1480-ORD
07/30/15

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6253

AN ORDINANCE amending the Bellevue Land Use Code to allow for the siting, permitting, and review of marijuana uses; amending sections 20.10.440 and 20.25D.070; creating a new section 20.20.535 of the Bellevue Land Use Code; repealing section 20.20.526 and Ordinances Nos. 6133 B-1, 6156, 6180, and 6222, and establishing an effective date.

WHEREAS, Washington votes approved Initiative 502 (1-502) on November 6, 2012. In relevant part, 1-502 legalized the possession of small amounts of marijuana and marijuana-related products for persons age 21 and older, and directed the state liquor control board to develop and implement rules to regulate and tax recreational marijuana producers, processors, and retailers; and

WHEREAS, marijuana is still classified as a schedule I controlled substance under federal law and crimes related to marijuana remain subject to prosecution under federal law; and

WHEREAS, on August 29, 2013, the United States Department of Justice, Office of the Attorney General, (DOJ) released updated guidance regarding marijuana enforcement. The guidance reiterates that DOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats to public safety related to marijuana crimes in "the most effective, consistent, and rational way." The guidance directs federal prosecutors to review potential marijuana-related charges on a case-by-case basis and weigh all information and evidence, including whether the operation is demonstrably in compliance with a strong and effective state regulatory system and if the conduct at issue implicates one or more of the eight stated federal enforcement priorities. The DOJ appears to not differentiate application of the guidance between medical cannabis and recreational marijuana; and

WHEREAS, in a joint statement dated August 29, 2013, Governor Jay Inslee and Attorney General Bob Ferguson stated the following:

> Today we received confirmation Washington's voter-approved marijuana law will be implemented. We received good news this morning when Attorney General Eric Holder told the governor the federal government would not pre-empt Washington and Colorado as the states implement a highly regulated legalized market for marijuana. Attorney General Holder made it clear the federal government will continue to enforce the federal Controlled Substance Act by focusing its enforcement on eight specific

> concerns, including the prevention of distribution to minors and the importance of keeping Washington-grown marijuana within our state's borders. We share those concerns and are confident our state initiative will be implemented as planned.
>
> We want to thank the Attorney General for working with the states on this and for finding a way that allows our initiative to move forward while maintaining a commitment to fighting illegal drugs. This reflects a balanced approach by the federal government that respects the states' interests in implementing these laws and recognizes the federal government's role in fighting illegal drugs and criminal activity.

and

WHEREAS, on October 16, 2013, the state liquor control board adopted rules for applying for, obtaining, and maintaining licenses for the production, processing, and retailing of recreational marijuana. Applicants will be required to identify a business location with their application submittals; and

WHEREAS, the state liquor control board allocated four recreational marijuana retail licenses for the City of Bellevue, and there are no limits on the number of recreational marijuana producer and processor licenses to be issued; and

WHEREAS, the City Council adopted Ordinance 6133 B-1 on October 21, 2013, implementing an emergency interim zoning ordinance regulating the location of recreational marijuana uses and imposing performance criteria intended to mitigate negative impacts arising from operation of recreational marijuana uses, to be in effect for a period of six months while the City drafted, considered, held hearings on, and adopted permanent zoning regulations and declaring an emergency; and

WHEREAS, under the Growth Management Act, the City was required to hold a public hearing within sixty days of adopting Ordinance No. 6133 B-1, which public hearing was held on December 2, 2013; and

WHEREAS, on March 17,2014, the City Council extended and amended Ordinance No. 6133 B-1 for an additional six month period by adopting Ordinance No. 6156, after entering findings of fact and holding the required public hearing on March 17, 2014 and a subsequent public hearing on the amendment on May 12, 2014; and

WHEREAS, on December 8, 2014, the City Council extended Ordinance No. 6133 B-1, as amended by Ordinance No. 6156, for an additional six month period by adopting Ordinance No. 6180, after entering findings of fact and holding the required public hearing on October 13, 2014; and

