

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: February 4, 2014

SUBJECT: ORDINANCE EXTENDING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390

I. RECOMMENDED ACTION

Approve a six-month extension to the interim land use regulations and official controls prohibiting medical marijuana collective gardens and other marijuana related facilities and uses.

II. DEPARTMENT CONTACT PERSONS

Rob Odle, Director, Planning and Community Development, 425-556-2417
Deborah Farris, Code Enforcement Officer, 425-556-2465
Alaric Bien, Senior Planner, 425-556-2458
Cameron Zapata, Assistant Planner, 425-556-2480

III. DESCRIPTION/BACKGROUND

On November 30, 1998, the voters approved Initiative 692 which allowed an affirmative defense for the possession of medical marijuana for qualifying patients. This was subsequently codified in state statute. During the 2011 legislative session, the Washington State Legislature passed a bill which included the legalization of medical marijuana production, processing, and dispensing facilities. Subsequent to passage of the bill, the Governor vetoed many portions of the bill including those portions dealing with dispensaries; however, one portion dealing with collective gardens was not vetoed. Collective gardens allow qualifying patients or their designee to grow, transport, and deliver marijuana for medical use. This portion of the legislation became law on July 22, 2011.

This law also allowed for jurisdictions to adopt zoning requirements for collective garden facilities, but left many issues unresolved. Before Redmond moved to adopt any regulations for these facilities, it was appropriate to get clarity at the state level and to study the potential types of regulations that would have been needed.

On August 16, 2011, the City Council unanimously enacted a moratorium on the location, establishment, licensing, and permitting of medical marijuana or cannabis collective gardens. This was extended on February 7, 2012, and again on July 31, 2012,

as the State had not enacted their final regulations. In the interim, staff continued to research the potential impact of collective garden facilities. In other states where similar situations exist, we have seen that some jurisdictions have experienced negative impacts from these facilities.

On November 6, 2012, Initiative 502 was passed by the voters of the State of Washington, providing a framework under which marijuana producers, processors, and retailers can become licensed by the State of Washington. Under Initiative 502, the Washington State Liquor Control Board was tasked with the responsibility to adopt regulations governing the licensing and operation of marijuana producers, processors, and retailers.

On February 19, 2013, the City Council adopted interim land use regulations prohibiting medical cannabis collective gardens in all zoning districts of the city and prohibiting the location of other marijuana related facilities and use. This allowed time for the continued study of issues in the siting of all marijuana facilities as well as allowing time for the adoption of regulations at the state level. The State was delayed in issuing their final regulations and the interim City regulations were extended for six months so that any ordinances considered by the City of Redmond would be consistent with what was enacted by the State.

The State adopted its final regulations on marijuana licenses, application process, requirements, and reporting (WAC 314-55) on October 16, 2013. In late October 2013 the Chair of the Liquor Control Board requested an opinion from the State Attorney General's Office on whether local jurisdictions can prohibit marijuana related facilities outright, and if they can expand the buffer zones locally.

The State accepted license applications from potential marijuana producers, processors, and retailers between November 18, 2013, and December 20, 2013. There are currently 12 businesses that have applied to the State for marijuana licenses within the City of Redmond.

During the last several months, staff has been monitoring the proposed rules, studying the effects of marijuana production, processing, and retailing on communities, and researching areas within the city where such activities may be allowed. A General Land Use Application and Zoning Amendment Application have been initialized. A State Environmental Policy Act (SEPA) review has been submitted, and the City Attorney has been consulted. Staff has also held open office hours on January 29, 30, and February 4, 2014, to answer questions and receive comments on the issue from the public.

On January 16, 2014, State Attorney General Ferguson released his legal opinion which stated that Initiative 502 was not intended to preempt a local authority from banning and/or regulating marijuana businesses within their jurisdiction.

Staff is recommending that the interim regulations be extended by six months to allow time for zoning and land use regulations to be adequately addressed, for state and local codes to be amended for compatibility, and for all restricted entities to be clearly defined.

Before the expiration of the current ordinance on March 2, 2014, the Redmond City Planning Commission will have held one study session on the issue, and will have held a public hearing on February 26, 2014. Further study will occur at the March 12, 2014, meeting with a final report projected to be approved on March 26, 2014.

Procedurally, in order for the interim regulations to be extended, the City Council must conduct a public hearing and vote to extend the interim regulations prior to their expiration on March 2, 2014. Staff has published notice for the public hearing to be conducted on February 4, 2014. Once the public hearing is complete, the Council may vote to extend or not to extend the interim regulations for an additional six months. During the next six months, staff will continue to monitor State actions and prepare appropriate zoning and other regulations for marijuana production, processing, and retailing consistent with State statute.

Should work on zoning and other regulations be completed before the expiration of this six month extension, the City will adopt the permanent regulations without delay, and the extension would cease to be in effect at that time. If there were sufficient reason to extend the interim regulations again, the Council must make that determination before the extended interim regulations expire.

IV. IMPACT

Without the extension of interim zoning regulations, the City will not be able to maintain current regulations on the locations and mitigation of impacts stemming from medical marijuana collective gardens or marijuana production, processing, and retailing facilities.

