



Staff Report

TO: Clark County Planning Commission

FROM: Oliver Orjiako, Director

PREPARED BY: Colete Anderson, Program Manager II

DATE: June 6, 2019

SUBJECT: CPZ2019-00019 CLARK COUNTY UNIFIED DEVELOPMENT CODE AMENDMENTS (TITLE 40) - RECREATIONAL MARIJUANA AND MEDICAL MARIJUANA COOPERATIVES

PROPOSED ACTION

The following proposed amendments to Clark County Unified Development Code, Title 40 implement Washington state law, to the extent Clark County deems the permissive aspects of the law appropriate, regarding recreational marijuana and medical marijuana cooperatives as provided in Chapter 69.50 RCW and Chapter 314-55 WAC:

No.	Title/Chapter/Section	Description
1	40.260.115	Amend CCC 40.260.115 (Marijuana Facilities) to delete the text associated with the issuance of permits; amending “control” to “cannabis;” adding a definition for “marijuana”, “medical marijuana cooperative”, and “substance use disorder treatment program;” amending the locational criteria from “1,000 ft.” to “750 ft.” except for elementary or secondary schools and public playgrounds; allow the sale of paraphernalia; and amend closing time from “8 p.m.” to “11 p.m.”
2	40.100.070	Amend CCC 40.100.070 (Definitions) to delete “collective garden”.
3	40.210.010	Amend CCC 40.210.010 (Forest, Agriculture and Agricultural-Wildlife Districts) to amend the use table to delete “collective gardens” and add “cooperative”; add production facilities in FR-40 and AG-20 and add processor I facilities to AG-20 districts.
4	40.210.020	Amend CCC 40.210.020 (Rural Districts) to amend the use table to delete “collective gardens” and add “cooperative”.
5	40.210.030	Amend CCC 40.210.030 (Rural Center Residential Districts) to amend the use table to delete “collective gardens” and add “cooperative”.
6	40.210.050	Amend CCC 40.210.050 (Rural Commercial Districts) to amend the use table to delete “collective gardens” and add “cooperative”; add retail facilities in CR-2 district.
7	40.220.010	Amend CCC 40.220.010 (Single-Family Residential Districts) to amend the use table to delete “collective gardens” and add “cooperative”.
8	40.220.020	Amend CCC 40.220.020 (Residential and Office Residential Districts) to amend the use table to delete “collective gardens” and add “cooperative”.
9	40.230.010	Amend CCC 40.210.050 (Rural Commercial Districts) to amend the use table to delete “collective gardens” and add “cooperative”; add retail facilities in CC and GC districts.
10	40.230.020	Amend CCC 40.230.020 (Mixed Use District) to amend the use table to delete “collective gardens” and add “cooperative”.
11	40.230.050	Amend CCC 40.230.050 (University District) to amend the use table to delete “collective gardens” and add “cooperative”.
12	40.230.060	Amend CCC 40.230.060 (Airport District) to amend the use table to delete “collective gardens” and add “cooperative”.
13	40.230.085	Amend CCC 40.230.085 (Employment Districts) to amend the use table to delete “collective gardens” and add “cooperative”; add production facilities in IL, IH, IR; add processor I facilities in IL, IH, IR, BP; and add processor II facilities in IL, IH, IR, BP districts.
14	40.250.110	Amend CCC 40.250.110 (Urban Holding District) to amend the use table to delete “collective gardens” and add “cooperative”.

The proposed amendments are attached in Exhibit 1.

BACKGROUND

Under the federal Controlled Substance Act, marijuana is classified as a Schedule I drug. Accordingly, possessing, growing or distributing marijuana, even for medical use, is a violation of federal law regardless of individual state statutes permitting such uses.

