

ORDINANCE NO. 28021

AN ORDINANCE relating to land use and zoning; adopting findings of fact to justify continuation of the emergency moratorium enacted by Ordinance No. 28010, on the acceptance of applications for the establishment, location, operation, licensing, permitting, maintenance, or continuation of medical cannabis collective gardens or medical cannabis dispensaries within the City of Tacoma; and to amend Ordinance No. 28010 to extend the moratorium for a period of one year to August 1, 2012, all as recommended by the Planning Commission.

WHEREAS state law allows for the immediate passage of a moratorium on land use and zoning controls as a temporary measure when an emergency exists, and

WHEREAS the City does not currently have regulations or requirements for medical cannabis, and

WHEREAS Engrossed Second Substitute Senate Bill (“E2SSB 5073”) which went into effect on July 22, 2011, authorizes cities to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes on the production, processing, and dispensing of cannabis within their jurisdictions, and

WHEREAS, on August 2, 2011, the City Council passed Ordinance No. 28010, enacting an emergency moratorium on the acceptance of applications for the establishment, location, operation, licensing, permitting, maintenance, or continuation of medical cannabis collective gardens or medical cannabis dispensaries within the City, and

WHEREAS the purpose of the moratorium is to allow time to develop and adopt zoning regulations, business licensing, health and safety requirements, and taxes for the production, processing, and dispensing of medical cannabis and to

allow the City reasonable time to review the associated regulations to ensure those regulations achieve their intended purpose, and

WHEREAS, in accordance with Tacoma Municipal Code 13.02.055, on September 7, 2011, the Planning Commission (“Commission”) conducted a public hearing on the moratorium and provided its findings and recommendations to the City Council, attached hereto as Exhibit “A” and by this reference incorporated as if fully set forth herein, and

WHEREAS after a review of the findings in the moratorium, state law, and the public comments provided, the Commission found that a moratorium is needed while the City considers a regulatory framework for the production, processing, dispensing, and delivery of medical cannabis to provide qualifying patients’ safe access to medical cannabis, and

WHEREAS the Commission found that the City has no land use regulations in place to adequately address medical cannabis collective gardens or dispensaries, and that any new land use regulations could impact a significant range of residents and businesses in the community, and

WHEREAS the Commission, in its findings, expressed that the current six-month duration of the moratorium should be extended one year to August 1, 2012, to allow for extensive coordination with the Medical Cannabis Task Force, community review and feedback, coordination with other efforts to regulate medical cannabis, and to manage ongoing planning activities, and

WHEREAS a public hearing is scheduled for September 27, 2011, to take further public testimony on the emergency moratorium established by Ordinance No. 28010; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the City Council has considered the testimony presented at the September 27, 2011, public hearing on the City-wide moratorium on the acceptance of applications for the establishment, location, operation, licensing, permitting, maintenance, or continuation of medical cannabis collective gardens or medical cannabis dispensaries within the City of Tacoma, as established by Ordinance No. 28010.

Section 2. That the City Council has considered the findings and recommendations of the Planning Commission regarding the moratorium established by Ordinance No. 28010.

Section 3. In accordance with RCW 35A.63.220, RCW 36.70A.390 and Tacoma Municipal Code 13.02.055, which require the City Council to adopt findings of fact justifying the adoption of moratoria, the "Whereas" clauses set forth above are hereby adopted as the Findings of Fact of City Council and are by this reference incorporated herein as if set forth in their entirety.

Section 4. Consistent with the findings and recommendations of the Planning Commission, the City Council hereby amends the moratorium established by Ordinance No. 28010 to extend the duration of the moratorium for a period of one year to August 1, 2012, in accordance with the work plan developed by the

Planning Commission and as allowed by RCW 35A.63.220, RCW 36.70A.390 and TMC 13.02.055.

Section 5. That the City Council has determined that the moratorium on the acceptance of applications for permits for the establishment, location, operation, licensing, permitting, maintenance, or continuation of medical cannabis collective gardens or medical cannabis dispensaries within the City, as established by Ordinance No. 28010, and as further amended by Section 4 of this Ordinance, shall be retained in full force and effect until August 1, 2012, unless hereafter rescinded, modified, or extended by separate ordinance.

