PLANNING COMMISSION MEETING

September 3, 2014
6:30 p.m.

AGENDA

City of

BONNEY Lake

"Where Dreams Can Soar"

The City of Bonney Lake's Mission is to protect the community's livable identity and scenic beauty through responsible growth planning and by providing accountable, accessible and efficient local government services.

www.ci.bonney-lake.wa.us

Location: Justice & Municipal Center, 9002 Main Street East, Bonney Lake.

Planning Commission Members:
Grant Sulham – Chair
L. Winona Jacobsen – Vice Chair
David Baus
Brad Doll
Dennis Poulsen
Craig Sarver
Debbie Strous-Boyd

City Staff:
Jason Sullivan, Senior Planner
Debbie McDonald, Planning Commission Clerk

I. Call to Order

II. Roll Call & Next Meeting Poll
(September 17, 2014)

III. Approval of Minutes

IV. Public Hearing

Motion: "I move to continue the public hearing on Resolution 2404 related to the Community Development Element to October 1, 2014."

V. Public Comments and Concerns

VI. New Business

A. Open Public Meeting Training

VII. Old / Continuing Business

A. Regulation of Marijuana in the City of Bonney Lake

VIII. For the Good of the Order

A. Correspondence

B. Staff Comments

C. Commissioner Comments

IX. Adjournment

Next Meeting: September 17, 2014

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PLANNING COMMISSION MEETING

AUGUST 20, 2014
6:30 p.m.

MINUTES

City of

BONNEY Lake

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Location: Justice & Municipal Center, 9002 Main Street East, Bonney Lake.

I. Call to Order: The meeting was called to order at 6:30 P.M.

II. Roll Call: Planning Commissioners in attendance were Grant Sulham – Chair, Winona Jacobsen – Vice Chair, David Baus, Brad Doll, Dennis Poulsen, Craig Sarver and Debbie Strous-Boyd.

Staff members in attendance were Senior Planner Jason Sullivan and Planning Commission Clerk Debbie McDonald.

III. Approval of Minutes: None to above at this time

IV. Public Hearing: None

V. Citizen Comments

Motion was made by Commissioner Sarver and seconded by Commissioner Doll to move Citizen Comments to after Old/Continuing Business – Regulations of Marijuana in the City of Bonney Lake.

Motion approved 7-0

VI. New Business: None

VII. Old/Continuing Business

A. **Regulation of Marijuana in the City of Bonney Lake:**

Senior Planner Sullivan introduced the panel, City Attorney Kathleen Haggard, Building Plans Examiner Scott Fielding and Deputy Fire Chief John McDonald.

City Attorney Kathleen Haggard presented a power point with the most current information as of August 20. She wanted to inform the Commissioners with the information they will need to make their decision and what options they have.

Plans Examiner Scott Fielding discussed the permits needed to open a store. It gets more complicated when you get into growing and processing the THC. The concern comes with how to dispose of the chemicals used in extracting the THC.

Assistant Fire Chief John McDonald addressed the hazards with the processing of the marijuana. The retail stores do not present much of a problem since there are similar retail establishments already in the City.

Commissioners came to a consensus on issues they would like addressed with the marijuana moratorium:

- Ban producers and processors
- Expand the definition on parks to include Swiss Park and other Home Owner Association Parks
- Require Crime Prevention through Environmental Design guidelines
- Include the indemnification language that was in Renton's ordinance

VIII. Citizens Comments

No one signed up for Public Comments and no comments were given.

B. **Planning Commission Futures**

Senior Planner Jason Sullivan updated Commissioners on upcoming Planning Commission meetings.

IX. For the Good of the Order

Senior Planner Jason Sullivan mentioned there will be a Short Course in Buckley on September 16th if any of the Commissioners are wanting to attend. The Department of Ecology will not require grading on docks in the Shoreline Master Plan.

Commissioners appreciated the discussion panel and were disappointed the Police Chief was unable to attend.

X. Adjournment

Motion was made by Vice-Chair Jacobsen and seconded by Commissioner Sarver to adjourn.

Motion approved 7-0

Meeting adjourned at 8:21

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Debbie McDonald Planning Commission Clerk

Bonney Lake
Planning Commission

Memo

Date : September 3, 2014

To : Mayor Johnson and City of Bonney Lake City Council

From : Bonney Lake Planning Commission

Re : **Marijuana Regulations**

PURPOSE:

On April 8, 2014, the City Council passed Ordinance 1481 extending the moratorium related to the issuance of permits associated with the recreational marijuana industry and adding the development of regulations to the Planning Commission's work plan. The purpose of this memo is to present three options developed by the Planning Commission related to the regulation of the recreational marijuana industry.

