

collective gardens and the approaches currently used by other jurisdictions to regulate collective gardens. Information on Initiative 502 ("I-502") to legalize marijuana use in Washington was also included, and the potential effect of I-502 was described in the event the initiative passes during the November 2012 General Election. Information from the June 18 packet is included in Attachment B for the Council reference.

Staff also advised the Council that direction would be sought at the close of the public hearing regarding the timing and processing of permanent regulations. Specifically, staff is seeking direction from Council whether to:

1. Wait until the outcome of the November General Election to proceed with developing final regulations on collective gardens;
2. Proceed with development of permanent regulations irrespective of the election and maintain the interim official control;
3. Prohibit collective gardens in the City and schedule development of regulations as part of the LUC work program; or
4. Prohibit collective gardens in the City with the intention to do so as a permanent solution.

The interim official control is limited to periods of up to six months, but may be renewed for additional six-month periods provided that Council holds a public hearing within 60-days of each subsequent extension. Options 1 and 2 will require additional extensions of the interim official control, necessitating additional public hearings, while staff continues researching, assimilating information, and developing permanent land use regulations. The Option 3 approach was endorsed by the Council for amending the helicopter requirements in lieu of a moratorium and may provide the most efficient approach to development of permanent land use regulations to govern permitting, siting, and performance criteria for the establishment of collective gardens. Option 3 would ensure that the code development work could be undertaken thoughtfully and not be governed by the strict timelines applied to interim official controls under the GMA. Option 3 would also allow the City Council to consider where in the LUC amendment work program the development of collective garden regulations should be prioritized vis-à-vis mandated code amendments and others amendments that may be of higher priority to Council and the City. The work program was originally presented to Council at the June 4 Study Session, and is currently anticipated for further Council consideration prior to the Council recess.

Finally, staff seeks direction from Council as to whether this topic necessitates that a public hearing on the permanent regulations be held before the City Council without prior review and recommendation from the Planning Commission, or whether this topic should be forwarded to the Planning Commission together with project principles for its consideration. In response to the request made by Council on June 18, additional information regarding the workload implications of keeping the code amendment or sending it on to the Planning Commission have been presented below.

Code Process and Workload Considerations

Council requested staff to provide information regarding the expected number of meetings required for both Council and the Planning Commission to consider proposed permanent regulations for collective gardens. It is estimated that up to three study sessions will be required to consider permanent regulations for collective gardens based on the complexity of issues related to their regulation. These issues include permitting requirements, allowed locations, separation and security requirements, and regulation of operations. This estimate, however, depends in part on the level of public interest and participation, which are factors that can be difficult to predict. Therefore, providing accurate estimates of the required work load and duration to process a LUC amendment is challenging. Below, staff has provided a road map of the code amendment process required under the Land Use Code. This road map is intended to demonstrate the required steps and meetings for both the Council and the Planning Commission when considering a LUC amendment.

LUC Amendment Process – Council Only Review	LUC Amendment Process Planning Commission Recommendation to Council <i>(*additional process are steps noted in italics)</i>
Amendment initiated by Council and direction provided to staff	Amendment initiated by Council and direction provided to Planning Commission
	<i>*Amendment introduced to Planning Commission</i>
State Environmental Policy Act (SEPA) review initiated	State Environment Policy Act (SEPA) review initiated
Public notice and 14 day comment period provided (Weekly Permit Bulletin)	Public notice and 14 day comment period provided (Weekly Permit Bulletin)
Washington State Department of Commerce notified of intent to amend the LUC code	Washington State Department of Commerce notified of intent to amend the LUC code
Study Sessions scheduled before City Council (number dependent on technical complexity, level of outreach and public interest)	<i>*Study Sessions scheduled before Planning Commission</i> (number dependent on technical complexity, level of outreach and public interest)
Staff report prepared analyzing LUC amendment for consistency with Comprehensive Plan	Staff report prepared analyzing LUC amendment for consistency with Comprehensive Plan
SEPA Determination issued (required prior to public hearing and final Council action)	SEPA Determination issued (required prior to public hearing and PC recommendation)
Community Council Courtesy Public Hearing held (7 day public notice required)	Community Council Courtesy Public Hearing held (7 day public notice required)

	<i>*Public Hearing held before the Planning Commission (14 day public notice required)</i>
	<i>*Planning Commission formulates Recommendation for Transmittal to the City Council</i>
Public Hearing held before the City Council (14 day public notice required)	<i>*Study Session held with the City Council to consider Planning Commission recommendation</i>
Council takes final action to adopt LUC amendment	<i>*Council acts on Planning Commission recommendation – remand to Planning Commission for additional work or take final action to adopt LUC amendment</i>
Final LUC amendment transmitted to Washington State Department of Commerce	Final LUC amendment transmitted to Washington State Department of Commerce
Approval/Disapproval Hearing held before Community Council (7 day notice required)	Approval/Disapproval Hearing held before Community Council (7 day notice required)

Council also asked staff to provide information on the Planning Commission's capacity for taking on this project. Staff verified that the Planning Commission's July meetings are scheduled to review and consider the revised Planning Commission draft of the City's Shoreline Master Program (SMP). The Planning Commission will not meet in August and will resume in September. At this time, it is anticipated that at least one meeting will be required in September for SMP review before the Planning Commission makes its recommendation to Council. If Council desires to adopt permanent regulations before the expiration of the interim official control on November 7, taking a proposed LUC amendment through the Planning Commission could prove challenging given the amount of material to review and complexity of the issues related to regulating medical marijuana collective gardens. Consequently, Council may find it is necessary to retain this code amendment project to meet mandated timelines.

Status of Litigation against the City of Kent

During the June 18 Regular Session, Council also asked staff to provide information regarding the status of legal action taken against the City of Kent in response to Kent's prohibition of medical marijuana collective gardens and the anticipated process and time commitments for both the Council and the Planning Commission to consider and process permanent regulations for medical marijuana collective gardens. The requested information is provided below.

On June 5, 2012, the City of Kent adopted Ordinance No. 4036, prohibiting medical marijuana collective gardens in all zoning districts, and all new zoning districts established after June 5, 2012. The Cannabis Action Coalition and some individuals sued Kent alleging that the ban is unlawful and violates the constitutional rights of medical marijuana patients to access prescribed medication. The plaintiffs are seeking a declaratory judgment from King County Superior Court that the ban is unlawful, injunctive relief preventing enforcement of the ban, and mandamus from the Court to require Kent to repeal its ban on the gardens. The action is cast

as a Land Use Petition, which provides for a fast-tracked hearing within 180 days of the filing of the lawsuit.

RECOMMENDATION

1. Hold the mandated public hearing. At the close of the public hearing, direct staff to proceed to draft permanent regulations consistent with Council's desired approach from Options 1-4, or provide staff with alternative direction based on testimony received at the public hearing.
2. Direct staff whether to process permanent regulations through the Planning Commission or to bring to the Council for consideration and approval.

MOTIONS

1. Move to open the public hearing for comments on the interim official control regulating medical marijuana collective gardens.
2. Move to close the public hearing and record on the interim official control.
3. Direct staff to draft permanent regulations (selecting desired direction from Options 1-4 above, or providing alternative direction to staff).
4. Direct staff to present the permanent regulations to the Planning Commission, or in the alternative, directly to the City Council.

ATTACHMENTS

- A. Ordinance No. 6058 adopted May 7, 2012.
- B. Background Analysis from June 18, 2012.
- C. Affidavits of Publication of public notice on June 18, 2012 and June 19, 2012.

AVAILABLE IN COUNCIL OFFICE

1. Notebook: *PROPOSED Regulations of Medical Marijuana Collective Gardens & Regulatory Approaches by Other Jurisdictions and Initiative 502.*
2. Washington State Department of Health: *Information Summary: Patient Access to Medical Marijuana in Washington State*, (July 2008).

1277-ORD
05/07/12

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6058

AN ORDINANCE of the City of Bellevue, Washington, adopting interim 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 permanent collective zoning regulations, to be effective immediately upon adoption, scheduling a hearing on the maintenance of the interim zoning ordinance and declaring an emergency.

WHEREAS, E2SSB 5073 (the Act) effective on July 22, 2011 amended Chapter 69.51A RCW and authorizes "collective gardens" which allows certain qualifying patients to produce, grown and deliver cannabis for medical use; and

WHEREAS, federal law prohibits the production, processing and dispensing of medical cannabis products, and strict federal sentencing guidelines enhance the penalties for violations involving more than 99 plants or occurring within 1000 feet of schools; and

WHEREAS state law strictly enhances the penalties for violations of the Controlled Substances Act that occur within 1000 feet of a school; and

WHEREAS, the Act authorizes municipalities to exercise local location, health and safety controls for the regulation of collective gardens; and

WHEREAS, the City Council deems it to be in the public interest to establish interim regulations pending local review of the anticipated changes in the law; and

WHEREAS, the acceptance of applications proposing development, establishment or licensing of collective gardens may allow new uses that are incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

WHEREAS, pursuant to RCW 36.70A.390 a public hearing must be held within 60 days of the passage of this ordinance; and

WHEREAS, establishment of interim regulations of six months in duration for the filing of certain applications for development, establishment or licensing of collective gardens will prevent substantial change until the land areas and the text of development standards applicable to collective gardens is reviewed, and any needed revisions are made to city codes; and

WHEREAS, the potential adverse impacts upon the public safety, welfare, and peace, as outlined herein, justify the declaration of an emergency; now therefore,

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

Section 1. Interim Regulation Adopted. Any application for, intake of, review of, or issuance of any permit for the establishment of a collective garden as defined in RCW 69.51A.085 is required to meet the following criteria:

- A.** An administrative conditional use permit (Part 20.30E of the Land Use Code ("LUC")) is required to operate a collective garden. The Director of the City's Development Services Department shall specify application submittal requirements as authorized under LUC 20.35.030 to operate a collective garden. All applications and approvals to operate a collective garden shall also comply with the requirements of Chapters 22-24 of the Bellevue City Code.
- B.** The provisions of RCW 69.51A.085, now or as hereafter amended, shall apply in addition to the provisions of this interim regulation.
- C.** For the purposes of this interim regulation only, the definitions codified at RCW 69.51A.010, now provided or as hereafter amended, shall apply to the provisions of this ordinance.
- D.** There shall be no more than one collective garden permitted on a property tax parcel.
- E.** Collective gardens may only be located in the Light Industrial, General Commercial, Bel-Red General Commercial and Medical Institution land use districts.
- F.** A collective garden, or facility for delivery of cannabis produced by the garden, may not be located within 1000 feet of schools, religious institutions, youth-oriented facilities, libraries, residential treatment facilities or any other collective garden or delivery site.
- G.** No collective garden shall be permitted outdoors.
- H.** No collective garden shall be located in any manner or place where the cannabis plants can be viewed or smelled from a public place.
- I.** Any transportation or delivery of cannabis from a collective garden shall be conducted by the collective members or designated provider so that quantities of medical cannabis allowed by RCW 69.51A.085, now or as hereafter amended, are never exceeded.
- J.** A qualifying patient cannot be a member of more than one Collective Garden, and must be a member of one Collective Garden for at least thirty (30) days before transferring their membership to another Collective

Garden. Each Collective Garden must maintain records of its membership for no less than three years.

Duration and Scope of Interim Regulations. The interim regulations imposed by this ordinance shall become effective on the date herein, and shall continue in effect for an initial period of sixty (60) days, unless repealed, extended or modified by the City Council after subsequent public hearings and the entry of additional findings of fact pursuant to RCW 35A.63.220.

Section 3. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing on this ordinance within sixty (60) days of its adoption, or no later than _____, so as to hear and consider public comment and testimony regarding this ordinance. Following such hearing, the City Council may adopt additional findings of fact, and may extend the interim regulations for a period of up to six (6) months. If a period of more than six months is required to complete consideration of any changes to city codes, the Council may adopt additional extensions after any required public hearing, pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 4. Permanent Regulations. The City Council hereby directs the staff to develop for its review and adoption permanent regulations to adopt the interim regulations adopted herein, and to transmit this ordinance to the Washington State Department of Commerce as required by law.

Section 5. 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 6. Public Emergency. The City Council hereby finds and declares that a public emergency exists and that this ordinance is a public emergency ordinance necessary for the protection of the public health and safety and should, therefore, take effect upon adoption. The facts upon which this public emergency is based include all recitals set out in this ordinance as well as those facts contained in the legislative record.

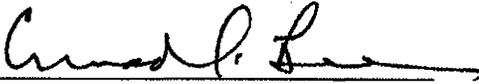
Section 7. Effective Date. In accordance with RCW 35A.13.190, this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption by a majority plus one of the City Council.

ORIGINAL

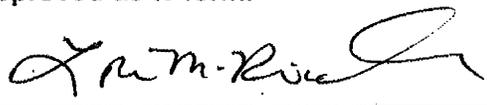
1277-ORD
05/07/12

Passed by the City Council this 7th day of May, 2012
and signed in authentication of its passage this 7th day of May,
2012.