Section 6. That if any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Passed _____

Mayor

Attest:

City Clerk

Approved as to Form:

Deputy City Attorney



MEDICAL CANNABIS EMERGENCY MORATORIUM REVIEW

FINDINGS AND RECOMMENDATIONS

TACOMA PLANNING COMMISSION
September 7, 2011

A. SUBJECT:

Emergency moratorium on the acceptance of applications for medical cannabis collective gardens and medical cannabis dispensaries within the City of Tacoma.

B. BACKGROUND:

On August 2, 2011, the City Council enacted an emergency moratorium on medical cannabis collective gardens and dispensaries (Ordinance No. 28010). The moratorium prohibits the acceptance of applications for the establishment, location, operation, licensing, permitting, maintenance, or continuation of medical cannabis collective gardens or medical cannabis dispensaries within the City. The moratorium applies Citywide and enacted for a duration of six months (until February 1, 2012).

C. FINDINGS OF FACT:

1. On November 3, 1998, Washington voters approved Initiative No. 962, codified in RCW 69.51A which created an affirmative defense for marijuana charges under state, but not federal law for qualifying patients and/or their designated providers for the use of marijuana for certain medical conditions.
2. During 2010 and 2011 a number of medical cannabis dispensaries applied for business licenses with the City. The City subsequently revoked or denied these licenses because the dispensaries are illegal. A number of dispensaries appealed these decisions and these appeals are before the City Hearing Examiner.
3. In its 2011 City of Tacoma State Legislative Agenda, the City Council declared that, "The City supports the voter approved right for those with certain terminal or debilitating chronic conditions to obtain medical cannabis for personal use. The law and regulations are vague and confusing for patients, providers and law enforcement. The City supports changes to the law and regulations which add clarity and certainty to protect qualifying patients' safe and legal access to medical cannabis".
4. The State Legislature passed Engrossed Second Substitute Senate Bill 5073 ("E2SSB 5073") which modifies RCW 69.51A. The Governor approved the legislation with significant modifications, including the veto of provisions directing state employees to conduct activities that could be interpreted as being in violation of federal law for the use, possession or distribution of marijuana.
5. The City Council directed that the revocation and licensing denial actions pertaining to medical cannabis dispensaries be stayed pending the outcome of the 2011 legislative session. The changes made in state law by E2SSB 5073 did not alter the City's position that the dispensaries are illegal

and the revocation and denial appeals are proceeding. No hearing date has been set by the Hearing Examiner.

6. E2SSB 5073 authorizes cities and local jurisdictions to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes on production, processing, and dispensing of medical cannabis within their jurisdictions.
7. E2SSB 5073 allows the establishment of medical cannabis collective gardens where up to ten qualifying patients may join together to produce, process, transport and deliver up to 45 cannabis plants for their own medical use.
8. E2SSB 5073 set no limit on the number of medical cannabis collective gardens that may be located at any site nor limitations as to where collective gardens may be located in relation to other uses.
9. On July 28, 2011, the City Council Public Safety, Human Services and Education Committee discussed policy themes related to medical cannabis and expressed its intent to forward proposals for a moratorium on medical cannabis collective gardens and dispensaries and the creation of a Medical Cannabis Task Force (“Task Force”).
10. On August 2, 2011, the City Council adopted Ordinance No. 28010, enacting an emergency moratorium and referred the moratorium to the Planning Commission for its review and to develop findings of fact and recommendation including the need for and duration of the moratorium.
11. The purpose of the moratorium is to allow time to develop and adopt zoning, business licensing, health and safety requirements and taxes for production, processing and dispensing of medical cannabis and to allow the City reasonable time to review the associated regulations to ensure that the proposed regulations achieve their intended purpose.
12. The moratorium directs the Planning Commission to develop appropriate zoning regulations for medical cannabis collective gardens and/or medical cannabis dispensaries and authorizes the City Manager to direct appropriate staff to review and develop appropriate business licensing requirements, health and safety requirements, and business taxes for medical cannabis collective gardens and/or medical cannabis dispensaries.
13. The moratorium applies City-wide and is in effect for six months (until February 1, 2012).
14. RCW 35A.63.220 and Tacoma Municipal Code (TMC) 13.02.055 permit the establishment of moratoria when it is necessary as a protective measure to prevent vesting under current regulations or to maintain the status quo.
15. With regards to the duration of moratoria, the Code provides:

“Moratoria or interim zoning may be effective for a period of not longer than six months, but may be effective for up to one year if a work plan is developed for related studies requiring such longer period.” [Excerpt from TMC 13.02.055.D.]
16. With the adoption of Ordinance No. 28010, the City Council declared that an emergency existed and that immediate adoption of a moratorium was necessary to prevent the permitting or licensing of new medical cannabis collective gardens or dispensaries that might be inconsistent with the proposed medical cannabis regulations under review and that could potentially undermine the moratorium’s goals.
17. TMC Chapter 13.02 sets forth the procedures and criteria for amending the City’s development regulations, including temporary moratoria.

