



City of Covington

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City of Covington

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The City of Covington is a place where community, business, and civic leaders work together with citizens to preserve and foster a strong sense of community.

PLANNING COMMISSION AGENDA

July 21, 2011

CALL TO ORDER

ROLL CALL

Chair Sean Smith, Vice Chair Daniel Key, Jack Brooks, Sonia Foss, Bill Judd, and Alex White.

PLEDGE OF ALLEGIANCE

APPROVAL OF CONSENT AGENDA

CITIZEN COMMENTS - *Note: The Citizen Comment period is to provide the opportunity for members of the audience to address the Commission on items either not on the agenda or not listed as a Public Hearing. The Chair will open this portion of the meeting and ask for a show of hands of those persons wishing to address the Commission. When recognized, please approach the podium, give your name and city of residence, and state the matter of your interest. If your interest is an Agenda Item, the Chair may suggest that your comments wait until that time. Citizen comments will be limited to four minutes for Citizen Comments and four minutes for Unfinished Business. If you require more than the allotted time, your item will be placed on the next agenda. If you anticipate, in advance, your comments taking longer than the allotted time, you are encouraged to contact the Planning Department ten days in advance of the meeting so that your item may be placed on the next available agenda.*

PUBLIC HEARING – NONE

UNFINISHED BUSINESS - NONE

NEW BUSINESS

1. Presentation by Crest Air Park Manager, Ricky Birge, on Required Consultation & Coordination for Covington Comprehensive Plan & Development Regulations (RCW36.70.547) Which May Affect Property Adjacent to Public Use Airports.
2. Discussion of Memorandum from City Attorney on Options for Regulating Medical Marijuana Dispensaries & Community Gardens (ACTION ITEM)

ATTENDANCE VOTE

PUBLIC COMMENT

COMMENTS AND COMMUNICATIONS OF COMMISSIONERS AND STAFF
ADJOURN

*Any person requiring a disability accommodation should contact the City at least 24 hours in advance.
For TDD relay service please use the state's toll-free relay service (800) 833-6384 and ask the operator to dial (253) 638-1110*

Web Page: www.covingtonwa.gov

M E M O R A N D U M

TO: Covington Planning Commission
FROM: Sara Springer, City Attorney
DATE: July 14, 2011
RE: New Medical Marijuana Legislation & Recommendation

The following is a very cursory overview and analysis of changes to state medical marijuana laws passed in the 2011 state legislative session and my recommendation to the planning commission for the city's response to those changes.

I. Background

Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A of the Revised Code of Washington (RCW), creates an affirmative defense for qualifying patients to the charge of possession of marijuana, and provides that such patients can, as an alternative to growing marijuana for their own use, designate a designated provider who can provide medical marijuana to only one patient at a time.

Many jurisdictions have recently seen the establishment of medical marijuana dispensaries within their boundaries that offer marijuana and marijuana products and claim to be operating as designated providers within the meaning of Chapter 69.51A RCW.

II. New Medical Marijuana Legislation—E2SSB 5073

Amended provisions to the medical marijuana regulations in Chapter 69.51A RCW were passed by the state legislature in the 2011 legislative session in Engrossed Second Substitute Senate Bill 5073, and were partially approved by Governor Gregoire on April 29, 2011. The governor vetoed a significant portion of the legislation and expressed her reservations about certain provisions that involved state employees in activity that could be interpreted as in violation of federal laws. Specifically, all provisions in the legislation that provided for licensed producers, processors, and dispensers were vetoed by the governor; all provisions establishing a state registry for patients, providers, dispensers, and collective gardens were vetoed as well.

