

**City of Seattle
Proposed Marijuana Zoning Restrictions
Staff Report**

March 19, 2013

Introduction

The City of Seattle is proposing to limit marijuana-related uses to scales that are appropriate for the zoning designation and characteristics of the area in which they would be located. These regulations are being proposed in response to changes to State regulations that allow the production, processing, selling, and delivery of marijuana and marijuana-infused products for medical and recreational use.

The purpose of this proposal is to limit the off-site impact of larger-scale marijuana-related activity. The ordinance would accomplish this by limiting the level of activity in business and residences in certain residential or character areas to levels allowed for what the State defines as a *single* collective garden. Proposed limits would apply in all designated Historic Districts and the following zones: Single-family, Multifamily, Pioneer Square Mixed, International District Mixed, International District Residential, Pike Place Mixed, Harborfront, and Neighborhood Commercial 1. The legislation would not limit marijuana-related activity in other areas beyond existing regulations.

The proposed ordinance would also implement a size limit for indoor agricultural operations in industrial areas and make a minor change to clarify the intent of existing allowances for certain agricultural uses. This change would apply to any agricultural use in industrial areas, including marijuana production that meets the definition of “indoor agricultural operations.”

Background and Analysis

Washington State Law

In 2011, the Washington State Legislature passed ESSB 5073, which implemented new regulations that permit qualified patients to grow marijuana for their own medical use through the creation of collective gardens. Although Governor Gregoire vetoed certain provisions of ESSB 5073, the remainder of the law went into effect on July 22, 2011 as the Medical Use of Cannabis Act (See Laws of 2011, Chapter 181; Revised Code of Washington (RCW) Chapter 69.51A). The act defines collective gardens as groups of up to 10 patients who grow, process, or dispense marijuana (or any combination of these activities) provided none of the following are exceeded:

- no more than 15 plants per patient with a maximum limit of 45 plants;

- no more than 24 ounces of usable marijuana per patient with a maximum limit of 72 ounces; and
- no more marijuana-infused products than could be made from 24 ounces of usable marijuana per patient or 72 ounces of usable marijuana in total.

State law does not expressly prohibit collective gardens from co-locating to create a larger-scale business. The State law clarifies, however, that it does not limit the authority of cities to regulate the siting of collective gardens within their jurisdictions.

In 2012, the people of Washington State passed Initiative 502 legalizing the possession of small amounts of marijuana and directing the Washington State Liquor Control Board to develop a process for regulating the production, processing, selling, and delivery of marijuana. This initiative, however, did not modify the existing provisions for medical marijuana; it is generally viewed as creating a separate licensing process for operations providing marijuana for recreational use. Consequently, it is likely that many operations will continue to produce, process, sell, or deliver marijuana for medical use under the 2011 Medical Use of Cannabis Act without a license from the Washington State Liquor Control Board.

Initiative 502 prevents the Washington State Liquor Control Board from issuing licenses to any “premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.” Initial analysis by the Seattle Department of Planning and Development suggests that this requirement will substantially limit producing, processing, selling, and delivery of marijuana for recreational use from businesses outside of industrial areas in Seattle. Consequently, it is likely that many businesses and some residences will continue to operate under the medical marijuana provisions in order to make the marijuana more readily available to medical patients.

Seattle Land Use Regulations

Based on an analysis of business licenses and advertising as of July 2012, the Department of Planning and Development (DPD) estimates that there are about 150 marijuana-related businesses operating within Seattle. This number is significantly larger than the number existing prior to the 2011 State legislation and it is expected that this number will continue to increase due to legalization of recreational use.

Seattle’s Land Use Code already defines a number of uses that are sufficient to accommodate marijuana-related activity, such as agriculture, food processing, manufacturing, retail sales and services, and medical uses. Use regulations vary by zone. For example, under current City law and under the proposed ordinance, retail uses, manufacturing uses, and agricultural uses—regardless of what is being sold,

made, or grown—would not be allowed in certain zones. The proposed bill would continue to rely on these basic zoning provisions to ensure compatible land uses.

Although existing regulations provide basic protections against the location of incompatible uses, the increased production, processing, selling, or delivery of marijuana likely to be spurred by the new State regulations may create additional impacts. Experience with medical marijuana dispensaries indicates that businesses containing usable marijuana or marijuana-infused products may have greater security issues compared with the other businesses. Additionally, many residents have expressed concern that marijuana-related businesses can negatively impact neighborhood character due to messaging on signs and the potential for robberies.