WHEREAS, on April 6, 2015, the City Council extended Ordinance No. 6133 B-1, as amended by Ordinance No. 6156, for an additional six month period by adopting Ordinance No. 6222, after entering findings of fact and holding the required public hearing on April 6, 2015; and

WHEREAS, on January 14, 2014, the Washington State Attorney General's Office issued its opinion (AGO No. 2014) that 1-502 does not preempt counties, cities, and towns from banning recreational marijuana within their jurisdictions and that local ordinances that do not expressly ban state licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction's police power; and

WHEREAS, several state courts have issued decisions that approve and affirm the Attorney General's opinion that cities have the authority to regulate marijuana uses; and

WHEREAS, on May 20, 2015, the King County Superior Court issued its decision in *Greensun Group LLC v. City of Bellevue*, No. 14-2-29863-3 SEA, which decision is incorporated herein as if set forth in full. The court determined, *inter alia*, that "the City of Bellevue has the authority to regulate the location and density of marijuana retail outlets within its boundaries, including through the adoption and enforcement" of a requirement that a retail marijuana outlet cannot be located within 1,000 feet of another retail marijuana outlet; and that "the City has the authority to develop and apply processes for enforcing" a 1,000 foot separation requirement, including through use of a first-in-time determination based on the date and time of issuance of the state liquor control board license or conditional license, whichever is issued first; and

WHEREAS, on April 24, 2015, the Washington State Legislature passed and Governor Inslee signed into law 2SSB 5052, The Cannabis Patient Protection Act and 2ESSHB 2136 reconciling the state medical and recreational marijuana programs; and

WHEREAS, the City has the authority to regulate the location and density of marijuana production, processing, distribution, and retail sales within its boundaries; and

WHEREAS, the establishment and/or licensing of marijuana uses may allow new uses that are incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

WHEREAS, the presence of large amounts of cash and/or marijuana makes retail outlets and other marijuana facilities a potential target of violent crime, including robberies and burglaries, thereby placing Bellevue residents, business owners, and others in danger of bodily harm, and increasing police enforcement risks and costs; and

WHEREAS, there may be other harmful secondary effects to public health, safety, morals, and welfare as a result of marijuana production, processing, distribution, and retail sales, which effects include but are not limited to loitering, odors, crime, and other behaviors that may be inconsistent with the character of the surrounding neighborhood; and

WHEREAS, it is critical to the public safety and economic vitality of the City to ensure the impacts of business obtaining a license from the state liquor control board to produce, process, or sell marijuana are minimized; and

WHEREAS, the City Council deems it to be in the public interest to establish permanent regulations regarding where marijuana producers, processors, and retail uses may be located in the City of Bellevue; and

WHEREAS, the City has a compelling interest in the protection of the health and safety of all its residents, as well as a compelling interest in ensuring that the goals and policies contained within the Comprehensive Plan and other policy/planning documents are fulfilled; and

WHEREAS, the Planning Commission held a public hearing on July 30, 2014, for the proposed Land Use Code Amendment (LUCA) contained herein; and

WHEREAS, the Planning Commission recommends APPROVAL of the Marijuana Uses LUCA; and

WHEREAS, the City Council finds that the proposed amendments meet the decision criteria of LUC 20.30J.135 and are consistent with the Comprehensive Plan, enhance the public health, safety, and welfare, and are not contrary to the best interest of the citizens and property owners of the City of Bellevue; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, Chapter 22.0.02 BCC; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Repeal. Ordinances Nos. 6133 B-1, 6156, 6180, and 6222 are hereby repealed.

Section 2. Repeal. Section 20.20.526 Medical Cannabis Collective Gardens is hereby repealed.

