15. MORATORIUM ON MEDICAL CANNABIS

STAFF REPORT

QUESTIONS FROM COUNCIL ON STAFF REPORT

DISCUSSION

ACTION TAKEN

NOTES:

CITY OF PULLMAN

HIGH Tech, HIGHER Education, HIGHEST Quality of Life

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MEMORANDUM

TO: Mayor and City Council

FROM: Laura D. McAloon, City Supervisor

RE: Discussion of Moratorium on Medical Cannabis

DATE: February 10, 2012

On August 30, 2011, the City Council adopted Resolution No. R-60-11, declaring a moratorium prohibiting medical cannabis (marijuana) collective gardens in all zoning districts within City limits. The moratorium was enacted to provide the City time to study the current conflict between state laws purporting to legalize the possession, use, dispensing and cultivation in collective gardens of cannabis for medical purposes and federal law which states that cannabis cannot be legally possessed or used for any reason. The moratorium is set to expire on March 1, 2011.

During the past five months of the moratorium, I have continued to monitor the issue. No resolution has been achieved in the state vs federal conflict. The Department of Justice has raided and prosecuted medical marijuana dispensaries and grow operations, both in Eastern and Western Washington. Meanwhile, the City of Seattle and other cities have passed comprehensive licensing and zoning ordinances in accordance with state law. Seattle's ordinance is presently being challenged in federal court on constitutional grounds based on the assertion that compliance with the city's licensing requirement subjects the individual to self-incrimination on federal drug possession charges, in violation of the Fifth Amendment. A similar challenge to Montana's medical cannabis legalization law was ruled on a few weeks ago by a federal judge in Montana – in that case, the court ruled that state law permitting possession for medical reasons trumps the federal law banning possession. That ruling is expected to be appealed to the Ninth Circuit.

Back in Washington State, Initiative 502 has been certified to the Legislature by the Secretary of State and that web site states, in part:

> Washington Secretary of State Sam Reed's office has certified Initiative to the Legislature 502, decriminalizing marijuana and regulating it and taxing it much like liquor. Sponsors submitted enough signatures to assure consideration by the Legislature and, failing success there, a statewide vote on the General Election ballot.
>
> ...

> The Legislature can pass the measure as submitted, reject it and let it go to the ballot this fall, ignore it and let it go to the ballot, or let it go to the ballot along with a legislative alternative. ...
>
> (Read more at http://blogs.sos.wa.gov/FromOurCorner/index.php/2012/01/marijuana-initiative-502-certified-to-legislatureballot/)

On January 30, I-502 was referred to the House Committee on State Government and Tribal Affairs, and to the Senate Committee on Government Operations, Tribal Relations & Elections for hearings. It has not passed out of the committees and is expected to be on the next election ballot.

In addition, there have been three legislative bills active this session. Substitute Bill 6265-S has been referred to the Senate Rules Committee and Ways & Means following a hearing in the Committee on Health & Long-Term Care and is still "alive" at the time of drafting this memo. The digest summary of SB 6265-S states that the bill:

> Regulates the medical use of cannabis through nonprofit patient cooperatives, collective gardens, local government regulation of nonprofit patient cooperatives and collective gardens, security requirements for the transportation of cannabis, affirmative defense and arrest and prosecution protections, establishment of a voluntary registry within the department of health, and modification of the state institute for public policy study. (emphasis added)

Copies of both I-502 and SB 6265-S are attached for your information.

On the federal level, Governor Gregoire and the governor of Rhode Island sent a joint request to the Drug Enforcement Agency (DEA) on November 30, 2011, asking for the reclassification of cannabis from Schedule 1 (use and possession banned outright) to a Schedule 2 drug which would enable both federal and state governments to regulate the possession and use of cannabis. To illustrate the distinction, cocaine and methamphetamine are Schedule 1 drugs, while codeine and morphine are Schedule 2 drugs. Unfortunately, some commentators have estimated that it may take the DEA up to ten years to respond to the Governor's request due to the need to study the medical and scientific impacts of the request.

As a result, there is no more clarity in the situation than existed last fall when the moratorium was enacted. With the moratorium expiring next month, the City must make a decision on whether to 1) extend the moratorium to provide for legislative or voter-approved resolution of the conflict; 2) let the moratorium expire and implement local regulations as authorized by the current state law; or 3) let the moratorium expire and do nothing locally, while letting the courts resolve the conflict between state and federal laws. As described below, there may be a local regulatory method that reconciles the conflict and protects the City and its employees from criminal or civil risks.

