Memorandum

To: Planning Commission

From: Rob Odle, Planning Director, 425-556-2417, rodle@redmond.gov
Deborah Farris, 425-556-2465, dfarris@redmond.gov
Alaric Bien, Senior Planner, a1bien@redmond.gov, 425-556-2458
Cameron Zapata, cazapata@redmond.gov, 425- 556-2480

Date: April 9, 2014

Subject: **Marijuana Related Amendments to the Redmond Zoning Code**

The purpose of the April 9 study session is to: 1) discuss and seek a recommendation from the Planning Commission in light of the March 31, 2014 Court of Appeals Division 1 decision described below regarding collective gardens, and 2) seek Planning Commission's preference regarding next steps with the draft Planning Commission Report. Regarding the Commission's report, among the options are that the Commission could approve the report or report as modified and ask staff to work with the Commission Chair and Vice Chair to finalize the section concerning collective gardens or – schedule approval of the Commission's report for April 16.

BACKGROUND - UPDATE FOR NEW CASE LAW

On Monday, March 31, 2014, the Court of Appeals Division I upheld the City of Kent's ban on collective gardens. *Cannabis Action Coalition v. City of Kent*, No. 70396-0-I. The Court held that despite the authorizing language in RCW 69.51A.085, collective gardens are illegal uses.

As brief background, in 2011, the Washington legislature adopted E2SSB 5073, which amended the Washington State Medical Use of Cannabis Act ("MUCA"), codified within chapter 69.51A RCW. RCW 69.51A.085 allowed qualified patients to establish collective gardens for the purpose of growing medical marijuana, subject to certain conditions. One condition on qualifying patients' participation in collective gardens was that a copy of each qualifying patient's valid documentation or proof of registration with the state registry, along with a copy of the patient's proof of identity, be available at all times on the premises. RCW 69.51A.040 was intended to provide qualifying patients with immunity from arrest or prosecution, but this immunity was only available if the patient had registered with the state, which could not happen as a result of Governor Gregoire's veto of the provision providing for the state registry. Therefore, the only protection available under the MUCA is an affirmative defense to charges of violations of state law through proof at trial under RCW 69.51A.043. As such, the Court found that collective gardens were an illegal use; qualifying patients only had an affirmative defense if prosecuted.

PREPARATION FOR APRIL 9, 2014 STUDY SESSION/POSSIBLE REPORT APPROVAL

Before approving the Planning Commission Report and recommended Zoning Code amendments (attached), staff and the City Attorney are recommending that the Planning Commission conduct a Study Session so that the Commission has the opportunity to discuss the Court of Appeals' decision holding that collective gardens are illegal uses. This discussion would afford the Planning Commissioners an opportunity to amend their recommendations to City Council (if so desired) based on this latest development.

In considering whether to amend the Planning Commission's recommendation, it is important to know that City ordinances may not conflict with state law, which occurs when the ordinance permits that which is prohibited under state law and vice versa. Under the *Kent* decision, the Court reasoned that because collective gardens were not legalized under the MUCA, a ban did not conflict with state law. Outright allowing such a use may conflict with state law. As currently written, the recommended language from the Planning Commission does not outright allow or specifically permit collective gardens, but inference is made that they are allowed as long as they meet the requirements under RCW 69.51A.085.

ADDITIONAL ITEMS

What would the Commission like to recommend? Some options you may consider:

1. Forward the current Planning Commission Report and the recommended amendments to City Council *without* any changes.

    - The cover memo to City Council would include an explanation that the Commission's recommendations were made prior to the Court of Appeals' decision on March 31, 2014--or--that the Planning Commission considered the new case law and did not recommend a ban on collective gardens.

2. Amend the Planning Commission Report to recommend, due to the Court of Appeals' decision, *to permanently ban collective gardens* until such time that collective gardens are made legal either through statute or reversal/reconsideration of the *Kent* case. The Commission's recommendation to Council *could also include* that the subject of allowing collective gardens be placed on a future Planning Commission's agenda for review in the event the collective gardens become a legal use.