The following is a general overview of key changes that will be incorporated into Chapter 69.51A RCW as of July 22, 2011:

- Up to ten qualifying patients may join together and have a collective garden with a maximum of forty-five plants.
- A minimum of fifteen days must elapse when a qualified provider switches from being the provider for one qualifying patient to being the provider for a different qualifying patient. This appears to eliminate the argument used by most dispensaries to justify providing cannabis to multiple patients, one after another.
- Nothing in the medical marijuana statutes require an employer with a drug-free workplace policy to accommodate medical use of cannabis.
- There is a broad indemnity provision that protects local government officials for actions taken to enforce the laws regarding medical marijuana if they are made in good faith.
- Cities, towns, and counties may adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes. All such regulations could apply to collective gardens, and could prohibit collective gardens from being sited next to or within a certain designated distance of other collective gardens, thus prohibiting large scale grow operations.

III. Recommendation to Planning Commission

Due to the governor's veto of 36 of the 58 sections of the legislator's bill, the law in its final form has inconsistencies and ambiguities. There currently is and will continue to be confusion regarding local regulation of medical marijuana collective gardens, dispensaries, processing facilities and production facilities, unless and until the laws are changed by the legislature or by citizen initiative. Most likely there will be significant differences in how various local governments approach these issues. Some jurisdictions are already facing legal challenges to their decision to not locate medical marijuana facilities.

Previously, it was recommended to the city council that a moratorium was not imminently needed. Now that the legislature has adjourned and the resulting legislation has done little to resolve the uncertainty of the legal status of marijuana dispensaries and other facilities, it is my recommendation that the planning commission recommend to the city council to pass a one-year moratorium on the zoning, licensing, or establishment of medical marijuana collective gardens, dispensaries, processing facilities, and production facilities. Such a moratorium is in line with the actions of numerous other jurisdictions and would allow the city time to consider zoning, licensing, and taxation regulations for medical marijuana collective gardens, dispensaries, processing facilities, and production facilities.

Unless a zoning moratorium is imposed, medical marijuana collective gardens, dispensaries, processing facilities, and production facilities may seek to locate within the city while the city lacks the necessary tools to ensure that such activity is legal, that the location is appropriate, and that the reported secondary impacts of such facilities are minimized and mitigated.

Under a one-year moratorium, the city would be required to establish a work program to address issues related to determining the legality of medical marijuana gardens, dispensaries, production facilities, and processing facilities, including but not limited to review of the pending dispute between state and federal law enforcement authorities regarding the legality of medical marijuana use under any circumstance. In the event that such uses are ultimately determined to be legal, the work plan should also review and research the most appropriate zoning districts in the city for such medical marijuana uses and develop related development regulations and performance standards applicable to medical marijuana uses in the city as may be necessary.

**Community Development Department
Planning Commission Schedule & Agenda Items
January - December 2011(1st & 2nd Quarters)**

Commission Meeting	Commission Agenda Item	Agenda Item Type	Staff
January 6, 2011	<ul style="list-style-type: none"> Public Hearing & Action on Street Type Amendment in Town Center Zone Discuss Changes to Zoning Code Definitions for Major & Minor Utilities 	<i>Public Hearing</i> <i>New Business</i>	Salina
January 20, 2011	<ul style="list-style-type: none"> Discussion of Banner Sign Code Amendments & Decision Authority for Extension of Commercial Site Development Applications 	<i>New Business</i>	David & Richard
February 3, 2011	<ul style="list-style-type: none"> Meeting Cancelled-No Required Business 	<i>New Business</i>	Richard & David
February 17, 2011	<ul style="list-style-type: none"> Public Hearing & Decision on Code Amendments for Banner Signs and Decision Authority for Extension of Commercial Site Development Permits Discussion of 2011 Comprehensive Plan & Development Regulation Amendment Docket 	<i>Public Hearing</i> <i>New Business</i>	Richard & Salina
March 3, 2011 Meeting Cancelled	<ul style="list-style-type: none"> Presentation of Submitted Items for 2011 Annual Comp Plan Amendment Docket 	<i>New Business</i>	Salina {Richard Absent}
March 17, 2011	<ul style="list-style-type: none"> Public Hearing & Recommendation to Council of Items for 2011 Annual Comprehensive Plan Amendment Docket 	<i>New Business</i>	Richard & Salina
April 7, 2011	<ul style="list-style-type: none"> Meeting Cancelled 	<i>New Business</i>	{Richard Absent}
April 12, 2011 Tuesday Council	<ul style="list-style-type: none"> Joint Study Session with Council to present PC Recommendation on 2011 Comp Plan Amendment Docket 	<i>Study Session</i>	Richard & Salina
April 21, 2011	<ul style="list-style-type: none"> Meeting Cancelled 	<i>New Business</i>	Richard
May 5, 2011	<ul style="list-style-type: none"> Appearance Request by Anderson, Baugh & Associates on "Northern Notch" (20 min.) 	<i>Appearance Request</i>	Richard
May 19, 2011	<ul style="list-style-type: none"> Initial Discussion of New Electric Vehicle Recharging Stations Code Amendments 	<i>New Business</i>	Richard, Brian & Darren
June 2, 2011	<ul style="list-style-type: none"> Discussion of Final 2011 Comp Plan Amendment Docket Continued Discussion on Electric Vehicle Recharging Stations Code Amendments 	<i>New Business</i>	Richard, Salina, & Brian
June 16, 2011	<ul style="list-style-type: none"> Public Hearing on Final 2011 Comp Plan Amendment Annual Docket 	<i>Public Hearing</i> <i>New Business</i>	Richard & Salina