In my opinion, neither I-502 nor the proposed legislative bills will resolve the inherent conflict between state and federal law that puts City employees at risk of federal criminal prosecution if the City implements and enforces the state's current or proposed regulatory schemes.

Upon consultation with Police Chief Jenkins and federal law enforcement officials, and in light of the continued conflict between state and federal laws, I propose that the City take the following steps:

1. Adopt an amendment to the City's business registration ordinance requiring any person operating a medical cannabis dispensary or collective garden to first obtain a business registration from the Pullman Police Department like all other businesses and vendors in the City.
2. Condition the issuance of a City business registration to medical cannabis dispensaries and medical cannabis collective gardens on the provision of documented approval of the operation of such dispensary or garden from the United States Drug Enforcement Agency (DEA).

This approach provides clarity for City personnel regarding the legality of medical cannabis operations in the City because such operations would not be permitted without DEA approval. It also provides a method to ensure that City personnel will not be subject to federal law enforcement actions as they fulfill their obligation to enforce state laws. It is consistent with the current state law which authorizes local governments to regulate both medical cannabis dispensaries and medical cannabis collective gardens through a local licensing program. The imposition of a business registration requirement of providing written approval from the DEA prior to issuance of a City business registration puts the responsibility for federal law compliance squarely in the hands of the business owner or garden operators, rather than City zoning or business registration staff. The requirement that a business provide a city with proof of compliance with current laws in order to obtain a local business license has been upheld in both Washington courts and federal courts, notably in the *Shaw v. City of Pasco* case involving Pasco's rental business licensing requirements. Both state and federal courts approved the local requirement that landlords must provide proof of compliance with all applicable state, local and federal laws in order to register with the city as a business.

How would the Council like to proceed on this issue, in light of the expiring moratorium on March 1, 2011?

S-4265.2

SUBSTITUTE SENATE BILL 6265

State of Washington 62nd Legislature 2012 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Kohl-Welles, Delvin, Keiser, Pflug, and Regala)

READ FIRST TIME 02/01/12.

AN ACT Relating to regulating the medical use of cannabis through nonprofit patient cooperatives, collective gardens, local government regulation of nonprofit patient cooperatives and collective gardens, security requirements for the transportation of cannabis, affirmative defense and arrest and prosecution protections, establishing a voluntary registry within the department of health, modifying the Washington state institute for public policy study, and providing technical corrections; amending RCW 69.51A.010, 69.51A.140, 69.51A.085, 69.51A.030, 69.51A.043, 69.51A.045, 69.51A.050, 69.51A.055, 69.51A.060, 69.51A.025, and 69.51A.200; adding new sections to chapter 69.51A RCW; adding a new section to chapter 42.56 RCW; creating a new section; repealing RCW 69.51A.047 and 69.51A.040; and providing a contingent effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 69.51A.010 and 2010 c 284 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cannabis" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

(2) "Collective garden" means qualifying patients or their designated providers sharing responsibility for acquiring and supplying the resources required to produce, process, transport, and deliver cannabis for medical use such as: A location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants. Members of a collective garden must only be qualifying patients or their designated providers.

(3) "Correctional facility" has the meaning provided in RCW 72.09.015.

(4) "Corrections agency or department" means any agency or department in the state of Washington, including local governments or jails, that is vested with the responsibility to manage those individuals who are being supervised in the community for a criminal conviction and has established a written policy for determining when the medical use of cannabis, including possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

(5)(a) "Designated provider" means a person who:

((~~(a)~~)) (i) Is eighteen years of age or older;

((~~(b)~~)) (ii) Has been designated in ((~~writing~~)) a written document signed and dated by a qualifying patient to serve as a designated provider under this chapter;

((~~(c) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and~~

~~(d)~~)) (iii) Is the designated provider to only one qualifying patient ((~~at any one time~~)); and

(iv) Is in compliance with the terms and conditions set forth in RCW 69.51A.043.

(b) "Designated provider" includes a qualifying patient who serves as the designated provider for another qualifying patient and who may be in possession of both patients' cannabis at the same time.

(6) "Dispense" means the selection, measuring, packaging, labeling, delivery, or sale of cannabis by a collective garden or nonprofit patient cooperative to a qualifying patient or designated provider who is a member of that collective garden or nonprofit patient cooperative.

((~~(2)~~)) (7) "Health care professional," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

((~~(3)~~)) (8) "Jail" has the meaning provided in RCW 70.48.020.

(9) "Labeling" means all labels and other written, printed, or graphic matter upon any cannabis intended for medical use or accompanying such cannabis.