    - The Planning Commission Report would still retain the recommendations to adopt permanent regulations to allow marijuana and marijuana-related uses in all zones throughout the City that are compliant with WAC 314-55 and local land use zoning regulations.

- The Planning Commission Report would still retain the recommendation requiring that all marijuana processing, producing, and retail be conducted in a permanent structure.

- The Planning Commission Report would still retain the recommendation that the City Council put the review of locations within Redmond for possible marijuana retailing uses on Redmond's 2014-2015 docket for Comprehensive Plan and Zoning Code amendments in order to identify properties or locations for which zoning could be changed to allow marijuana retail use.

REVIEW SCHEDULE

The Commission held its first study session on February 12, 2014 and held a public hearing and second study session on February 26, 2014. An additional study session was held on March 12, 2014 to complete the Planning Commission's recommendation.

Please contact Deborah Farris with questions or concerns.

ENCLOSURES

Planning Commission Report
Recommended Amendments to Redmond Zoning Code

Planning Commission Report

To: City Council

From: Planning Commission

Staff Contacts:
Robert G. Odle, Planning Director, (425) 556-2417,
rodle@redmond.gov
Deborah Farris, Code Enforcement Officer, (425) 556-2465
dfarris@redmond.gov
Alaric Bien, Senior Planner, (425) 556-2458
a1bien@redmond.gov
Cameron Zapata, Assistant Planner (425) 556-2480
cazapata@redmond.gov

Date: April 9, 2014

File Number: LAND-2013-02108, PROJ-2013-00954, SEPA-2014-00132

Title: Amend Redmond Zoning Code (RZC) Chapter 21.41-Marijuana Related Uses

Planning Commission Recommendation: Approval

Recommended Action: Adopt amendments to the Redmond Zoning Code as shown in *Attachment A.* In addition, the Planning Commission recommends that the City Council put the review of locations within Redmond for possible marijuana retailing uses on Redmond's 2014-2015 docket for Comprehensive Plan and Zoning Code amendments in order to identify properties or locations for which zoning could be changed to allow marijuana retail use.

Summary:

The City of Redmond is proposing amendments to the Redmond Zoning Code, Chapter 21.41 –Marijuana Related Uses. With the current interim regulations set to expire on September 2, 2014, the Planning Commission recommends the adoption of permanent regulations to allow marijuana and marijuana-related uses in all zones throughout the City that are compliant with WAC 314-55 and local land use zoning regulations.

In addition, the Planning Commission recommends that all marijuana and marijuana-related uses be conducted in permanent structures that comply with the City's building code (*Attachment A*).

The Planning Commission also recommends that the City Council put the review of locations within Redmond for possible marijuana retailing uses on Redmond's 2014-2015 docket for Comprehensive Plan and Zoning Code amendments in order to identify properties or locations for which zoning could be changed to allow marijuana retail use.

As part of the process to identify and prepare this package of proposed amendments, the Planning Commission reviewed Washington State's required buffers (as outlined in WAC 314-55) as well as the Technical Committee Report, dated January 31 2014. (*Attachment E*)

Reasons the Proposal should be Adopted:

The recommended amendments to the Redmond Zoning Code should be adopted in order to:

- Adopt permanent regulations to allow marijuana and marijuana-related uses in all zones throughout the City that are compliant with WAC 314-55 and local land use zoning regulations.

- Require that all marijuana processing, producing, and retail be conducted in a permanent structure.

  While WAC 314-55 requires that marijuana production must take place within a fully enclosed facility, it stops short of requiring the same for processing and retail. Adding this regulation will prevent all marijuana and marijuana-related uses within the City, from being conducted in less secure temporary/mobile type structures.

Recommended Findings of Fact

1. Public Hearing and Notice

a. Public Hearing Date

The Planning Commission held a public hearing on February 26, 2014.

b. Notice

The public hearing was published in the Seattle Times. Public notices were posted in City Hall and at the Redmond Library. Notice was also provided by including the hearing in Planning Commission agendas and extended agendas that are distributed to various members of the public and various agencies, and posted on the City's web site. Additionally, notice was sent via email to all persons of record.