18. TMC 13.02.055 provides that following adoption of an emergency moratorium, the Planning Commission is required to conduct a public hearing and provide findings and recommendations to the City Council before the Council, after further review, takes final action to retain, rescind or modify the emergency moratorium. The Commission's findings and recommendations are required to address the need for and the appropriate duration of the moratorium.
19. The emergency moratorium was initially presented to and discussed by the Planning Commission at its August 17, 2011 meeting. The Commission authorized the distribution of the moratorium ordinance for public review and to receive comment at a public hearing on September 7, 2011, the date established by Ordinance No. 28010 (declaring the emergency moratorium) for the Commission's public hearing on the matter.
20. Written and/or electronic notice of the Planning Commission's public hearing was sent to community members who testified on the emergency moratorium to the City Council at its August 2, 2011 meeting, all known owners of medical cannabis dispensaries and/or medical cannabis collective gardens, parties of record involved in the Hearing Examiner appeals, citizens who provided comments to the Planning Commission prior to the public hearing on September 7, 2011 concerning the moratorium and possible future regulation of medical cannabis within the City and to members of the Medical Cannabis Task Force. The notice also was provided to all recipients of the Planning Commission agenda, the Planning Commission's electronic mailing list, City Council members, Neighborhood Councils, business district associations, adjacent jurisdictions, state and other governmental agencies, the Puyallup Tribal Nation, City staff, City Commissions, environment, development, civic and social organizations, major institutions and employers, and other interested individuals and groups. In addition, notice was sent to taxpayers of record for all known properties with existing medical cannabis collective gardens and/or dispensaries and to taxpayers of record for all properties within 400 feet of these properties. In total, the notice was sent to more than 1,700 addresses. Additionally, the public notice was posted on the bulletin boards on the first and second floors of the Tacoma Municipal Building and on the City's internet website.
21. The notice included general information regarding the time and place of the public hearing, a description of the purpose of the public hearing, where additional information could be obtained and how to submit public comment.
22. A copy of the moratorium ordinance was available for review at the offices of the Community and Economic Development Department, at all branches of the Tacoma Public Library and also was posted for public review on the City's website.
23. On August 23, 2011, the City Council adopted Resolution No. 38318 creating a Medical Cannabis Task Force to be comprised of citizens that would be impacted by future land use regulation, health and safety requirements, licensing and taxes to provide feedback and recommendations to the Planning Commission, the City Manager and the City Council.
24. The Medical Cannabis Task Force is to serve a term through February 1, 2012 coincident with the expiration of the six-month moratorium but the term can be extended to August 1, 2012 by action of the City Council Public Safety, Human Services and Education Committee.
25. The Medical Cannabis Task Force has not met or scheduled their first meeting.
26. The Planning Commission held a public hearing on the moratorium on Wednesday, September 7, 2011. One person provided testimony at the hearing and she spoke in favor of the continuation of the moratorium.
27. In addition to the testimony received at the September 7, 2011 public hearing, three written comments were submitted in response to the public notice.

28. The Planning Commission reviewed all testimony offered at the September 7, 2011 public hearing and all written testimony submitted to the Commission prior to the comment deadline.
29. The testimony at the public hearing and the information contained in the public record indicate that public opinion supports continuation of the moratorium to prevent new medical cannabis collective gardens and dispensaries while the City reviews and considers regulations for such establishments.
30. Based on the moratorium ordinance adopted by the City Council and the public testimony provided during this review, the Commission has identified the following items in need of review:
 - The City has no regulations in place to address medical cannabis collective gardens or dispensaries;
 - City regulation of medical cannabis collective gardens is needed to add clarity to state law and certainty to protect qualifying patients' safe access to medical cannabis in accordance with state law; and
 - City regulation of medical cannabis collective gardens is needed to ensure the protection of the health, safety and welfare of the City's citizens and business community.
31. In order to make an informed recommendation on land use regulations, the Planning Commission envisions a thorough evaluation of the issues related to medical cannabis regulation, and the adequacy of the City's existing regulatory framework. Due to the complexity of the issues, this review will likely require coordination with other City efforts led by the City Manager that may involve amendments to the Tacoma Municipal Code including but not limited to the Tax and License Code, Health and Sanitation Code, Buildings Code and Public Safety and Morals Code.
32. In order to consider properly this issue, Planning Commission review will also necessitate input from community stakeholders, including medical cannabis providers, qualified patients, designated providers, physicians, law enforcement personnel, neighborhood groups and the business community in addition to the feedback and recommendations from the Medical Cannabis Task Force.