BACKGROUND:

In 1998, voters approved I-692 which legalized the use of marijuana for medicinal purposes. In 2011, the Washington State Legislature approved Engrossed Second Substitute Bill (ESSB) 5073 allowing medical marijuana collective gardens which was partially vetoed by Governor Gregoire. The veto removed all sections that established a state registry for collective gardens. The remaining sections of ESSB 5073 were codified as Chapter 69.51A RCW.

Initiative 502 (I-502), now codified in Chapter 69.50 RCW, was passed by Washington voters in 2012. The initiative authorized three types of license (producer, processor, and retailer) and directed the Washington State Liquor Control Board (LCB) to develop rules regarding the issuances of the licenses and regulating the production, processing, and sale of marijuana. As explained in the City Attorney's letter to the City Council on October 14, 2013 regarding recreational and medical marijuana:

> A producer's license authorizes its holder to produce, possess, deliver, distribute, and sell marijuana. A processor's license authorizes its holder to process, package, and label marijuana and marijuana products for sale to marijuana retailers. A retailer's license authorizes its holder to possess, deliver, distribute, and sell usable marijuana and marijuana-infused products. A single licensee can

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> hold licenses for both production and processing. However, a marijuana retailer cannot hold a production or processing license. All three types of marijuana licenses are subject to regulation by the Liquor Control Board and are also subject to the Board's annual renewal. Additionally all three licenses are limited to the specific location for which the license is issued and are not freely transferrable from the licensee to another individual.

Final rules went into effect on September 16, 2013, at which time applications for licenses could be submitted to the LCB. The major provisions of the rules adopted by the LCB, codified as Chapter 314-55 WAC, include:

- Provisions that require businesses to allow law enforcement office unfettered access, without notice or cause. This includes a personal residence. Thus home occupation businesses are not allowed.

- Prohibition on allowing employees or customers to consume marijuana or marijuana-infused products on the premises.

- Prohibition that businesses and advertising may not be located within 1000 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or any game arcade (where admission is not restricted to persons age twenty-one or older).

- Significant limitations placed on retailers of marijuana by the LCB as explained in the City Attorney's October 14, 2013 letter:

  > Retailers are not allowed to sell anything other than usable marijuana, marijuana- infused products, or products related to the storage or use of marijuana or marijuana-infused products. RCW 69.5O.357; WAC 314-55-079. Retailers are prohibited from selling pure marijuana extract, in addition to being prohibited from selling their products over the internet or by home delivery. Retailers are restricted to a 1,600 square inch sign stating the business's name and may not display usable marijuana or marijuana-infused products in a manner that makes them visible to the general public.

- Required background checks which will be used to deny licenses to those who have a criminal background that exceeds a certain threshold based upon a point system developed by the LCB. The point system is provided in WAC 314-55-040.

- Extensive security requirements on licensees as explained in the City Attorney's October 14, 2013 letter:

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> All employees are required to display an identification badge issued by the licensed employer at all times when they are on the premises. Each licensed premises must have a security alarm system installed on all perimeter entry points and all perimeter windows. Additionally, each licensed premises must maintain an extensive surveillance system, as detailed in the WAC 314-55-083.
>
> The regulations also contain traceability requirements to ensure that marijuana or marijuana-infused products do not make their way out of the regulated stream of commerce. WAC 314-55-083(4). These traceability requirements include providing the Liquor Control Board with notification of certain events such as harvesting plants, destroying marijuana or marijuana products, and any theft of an item containing marijuana. The licensee must also maintain a complete inventory and retain all point of sale records.
>
> Any time a licensee transports marijuana or a marijuana-infused product, the licensee must notify the board of the amount and type of marijuana products being transported, along with the name of the transporter and the times of departure and expected delivery. Licensees who receive such shipments must also report the amount and type of marijuana products received. WAC 314-55-085.
>
> To further ensure that marijuana products do not escape the state-regulated stream of commerce, the Liquor Control Board has also included extensive marijuana waste disposal procedures in its regulations. WAC 3I5-55-097.

I-502 imposes a 25% excise tax at each transaction point (producer to processor, processor to retailer, and retailer to consumer) but local governments will not receive any of the excise tax revenues. Local governments will receive sales tax revenue that will be collected on retail sale of marijuana in the same way they do for all retail sales.