In addition, City staff held three Office Hour sessions. These sessions provided opportunities for individuals to receive information and submit their comments/concerns on marijuana-related uses within the city. Sessions were held on January 29, 30 and February 4, 2014 at various times (9:30-12pm, 2:00-4:30 pm, and 5:30 to 8:00 pm). Notices for the Office Hour sessions were posted on Twitter, RCTV, Redmond.gov, and the Redmond Reporter. An email was also sent out to each person of record.

For those who couldn't attend the Office Hour sessions, City staff also provided an email address and phone number so that they could submit their questions and comments on the subject as well.

A FAQ page was posted on Redmond.gov along with a map showing potential locations for marijuana-related uses. Information was also posted on the City's neighborhood Facebook pages.

2. Public Comments

Two individuals, Aaron Kendrick and Jenny Carbon Rickman, testified orally as part of the public hearing that they are interested in operating marijuana related businesses in Redmond. Both parties stated their concerns regarding the postponement of any actions/recommendations by the Planning Commission. They stated that applying for a marijuana license (from the State) is time sensitive, and it would be helpful for any prospective business owner to know and understand the City of Redmond's intentions going forward. *(Attachment B).*

Planning Commission also received three items of written testimony: (*Attachment C)* Traci Pierce, Superintendent of the Lake Washington School District recommended expanding the State's buffers as defined in WAC 314-55 in order to protect children as they travel to and from school. Barbara Dickson, a Redmond resident requested that marijuana be banned entirely. A local business owner, Sarkis Johnsen asked that the City not add additional restrictions that could potentially make it more difficult to open and operate a marijuana-related business.

Recommended Conclusions

1. Key Issues Discussed by the Planning Commission

The majority of the Commission expressed concern that the result of the combination of the buffers in I-502 coupled with existing uses and the City's existing zoning is that retail sales of marijuana would not be permitted in Redmond. They questioned whether that was appropriate. Commissioners also observed that the expanded buffers under the staff recommended alternative would limit marijuana business opportunities further in comparison to the buffers established as part of I-502 and several Commissioners expressed concern about that potential limit.

The Commission questioned the rationale for the Technical Committee's recommended expansions to the buffers established in WAC 314-55. As each of the Technical Committee's recommendations was discussed, a separate motion was put on the floor, and voted on. By a majority vote on each of the issues, the Commissioners decided not to recommend the Technical Committee's expanded buffers to WAC 314-55.

The Planning Commission agreed that allowance for marijuana-related uses in the City of Redmond should be as broad as legally possible. A motion was passed 6-0 recommending that marijuana uses compliant with WAC 314-55 and local zoning regulations be made permanent as soon as possible.

Similarly, the Planning Commission agreed that collective gardens should be allowed throughout the City as long as compliant with state law (RCW 69.51A.085) and within a permanent structure.

The Planning Commission majority recommends that the City Council put the review of locations within Redmond for possible marijuana retailing uses on Redmond's 2014-2015 docket for Comprehensive Plan and Zoning Code amendments in order to identify properties or locations for which zoning could be changed to allow marijuana retail use. These Commissioners believed it was important for there to be at least one location for marijuana retailing in Redmond and expressed interest in discussing this topic as part of the Commission's work plan. One Commissioner did not support this motion.

(See also: Issue Matrix, *Attachment D*)

2. Recommended Conclusions of the Technical Committee

The recommended conclusions, as found in the Technical Committee Report, are attached. (*Attachment E).*

3. Planning Commission Recommendation

The Planning Commission approved a motion to recommend allowing marijuana related businesses in the City of Redmond in accordance with the restrictions identified in WAC 314-55; to require that all marijuana related businesses be conducted in permanent structures; and to adopt these recommendations as permanent regulations as soon as possible (motion passed by a vote of 6-0, March 12, 2014). In addition, the Planning Commission majority recommended that analysis be undertaken to identify locations within the City for which the zoning could be changed to allow the retail sales of marijuana and requested that this topic be placed on the 2014-2015 Comprehensive Plan amendment docket (motion passed by a vote of 5-1, March 12, 2014).

