## STAFF REPORT

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| **Agenda Item:** | 12 | **Name:** | Erin Auzins |
| **Proposed No**.: | 2015-0502 | **Date:** | December 1, 2015 |

**SUBJECT**

Proposed Ordinance 2015-0502 would renew for six months an existing moratorium on the establishment or location of medical marijuana dispensaries and collective gardens.

**SUMMARY**

The council adopted the first medical marijuana moratorium with Ordinance 17726 in December 2013. That Ordinance established a one-year moratorium on the location, establishment or expansion of medical marijuana collective gardens or dispensaries authorized under the state medical marijuana law[[1]](#footnote-1). The moratorium was intended to give the state legislature time to act on the regulatory gap between the largely unregulated medical marijuana law, and the new recreational marijuana law approved by voters with Initiative 502.

The state legislature did not take any legislative action to address the regulatory gap between the state’s regulations for recreational marijuana (I-502) and medical marijuana in its 2014 session. As a result, the Council passed a six-month extension to the moratorium with Ordinance 17940, with the expectation that the legislature would take action during the 2015 session to address this issue.

On April 24, 2015, Governor Jay Inslee signed into law an act[[2]](#footnote-2) that would incorporate the medical marijuana laws into the recreation marijuana regulatory system. This law would more clearly make medical marijuana dispensaries illegal, and would place strict limits on marijuana cooperative systems and collective gardens. These portions of the law become effective in July 2016.

Proposed Ordinance 2015-0502 would extend the moratorium for another six months, through June 2016. This would give the County a tool to prevent any additional collective gardens and dispensaries from locating and operating in unincorporated King County prior to the effective date of these provisions.

**BACKGROUND**

In 1998, Washington decriminalized “medical marijuana” with the passage of Initiative 692. The initiative limited criminal penalties on the use, possession, and cultivation of marijuana by patients who possess "valid documentation" from their physician or medical professional affirming that he or she suffers from a debilitating condition and that the "potential benefits of the medical use of marijuana would likely outweigh the health risks." As this initiative was implemented, a number of areas of concern arose that were not addressed in the original measure.

In 2011, the legislature adopted ESSB 5073 that would have addressed these concerns by developing a framework for regulating medical marijuana dispensaries and establishing a statewide registry of patients with valid authorizations. The Governor vetoed significant portions of the legislation, primarily those elements that would have regulated the sellers and users, while leaving intact several elements of the bill that ultimately became law. One of these elements has been interpreted by the courts to allow the establishment of “collective gardens” that now act as unregulated marijuana dispensaries. While the law establishes the rights of those with authorization to use medical marijuana, the mechanisms that would have allowed law enforcement to validate authorizations were also vetoed.

On November 6, 2012, Washington voters approved Initiative 502 (I-502). Prior to the passage of I-502, persons possessing even minor amounts of the drug could be subject to criminal charges, prison time, and subsequent criminal records. However, I-502 makes no changes to the state’s medical marijuana laws, leaving several areas of concern related to the medical marijuana industry that remained unresolved*.*

On April 24, 2015, the Governor signed Second Substitute Bill 5052,[[3]](#footnote-3) the Cannabis Patient Protection Act, which is intended to regulate the medical marijuana system. The legislation will require that the state (the Department of Health working with the Liquor Control Board) establish a series of standards for medical marijuana and also develop systems for the voluntary registration of patients. The legislation also requires that the Liquor Control Board (to become the Liquor and Cannabis Board in July 2015) establish a system of regulations for the production, processing and retail sale of medical marijuana for patient’s use.

The new regulations would include a retail license with a “medical marijuana endorsement” that would require the retailer to meet special requirements for meeting the needs of medical marijuana users. The legislature has established that “collective gardens” and “dispensaries” operating before the voter approval of I-502 on November 6, 2012, would have a priority in obtaining licenses with this endorsement. These establishments would have to meet all of the same regulatory standards as recreational stores, including the 1,000-foot buffer zone from incompatible uses. The legislation will eliminate the current provisions for “collective gardens” starting July 1, 2016, and as a result, medical marijuana dispensaries will no longer be legal. The legislation leaves in place the legal protections for these collective gardens until July 2016. As a consequence, the “unregulated” medical marijuana dispensaries can continue to operate under existing strictures through the July 1, 2016, date.

**ANALYSIS**

The portions of the new state law that would make medical marijuana businesses either licensed by the state, or illegal under state law, will take effect July 1, 2016. Between the end of the current moratorium on December 16, 2015, and when the new state law and associated agency rules becomes effective, there is a potential risk of new medical marijuana businesses locating in unincorporated King County. The Department of Permitting and Environmental Review (DPER) has used the existing moratorium to close new medical marijuana businesses that have attempted to operate in unincorporated King County in the past two years.

In addition, once the state law is effective, there could be medical marijuana businesses that have not been licensed by the LCB and continue to operate illegally. How the state and the County will coordinate enforcement activities for these illegal businesses has not been resolved.

The proposed moratorium renewal would be in place for six months, which is the maximum allowed by state law.[[4]](#footnote-4) Because of the implementation date of the provisions of 2SSB 5052, the executive may request or the council may initiate additional moratorium renewals through July 1, 2016. If the county chooses not to extend the moratorium, there is a potential risk that medical marijuana businesses locate and operate in unincorporated King County without state approval, which could create additional enforcement activities for DPER and the LCB.

**ATTACHMENTS**

1. Proposed Ordinance 2015-0502

**INVITED**

* John Starbard, Director, DPER

1. Chapter 69.51A RCW. [↑](#footnote-ref-1)
2. Second Substitute Bill 5052 [↑](#footnote-ref-2)
3. The bill as passed by the legislature can be viewed here: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5052&year=2015#history>. The Governor did veto several sections of the bill. The veto letter can be viewed here: <https://crmpublicwebservice.des.wa.gov/bats/attachment/vetomessage/c37d74e7-ddea-e411-8e68-005056ba1e68>. None of the vetoed sections change how medical marijuana businesses would be regulated. [↑](#footnote-ref-3)
4. RCW 36.70A.390 allows renewals of one or more six month periods. The renewal would be in place through June 16, 2015. [↑](#footnote-ref-4)