

**GRANDVIEW CITY COUNCIL
STUDY SESSION MINUTES
AUGUST 23, 2011**

1. CALL TO ORDER

Mayor Pro Tem Pam Horner called the study session to order at 6:00 p.m. in the Council Chambers at City Hall.

Present were: Mayor Pro Tem Horner and Councilmembers Mike Bren, Diana Jennings, Bill Moore, Jesse Palacios, Javier Rodriguez and Joan Souders. Mayor Norm Childress was absent.

Staff present were: City Administrator/Public Works Director Cus Arteaga, City Attorney Tony Menke, City Attorney Quinn Plant, Police Chief David Charvet, City Treasurer John Myers and City Clerk Anita Palacios.

2. COLLECTIVE GARDEN MORATORIUM

City Attorney Plant raised the issue of whether the City Council may want to consider a legislative response to new legislation legalizing medical marijuana gardens.

Background

Engrossed Second Substitute Senate Bill 5073 as passed by the Washington State Legislature and partially signed into law by the Governor created a new legal means of producing medical marijuana for qualified users known as the collective garden. Section 402 of the legislation provides that up to ten qualifying patients may join together and have a collective garden with a maximum of 45 plants. This is an additional means for qualified patients to obtain medical marijuana. The law became effective July 22, 2011.

Section 403 states:

(1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.

The new legislation gives the City of Grandview the authority to regulate and zone collective gardens if it chooses to do so. However, it does not appear that the Legislature intended to give local jurisdictions the option to ban collective gardens.

Section 1102 states:

(1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in this act is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

Concerns About Collective Gardens

The location of even small collective gardens gives rise to concerns for local jurisdictions. In addition, some proponents of medical marijuana collective gardens have suggested they may seek to establish multiple collective gardens on single parcels of property which may include large scale indoor hydroponic grow operations in warehouses or similar facilities. Concerns included:

1. Possible associated criminal activity with collective gardens. These included:
 - a. Theft and armed robbery of the marijuana products grown.
 - b. Illegal sales of the marijuana product grown.
 - c. Illegal open use of marijuana products at grow sites.
 - d. Inability for police to readily distinguish what may be a legal collective garden for legitimate medical marijuana use by qualified patients from an illegal grow operation for sale and distribution.

2. Possible public safety health risks from unregulated collective gardens. These included:
 - a. Fire hazards from grow lights and drying equipment.
 - b. Waste products, fertilizers and grow chemicals infiltrating ground water and/or sewer systems causing clean water issues.
 - c. Improper disposal of agriculture waste after harvest.

- d. Adulteration of neighboring lands and crops if seeds drift. (It is a weed!)
3. Possible negative citizen reaction to the unregulated establishment of collective gardens in certain areas such as:
 - a. In commercial business districts.
 - b. In residential neighborhoods.
 - c. Near churches and schools.
 - d. On public property.

Options for the City to Deal with Collective Garden Concerns

As a background to any discussion on zoning or licensing medical marijuana gardens, he pointed out potential risk. The possession of marijuana remained a crime under federal law. The US Attorneys for Washington have suggested that licensing marijuana operations (in the State context) could be viewed as aiding and abetting a violation of the controlled substances act. The counter argument was that zoning or licensing regulations, which simply restrict or limit an activity already authorized by state law, cannot rise to this level. This appeared to be the general view of cities and counties in Washington, as evidenced by the widespread adoption of moratoriums since this legislation passed.

The following options were available to the City Council. He also pointed out that prohibiting medical marijuana gardens outright and taxing the production of medical marijuana produced in collective gardens both appear to be unviable legal options at present.

1. Moratorium. The City Council may want to pass a moratorium ordinance allowing time for it to study the impacts and possible solutions thereto created by collective gardens.

2. Zoning. Whether or not a moratorium is adopted, the City Council may consider adopting zoning regulations that limit the zoning areas where collective gardens may be established.

3. Licensing or permitting. As an alternative to or in addition to zoning restrictions the City could impose a legal requirement that any collective garden operators must first obtain a permit or license. Reasonable regulations related to public health, welfare and safety could be imposed as a condition to obtaining or maintaining a license or permit (e.g. nobody with criminal convictions gets a license, etc.).

4. Regulatory ordinances. In addition to or separate from any licensing or permitting laws, local jurisdictions could consider adoption of ordinances that merely regulate how collective gardens for medical marijuana could be operated legally. Violations could be civil penalties and/or misdemeanors.

5. Do nothing. It was worth considering that time and effort spent doing moratoriums, zoning, permitting/licensing and regulatory ordinances may be wasted time and expense resulting in frustration when the Legislature next convenes and passes new law or when the next Initiative gets voted on by the public. This was not an idle possibility. The proponents of SSB 5073 have vowed to fix the problems that resulted in and from the Governor's veto. An Initiative has already been filed and would likely be certified to legalize and tax all use of cannabis in Washington by persons 21 and older. Courts may get involved in the

existing law or with these potential future changes. However, doing nothing may not sit well with the citizens who do not favor these changes or who do not want grow operations next to their businesses, homes, schools and churches.

This list was not intended to be exhaustive, but rather to highlight some of the options available to the City Council as it deliberates an appropriate response to this important legislation.

Police Chief Charvet recommended that the Council consider adopting of a moratorium.

Following discussion, Council consensus was to adopt an ordinance enacting a six-month moratorium.

3. ADJOURNMENT

The study session adjourned at 6:40 p.m.

Mayor Pro Tem Pam Horner

Anita Palacios, City Clerk