

Castle Rock City Council  
Special Meeting/Public Hearing  
August 24, 2011

#### CALL TO ORDER

Mayor Pro-Tempore Earl Queen called the special meeting of the Castle Rock City Council to order at 6:05 p.m. followed by the Pledge of Allegiance. The following councilmembers were present: Ray Teter, Glenn Pingree, and Jack Reilly. Mayor Helenberg and Councilmember Mask were absent. Also present: City Attorney Frank Randolph, City Planner T.J. Keiran, Planning Commission members Nancy Murphy, Gwen Boss, Gordon Snyder, Richard Heltemes and Brenda Hornbuckle, Planning Commission Secretary Joanne Purvis, Secretary Barbara Roller and Clerk-Treasurer Ryana Covington.

Purpose of the meeting: to take public testimony on interim Ordinance No. 2011-08, which was passed July 11, 2011, under declaration of emergency. This ordinance adopts official zoning controls regarding medical marijuana collective gardens for a period of six months, to be in effect while the city drafts, considers, holds hearings and adopts detailed collective garden zoning regulations. Public input provided at this Special Meeting/Public Hearing will be taken into consideration by City Council in formulating findings of fact and conclusions of law relating to the interim zoning. At the regular city council meeting scheduled for September 12, 2011 City Council shall take action to either adopt findings of fact on the interim zoning or cancel the interim zoning.

Keiran outlined that the planning commission members are present to hear testimony on the proposed interim zoning ordinance. They will be taking the testimony into consideration, when developing standards for a final ordinance to present to council.

#### Speakers included the following:

Jon Griffin, Master Gardener, WSU Extension Service provided a Power Point presentation on the needs of plants for both indoor and outdoor year around gardens. His presentation included the importance of evaluating conditions for water, light sources, air quality, temperature and nutrients, for plants grown in both soil and hydroponic gardens. Increasing CO2 levels will create humidity; which plants need.

Branden McNew, Castle Rock Patrol Officer, stated he has received specialized training regarding drug interdiction and worked with the Drug Task Force. He offered perspectives from a law enforcement basis and provided three examples of recent calls relating to marijuana issues. He stated that people have been known to abuse many different types of substances, from alcohol to food consumption. He pointed out that not all medical marijuana patients are engaged in illicit behavior; however there are some who try to take advantage of the situation. McNew stated the Drug Task Force distributes a questionnaire to users. Information obtained from this questionnaire indicates that 100% of users stated their first drug of choice was marijuana. This however, does not mean that all medical marijuana patients will progress to heavier drug use.

Rama Mitchell, substance abuse treatment counselor, provided information pertaining to treatment trends since 2002 in adolescents and adults. According to the 2010 Healthy Use

Survey which was provided to teenage students, indicated that marijuana is the drug of choice and that the perception of harm has decreased among that age bracket. He stated the drug is still considered illegal and he urged parents, teachers and peers to communicate the dangers of substance abuse.

Frank Randolph, City Attorney provided a Power Point presentation pertaining to the legal issues of collective gardens and also the planning issues that the city needs to address. The 1970 Federal Controlled Substance Act (CSA) identifies marijuana as a Schedule 1 drug, with a high potential for abuse. In 1971, Washington State Controlled Substances Uniform Act mirrored the Federal CSA. Both of these are still valid law. Washington State voters approved I-692 in 1998 which allows the use of marijuana for medical purposes for patients with terminal or debilitating illness, providing a doctor recommends such use. This has created a conflict between the State and federal laws. ESSSB5073, Section 401 states that use in compliance, now does not constitute a crime and the qualifying patient/provider may not be arrested, prosecuted or subject to other criminal sanctions or civil consequences. However high demand for marijuana makes diversion to illegal users a concern for patients, the public and law enforcement. The US Supreme Court also has reviewed the problem of diversion, citing the following concerns; economic incentive for physicians, the physician recommendations are open-ended (no dosage/duration for use), and the terms for qualifying illness is broad. Washington State ESSSB5073 restricts that physicians cannot have practices solely for authorizing cannabis and there cannot be any advertisement for medical cannabis. They also cannot hold an economic interest in the enterprise which produces, processes or dispenses medical marijuana use. Randolph noted that collective gardens became allowable in Washington State July 22, 2011. Collective gardens allow up to ten qualifying patients to grow for their own use a total of up to 45 plants and 72 ounces of usable marijuana. Prior to the collective garden initiative, a qualified individual could grow, on their own, up to fifteen plants, and possess up to 24 ounces of usable marijuana for their own use.