Impacts from smaller-scale activity—a level associated with a single collective garden—would be more limited because these activities would be small in scale and have few participants. (To qualify as a collective garden under State law, no more than ten qualifying patients may participate in the collective at any time.) Larger-scale activities would be more likely to have impacts to adjacent properties due to the volume of customers. To limit the negative off-site impacts of larger-scale operations, the proposed ordinance would limit the production, processing, selling, or delivery of marijuana from a business or residence to levels consistent with State standards for a single collective garden in areas with a predominately residential character and in historic areas.

The proposed legislation was developed in response to the new State legislation and initiative and is based on the work of an interdepartmental team consisting of City staff and representatives of the Mayor, City Council, and the City Attorney. A stakeholder group of medical marijuana industry representatives was also convened to provide feedback on the proposal. In the fall of 2012, Councilmembers Clark and Licata also discussed the proposal at District Council meetings throughout the city to gain feedback on the proposal.

Proposed Changes

The proposed bill would make the following changes to the Land Use Code:

- Define the terms marijuana, usable marijuana, marijuana product, and indoor agricultural operation.
- Establish limits on the production, processing, selling, or delivery of marijuana from a business or residence in a historical or special review district* or Single-family, Multifamily, Pioneer Square Mixed, International District Mixed, International District Residential, Pike Place Mixed, Harborfront, and Neighborhood Commercial 1 zones.
- Modify the existing provision that limits community gardens and urban farms on industrially zoned property in the Manufacturing and Industrial Centers (MICs) from allowing “rooftop and vertical farms” to allowing “rooftop farms and indoor

agricultural operations”. Indoor agricultural operations would be limited to 10,000 square feet, excluding associated office or food processing areas.

* Ballard Avenue, Columbia City, Fort Lawton, Harvard-Belmont, International Special Review District, Pike Place, Pioneer Square, and Sand Point. More information on Historic Districts can be found at www.seattle.gov/neighborhoods/preservation/historic_districts.htm.

In the zones and areas not mentioned above, the production, processing, selling, or delivery of marijuana would continue to be regulated according to existing provisions in the Land Use Code for comparable uses by zone designation.

In the restricted zones and areas, the production, processing, selling, or delivery of marijuana, marijuana-infused products, or useable marijuana in any business establishment or dwelling unit would be limited to:

- 45 marijuana plants;
- 72 ounces of useable marijuana; and
- an amount of marijuana product that could reasonably be produced with 72 ounces of useable marijuana.

These limits are consistent with the State's requirements for individual collective gardens.

The proposed bill would not define marijuana-related activity as a distinct use regulated by zone. Although an applicant may need to obtain a permit to establish an agricultural or retail use, the City would not require the applicant to identify that the agricultural or retail use is marijuana-related. The proposal would set enforceable limits on the scale of marijuana-related activity that may be conducted from businesses or residences in the zones listed above, even though there would be no requirement to obtain a permit specifically to conduct marijuana-related activity.

Marijuana-related activity established prior to the effective date of the proposed ordinance would be required to come into compliance with the new regulations within 12 months of the ordinance's effective date.

In general, marijuana-related activity would not be limited by this legislation from locating businesses and residences in Industrial and Seattle Mixed zones and the downtown and commercial zones not mentioned above. Of course, like any use, marijuana-related activity would have to meet the standards of each zone applicable to the type of use conducted on the site. Examples of such standards include noise and odor standards, size limits, transparency requirements, signage, and, in certain industrial areas, limitations on outdoor agriculture.

Additionally, this proposal would make a minor change to the existing allowance for agricultural uses within designated Manufacturing and Industrial Centers (MICs). Under existing regulations, Community Gardens and Urban Farms are allowed within MICs only on rooftops or as vertical farming. “Vertical farming” is not defined in the Land Use Code, but was generally intended to include intensive indoor farming where containers and grow lights could be stacked to allow compact production. This restriction was intended to limit conversion of industrial spaces to agricultural use by ensuring efficient use of space and to limit open soil farming that would necessitate the removal of existing improvements such as paving and buildings. This proposal would clarify the existing regulations by changing the term “vertical farming” to “indoor agricultural operation” and define indoor agricultural operation as “a business establishment with an agricultural use that is limited to plants grown in containers within the interior of an enclosed structure.” The proposal would also prohibit indoor agricultural operations with grow areas greater than 10,000 square feet to limit large operations that could displace existing industrial uses.

The proposal would not alter federal or State criminal law related to marijuana, and it would not place any City employee in the position of permitting or sanctioning any marijuana-related activity. Rather, it would be an exercise of the City’s authority to protect the public health, safety, and welfare by preventing incompatible uses—in this instance, larger-scale marijuana-related activity and businesses and residences in areas where such activity could cause inappropriate off-site impacts.