List of Attachments

Attachment A: Recommended Amendments to Redmond Zoning Code

Attachment B: Minutes for February 26, 2014 Planning Commission Meeting

Attachment C: Written Testimony

Attachment D: Issues Matrix

Attachment E: Technical Committee Report with Exhibits

- **Exhibit A:** SEPA Threshold Determination
- **Exhibit B:** Proposed Regulations for "Alternative 2"
- **Exhibit C:** "Alternative 2" Zoning Map
- **Exhibit D:** Public Hearing Notice

Attachment F: Updated Maps for I-502 and I-502 with "Alternative 2" Enhancements

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Robert G. Odle, Planning Director Date

_____ _____

Franz Wiechers-Gregory, Planning Commission Chairperson Date

Approved for Council Agenda _____ _____

John Marchione, Mayor Date

ATTACHMENT A

Planning Commission
Recommended Amendments to Redmond Zoning Code

1. ***Add new chapter 21.41 to the Redmond Zoning Code***:

RZC 21.41 MARIJUANA-RELATED USES

21.41.010 Relationship to federal law**.** The production, processing and retailing of marijuana is and remains illegal under federal law. Nothing in this chapter or as provided elsewhere in the RZC or RMC authorizes or permits any person or entity to circumvent or violate federal law.

21.41.020 Collective gardens. No Washington State Liquor Control Board license is required for collective gardens. A collective garden must meet all requirements under RCW 69.51A.085, including but not limited to limitations on the number of members, number of plants, amount of useable marijuana on site, maintenance of each member's valid documentation of qualifying patient status.

21.41.030 State license. No marijuana processor, marijuana producer, or marijuana retailer shall locate in the city without a valid license issued by the Washington State Liquor Control Board, and must at all times conform with state law and city regulations. In the event any city regulation conflicts with state law or state regulations, the more restrictive provision shall prevail.

21.41.040 Location; buffers.

A. Marijuana production, marijuana processing and marijuana retail uses are allowed uses within the City where in compliance with state law and regulation and this chapter.

B. No marijuana producer, marijuana processor, or marijuana retailer shall locate within 1000 feet, measured in the manner set forth in WAC 314-55-050(10), from any of the existing uses as defined in WAC 314-55-010:

1. Elementary or secondary school;
2. Playground;
3. Recreation center or facility;
4. Public park;
5. Public transit center;
6. Library; or
7. Game arcade.

21.41.050 Structural requirements.

All collective gardens, marijuana processors, marijuana producers and marijuana retailers must operate in a permanent structure designed to comply with the City Building Code.

2. ***Add new definitions under chapter 21.78 of the Redmond Zoning Code***:

Collective Garden. A facility, use, or location at which qualifying patients grow, produce, process, transport, or deliver marijuana for medical use, as provided in RCW 69.51A.085. A location utilized solely for the purpose of distributing marijuana shall not be considered a collective garden.

Marijuana. All parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

Marijuana-Infused Products. Products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include usable marijuana.

Marijuana Processing. Processing of marijuana by a marijuana processor into useable marijuana and marijuana-infused products, including the packaging and labeling of useable marijuana and marijuana-infused products for sale in retail outlets, and sale of useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

Marijuana Processor. A person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

Marijuana Producer. A person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

Marijuana Production. Production of marijuana by a marijuana producer to sell at wholesale to marijuana processors and other marijuana producers.

Marijuana Retail Sales. The sale of usable marijuana and marijuana-infused products by a marijuana retailer in a retail outlet.

Marijuana Retailer. A person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

Retail Outlet. A location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

THC Concentration. The percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant cannabis, or per volume or weight of marijuana product.