**Planning Commission Schedule & Agenda Items
July- December 2011 (3rd & 4th Quarters)**

<u>Commission Date</u>	<u>Commission Agenda Topics</u>	<u>Agenda Type</u>	<u>Staff Needed</u>
July 7, 2011	<ul style="list-style-type: none"> • Discussion, Final Action, & Recommendation to Council on 2011 Comp Plan Amendment Docket {Council Hearing on Aug. 9} 	<i>Continued Business</i>	Richard & Salina
July 21, 2011	<ul style="list-style-type: none"> • Discussion of Medical Marijuana Uses in Zoning Districts-Council Direction • Discussion of Crest Airpark & Requirements for Consultation on Land Use Plans & Regulations-Impact on Downtown Plans 	<i>New Business</i>	Richard & Salina
August 4, 2011	<ul style="list-style-type: none"> • Discussion of Electric Vehicle Charging Station Code Amendments-State Mandate • Discussion of Zoning Regulations for Indoor Gun Ranges-Council Direction 	<i>Continued Business & New Business</i>	Richard, Salina, & Brian
August 18, 2011	<ul style="list-style-type: none"> • Public Hearing on Electric Vehicle Charging Station Zoning Code Amendments • Continued Discussion of Zoning Regulations & Indoor Gun Ranges-Council Direction 	<i>Public Hearing & Continued Business</i>	Richard & Salina
September 1, 2011	<ul style="list-style-type: none"> • Possibly Cancel for Labor Day Weekend 	<i>None</i>	
September 15, 2011	<ul style="list-style-type: none"> • PC Hosts Joint Commissions Meeting on State of the City Message by City Manager 	<i>New Business</i>	Salina
October 6, 2011	<ul style="list-style-type: none"> • Joint Meeting with Planning Commissions of Maple Valley & Black Diamond 	<i>New Business</i>	Richard
October 20, 2011	<ul style="list-style-type: none"> • Cancel Meeting (Staff at State APA Conference) 	<i>None</i>	
November 3, 2011	<ul style="list-style-type: none"> • Election of Officers • Public Hearing on Regulation of Indoor Gun Ranges 	<i>Public Hearing</i>	Richard
November 17, 2011	<ul style="list-style-type: none"> • Final Decision & Recommendation on Regulation of Indoor Gun Ranges 	<i>Continued Business</i>	Richard
December 1, 2011	<ul style="list-style-type: none"> • Discussion of 2012 Work Plan Items for Recommendation to Council 	<i>New Business</i>	Richard
December 15, 2011	<ul style="list-style-type: none"> • Meeting Possibly Cancelled for Holidays 	<i>New Business</i>	
TBD—2012	<ul style="list-style-type: none"> • Placeholder 		