V. ALTERNATIVES

The City Council could choose not to extend the interim zoning regulations, and in that case there is the potential for the siting of medical marijuana collective gardens and marijuana production, processing, and retailing facilities within the city limits.

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VI. TIME CONSTRAINTS

The current interim zoning regulations will expire on March 2, 2014.

VII. LIST OF ATTACHMENTS

Attachment A: Proposed Ordinance

/s/

Robert G. Odle, Director, Planning and Community Development

1/20/2014

Date

Approved for Council Agenda: /s/

John Marchione, Mayor

1/24/2014

Date

ATTACHMENT A

NON-CODE

CITY OF REDMOND
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, EXTENDING INTERIM LAND USE REGULATIONS AND OFFICIAL CONTROLS FOR MARIJUANA-RELATED USES ENACTED BY ORDINANCE NO. 2682 AND EXTENDED BY ORDINANCE NO. 2702 PURSUANT TO RCW 35A.63.220 AND RCW 36.70A.390 UNTIL SEPTEMBER 2, 2014; ENTERING LEGISLATIVE FINDINGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Ordinance No. 2682 of the City of Redmond adopted interim land use regulations and official controls adding new marijuana-related definitions to Chapter 21.78 of the Redmond Zoning Code ("RZC") and adding a new Chapter 21.41 prohibiting medical cannabis collective gardens in all zoning districts of the city and prohibiting the location of other marijuana-related facilities and uses until the State adopts licensing regulations and the City adopts zoning regulations, and such interim land use regulations and official controls were extended for a six-month period by Ordinance No. 2702; and

WHEREAS, the interim regulations and controls will expire March 2, 2014, unless permanent regulations are adopted or unless the interim regulations and controls are extended; and

WHEREAS, the Washington State Liquor Control Board adopted regulations promulgated at chapter 314-55 of the Washington Administrative Code effective November 21, 2013; however, the

City of Redmond has not yet completed its public process for adoption of permanent regulations regarding the operation of marijuana producers, processors, and retailers and will not complete the process prior to expiration of Redmond's interim regulations and controls and the City's planning staff has therefore recommended that the interim regulations be extended for an additional six months; and

WHEREAS, City planning staff have been continuing to work on draft regulations governing the location and operation of marijuana-related facilities and uses within the City but require additional time to complete the public process required by state law; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to extend interim regulations for a period of six months after a public hearing and adoption of findings justifying the same; and

WHEREAS, unless the interim regulations and controls are extended, medical cannabis collective gardens, marijuana-related facilities and uses may be established within the City of Redmond while the City lacks the necessary tools to ensure that the location is appropriate and that the secondary impacts of such gardens, facilities, and uses are minimized and mitigated; and

WHEREAS, the Redmond City Council held a public hearing on extension of the interim regulations and controls on February 2, 2014, and after considering all testimony given at the hearing, determined that an extension was justified and in the best interests of the City; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings in Support of Extending Interim Regulations. In addition to the findings previously made as set forth in Ordinance No. 2702, and Ordinance No. 2682, the Redmond City Council makes the following additional findings:

1. The City Council adopts the recitals set forth above in support of extending the interim regulations originally adopted under Ordinance No. 2682.

2. [reserved for additional findings after public hearing].

Section 2. Extension of Interim Zoning Regulations. The interim land use regulations and official controls set forth in Ordinance No. 2682 and as extended by Ordinance No. 2702 shall remain in effect for an additional period of six months, and shall automatically expire at that time unless the same are extended as provided in RCW 36.70A.390 and RCW 35A.63.220 prior to that date, or unless the same are repealed or superseded by permanent regulations prior to that date.

Section 3. Staff and Planning Commission Work Plan.

The Mayor or his designee is hereby authorized and directed to continue to develop draft permanent regulations regarding marijuana-related uses to replace the interim regulations and land use controls set forth in Ordinance No. 2682. The work plan for adoption of permanent regulations includes the following:

- January 2014 - SEPA notice and review by Technical Committee
- February 4, 2014 - Council Public Hearing and Extension of Interim Regulations
- February 5, 2014 - Planning Commission Public Hearing Notice for permanent regulations published.
- February 12, 2014 - Planning Commission Study Session
- February 26, 2014 - Planning Commission Public Hearing
- March 12, 2014 - Follow up Planning Commission Study Session
- March 26, 2014 - Planning Commission Report Approval
- April/May 2014 - Packet to City Council for adoption of permanent regulations.

Section 4. Transmittal to Washington State Department of Commerce. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce, as required by law.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity

of any other section, sentence, clause, or phrase of this ordinance.

Section 6. Effective Date. This ordinance shall take effect five days after its publication, or publication of a summary thereof, in the City's official newspaper, or as otherwise provided by law.

ADOPTED by the Redmond City Council this _____ day of January, 2014.

CITY OF REDMOND

JOHN MARCHIONE, MAYOR

ATTEST:

MICHELLE M. HART, MMC, CITY CLERK

(SEAL)

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

JAMES HANEY, CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
SIGNED BY THE MAYOR:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____