D. CONCLUSIONS:

On August 2, 2011, the City Council declared an emergency and adopted an immediate, six-month moratorium on the acceptance of applications for medical cannabis collective gardens or medical cannabis dispensaries.

After a review of the findings in the moratorium, State law, and the public comments provided, the Commission concludes that a moratorium is needed while the City considers a possible regulatory framework for medical cannabis. The Commission also concludes that the production, processing, dispensing and delivery of medical cannabis to qualifying patients should be conducted in a responsible manner to minimize impacts on qualifying patients, designated providers, and the health, safety and welfare of the community.

State law and City Code allow a moratorium to be in effect for a longer period of up to one year if a work plan to address the permanent regulatory requirements requires a longer period. The Commission notes that any new land use regulations could impact a wide range of residents and businesses in our community. The need for extensive coordination with other City Staff and the

required feedback on proposed regulations from the Medical Cannabis Task Force will necessitate a schedule that can accommodate timely review and comment by others.

The Commission also is concerned about the potential of the new task to develop code for medical cannabis may have on other planning work underway or planned to occur this fall including amendments to downtown parking requirements and our regular work on the 2012 Annual Amendment. The Commission and staff's ability to manage existing responsibilities in addition to this new task will be severely constrained within a six-month schedule.

While the Commission shares the City Council's concern of the potential impact the moratorium may have on the ability for qualified patients to access necessary medication, the Commission finds that a one-year schedule is more reasonable and will allow for the citizen feedback that the City Council has requested. The Commission proposes a work plan to address medical cannabis regulations, conduct necessary review, coordinate with other City efforts and to consider feedback and input from the Medical Cannabis Task Force.

E. RECOMMENDATION:

The Planning Commission finds that there is a need for an emergency moratorium to preserve the status quo while the City develops and considers regulations pertaining to medical cannabis.

The Commission further recommends that the City Council continue the emergency moratorium on medical cannabis collective gardens and dispensaries adopted under Ordinance No. 28010 for a period of one year (August 1, 2012) in accordance with the attached work plan.

The Commission further recommends that the term of the Medical Cannabis Task Force be extended to August 1, 2012 as authorized by Resolution No. 38318 and consistent with the attached work plan.

Attachment



Medical Marijuana

PLANNING COMMISSION PROPOSED 12-MONTH WORK PLAN
September 7, 2011

Date	Event
August 2, 2011	City Council adopts emergency moratorium; Ordinance No. 28010.
August 17	Planning Commission discussion of Ordinance No. 28010, State law, Council direction and proposed code amendment schedule.
August 17	Provide notice for Commission public hearing on emergency moratorium.
August 23	Medical Cannabis Task Force created by adoption of Resolution No. 38318.
August 31	Planning Commission Draft Findings of Fact and Recommendation on moratorium completed.
September 7	Planning Commission conducts public hearing on emergency moratorium. Findings of Fact and Recommendation on moratorium forwarded to Council.
September	Medical Cannabis Task Force convenes and may provide written or verbal feedback to the Public Safety Committee and/or City Council on Planning Commission's Findings of Fact and Recommendation.
September 15	City Clerk provides notice of Planning Commission's recommendation on moratorium in advance of City Council public hearing.
September 22	Public Safety Committee review of Planning Commission's Findings of Fact and Recommendation on the emergency moratorium. "Do pass" recommendation sought.
September 27	City Council conducts public hearing on moratorium. First Reading of Ordinance to retain, rescind or modify moratorium.
October 4	City Council extends moratorium for 12 months expiring August 1, 2012.
October 20	Draft benchmarking report prepared that: (1) summarizes regulatory approaches and land use code options used by other Washington municipalities and by selected jurisdictions in other states with medical marijuana laws; and (2) proposes a regulatory approach and possible land use code options for Council consideration and review.
October	Medical Cannabis Task Force review of proposed regulatory approach and possible land use code options. Task Force may provide written or verbal feedback to the Public Safety Committee.
October	Staff review of and coordination with other City efforts on regulating, licensing, and taxing medical cannabis.
October 27	Public Safety Committee discussion of draft benchmarking report and direction on proposed regulatory approach and possible land use code options.
November 9	Draft benchmarking report and a revised report per Public Safety direction on proposed regulatory approach and possible land use code options prepared for Commission review.