Useable Marijuana. Dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

Planning Commission Discussion Issues Matrix – Zoning Code Amendment for Marijuana Related Uses

Issue / Commissioner	**Discussion Notes**	**Issue status**
1. Should a "4th Alternative" be proposed for Council's consideration? (Murray/Miller)	<u>Staff Comment/Recommendation:</u> If the Planning Commission decides to recommend that the City consider a land use/zoning code amendment for marijuana retail, it will be reflected in the PC report to Council. If the Council supports consideration of this amendment, it can be proposed as part of the 2014-15 Comprehensive Plan Amendment Docket. <u>Public Comment:</u> <u>PC Comments:</u> Some Commissioners expressed an interest in recommending to the City Council that the City consider a land use/zoning code amendment to allow create space for marijuana retail within the City. The Planning Commission will be continuing the discussion of whether or not to consider recommending that a land use/zoning code amendment to allow marijuana retail be considered by City Council. Staff has prepared language that will be included in the Planning Commission Report if Commissioners choose to do so. The issue is open and pending. <u>3/12/14:</u> The Planning Commission majority decided to include a recommendation that City Council put the review of locations within Redmond for possible marijuana retailing uses on Redmond's 2014-2015 docket for Comprehensive Plan and Zoning Code amendments, in order to identify properties or locations for which zoning could be changed to allow marijuana retail use. This recommendation is included in the Planning Commission Report.	<u>Opened</u> 2/12/14 <u>**Closed**</u> **<u>3/12/14</u>**

Issue / Commissioner	Discussion Notes	Issue status
2. Is the response to question B2a of the Technical Committee Report biased? (Chandorkar)	Staff Comment/Recommendation: Staff has noted the concern and will avoid this reference in the Planning Commission Report. Public Comment: PC Comments: There was some concern that staff's response to the "consistency with the goals, visions, and framework policy of the Comprehensive Plan" in the Technical Report may be subjectively commenting on "healthy lifestyle" as it relates to marijuana uses. The Planning Commission was satisfied that staff noted the concern and will avoid this reference in the Planning Commission Report.	Opened 2/12/14 **Closed** **2/26/14**
3. What is the rationale for allowing "processing" in Manufacturing Parks (MP), Business Parks (BP), Industrial (I), Gateway Design District (GDD), and Overlake (OV) and (OBAT) per the proposed Comprehensive	Staff Comment/Recommendation: Per the Redmond Zoning Code, the definition of "Manufacturing and Wholesale Trade" is: "An establishment that engages in the transformation of raw materials into finished products, in the sale or distribution of those products to persons, firms, or corporations for resale, in the storage of materials or products in a warehouse or similar structure, or in the assembly or fabrication of goods. A manufacturing or wholesale trade establishment does not engage in the retail sale of products to the end consumer." A marijuana processor license allows a licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to a marijuana retailer. As such, a processor/processing business meets the Zoning Code's definition of "Manufacturing and Wholesale Trade" and thus is an allowed use in the zones cited above: MP, BP, I, GDD, OV and OBAT.	Opened 2/12/14

Issue / Commissioner	Discussion Notes	Issue status
Land Use Chart? (Sanders)	Public Comment: PC Comments: The question was answered to the Planning Commission's satisfaction and the issue was closed.	**Closed** **2/26/14**
4. How was the proposed land use chart for marijuana related uses throughout the City, produced? (Sanders)	Staff Comment/Recommendation: The Comprehensive Land Use Chart, RZC 21.04 "General Provisions" is a compilation of the permitted land uses throughout the City. First, staff determined where "general sales or service"; "manufacturing and wholesale trade" and "agriculture" are currently allowed uses. Next, with the exception of residential zones (WA State regulation), if a zone currently allows retail sales, then "marijuana retail sales" was added to the chart under the "general sales or service" category and designated by P. The same procedure was used to determine in which zones marijuana processing and marijuana production would be an allowed use. Public Comment: PC Comments: The question was answered to the Planning Commission's satisfaction and the issue was closed.	Opened 2/12/14 **Closed** **2/26/14**
5. Can the Planning Commission postpone making a	Staff Comment/Recommendation: Planning Commission could opt to table the discussion and postpone making a recommendation to Council until the State legislature votes. If HB 2322 is passed, staff would	Opened 2/12/14