Medical Marijuana

- 1998 Washington voters approved Initiative-692 decriminalizing the possession and limited use of medical marijuana for patients under a physician's care who are suffering from a terminal or debilitating illness.
- 2007 I-692 was amended to allow patients to receive assistance from designated providers and broadened the definition of diseases and conditions for which medical marijuana could be prescribed.
- 2008 An amendment to I-695 defined the 60-day supply. [WAC 246-75-010].
- 2010 An amendment to I-695 increased the types of healthcare professions allowed to authorize marijuana for medical use.
- 2011 The legislature passed SB 5073 to amend and clarify the law on the medical use of marijuana so that qualifying patients and designated providers who comply with the law would not be subject to arrest. The bill would have put into place a state structure to license and regulate the use, distribution and processing of medical marijuana. However, concerned the new state law was in conflict with existing federal law and required the involvement of state employees, the Governor requested a legal opinion from the U.S. Department of Justice. She received an opinion saying, "State employees who conduct activities mandated by the Washington Legislative proposals would not be immune from liability under the Controlled Substance Act." The opinion prompted the Governor to veto many sections of the bill. In doing so, she chose not to veto Section 403, which allows for 10 "qualifying patients to create and participate in collective gardens for the purpose of producing, processing, transporting and delivering cannabis for medical use." Section 403 of SB 5073 became state law on July 22, 2011. It allows a total of 45 plants and 72 ounces of medical marijuana to be at any one location at any given time. In a statement, the Governor explained the partial veto of SB 5073 saying medical cannabis nonprofit cooperative organizations "should be conditioned on compliance with local government location and health and safety specifications."

Recreational Marijuana

- 2012 Washington voters passed Initiative-502, which legalized the possession and use of one ounce or less of marijuana for persons over 21. The measure removed state-law criminal and civil penalties for activities that it authorizes; tax marijuana sales; and earmark marijuana-related revenues. The state Liquor and Cannabis Board (LCB) was required to adopt regulations regarding the production (growing), processing and retailing of marijuana and related products in Chapter 314-55 WAC. The LCB handles the licensing of marijuana facilities, but it is up to local jurisdictions to decide where and under what conditions such facilities will locate and, to some extent, operate. Local governments are specifically authorized to prohibit licensed marijuana business on lands zoned for residential use or a rural use with a minimum lot size of 5 acres or smaller. [RCW 69.50.331(9)].

Medical and Recreational Marijuana

- 2015 The legislature enacted the Cannabis Patient Protection Act (2SSB 5052) and Marijuana Taxation Reform (2E2SHB 2136). 2SSB 5052 codified into Chapter 69.51A RCW and integrates the medical market with the regulated recreational market and shifts the oversight from the Department of Health to the LCB. The statutes on "collective gardens" were repealed and replaced by a statute authorizing "cooperatives" for the growing of marijuana for medical use. The Department of Health was charged with adopting rules for a medical marijuana authorization database, training/certification of consultants and product compliance. [Chapter 246-70 WAC, Chapter 246-71 WAC, Chapter 246-72 WAC]. As of July 1, 2016, up to four

patients who are entered in the database can join together to form a cooperative garden. [RCW 69.51A.250], [WAC 314-55-410]. As with I-502 marijuana facilities, local governments are authorized to prohibit medical marijuana cooperatives. [RCW 69.51A.250(3)(c)].

2E2SHB 2136 added a new section to Chapter 69.50 RCW allowing LCB licensed common carriers to physically transport and deliver marijuana, marijuana concentrates, and marijuana-infused products between licensed marijuana businesses within the state. [RCW 69.50.385], [WAC 314.55.310]. Marijuana retailers are prohibited from internet sales and delivering products to a customer. [WAC 314-55-079(5)]. The county may reduce the buffer requirements for a licensed marijuana business from 1,000 feet to 100 feet. In order to reduce the buffer, the county would need to pass an ordinance declaring that the reduction would not negatively impact the county's law enforcement efforts, public safety or public health. The LCB would then be able to issue licenses based on the ordinance.

- 2016 SSB 6177 amended the marijuana research license that permits the licensee to produce, process, and possess marijuana for limited research purposes provided in RCW 69.50.372. The LCB was established as the lead reviewer and instructs the LCB to select a scientific reviewer to review research applications and make recommendations for approval or denial of research projects and licensed research activities. [WAC 314-55-073].
- 2017 ESSB 5131 amended marijuana research licenses; established a competitive, merit-based application for retail licenses; and allows medical marijuana cooperatives, qualified patients, and designated providers to purchase immature plants, clones, or seeds from a licensed producer.

