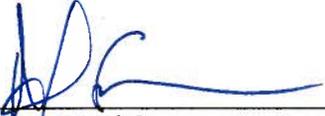
In fall 2012, Washington voters passed Initiative 502, which legalized the possession and use of one ounce or less of marijuana. Consequently, the Liquor Control Board is tasked with rulemaking for the recreational marijuana statute, and that process is anticipated to run into 2014. Thus, the new law and process to allow state-regulated recreational marijuana are germane to the discussion of zoning collective gardens because we can anticipate that patients soon will have increased access to safe medical cannabis.

ACTION REQUESTED

Consider ordinances to allow the limited siting of Collective Gardens, as defined in RCW 69.51A.085, within some zoning districts, or alternately, the prohibition of Collective Gardens throughout the unincorporated area, and make a recommendation to the Board of Clark County Commissioners.

DISTRIBUTION

Prosecuting Attorney's Office, County Administrator, Department of Community Development, Public Information and Outreach, Department of Community Services


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Approved: _____
BOARD OF CLARK COUNTY
COMMISSIONERS