Issue / Commissioner	Discussion Notes	Issue status
recommendation to Council until the State Legislature votes on House Bill 2322? (Chandorkar)	need to revisit and amend the current proposed language and land use charts. The State is expected to vote on the HB sometime in April, which would give the Planning Commission time to make its recommendations to City Council before the current interim regulations expire on September 2, 2014. Staff recommends not postponing making a recommendation to City Council because the legal context for land use regulations related to marijuana processing, production and retail could continue to change. The City Council has the option to refer a topic back to Planning Commission for further discussion and recommendation as needed. 2/26/14: The City Attorney advised against postponement at this time. Information was also provided regarding HB 2322's failure to make it out of committee in the State Legislature. The Planning Commission did not decide whether to postpone or move forward with making a recommendation to City Council. This issue is still open and pending. Public Comments: Two citizens (who are interested in operating a marijuana related business in Redmond) spoke to the Commission at the 2/26/14 public hearing. Both parties stated their concerns regarding the postponement of any actions/recommendations. These citizens stated that applying for a marijuana license (from the State) is time sensitive, and it would be helpful for any prospective business owner to know and understand the City of Redmond's intentions moving forward. PC Comments: 3/12/14: The Planning Commission decided *not* to postpone making their recommendations to City Council.	**Closed** **3/12/14**
6. Should Planning Commission recommend adding a 1,000 ft.	Staff Comment/Recommendation: Requiring that marijuana related businesses be separated by 1,000 ft. will prevent concentrations of marijuana related uses in any one area in the City. This would help to avoid	Opened 2/12/14

Issue / Commissioner	Discussion Notes	Issue status
separation (to the I-502 buffers) between marijuana related businesses? (Sanders/all)	concentrations of these uses in specific locations within the City. <u>Public Comments:</u> <u>PC Comments:</u> <u>2/26/14</u>: Commission did not complete their discussion of a 1,000-ft. separation between marijuana related businesses. This issue is still open and pending. <u>3/12/14:</u> The Planning Commission voted 6-0 not to recommend a 1,000 ft. separation between marijuana-related businesses. The Commission recommended that marijuana-related uses in the City should be a broad as legally possible providing that the marijuana uses are compliant with WAC 314-55 and local zoning regulations.	**<u>Closed</u>** **<u>3/12/14</u>**
7. Should language be added to the proposed regulations that would require that all processing be conducted in a permanent structure? (Sanders)	<u>Staff Comment/Recommendation:</u> WAC 314-55 requires that marijuana *production* must take place within a fully enclosed secure indoor facility, but does not appear to require the same for processing. The City Attorney will provide example language for such a requirement for processing businesses to discuss further with the Planning Commission. <u>Public Comments</u>: <u>PC Comments:</u> <u>3/12/14:</u> Language requiring that all marijuana and marijuana-related uses be conducted in permanent structures that comply with the City's building codes has been added to the recommended regulations.	<u>Opened</u> 2/26/14 **<u>Closed</u>** **<u>3/12/14</u>**
8. Are there liquor stores that are	<u>Staff Comments/Recommendation:</u>	<u>Opened</u>

Issue / Commissioner	Discussion Notes	Issue status
within 1,000 ft. of residential zones and child care centers? (Murray)	Yes. Within Redmond, there are stores located within 1,000 ft. of residential zones and/or child care centers that sell liquor, wine, and beer. The State has not imposed these same restrictions on businesses that sell alcohol. Retail establishments selling alcohol in Redmond must only meet land use zoning regulations. Public Comments: PC Comments: 3/12/14: The question as to why the State has not imposed these same restrictions on businesses that sell alcohol was addressed by the City attorney and answered to the Planning Commission's satisfaction. The issue was closed.	2/26/14 **Closed** **3/12/14**