CLARK COUNTY

Medical Marijuana

- 2011 Since Clark County did not have specifications for the use of medical marijuana, the then Board of County Commissioners (board) adopted Res. 2011-07-04 on July 12, 2011 that placed moratoria on "collective gardens". The board adopted Res. 2011-08-07 that extended the moratoria for one year. On October 18 the board approved a work plan to be completed during the one year timeframe.
- 2012 On July 10, 2012, the board adopted Res. 2012-07-01 that extended the moratoria on "collective gardens" to June 10, 2013.
- 2013 On July 9, 2013, the board adopted Ord. 2013-07-08 that amended the Clark County Unified Development Code Title 40 to include a definition for medical marijuana "collective garden" and associated use tables. Medical marijuana collective gardens was specifically prohibited "X" in CCC40.210.010-1, 40.210.020-1, 40.210.030-1, 40.210.040-1, 40.210.050-1, 40.220.010-1, 40.220.020-1, 40.230.010-1, 40.230.020-1, 40.230.050-1, 40.230.060-1, 40.230.070-1 and 40.230.085-1. Ord. 2013-07-08 included a sunset date of one year from the date of adoption in Section 18 Termination.
- 2014 On September 23, 2014, the board adopted Res. 2014-09-09 to place a temporary moratorium on applications for permits for medical marijuana. On November 4, the board adopted Ord. 2014-11-02 that repealed Section 18 of Ord. 2013-07-08 and readopted and incorporated by reference the remainder of Ord. 2013-07-08.

Recreational Marijuana

- 2013 On August 13, 2013, the board adopted a six-month moratorium on the acceptance of any applications related to I-502. Staff was directed to form a working group consisting of representatives from Community Development, Sheriff, Board, Prosecuting Attorney, and County Administrator. The working group was tasked with development of draft code language for the siting of marijuana facilities in the county. Res. 2013-08-04 included a sunset date of six months from the date of the resolution.

On October 8, 2013, the board adopted Res. 2013-10-06 to continue the temporary moratoria

on accepting permit applications until February 13, 2014.

- 2014 On February 11, 2014, the board adopted Res. 2014-02-17 to continue the moratoria on accepting any land use applications for marijuana facilities and extend the moratorium until June 11, 2014.

On May 27, 2014, the board adopted Ord. 2014-05-07 that added a new section CCC40.260.115 Marijuana Facilities, amended CCC 40.100.070 Definitions for “agriculture,” and amended use tables. Marijuana facilities under I-502 and Chapter 314-55 WAC were specifically prohibited “X” in CCC40.210.010-1, 40.210.020-1, 40.210.030-1, 40.210.040-1, 40.210.050-1, 40.220.010-1, 40.220.020-1, 40.230.010-1, 40.230.020-1, 40.230.050-1, 40.230.060-1, 40.230.070-1 and 40.230.085-1. The board included a provision that the county will not issue any land use approvals for I-502 facilities until such time as marijuana is no longer listed as a federally-controlled substance. [CCC40.260.115(B)(4)].

- 2016 On June 28, 2016, council adopted Ord. 2016-06-12 during the periodic review and amended CCC40.260.115(D)(1) from AG-20 and FR-40 to AG-10 and FR-20; and C-3 to CC.

- 2017 On July 11, 2017, council adopted Ord. 2017-07-04 amending CCC40.260.115(D)(1) from AG-10 and FR-20 to AG-20 and FR-40 respectively.

SUMMARY OF PUBLIC INVOLVEMENT PROCESS

Since the passage of Ord. 2017-07-04, Clark County Council has held work sessions on December 13, 2017, May 30, 2018, April 3, 2019, and May 1, 2019 to hear from local experts on recreational marijuana’s effect on public health, public safety, revenue projections, and substance abuse and treatment.

The proposed amendments were sent to the Department of Commerce pursuant to RCW 36.70A.106 on May 16, 2019. On May 16, the proposed amendments were posted on the Clark County website. On May 22, legal notice for the June 6 Planning Commission hearing and a Notice of Determination of Non-Significance and SEPA Environmental Checklist were published in the Columbian and the Reflector newspaper. The proposed amendments were reviewed by the Development Engineering Advisory Board on May 2 and June 6. On May 2 and 16, the Planning Commission held work sessions. On July 2, 2019 a council hearing is scheduled to consider the Planning Commission recommendations on the proposed amendments. Public comments are included in the Planning Commission Hearing binder.

APPLICABLE CRITERIA, EVALUATION AND FINDINGS

The Clark County Unified Development Code, Title 40 (CCC), consolidates all development-related regulations, land use zoning, critical areas, and environmental protection.

CCC is required to be consistent with the 20-year Comprehensive Growth Management Plan. Amendments to CCC respond to a substantial change in policy, better implements applicable comprehensive plan policies, or reflect changes in federal/state law. The proposed amendments reflect changes in state law and are provided in Exhibit 1.

NEXT STEPS

The County Council will hold a public hearing on July 2, 2019 to discuss the proposed amendments to Title 40.

RECOMMENDATION AND CONCLUSIONS

Based on the information presented in this report, staff recommends that the Planning Commission forward a recommendation of **APPROVAL** to Clark County Council.