I-502 does not supersede, or even address, regulations pertaining to medical marijuana. Because I-502 is silent regarding medical marijuana it is generally viewed as creating a separate licensing process for providing marijuana for recreational use and thus any existing regulations for providing marijuana for medicinal use will remain as-is. That said, it is clear that existing outlets providing medical marijuana will not automatically become outlets licensed by the State, although they still could apply to be a licensed outlet. The City currently has not medical marijuana collective gardens and the use is prohibited in the City.

DISCUSSION:

The City Council has directed the Planning Commission to study and propose development regulations to the Council on or before the expiration of the moratorium. The Planning Commission was directed to study a range of approaches to regulation, including zoning,

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development regulations, and a complete or partial prohibition in all zones. This Planning Commission has developed three different options for the Council to consider: (1) Complete Ban on medical and recreational marijuana; (2) allow retail establishments and ban producers, processors, and collective gardens; and (3) continue to ban collective gardens and only rely on the LCB regulations to control recreational marijuana.

I. Option 1: Permanent Ban of All Marijuana Businesses

The first option that is available to the City is a complete ban on all marijuana business, both retail and medical/collective gardens. In exploring this options the Planning Commission first explore question related to both state and federal preemptions; specifically,

1. Whether or not the City was preempted from establishing a complete prohibition on marijuana business in light of I-502; and

2. Whether or not the City can rely on the Federal Control Substance Act of 1970 (CSA) to ban marijuana businesses.

Based on memos issued by the Washington State Attorney General (AG), the City is not preempted by state law from total prohibiting marijuana related businesses; however, the City cannot rely on the CSA to ban business licenses and permits for marijuana related businesses.

A. State Preemption of Local Ordinances

The AG issued AGO 2014 No. 2 on January 16, 2014 which stated that I-502 did not include any specific language to preempt a local jurisdiction ability to regulate marijuana business. The opinion went on to concluded that give the strong presumption against finding that state law preempts local ordinances, the board power granted by the Washington Constitution to local jurisdiction to regulate land use, and the lack of any specific preemption language in I-502, cities do have the authority to ban marijuana procedures, processors, and retailers. While the Courts are not bound by the AG's opinion it is given substantial wait by the Courts. However, the LCB has indicated that a local ban will not be reason that the LCB would deny a licenses and it would be up to the local jurisdiction to enforce the ban.

The Washington State Court of Appeals – Division 1 did uphold the authority of cities to ban collective gardens since the preemption against local bans was only for collective gardens registered with the state and there is no state registry for collective gardens as the result of Governor Gregoire's veto. However, it is unclear whether or not the

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Washington State Courts would reach the same conclusion that cities have the authority to prohibit other marijuana business authorized under Chapter 69.50 RCW

B. Federal Preemption Marijuana Regulations

Currently, the CSA still prohibits the possession and distribution of marijuana for any purposes. However, the City Attorney's October 14, 2013 letter, stated that, "… a majority of courts of held that municipalities may not rely of the federal CSA's preemption of conflicting state laws to justify passing ordinances banning marijuana." The reason that the City should not rely on the CSA to prohibit marijuana business is further explained in the Washington State Attorney General's Memorandum Responding to Cross-Motions on Summary Judgment in the case of *MMH v. City of Fife*, which takes the position that since the CSA contained specific language that the law did not preempt the entire field of regulations related to marijuana there is no preemption of local and state laws and as such City's cannot rely on the CSA to ban marijuana business authorized under I-502.

II. Option 2: Establish Zoning Regulations for Marijuana Businesses

The second option that is available to the City, is to establish specific zoning and land use controls related to the regulation of marijuana, both retail and medical/collective gardens.

The AG's memorandum in the Fife case takes the position that when Congress enacted the CSA the Congress included specific language that it was not preempting the entire field of regulation related marijuana and as such states are allowed to enact laws related to marijuana that maybe different than the federal law; to include allowing the sale of marijuana.

The AG's memorandum also takes the position that based on previous federal court decision related to medical marijuana, jurisdictions that issue business licenses or permits for business that produce, process, or sale marijuana would not meet the Federal standard for aiding or abetting a violation of the CSA.

The US Department of Justice Memo issued on August 29, 2013 indicates that the federal enforcement proprieties under the CSA are to:

- Prevent the distribution to minors
- Prevent the revenue from the sale of marijuana from going to criminal enterprises
- Prevent the diversion of marijuana from states where it is legal to states where it is still illegal

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- Prevent state-authorized marijuana activity from being used as a cover or pretext from trafficking of other illegal drugs or other illegal activity.