November	Medical Cannabis Task Force review of revised draft report and may provide written or verbal feedback to the Planning Commission.
November 16	Commission discussion of draft benchmarking report and revised report on proposed regulatory approach and potential land use code options per input from Task Force and direction of the Public Safety Committee. Commission provides direction to staff on the development of land use code.
November	Staff review of and coordination with other City efforts on regulating, licensing, and taxing medical cannabis.
December 14	Preliminary analysis report and code amendments based on Commission's direction prepared.
December	Medical Cannabis Task Force review of preliminary analysis report and code amendments. Task Force may provide written or verbal feedback to the Planning Commission
December	Staff review of and coordination with other City efforts on regulating, licensing, and taxing medical cannabis.
December 28	Revised preliminary analysis report on code amendments based on Task Force input prepared for Commission review.
January 4	Commission discussion of preliminary code amendments and input from Task Force and staff associated with other City efforts. Commission provides direction on revising preliminary code amendments
January	Staff review of and coordination with other City efforts on regulating, licensing, and taxing medical cannabis.
January 18	Preliminary public review draft code prepared for Medical Cannabis Task Force review.
January	Medical Cannabis Task Force review of preliminary public review draft code. Task Force may provide written or verbal feedback to the Planning Commission.
February 8	Public review draft code and staff report completed.
February 15	Commission authorizes proposed land use code amendments for public review and sets a public hearing date.
February 22	Distribution of public notice for Planning Commission public hearing.
February 23	Public Safety Committee discussion of draft land use code amendments.
February	Medical Cannabis Task Force review of public review draft code. Task Force may provide written or verbal feedback to the Planning Commission.
February	Staff review of and coordination with other City efforts on regulating, licensing, and taxing medical cannabis.
March 21 , 2012	Planning Commission public hearing on draft land use code amendments.
March 30	Last day to submit written comments on draft amendments
March	Staff review of and coordination with other City efforts on regulating, licensing, and taxing medical cannabis.
April 11	Draft Responsiveness Report on Public Hearing testimony prepared for Commission review.

April	Staff review of and coordination with other City efforts on regulating, licensing, and taxing medical cannabis.
April	Medical Cannabis Task Force review of public testimony on draft code. Task Force may provide written or verbal feedback to the Planning Commission.
April 18	Planning Commission discussion of hearing testimony, staff responses, and possible revisions to draft code amendments.
April 25	Draft recommendation and Findings of Fact prepared for Commission review.
May 2	Planning Commission completes review and makes recommendation to City Council on land use code amendments.
May	Medical Cannabis Task Force review of Commission's recommendation. Task Force may provide written or verbal feedback to the City Council.
May	Staff review of and coordination with other City efforts on regulating, licensing, and taxing medical cannabis.
May 8	City Council sets hearing date on Commission's recommendation to amend the Land Use Regulatory Code.
May 10	Public Safety Committee discussion of Commission's recommendation on land use code amendments.
May 10	City Clerk provides public notice for City Council public hearing.
May 15	City Council study session on proposed amendments as recommended by the Planning Commission.
May 22, 2012	City Council conducts public hearing on proposed amendments as recommended by the Planning Commission.
June 5	City Council study session to discuss hearing testimony and possible revisions to the draft code based on public comment and further review.
June	Medical Cannabis Task Force review of Council revisions, if any. Task Force may provide written or verbal feedback to the Public Safety Committee or City Council.
June 28	Public Safety Committee "do pass" recommendation on code amendments.
July 10	City Council – first reading of ordinance(s) to adopt amendments
July 17	City Council – second reading and adoption of amendments
July 27	Submit final amendments to State
July 30	Effective date of amendments
August 1, 2012	Moratorium expires Medical Cannabis Task Force sunsets