

City of Seattle
Proposed Cannabis Zoning Restrictions

September 2012

Introduction

The City of Seattle is proposing to implement regulations pertaining to the production, processing, and dispensing of cannabis in certain zones within the city. In 2011, the Washington State Legislature allowed the creation of collective gardens, which allows groups of qualifying patients to produce, process, or dispense cannabis and cannabis products for medical use. Although the State prescribed specific standards for the size of collective gardens, the State did not prohibit individual collective gardens from co-locating and sharing facility and staff resource. Local advocates suggest that this aggregation of individual collective gardens will be commonplace.

The purpose of this proposed ordinance is to limit the off-site impact of larger-scale cannabis-related activity. The ordinance would accomplish this purpose by limiting the level of activity allowed in zones with a predominately residential or historic character to what the State allows in a *single* collective garden. The ordinance would establish limits on the size of operations involving the production, processing, and dispensing of cannabis in Single-Family, Multifamily, Pioneer Square Mixed, International District Mixed, International District Residential, Pike Place Mixed, Harborfront, and Neighborhood Commercial 1 zones. These limitations would prevent collective gardens from co-locating in these zones in a manner that could adversely impact these areas.

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 in industrial areas.

Background

In 2011, the Washington State Legislature passed ESSSB 5073, which altered State regulations that some people had previously interpreted to allow medical marijuana dispensaries and implemented new regulations that permit qualified patients to grow cannabis for their own medical use through the creation of collective gardens. Although the Governor vetoed certain provisions of ESSSB 5073, the remainder of the law went into effect on July 22, 2011 (See Laws of 2011, Chapter 181). Collective gardens allow groups of up to 10 patients to grow, process, or dispense cannabis provided they do not exceed any of the following standards:

- no more than 15 plants per patient to a maximum of 45 plants;
- no more than 24 ounces per patient to a maximum of 72 ounces; and
- no more cannabis products than could be made from 24 ounces per patient to a maximum of 72 ounces

Collective gardens are not prohibited from aggregating to increase their scale. The State law allows cities to regulate the siting of collective gardens within their jurisdictions.

Based on an analysis of business licenses and advertising as of July 2012, the City estimates that there about 150 cannabis-related businesses operating within Seattle.

This proposed ordinance was developed in response to the new State legislation and is based on the work of an interdepartmental team consisting of City staff and representatives of the Mayor, City Councilmembers, and City Attorney. A stakeholder group of medical marijuana industry representatives was also convened to provide feedback on the proposal.

Analysis Summary

The Land Use Code already defines a number of uses that might involve cannabis-related activity, such as agriculture, food processing, manufacturing, retail sales and services, and/or 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 ordinance would continue to rely on these basic zoning limitations to ensure compatible land uses.

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

Impacts from smaller-scale activity—a level associated with an individual collective garden, which is limited to 10 patients—would be more limited because it would be smaller in scale and less likely to advertise. However, larger-scale activity—such as operations involving multiple co-located collective gardens—could be run like any commercial business with an incentive to generate an economy of scale and attract new business. To limit the negative off-site impacts of larger-scale operations, the proposed ordinance would limit the production, processing, or dispensing of cannabis to levels consistent with State standards for individual collective gardens in areas with a predominately residential character and in certain historic areas.

Proposed Changes

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

- Define the terms cannabis, usable cannabis, cannabis product, and indoor agricultural operation.
- Establish limits on the production, processing, and dispensing of cannabis in Single-Family, Multifamily, Pioneer Square Mixed, International District Mixed, International District Residential, Pike Place Mixed, Harborfront, and Neighborhood Commercial 1 zones in order to prevent the impacts that could result from the aggregation of individual collective gardens into larger commercial operations.
- Modify the existing provision limiting 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 sq ft excluding associated office or food processing areas.

In the zones not mentioned above, the production, processing, or dispensing of cannabis would continue to be regulated according to existing provisions in the Code for comparable uses by zone designation.

In the zones enumerated above, the production, processing, or dispensing of cannabis, cannabis products, or useable cannabis in any business establishment or dwelling unit would be limited to:

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

These limits are consistent with the State's requirements for individual collective gardens. The City's restrictions would not, however, include other limitations for collective gardens required by the State such as the number of affiliated patients, whether the patients are medically qualifying, the amount of plants or usable cannabis per patient, or the THC content. These standards were omitted because the City does not have the expertise or resources to evaluate these standards, and because the State's regulation of collective gardens for purposes of State criminal law merely establishes a useful measure of smaller-scale cannabis-related activity for purposes of City land use policy.

The size restrictions would apply within the following zones:

1. Residential zones (Single-Family and Multifamily).
2. Neighborhood Commercial 1 zones, which are generally small retail areas surrounded by residential zones.
3. Certain special purpose zones possessing historical character (Pioneer Square Mixed, International District Mixed, International District Residential, Pike Place Mixed, Harborfront).

Like existing City land use regulations, the proposed ordinance would not define cannabis-related activity as a distinct use regulated by zone. So while an applicant may

need to get a permit to establish an agriculture or retail use, the City would not require the applicant to identify that the agricultural or retail use is cannabis-related. The limits in the proposed ordinance would be in a new section added to SMC Chapter 23.42, the General Use Provisions. That chapter, for example, limits the number of certain animals that may be kept on lots in certain zones—although the City might require someone who violates such a limit to come into compliance, no permit is required in order to keep an animal. Likewise, the proposed ordinance would set enforceable limits on the scale of cannabis-related activity that may be conducted in certain zones, even though there would be no requirement to obtain a permit specifically to conduct cannabis-related activity.

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

In general, collective gardens would continue to be allowed in Industrial and Seattle Mixed zones and the downtown and commercial zones not mentioned above, provided they met 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, fenestration 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 only allowed within MICs 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. The existing term is problematic because it requires reviewers to determine whether plants are actually located above one another. This proposal would change “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.” This change would achieve the intent of the original proposal in a clear and enforceable manner. The proposal would also limit indoor agricultural operations to 10,000 square feet to limit large operations that could displace existing industrial uses.

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

Recommendation

The proposed code amendments clarify City land use regulations in light of the recent changes to State law. In addition, the proposal will promote the public interest by ensuring that the production, processing, or dispensing of cannabis does not have substantial adverse impacts on existing residential and historic neighborhoods and by clarifying existing provisions for agricultural uses in industrial areas.