- Prevent violence and use of firearms in the cultivation and distribution of marijuana

- Prevent drugged driving

- Prevent growing of marijuana on public lands

- Prevent marijuana possession and use on federal lands.

The Department of Justice Memo provides that states and local jurisdiction which have adopted rules legalizing marijuana and have implemented strong regulatory systems would not treated Federal priorities under the CSA and may affirmative address those priorities by prevent the sale to minor and removing the illicit marijuana trade.

Based on these opinions, a number of cities within Washington have adopted regulations related to the production, processing and sale of marijuana for recreational purposes. The regulatory approaches from a number of large and small cities in Washington is provided below:

- Carnation limits all marijuana uses to the City's Horticultural Zone. Carnation does not adopt any additional standards than those established by the LCB.

- Des Moines limits all marijuana uses areas zoned Business Park which is a light industrial zone and two commercial zones along SR-99 within the City. Des Moines does not adopted any additional standards than those established by the LCB.

- Ellensburg allows marijuana uses in all of the commercial zones in the City. In addition to the LCB regulations, the City limits the maximum size of retail facilities to 3,000 square feet, prohibits drive-thru facilities, requires that all productions facilities be located in-doors, and prohibits all off-site signage.

- Gig Harbor allows marijuana uses in some of the City's commercial zones. In addition to the LCB regulations, the City requires that no collective garden or other marijuana use be within 1,000 feet of each other, establishes parking requirements, and expands the definition of game arcade. Gig Harbor also establishes a more formal permit review process in addition to any required building permits and state licenses.

- Issaquah allows marijuana uses in some of the City's commercial zones. In addition to the LCB regulations, the City requires that no collective garden or other marijuana use

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be within 1,000 feet of each other and requires that all marijuana use be within an enclosed building. Issaquah also establishes security requirements in addition to the LCB regulations related to security cameras and implementing crime prevention through environmental design (CPTED) regulations. Issaquah also utilizes a more formal permit review process in addition to any required building permits and state licenses

- Renton allows marijuana uses in some of the City's commercial zones provided that the use is within an enclosed building or structure. While Renton simply adopts the LCB regulations to govern marijuana use, the City requires that any person obtaining a business license from the City for a marijuana use to:

  > … indemnify and defend the City, its officers, elected officials, employees, attorneys, agents, insurers, and self-insurance pool, if any, against all liability, claims and demands, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the marijuana-related business that is the subject of the license. The licensee further agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees.

  Renton's procedures also require that the person obtain the business licenses from the City acknowledges that marijuana is still illegal under federal law and that:

  > Based on the Supremacy Clause and federal law in general, the applicant may still be subject to arrest, prosecution, imprisonment, and/or fines for violating federal law, the Renton [sic] shall have no duty, responsibility, or liability based on any of those events, and that Renton may be the entity to arrest, prosecute, imprison or fine the applicant.

Each city took slightly different approaches and are provided to simple illustrative some of the approaches taken by cities.

A complete map of the approaches, to include prohibition, taken by cities within Washington is available on the MSRC website at the following link: http://www.mrsc.org/subjects/legal/502/recmarijuana.aspx#rreads. The interactive map provides links to the actual ordinance adopted by cities by clicking on the city and then the ordinance link provided in the popup.

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In addition to the zoning related issues, there are a number of other safety and environmental issues associated with producers and processors.

A. Air Pollution and Odors

The Clean Air Agency's primary concern is the emissions that may come from facilities for producers and processors. The primary concern is that grow operations create a significant amount of odorous emissions which may cause nuisance impacts off-site, if they are not properly controlled and managed by the licensees. As a result of these concerns, producers and processors are required to obtain a license from the Clean Air Agency in addition to the license from the LCB. The permits entail a case-by-case review of individual applications and will result in each facility using the best available control technology to control odor and other emissions. The Clean Air Agency does not have concerns related to retail operations.

Given that producers and processors are required to obtain a license from the Clean Air Agency, the construction activities associated with these use would not be categorical exempt from SEPA pursuant to WAC 197-11-800(1) and (2). Therefore, the City would have to complete a review under SEPA for every building permit, including tenant improvements, associated producers and processors.

B. Hazardous Materials

The production and processing of marijuana involves a number of chemicals and other hazardous materials.

During the grow operations, producers use a number of fertilizers and pesticides that must be treated before entering the City's sewer or storm water system. Grow operations also pump oxygen into indoor grow operations to provide an oxygen rich environment that facilities plant production and also increase the fire danger as high oxygen environments are highly flammable.