Randolph discussed experiences in other cities that have similar cannabis laws for medical marijuana establishments. Those cities have had issues with distinctive odors in neighborhoods causing respiratory problems, excessive electrical use (fire hazard), development of attractive nuisances relating to theft/robbery and diversions.

Mr. Randolph noted that Section 1102 of the new legislation affirms that cities may adopt and enforce zoning requirements, business licensing requirements, health and safety requirements and business taxes. The city is currently trying to develop zoning laws to address issues that other cities have expressed concerns for. Randolph outlined the points included in the interim zoning ordinance, which included the following:

- allowed in the C-2 Highway Business District
- not within 300 feet of schools, churches, youth-oriented facilities, libraries or residential treatment facility
- if indoors, not within 100' of occupied legal residence parcel and enclosed by a 6' fence
- not visible from a public place
- no more than one garden per parcel
- parcel must be owned or leased to one of the members
- qualifying patient may not be a member of more than one garden
- must be member for at least 30 days before changing
- maintain membership records for three years

Randolph stated if the city council wants to proceed with this ordinance, these regulations will be in effect for the next six months to allow the planning commission to complete their work. If nothing happens by January, Randolph stated the ordinance would expire at that time.

James Barber Sr., representing the Healing Hands of God. Barber stated that he felt the proposed ordinance contained many flaws. ESSSB 5073, Section 403 did not allow the city to supersede State law and he stated the policing power of the city is already in place through adoption of the International Building Code. Barber provided the following comments summarized below:

- the interim ordinance cites Section 1102 of ESSSB 5073 as allowing cities to adopt regulations for zoning requirements. He stated Section 1102 refers to dispensaries, not collective gardens.
- collective gardens has been approved by the legislature and under the Washington State Growth Management Act, if no commercial zone is established, the city is not required to adopt zoning to accommodate dispensaries.
- he felt the federal government will not come into the city to enforce federal law for just 45 plants and the city cannot create laws to interfere in the privacy of qualified patients under the recent legislation. However, cities can regulate dispensaries under Section 1102.
- cited RCW 34.05.570 requires a burden of proof to be established to demonstrate validity of an action.
- stated that RCW 19.27.095(1) requirements of a full application must be defined by local ordinance and this is already in place by the International Building Code; the city does not need to add more.
- stated the public rights are already vested and he cited the Washington State Zoning Vested Rights Doctrine, Washington Law Review of 1981.
- persons should be able to define their conduct and he stated this is a conduct rule, not a zoning enforcement issue.
- stated that by restricting collective gardens to the C-2 Commercial Zone takes away a person's personal rights as patients and providers and transforms them into a business. He felt this action makes it an imminent domain issue which he stated requires notice and just compensation for taking away use of personal property for qualified medical marijuana card holders.
- cited various Washington State policies, including Section 403 that he said are vested rights doctrines.
- stated the history of medical marijuana is derived from 6950, Controlled Substances Therapeutic Research Act, which is based on Article 1(7) of the Washington State Constitution and no access to private information and no civil or criminal process is allowed.
- stated that a local ordinance conflicts with and is preempted by state law if it is repugnant to a matter of state-wide concern; and medical marijuana is a state-wide concern.
- the legislature declared the purpose of the Medical Marijuana Use Act was to enhance the access of patients and providers to medical cannabis through collectives and cooperatives and to promote unified consistent application of the Act through all counties. He felt that Castle Rock is disagreeing with the legislature's intent and therefore cannot enact laws to impede this intent. He felt the city does not understand the State Act.
- read an email from Mike Cook, Commander of the Skamania-Clark County Drug Task Force that stated the legislative bill did not ban dispensaries; cities can zone for dispensaries, but cannot outright preclude them.
- felt the city's requirement to have the name and address of all qualifying patients applying for

the permit and proof of qualifying status is not allowed under medical privacy laws.

- Section 4 (E)(3) of the interim ordinance states that the city is issuing a permit, but the members are not immune from federal prosecution; he felt this constitutes a contradiction.
- felt the city officials are using their individual powers, rather than acting in official capacity.

#### Public Comments:

Steve White, Sheriffs Chaplain and twelve year resident of Castle Rock stated he is opposed to the medical marijuana law. He thanked city council for implementing zoning regulations to protect the city.

Paul Kessler, Castle Rock resident, stated he is a cancer survivor and he spoke in support of the use of medical marijuana and non-traditional medicine.

Diana Johnson former Kelso City Councilmember, introduced Sherry Roberts. Roberts suffered the effects of melanoma to the eye. Johnson stated Ms. Roberts was in terrible pain, is not a criminal or a drug addict and Johnson stated the use of medical marijuana helped to control the pain.

Robert Terry, Longview, spoke of the benefits of medical marijuana use. Noted that THC is a natural substance.

