

ORDINANCE O-4358

AN ORDINANCE OF THE CITY OF KIRKLAND EXTENDING A MORATORIUM ON THE ESTABLISHMENT OF MEDICAL MARIJUANA COLLECTIVE GARDENS, DEFINING "MEDICAL MARIJUANA COLLECTIVE GARDENS"; PROVIDING FOR A PUBLIC HEARING; ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING THAT THE MORATORIUM, UNLESS EXTENDED, WILL SUNSET WITHIN SIX (6) MONTHS OF THE DATE OF ADOPTION.

WHEREAS, on July 19, 2011, the City Council passed Ordinance 4316, imposing a moratorium on the licensing, establishment, maintenance or continuation of any medical marijuana collective garden; and

WHEREAS, on August 2, 2011, the City Council conducted a public hearing to take public testimony on the imposition of the moratorium; and

WHEREAS, on January 3, 2012, the City Council, after conducting a public hearing, adopted Ordinance 4344 which extended the moratorium for an additional six months; and

WHEREAS, the moratorium enacted by Ordinance 4344 will expire on July 3, 2012; and

WHEREAS, Ordinances 4316 and 4344 defined the medical marijuana collective gardens that were subject to the moratorium and adopted findings and conclusions supporting the moratorium; and

WHEREAS, additional time is needed to allow the City to consider land use regulations to address medical marijuana collective gardens; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 allow the City to extend a moratorium for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal; and

WHEREAS, on June 3, 2012, a determination of nonsignificance was issued on the proposed extension of the medical marijuana collective gardens moratorium, pursuant to the State Environmental Policy Act; and

WHEREAS, the City Council desires to enter findings in support of the extension of the moratorium;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The recitals set forth above are hereby incorporated as findings of fact.

Section 2. The City Council further finds as follows:

- a. The possession or distribution of marijuana has been and continues to be a violation of state law pursuant to Chapter 69.50 RCW (Washington's uniform Controlled Substances Act), and federal law, through the Controlled Substances Act; and

- b. In 1998 the voters of Washington State approved Initiative 692, now codified as Chapter 69.51A RCW, which created a limited defense to marijuana charges under state, not federal, law if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Ch. 69.51A RCW; and
- c. In 2011 the state legislature passed Engrossed Second Substitute Senate Bill (E2SSB) 5073 making significant amendments to the medical marijuana law in Washington; and
- d. The Governor signed the E2SSB 5073, but vetoed several portions expressing her reservations about provisions that involved state employees in activities that could be interpreted as in violation of federal laws; and
- e. E2SSB 5073 became effective on July 22, 2011; and
- f. E2SSB 5073 authorizes "collective gardens" where up to ten qualifying patients may join together to produce, grow and deliver up to 45 marijuana or cannabis plants for medical use; and
- g. Under E2SSB 5073 there is no limit to the number of medical marijuana collective gardens that may be located at any site nor restrictions as to where collective gardens may be located in relation to other uses; and
- h. Medical marijuana collective gardens are not currently addressed in the Kirkland Zoning code and under Section 1102 of E2SSB 5073 cities may adopt zoning requirements for collective gardens; and
- i. The City's adoption of land use regulations applicable to medical marijuana collective gardens may be subject to federal or state preemption.
- j. Additional time is needed to study the land use impacts of medical marijuana collective gardens.
- k. Unless the moratorium imposed by Ordinance 4316 and extended by Ordinance 4344 is further extended, medical marijuana collective gardens may be located within the City of Kirkland while the City lacks the necessary tools to ensure the location is appropriate and that the potential secondary impacts of collective gardens are minimized and mitigated; and
- l. The City Council deems it to be in the public interest to further extend the moratorium imposed by Ordinance 4316, and extended by Ordinance 4344, pending consideration of land use regulations to address medical marijuana collective gardens.

Section 3. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, the moratorium enacted by Ordinance 4316 and extended by Ordinance 4344 prohibiting the licensing, establishment, maintenance or continuation of any medical marijuana collective garden in the City of Kirkland is extended for six months. A "medical marijuana collective garden" is an area or garden where qualifying patients engage in the production, processing, or transporting and delivery of marijuana for medical use as set forth in the E2SSB 5073 and subject to the limitations therein.

Section 4. Medical marijuana collective gardens as defined in Section 3 are hereby designated as prohibited uses in the City of Kirkland. In accordance with the provisions of RCW 35A.82.020 and Kirkland Municipal Code 7.02.290, no business license shall be issued to any person for a medical marijuana collective garden, which use is hereby defined to be a prohibited use under the ordinances of the City of Kirkland.

Section 5. The moratorium set forth in this Ordinance shall be in effect for a period of six months from the date this Ordinance is passed and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Kirkland City Council.

Section 6. The City Manager is hereby authorized and directed to develop draft regulations regarding medical marijuana collective gardens. The regulations shall be referred to the Kirkland Planning Commission for review and recommendation for inclusion in the Kirkland Zoning Code.

Section 7. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 8. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this 19th day of June, 2012.

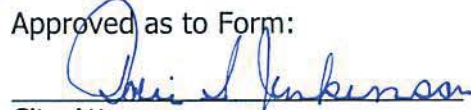
Signed in authentication thereof this 19th day of June, 2012.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney