ORDINANCE NO. 4208

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Title 15 of the Kent City Code by repealing all sections pertaining to medical cannabis collective gardens, and adopting new regulations pertaining to medical marijuana patient cooperatives.

RECITALS

A. Second Substitute Senate Bill No. 5052, known as the "Cannabis Patient Protection Act," was signed into law by Governor Inslee on April 24, 2015. This Act allows qualifying patients and/or designated providers who hold valid recognition cards to form a "cooperative" in which marijuana can be collectively grown for personal, medical use, beginning July 1, 2016. The Act also repeals the existing category of "collective gardens," as defined in RCW 69.51A.085, effective as of July 1, 2016.

B. Medical marijuana patient cooperatives are limited to four or fewer members; must be registered with the state Liquor and Cannabis Board; and must be located within the domicile of one of the members of the cooperative.

C. Second Engrossed Second Substitute House Bill 2136, signed by Governor Inslee on June 30, 2015, further clarified that the Liquor and Cannabis Board must deny the registration of a proposed patient cooperative if the location is prohibited by local zoning ordinance.
D. Kent’s zoning code does not currently address this new category of patient cooperatives, requiring an amendment to the city code.

E. On May 5, 2016, the City requested expedited review under RCW 36.70A.106 from the Washington State Department of Commerce regarding the City’s proposed code amendments. The Washington State Department of Commerce granted the request for expedited review on May 23, 2016. No comments were received from State agencies.

F. On May 9, 2016, staff gave an overview of these proposed amendments before the Economic and Community Development Committee.

G. On May 9, 2016, during a workshop meeting, staff received authorization from the Land Use and Planning Board ("LUPB") to draft an ordinance amending Kent’s zoning code to address collective gardens and patient cooperatives.

H. On May 20, 2016, the City conducted and completed environmental review under the State Environmental Policy Act (SEPA). The City’s SEPA Responsible Official issued a Determination of Nonsignificance for the proposed code amendments.

I. On May 23, 2016, the LUPB held a public hearing to consider the recommendation of Planning staff. At the opening of the public hearing, staff included additional information to the LUPB, in both the staff report and during staff’s oral presentation, regarding the availability of options other than total prohibition, if the LUPB wished to explore those. The LUPB declined to vote on these other options, and at the close of the public hearing the LUPB moved by unanimous vote to recommend to the full City Council the adoption of the draft amendments prohibiting patient cooperatives in all zoning districts, as recommended by staff.
J. On June 13, 2016, the Economic and Community Development Committee considered the ordinance repealing the sections of city code pertaining to medical cannabis collective gardens and addressing the new category of patient cooperatives, and recommended approval of the ordinance, as proposed by staff and approved by the LUPB, but directed that matter be placed under "other business" on the Council agenda so that all Councilmembers would have a chance to discuss the matter prior to voting on it. The matter was subsequently considered by the full City Council at its July 5, 2016, meeting.

K. While collective marijuana growing has never been authorized in Kent, the Kent Police Department ("KPD") has investigated numerous illegal marijuana grow operations in housing units all over the City. KPD has noted that residential "grow houses" often pose multiple environmental concerns, including, but not limited to: excessive power consumption; increased mold and mildew; pervasive odors; and structural damage.

L. Furthermore, these impacts are magnified by the fact that these grow houses are often rental units that are rendered uninhabitable after being used for the indoor growing and cultivation of marijuana.

M. The City Council recognizes that approved medical uses of marijuana may provide relief to patients suffering from debilitating or terminal conditions, but because of the potential secondary impacts, the establishment of facilities for the collective growth, production, and processing of medical marijuana in residential units is not appropriate for any zoning district within the City.

N. The City Council further understands that while the medical benefits of marijuana have been recognized by the state legislature,
marijuana remains a Schedule I controlled substance under both the federal Controlled Substances Act (CSA) and the Washington State Uniform Controlled Substances Act (Chapter 69.50 RCW), and any possession and use of marijuana is still a violation of federal law.

O. The City Council has determined that the passage of a permanent zoning code amendment that shall prohibit the establishment of residential medical marijuana patient cooperatives in all zoning districts of the City will serve the public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

**ORDINANCE**

**SECTION 1.** - *Findings of Fact.* The recitals and findings of fact set forth above are adopted as the City Council’s findings supporting the passage of this ordinance.

**SECTION 2.** - *Repealer.* Section 15.02.074 of the Kent City Code is hereby repealed in its entirety.

**SECTION 3.** - *Repealer.* Section 15.08.290 of the Kent City Code is hereby repealed in its entirety.

**SECTION 4.** - *Amendment.* Chapter 15.02 of the Kent City Code is hereby amended by adding a new section 15.02.326 to read as follows:

**Sec. 15.02.326 Patient cooperative, medical marijuana.**

*Medical marijuana patient cooperative* means a group of four or fewer qualifying patients and/or designated providers who share
responsibility for producing and processing marijuana only for the medical use of the members of the cooperative, pursuant to, and in accordance with, all the terms and conditions of RCW 69.51A.250, as now enacted or as subsequently amended.

**SECTION 5. - Amendment.** Chapter 15.08 of the Kent City Code is hereby amended by adding a new section 15.08.295 to read as follows:

**Sec. 15.08.295 Patient cooperatives.**

A. *Medical marijuana patient cooperatives*, as defined in KCC 15.02.326, are prohibited in the following zoning districts:

1. All agricultural districts, including A-10 and AG;


3. All commercial districts, including NCC, CC, CC-MU, DC, DCE, DCE-T, CM-1, CM-2, GC, and GC-MU;

4. All industrial districts, including M1, M1-C, M2, and M3; and

5. Any new district established on or after July 1, 2016.

B. Any violation of this section is declared to be a public nuisance per se, and shall be abated by the city attorney under applicable provisions of this code or state law, including, but not limited to, Chapter 1.04 KCC.
C. Nothing in this section is intended to authorize, legalize or permit the establishment or operation of a use that violates any city, county, state or federal law or statute.

SECTION 6. – Moratorium terminated. The moratorium adopted pursuant to Ordinance 4206 shall terminate upon the date this ordinance goes into effect in accordance with Section 9.

SECTION 7. – Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 8. – Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

SECTION 9. – Effective Date. This ordinance shall take effect and be in force five days after its publication, as provided by law.

Refused to Sign 7-18-16
SUZETTE COOKE, MAYOR

ATTEST:

SUE HANSON, INTERIM CITY CLERK
APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 5th day of July, 2016.
APPROVED: _____ day of ________________, 2016.
PUBLISHED: 22nd day of July, 2016.

I hereby certify that this is a true copy of Ordinance No. 4208 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

SUE HANSON (SEAL)
SUE HANSON, INTERIM CITY CLERK
From: Cooke, Suzette  
Sent: Friday, July 15, 2016 6:12 PM  
To: City Council  
Cc: City Clerk; Matheson, Derek; Fitzpatrick, Pat; Brubaker, Tom; Wilmot, Michelle; Galazin, David; Wolters, Ben  
Subject: Mayor’s Position on Ordinance 4208

Dear Kent City Councilmembers,

On July 5 you passed Ordinance 4208 by a 4 to 2 vote amending Title 15 of the Kent zoning code, prohibiting medical marijuana cooperatives in all Kent zoning districts. Your action would have replaced the moratorium against MMJ patient cooperatives passed at the previous council meeting. Following passage, in light of my support for public access to medical marijuana (MMJ), I announced that I would either veto the ordinance or allow it to be enacted without my signature. I have decided the latter: Ordinance 4208 will become law without my signature.

Had I vetoed the ordinance, MMJ patient cooperatives would still be illegal. Our city has a “permissive” zoning code, which means that if a use is not specifically allowed, it is prohibited. Since MMJ patient co-ops are a newly-established land use created by the state legislature this year, they do not appear as a regulated use in our zoning code. Since a veto cannot add any language to an ordinance, my veto of Ordinance 4208 would not add MMJ patient cooperatives as a land use in our code, and therefore would have been ineffective in allowing them to exist in Kent.

Additionally, had I vetoed Ordinance 4208, the Council’s moratorium against allowing MMJ patient cooperatives would still be in effect for at least 6 months - and may be extended.

While I am disappointed I cannot increase local access to MMJ, I am appreciative of individual conversations I had with Council President Boyce and Councilmembers Berrios and Ralph. They have committed to addressing the broader issue of local access to medical marijuana in a more comprehensive fashion at a council retreat in February of 2017. I look forward to a positive resolution.

Respectfully,

Suzette Cooke, Mayor
Office of the Mayor
220 Fourth Avenue South, Kent, WA 98032
Phone 253-856-5700
scooke@KentWA.gov

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