City of Seattle
Update to Marijuana Zoning Restrictions
Report

Introduction

The City of Seattle is proposing to update existing marijuana zoning restrictions in order to make them easier to enforce and more consistent with state regulations.

The proposed ordinance would update the definition of major marijuana activity to reduce the threshold at which marijuana activity must meet the locational and licensing requirements of Land Use Code Section 23.42.058. The ordinance would also add new separation requirements for marijuana activities, apply existing standards for odor control, and reorganize Section 23.42.058 to clarify existing rules.

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.

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, many operations 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.

In 2015, the Washington State Legislature passed SSB 5052 to align the recreational and medical marijuana markets. As part of this legislation, the allowance for Collective Gardens be eliminated as of July 1, 2016 and be replaced with a new allowance for Cooperatives. Cooperatives allow groups of up to 4 patients who grow and process for their own medical use provided the cooperative:

- is registered with the Washington Liquor and Cannabis Board (formerly the Liquor Control Board)
- is located within a residence;
- is not located within 1 mile of a marijuana retailer; and
- does not grow more than the number of plants authorized by their recognition cards, up to a maximum limit of 60 plants.

Current Seattle Land Use Regulations

Marijuana businesses are expected to meet all the requirements for their use category under the Land Use Code. Generally, production is considered an agriculture use, processing is considered food processing or light manufacturing, and selling or delivery is considered retail sales and services. Additionally, the Land Use Code establishes a threshold for major marijuana activity as well as locational and licensing requirements for major marijuana activity. TIP 134 summarizes rules for marijuana businesses in detail and is available at: http://web1.seattle.gov/dpd/cams/CamDetail.aspx?cn=134.

Major marijuana activity is currently defined as the production, processing, selling, or delivery of marijuana, marijuana-infused products, or usable marijuana that involves more than

- 45 marijuana plants,
- 72 ounces of useable marijuana, or
- an amount of marijuana-infused product that could reasonably be produced with 72 ounces of useable marijuana.

Activity below this threshold is allowed throughout the city without a license from the Washington Liquor and Cannabis Board, provided the use (agriculture, food processing, light manufacturing, retail sales and service) is allowed in the applicable zone. Major marijuana activity is not allowed unless it is part of a business establishment that has a license from the Washington Liquor and Cannabis Board and is not located in any of the following areas:

- Any Single-family zone;
- Any Multifamily zone;
- Any Neighborhood Commercial 1 (NC1) zone;
- Any of the following Downtown zones:
    - Pioneer Square Mixed (PSM);
    - International District Mixed (IDM);

    - International District Residential (IDR);
    - Downtown Harborfront 1 (DH1);
    - Downtown Harborfront 2 (DH2); or
    - Pike Market Mixed (PMM); or
- Any of the following districts:
    - Ballard Avenue Landmark District;
    - Columbia City Landmark District;
    - Fort Lawton Landmark District;
    - Harvard-Belmont Landmark District;
    - International Special Review District;
    - Pike Place Market Historical District;
    - Pioneer Square Preservation District;
    - Sand Point Overlay District; or
    - Stadium Transition Area Overlay District.

Challenges with Existing Land Use Regulations

The intent of the existing marijuana regulations was to allow individual collective gardens to continue operating throughout Seattle in order to allow an adequate supply of medical marijuana for patients. Consequently, the activity thresholds were established to be consistent with the state thresholds for individual collective gardens.

An unintended consequence of these regulations is that commercial operations producing, processing, selling, and delivering both medical and recreational marijuana and operating without a state license, have been allowed to open new facilities. In practice, it is possible for a commercial business to meet the requirements of the code by selling marijuana to retail facilities for distribution, or by operating processing and retail facilities that regularly restock their supply to avoid violating the threshold at any one time. Because the City does not have the authority or resources to ensure that this marijuana is actually being used for medical purposes, these commercial businesses may in effect be competing with licensed recreational stores. The potential impact of this outcome is particularly concerning as the unregulated businesses do not have to follow security, product testing, safety, or advertising requirements and do not pay marijuana-specific taxes. Consequently, they may also be able to provide products at a much lower cost than the licensed recreational businesses.

Proposed Changes

Land Use Code Section 23.42.058, Marijuana, would be reorganized to clarify how the rules apply to residential and other uses. The proposal requires a license to be obtained from the state and the City. In addition, the 'scope of provisions' and use provisions of applicable zones are amended to reflect the use regulations in Section 23.42.058. Three key elements are explained in more detail below:

1. The definition of major marijuana activity;
2. Separation requirements for major marijuana activity; and
3. Odor control standards.

1. Major Marijuana Activity.

The proposed bill would change the definition for major marijuana related activities as follows:

	Current threshold to be considered major marijuana activity	**Proposed threshold to be considered major marijuana activity**
Production	45 plants	• Any production outside a dwelling unit • Production inside a dwelling unit including more than 15 plants, except that 60 plants are allowed for state registered cooperatives
Processing	72 ounces of useable marijuana or an amount of marijuana-infused product that could reasonably be produced with 72 ounces of useable marijuana on-site	• Any processing outside of a dwelling unit • Any processing within a dwelling unit other than the drying or incorporation into food of the product of 15 plants, except that the drying or incorporation into food of the product of 60 plants is allowed for state registered cooperatives
Selling & Delivery	72 ounces of useable marijuana or an amount of marijuana-infused product that could reasonably be produced from 72 ounces of useable marijuana on-site	Any selling or delivery

These new thresholds would more clearly regulate the production, processing and sale of marijuana and marijuana products in order to ensure appropriate oversight and business practices consistent with state law.

2. Separation Requirements for Major Marijuana Activity.

The proposal includes provisions that require certain marijuana related businesses to be separated by a minimum distance from each other and from a list of uses as follows:

Applicable Uses*	**Separation Requirement****
New or expanding major marijuana activity from: • elementary school; • secondary school; or • playground.	1000 feet
New or expanding major marijuana activity from: • child care center; • game arcade; • library; public park; • public transit center; or • recreation center or facility.	500 feet
New or expanding major marijuana activity involving retail transactions from: Any other major marijuana activity involving retail transactions.	A major marijuana activity involving retail transactions may not be located within 500 feet of any other property containing state-licensed major marijuana activity involving retail transactions.

*The uses are defined in the Washington Administrative Code section 314-55-010.
**Distances are measured from any lot line of property on which any of the listed uses are located or proposed to be located.

The separation requirements are intended to balance the public, health, safety and welfare interests in having sufficient areas within which these activities may locate and prevent concentration of these activities in any one area.

3.Odor Control Standards.

Since the production and processing of marijuana can result in odors that may impact neighboring properties, the proposal is to add these marijuana related activities to existing odor control standards that are currently in the code for the applicable zones where these activities would be allowed. The odor standards are also proposed to be

amended to clarify that vents should be directed away from all neighboring uses when possible.

The odor control standards give the Director, in consultation with the Puget Sound Clean Air Agency, the authority to require mitigation such as directing vents and pipes away from neighboring uses or the use of filters to reduce or eliminate odor causing emissions.

Recommendation

The Director recommends adoption of the proposed ordinance.