(10) "Medical use of ((~~marijuana~~)) cannabis" means the production, possession, dispensing, manufacture, delivery, or administration of ((~~marijuana, as defined in RCW 69.50.101(q),~~)) cannabis for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating ((~~illness~~)) medical condition.

((~~(4)~~)) (11) "Nonprofit patient cooperative" means a member run nonprofit corporation registered with the secretary of state under chapter 24.03 or 24.06 RCW but which is not required to be recognized as an organization under 26 U.S.C. Sec. 501(c)(3) by the federal internal revenue service. Nonprofit patient cooperatives dispense cannabis for the medical use of their members if not prohibited by counties, cities, or towns under section 2 of this act and must meet all requirements of this chapter. Members of a nonprofit patient cooperative must only be qualifying patients or their designated providers.

(12) "Peace officer" has the meaning provided in RCW 43.101.010.

(13) "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, date of birth, or address, either alone or when combined with other sources, that establish the person is a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products for purposes of registration with the department of health or its designee. The term "personally identifiable information" also means any information used by the department of health or its designee to identify a person as a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products.

(14) "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system shall be considered part of the same single plant.

(15)(a) "Qualifying patient" means a person who:

((~~(a)~~)) (i) Is a patient of a health care professional;

((~~(b)~~)) (ii) Is eighteen years of age or older or who is under eighteen years of age and whose parent or guardian has provided written consent for the medical use of cannabis by the minor to a health care professional;

(iii) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;

((~~(c)~~)) (iv) Is a resident of the state of Washington at the time of such diagnosis;

((~~(d)~~)) (v) Has been advised by that health care professional about the risks and benefits of the medical use of ((~~marijuana~~)) cannabis; ((~~and~~

~~(e)~~)) (vi) Has been advised by that health care professional that ((~~they~~)) he or she may benefit from the medical use of ((~~marijuana~~)) cannabis; and

(vii) Is otherwise in compliance with the terms and conditions of this chapter.

(b) The term "qualifying patient" does not include a person who is actively being supervised for a criminal conviction by a corrections

agency or department that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision and all related processes and procedures related to that supervision.

(16) "Registration card" means a card issued by the department of health or its designee under section 16 of this act that demonstrates registration with the registry.

(17) "Registry" means the registry developed and maintained by and within the department of health or its designee under section 16 of this act to permit qualified patients and designated providers to register in order to qualify for arrest and prosecution protection. Collective gardens and nonprofit patient cooperatives may also register their locations.

((~~(5)~~)) (18) "Tamper-resistant paper" means paper that meets one or more of the following industry-recognized features:

(a) One or more features designed to prevent copying of the paper;

(b) One or more features designed to prevent the erasure or modification of information on the paper; or

(c) One or more features designed to prevent the use of counterfeit valid documentation.

((~~(6)~~)) (19) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

(f) Diseases, including anorexia, which result in nausea, vomiting, ((~~wasting~~)) cachexia, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

(g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

((~~(7)~~)) (20) "Useable cannabis" means dried flowers of the *Cannabis* plant. Useable cannabis excludes stems, stalks, leaves, seeds, and roots. "Useable cannabis" does not include cannabis products.

(21)(a) "Valid documentation" means:

((~~(a) A~~)) (i) An original statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper and valid for up to one year from the date of the health care professional's signature, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of ((~~marijuana~~)) cannabis; and

((~~(b)~~)) (ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.

(b) In the case of a designated provider, "valid documentation" means the signed and dated document valid for up to one year from the date of signature executed by the qualifying patient who has designated the provider.

NEW SECTION. **Sec. 2.** A new section is added to chapter 69.51A RCW to read as follows:

(1)(a) Counties with a population of less than two hundred thousand and the cities and towns within such counties may enact ordinances providing that nonprofit patient cooperatives are not prohibited from operation within their jurisdiction. Nonprofit patient cooperatives are prohibited within those jurisdictions unless such ordinance is enacted.

(b) Counties with a population of two hundred thousand or more and the cities and towns within such counties may enact ordinances providing that nonprofit patient cooperatives are prohibited from operation within their jurisdiction. Nonprofit patient cooperatives are not prohibited within those jurisdictions unless such ordinance is enacted.

(2) A county, city, or town that does not prohibit nonprofit patient cooperatives under subsection (1) of this section may adopt and enforce requirements for nonprofit patient cooperatives that include but are not limited to: Security requirements; inspection standards, including policies on verifying qualified patient records; limits on square footage; and limits on number of plants and amounts of useable