Section 3. Section 20.10.440 – Resource Land Use Charts - of the Bellevue Land Use Code is hereby amended to add as separate entries "marijuana

production" and "marijuana processing" as an administrative conditional use in the following land use district: Light Industrial (LI), and to add the following new note 6:

(6) See LUC 20.20.535 for general development requirements for marijuana uses.

The "marijuana production" use shall be placed alphabetically in the use chart immediately below the "Agriculture, Production of Food and Fiber Crops, Dairies, Livestock and Fowl, Excluding Hogs" listing. "Marijuana processing" shall be placed directly below "Agricultural Processing" (Standard Land Use Code Reference 821).

Section 4. Section 20.10.440 – Resource Land Use Charts - of the Bellevue Land Use Code is hereby amended to prohibit Medical Cannabis Collective Gardens (8192) and to amend note 4 to read: "Medical Cannabis Collective Gardens are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses."

Section 5. Section 20.10.440 – Wholesale and Retail Land Use Charts - of the Bellevue Land Use Code is hereby amended to add under standard land use code reference 59 "Marijuana retail outlet" as an administrative conditional use in the following land use districts: GC; CB; F1; DNTN O-1; DNTN O-2; DNTN-MU; DNTN-OB; and DNTN-OLB, and to add the following new note 41:

(41) See LUC 20.20.535 for general development requirements for marijuana uses.

The "marijuana retail outlet" use shall be placed in the use chart immediately below the "Adult Retail Establishments" listing.

Section 6. Section 20.25D.070 -- Resources in Bel-Red Land Use Districts Chart of the Bellevue Land Use Code is hereby amended to add as separate entries "marijuana production" and "marijuana processing" as prohibited uses in all Bel-Red land use districts.

The "marijuana production" use shall be placed alphabetically in the use chart immediately below the "Agriculture, Production of Food and Fiber Crops, Dairies, Livestock and Fowl, Excluding Hogs" listing. "Marijuana processing" shall be placed directly below "Agricultural Processing" (Standard Land Use Code Reference 821).

Section 7. Section 20.25D.070 – Resources in Bel-Red Land Use Districts Chart of the Bellevue Land Use Code is hereby amended to prohibit Medical Cannabis Collective Gardens (8192) and to amend note 3 to read: "Medical Cannabis Collective Gardens are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses."

Section 8. Section 20.25D.070 -- Wholesale and Retail in Bel-Red Land Use Districts Chart of the Bellevue Land Use Code is hereby amended to add under standard land use code reference 59 "Marijuana retail outlet" as an administrative conditional use in the following land use districts: BR-OR/OR1/OR2; BR-RC-1; RC-2; RC-3; BR-GC; BR-CR; and BR-ORT, and to add the following new note 17:

(17) See LUC 20.20.535 for general development requirements for marijuana uses.

The "Marijuana retail outlet" use shall be placed in the use chart immediately below the "Adult Retail Establishments" listing.

Section 9. A new section 20.20.535 of the Bellevue Land Use Code is hereby adopted as follows:

20.20.535 Marijuana Uses.

A. Purpose.
The purpose of this section is to regulate marijuana producers, processors, and retailers regulated under Chapters 69.50 and 69.51A RCW by identifying appropriate land use districts and establishing development and performance standards. Marijuana producers, processors, and retailers shall only be permitted when licensed by the Washington State Liquor and Cannabis Board. The production, sale, and possession of marijuana remains illegal under the federal Controlled Substances Act. Nothing herein or as provided elsewhere shall be construed as authority to violate or circumvent federal law.

B. Applicability.
This section applies to marijuana uses licensed by the Washington State Liquor and Cannabis Board.

C. Review Required – Administrative Conditional Use.
An administrative conditional use permit (Part 20.30E LUC) is required to operate any marijuana use. The director shall review applications to operate a marijuana use for compliance with this section and with all other applicable provisions of the Bellevue City Code.

D. Definitions Specific to Marijuana Uses.
The definitions codified at WAC 314-55-010, now or as hereafter amended, apply to this section. The following definitions are specific to marijuana uses and shall have the following meanings:

1. "Director" means the Director of the City of Bellevue's Development Services Department or his or her designee.

2. "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; 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. The term 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.

3. "Marijuana processor" means a person licensed by the state liquor and cannabis board to process marijuana into marijuana concentrates, useable marijuana and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

4. "Marijuana producer" means a person licensed by the state liquor and cannabis board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

5. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

6. "Marijuana retailer" means a person licensed by the state liquor and cannabis board to sell useable marijuana, and marijuana-infused products in a retail outlet.

7. "Marijuana Uses" means the collective of Marijuana producer, retailer, and processor.

8. "Retail outlet" means a location licensed by the state liquor and cannabis board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

9. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

E. Marijuana producers, processors, and retailers must comply with all requirements of chapters 69.50 and 69.51A RCW, chapter 314-55 WAC, now or as hereafter amended, and all applicable City of Bellevue ordinances, standards, and codes.

F. Limitations on Uses. The following limitations shall apply to all marijuana producers, processors, and retailers, unless stated otherwise:

1. A marijuana producer, retailer, or processor, shall not be located within 1,000 feet of the following uses or any use included in Chapter 314-55 WAC now or as hereafter amended:

    a. Elementary or secondary school;
    b. Playgrounds;
    c. Recreation center or facility;
    d. Child care centers;
    e. Public parks;
    f. Public transit centers;
    g. Libraries; and
    h. Any game arcade.

2. No marijuana retailer shall be located within 1,000 feet of any other marijuana retailer.

    a. Areas where no retail marijuana uses are located. If two or more marijuana retail applicants seek licensing from the state and propose to locate within 1,000 feet of each other, the City shall consider the entity who is licensed first by the state liquor and cannabis board to be the "first-in-time" applicant who is entitled to site the retail use. First-in-time determinations will be based on the date and time of the state-issued license or conditional license, whichever is issued first. The Director shall make the first-in-time determination, whether in connection with an application for an administrative conditional use permit or as otherwise appropriate.

    b. First-in-time determinations are location-specific and do not transfer or apply to a new property or site, unless the new site is within the same tax parcel. See paragraph G.3 for regulations applying to established retail uses and status of first-in-time determinations.

    c. Appeal of Director Determination. The Director's first-in-time determination may be appealed pursuant to LUC 20.35.250, Appeal of Process II decisions.

3. No marijuana producer, processor, or retailer shall be located within 1,000 feet of any park mapped in the City's Geographic Information System.

4. Measurement. All separation requirements shall be measured as the shortest straight line distance from the property line of the proposed business location to the property line of the use listed in this section.

5. No marijuana producer, processor, or retailer shall be allowed in single family and multi-family land use districts (R-1 – R-30; DNTN-R; BR-R).

6. No marijuana retailer is allowed as a subordinate or accessory use in any land use district.

7. Marijuana shall be grown in a structure. Outdoor cultivation is prohibited.

G. Marijuana Retail Outlets.

1. Odor. Marijuana odor shall be contained within the retail outlet so that odor from the marijuana cannot be detected by a person with a normal sense of smell from any abutting use or property. If marijuana odor can be smelled from any abutting use or property, the marijuana retailer shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor.

2. Signage for Marijuana Retail Outlets. Retail outlets shall comply with WAC 314-55-155(1), now or as hereafter amended. Additionally, signage for retail outlets must undergo design review in those land use districts requiring such review in the Bellevue Sign Code, Chapter 22B BCC.

3. First-in-Time – Change in ownership, relocation, and abandonment

   a. Ownership. The status of a first-in-time determination is not affected by changes in ownership.

   b. Relocation. Relocation of a retail outlet to a new property voids any first-in-time determination previously made as to the vacated property. The determination shall become void on the date the property is vacated. Applicants who may have been previously denied a license due to a first-in-time determination at the vacated property may submit a new application after the prior first-in-time determination becomes void.

   c. Discontinuance. If an existing marijuana retail use is discontinued or abandoned for a period of 12 months with the intention of abandoning that use, then the property shall forfeit first-in-time status. Discontinuance of a licensed retail use for a period of 12 months or greater constitutes a prima facie intent to abandon the retail use. Intent to abandon may be rebutted by submitting documentation adequate to rebut the presumption. Documentation rebutting the presumption of intent to abandon includes but is not limited to:

      i. State licensing review or administrative appeal; or

      ii. Review of building, land use, other required development permits or approvals; or

iii. Correspondence or other documentation from insurance provider demonstrating an intent to reestablish the use after either a partial or full loss or disruption of the use.

iv. The Director shall determine whether a retail use has been discontinued, abandoned, or voided, whether in connection with an application for an administrative conditional use permit or as otherwise appropriate.

d. Accidental Destruction. First-in-time status is not affected when a structure containing a state-licensed retail outlet is damaged by fire or other causes beyond the control of the owner or licensee; provided redevelopment occurs within 12 months or the licensee provides documentation demonstrating why redevelopment cannot commence within 12 months, otherwise the Director shall determine the retail use abandoned, unless the licensee can demonstrate an intent not to abandon the use. If the retail use cannot be reestablished within 12 months, the licensee shall provide a schedule with reasonable deadlines to establish the use.

e. Appeal of Director Determination. The Director's Determination of whether a retail use has been discontinued, abandoned, or voided may be appealed pursuant to LUC 20.35.250, Appeal of Process II decisions.

H. Marijuana Producers and Processors. Marijuana production and processing facilities are allowed only in the Light Industrial land use district and shall comply with the following provisions:

1. Marijuana production and processing facilities shall be ventilated so that the odor from the marijuana cannot be detected by a person with a normal sense of smell from any adjoining use or property;

2. Signage for marijuana producers and processors shall comply with the City of Bellevue Sign Code, Chapter 22B of the Bellevue City Code.

3. A screened and secured loading dock, approved by the Director shall be required. The objective of this requirement is to provide a secure, visual screen from the public right-of-way and adjoining properties, and prevent the escape of odors when delivering or transferring marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products.

I. Regulations Applicable to all Marijuana Uses.

1. Security. In addition to the security requirements in chapter 315-55 WAC, during non-business hours, all marijuana producers, processors, and retailers shall store all marijuana concentrates, useable marijuana, marijuana-infused

products, and cash in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or securely attached thereto. For useable marijuana products that must be kept refrigerated or frozen, these products may be stored in a locked refrigerator or freezer container in a manner approved by the Director, provided the container is affixed to the building structure.

2. Release of Liability and Hold Harmless.
The permittee of a marijuana use shall provide an executed release in a form approved by the Bellevue City Attorney's Office to the City of Bellevue, for itself, its agents, officers, elected officials and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution or seizure of property, or liabilities of any kind that result from any arrest or prosecution for violations of federal or state law relating to operation or siting of a marijuana use. Additionally, within the release document, the permittee of a marijuana use shall indemnify and hold harmless the City of Bellevue and its agents, officers, elected officials, and employees from any claims, damages, or injuries brought by adjacent property owners or other third parties due to operations at the marijuana use and for any claims brought by any of the marijuana use's members, employees, agents, guests, or invitees for problems, injuries, damages, or liability of any kind that may arise out of the operation of the marijuana use.

J. Conflicts.
In the event of a conflict between chapters 69.50 and 69.51A RCW, chapter 314-55 WAC, and this section, the most restrictive provision shall apply.

Section 10. Severability. Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 11. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

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Passed by the City Council this 3rd day of August, 2015 and signed in authentication of its passage this 3rd day of August, 2015.

(SEAL)

Claudia Balducci, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Attest:

for Kyle Stannert
Myrna L. Basich, City Clerk

Published August 6, 2015