Mike Lerma, Pastor of the Castle Rock First Baptist Church, voiced concern over the availability of this illegal substance to children. Concerned that the location of the existing clinic should be relocated to reduce exposure.

Donna Clark, Longview, stated her husband died from cancer. Chemotherapy and radiation created other issues and the use of marijuana increased his appetite, enabling him to eat.

Peggy Button, Castle Rock, stated medical marijuana patients should not have to travel to obtain their medicine. Felt Castle Rock has the resources already existing in our community. Stated Cannabis is not a drug; it is an herb.

Sherry Roberts, felt that medical marijuana patients are not criminals and she described how medical marijuana has helped her after her surgery.

Lori Baker, Castle Rock, thanked city council for taking quick action to implement interim zoning regulations.

Ray Hepler, stated he has a medical condition regarding back problems. He noted that he uses a back brace to stabilize his issue and felt that if he used marijuana for his medical condition, it would not be beneficial to his lifestyle.

Melissa Robinson, owner of Healing Hands of God. Stated she is a mother of six children. Noted that the current law allows for 15 plants to be grown by qualifying medical marijuana patients, with an additional 15 plants to be grown by a qualified provider; for a total of 30 plants per house. Collective gardens allow for only 15 more plants. She noted there already are private

gardens existing in our community which are located near churches, schools and government buildings.

Dianne Swanson, Longview, stated she is a career intervention specialist working in the schools. On behalf of the CARE Coalition, Swanson read a letter in support of the city's time and research that has been committed toward development of the interim zoning ordinance.

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T.J. Keiran, City Planner, stated that Roy Henson, Castle Rock resident, submitted written comments to the SEPA determination. Henson resides adjacent to Exit 48 C-2 zone area. He does not believe that the city should develop zoning regulations for this use, since it is against federal law.

James Tarragano, Castle Rock, stated nobody wants to see marijuana use at the schools or near churches. He noted that the issue of 45 plants for ten people was determined by the state law, not Castle Rock and the only regulation that the city was trying to develop was for permits issued for land use. He feels there should be some type of oversight developed to regulate how the product is grown. He also feels marijuana should only be available by prescription from a doctor.

Kelly Stone, Packwood, WA; stated she is impressed by the city's action. She described her medical history with degenerative disc disease. Medications prescribed by her doctors created other issues and cost up to \$3000/month. She stated since she began using medical marijuana, she has experienced improvement in her mobility.

Cheryl Louws, Toutle, has lived in community for 37 years. She described how medical marijuana has improved her mobility due to an injury to her back. She felt it is the parent's responsibility to teach their children to stay away from drugs.

Julian Robinson, owner of Healing Hands of God, thanked the city council for hosting the meeting and allowing people to be heard. He noted the benefits of medical marijuana. Collective gardens will allow the sick to pool resources to produce their medication. He felt that parenting children is the best way to keep them from drugs.

Kurt Bern, Kelso, disagrees that medical marijuana recommendations are being used solely by the sick. He is aware of many people who have been issued medical marijuana cards, who do not have legitimate medical issues. He stated marijuana is against federal law and he felt this should not be something Castle Rock should have in their city.

Max Weston, Castle Rock, stated the bulk of medical marijuana patients do not come to speak at public meetings because they feel afraid. He felt the zoning was a great start. He does not want his children around marijuana; however he does know people who have benefitted medically. He suggested that city council meet with the Robinsons to share information and reduce the adversity.

John Weston, Castle Rock, stated after serving in Vietnam, he suffered damage due to the effects of Agent Orange. In his research, he found that the Center for Substance Abuse cannot determine if marijuana use is addictive, but it may lead to psychological addiction. In Canada, it has been determined that marijuana is not a gate-way drug and should be treated the same as alcohol.

Tina Cos, Castle Rock, stated she has visited the Healing Hands of God business and was surprised to observe their concern over their patients. She felt that nothing will change regarding children unless parents begin caring for these children and teach them to stay away from drugs. She described a situation where she was taken advantage of by a state licensed contractor. She felt that if nobody governs these individuals, how does the city expect to enforce this ordinance. She feels that as long as the use is legal, it should be protected and business should not be overregulated.

Mayor Pro-Tempore Earl Queen closed public comment.

Councilmember Ray Teter thanked everyone for their comments. He feels that medical marijuana is needed; however it also needs to be regulated to allow it to be dispensed in a safe manner. For this reason, he supports the ordinance.

Mayor Pro-Tempore Queen adjourned the meeting at 8:10 p.m.

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Mayor Pro-Tempore Earl Queen

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Clerk-Treasurer