

## **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, albien@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