During the processing of marijuana, hydrocarbon solvents like N-butane and isobutane are used to extract tetrahydrocannabinol (THC) from other parts of the plant. These materials are highly combustible and must be used correctly to prevent explosions. In addition to the hydrocarbon solvents other solvents are used like ethanol, propylene glycol, and vegetable glycerin. In addition to the fire hazardous of the solvents, steps must also be taken to ensure that the waste products from processing do not end up in the City's sewer or storm water systems.

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C. Energy Consumption

One of the biggest environmental concerns with indoor grow operations is the carbon foot print of the industry. Indoor grow operations typically rely on multiple 1,000 watt High Intensity Discharge (HID) Grow Lights that are either high pressure sodium or metal halide. The energy consumption for **one** HID Grow Light is approximately 360 kilowatts (KW) per month. A small grow operation can easily use 15 grow lights consuming 5,400 KW per month. The average single family home utilizes 700 to 1,200 KW per month.

D. Food Safety Regulations

Typically businesses that handle or process food for sale for human consumption is required to get a license from the Washington State Department of Agriculture (WSDA). While marijuana-infused products must be made in facilities that meet the WSDA requirements in Chapters 16-165 and 167-167, the Assistant Director of the WSDA issued a letter on May 6, 2014 stating that individuals interested in producing marijuana-infused products would need to get a license from the LCB. The letter also stated that WSDA license facilities are not allowed to process both conventional food products and marijuana infused products do to safety requirements. At this time there does not appear to be inspection and license procedures for marijuana-infused food products.

At the federal level, food handling and process are either regulated by the USDA or the FDA to ensure that safety of the food supply. However, since marijuana is still illegal under federal law, the USDA and FDA will not issue license or inspect producers of marijuana-infused products.

The Planning Commission would recommend that if the City wanted allow any marijuana related business that the City should only allow retail establishments. Under this recommendation the City Council would adopt a ban on producers and processors given the number of possible environmental and safety impacts and continue to ban on collective gardens. In addition to LCB requirements for marijuana retailers, the following regulations should be adopted, if the City Council chooses to allow retail operations in the City:

A. Expand the Definition of Parks/Playground

The current definition of playground and public park used by the LCB in WAC 314-55-010(16) and (17), respectively, requires that the playground or park be owned and/or managed by a city, county, state, or federal government. Based on these definitions, marijuana business can be located within a 1,000 feet of a private park facility like Swiss Park or homeowner association parks. Given the intent of the requirement to keep these

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types of uses away from areas where children congregated, the Planning Commission would recommend that as part of any adopted regulations the definition of park and/or playground used to issue City permits included Swiss Park and all parks owned and maintained by homeowner associations.

B. Include Liability Language

The Planning Commission also recommends that if the City Council allows retail marijuana business that the indemnification language in the Renton Ordinance be include in the City's regulation. The City may also want to consider requiring that that the insurance for the business required by WAC 314-55-082 name the City as additional insured for claims or lawsuits arising out of the operation of the business. Licensees are already required to identify the LCB as an additional insured on all insurance policies as a condition of the license per WAC 314-55-082(3).

C. Require Crime Prevention Through Environmental Design

Crime Prevention Through Environmental Design (CPTED) includes strategies implemented to directly modify the environment to deter criminal activity and increase overall safety for citizens by ensuring that the layout and design of a building does not facilitate criminal activity (i.e. poor lighting, overgrown landscaping, doors located dark corners of a building, building layouts that provide exterior hiding spaces, etc.)

III. Option 3: Rely Solely on LCB Regulations for Recreational Marijuana Businesses

The third option is simply to allow the current moratorium expire and rely on the City's existing land use controls and the LCB regulations to regulate marijuana businesses. Within Bonney Lake, the only areas were marijuana uses could be allowed under the State's regulations would be a portion of Midtown and Eastown as a result of the 1,000 foot buffer zone established by WAC 314-55-050(10). Marijuana uses are also not allowed in association with a residential structure pursuant to WAC 314-55-015(5).

CONCLUSION:

At this time the Planning Commission is looking for further guidance from the City Council as to the City Council's preferred option. The Planning Commission is aware that the identification of a preferred option does not obligate the City to vote in favor of that option when the final ordinance is presented to the City Council.

In addition to identifying a preferred option, the Planning Commission is requesting that the City Council extend the moratorium for an additional 6 months in order to provide sufficient time to prepare a draft ordinance, complete the required SEPA review, provide the required sixty day

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notice to the Department of Commerce, conducted the required public hearing on the draft ordinance, and provide time for final council action on the draft ordinance.

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