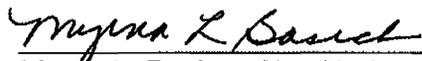
(SEAL)


Conrad Lee, Mayor

Approved as to form:


Lori M. Riordan, City Attorney

Attest:


Myrfa L. Basich, City Clerk

Published May 10, 2012

ATTACHMENT B - BACKGROUND/ANALYSIS FROM JUNE 18, 2012

Regulation of Medical Marijuana in Washington

Federal and Washington law prohibits the production, processing, and dispensing of medical cannabis or medical cannabis products under the respective state and federal controlled substances acts.¹ In 1998, however, Governor Locke signed into law the Medical Marijuana Act (the "Act"), approving the limited use of medical marijuana by patients with qualifying medical conditions.² The Act allows qualified patients to either grow their own marijuana or to designate a provider to grow the marijuana for them. The Act also limits the quantity of medical marijuana a patient may possess.

An inherent inconsistency exists between the two state acts and the federal controlled substance act, relating to the production, processing and distribution of medical marijuana. In an attempt to clarify that inconsistency, the legislature in 2011 passed ESSB 5703. This bill, in relevant part, authorized medical marijuana dispensaries and allowed qualifying patients to participate in collective gardens to grow marijuana for medical use. The bill also authorized cities to regulate and license the production, processing, or dispensing of medical marijuana and its products within their jurisdiction. Governor Gregoire signed the bill, but vetoed several portions related to dispensaries and state licensing and registration requirements. The Governor also expressed reservations about provisions that could place government employees in a position to be held responsible for violation of federal law during the discharge of their work duties. The veto created inconsistency and uncertainty in the administration and enforcement of portions of the state law that were not vetoed and the existing Act. This included the operation and regulation of medical marijuana collective gardens. While clarifying legislation was introduced in the 2012 legislative session, it was not adopted.

Regulatory Approaches by other Jurisdictions

Local jurisdictions have adopted a range of regulatory tools related to collective gardens. Many jurisdictions have imposed moratoriums, and others have adopted interim zoning controls for collective gardens. Issaquah and Seattle have adopted permanent regulations for collective gardens. Seattle's regulations go beyond just the regulation of collective gardens and instead regulate medical marijuana businesses. Kent, Woodinville, and Pasco have prohibited medical marijuana entirely in their cities. The following table is intended to provide the Council with the range of approaches other jurisdictions are employing to regulate medical marijuana collective gardens. The table describes the type of regulatory tool, a general description of the tool, and its status.

¹ 21 U.S.C. 801 et. seq.; Chapter 69.50 RCW.

² Chapter 69.51A RCW.

Jurisdiction	Initial Type of Regulation in Response to ESSB 5703	What is Allowed or Prohibited?	Status
Kirkland	Six month moratorium	Prohibits licensing, establishment, maintenance, or continuation of any collective garden.	Moratorium extended in January 2012 and a study session with the Kirkland City Council is scheduled for June 19, 2012. (Ord. No. O-4344).
Sammamish	Six month moratorium	Includes restrictions on locations and prohibits use and issuance of business licenses	Moratorium extended on the establishment of collective gardens. (Ord. No. 02023-320, Jan. 17, 2012).
Issaquah	Six month moratorium	Moratorium repealed.	Permanent regulations adopted allowing collective gardens in commercial zones; requiring applicant to undergo background checks, security systems, special licensing, and land use permits. (Ord. No. 2633, Dec. 2011).
Redmond	Six month moratorium	Prohibits locating, establishing, licensing, and permitting of collective gardens.	Moratorium extended. (Ord. No. 2646, Feb. 2012)
Woodinville	Six month moratorium	Moratorium repealed.	Permanent regulations adopted prohibiting collective gardens and dispensaries in all land use zones. (Ord. No. 541, Feb. 2012)
Seattle	Permanent regulations	Allows medical cannabis businesses in compliance with all local laws and regulations. (Ord. No. 123661, July 2011)	No change
Shoreline	Six month interim zoning control.	Interim zoning control limiting location and number of collective gardens:	Extended interim zoning controls for six months and adopted a new regulatory license for collective gardens. (Ord. No. 625, Jan. 12, 2012).
Kent	Six month moratorium	Moratorium repealed	Permanent regulations adopted prohibiting collective gardens in all zoning districts. (Ord. No. 4036, June 2012).
Pasco	Moratorium	Moratorium repealed.	Permanent regulations adopted prohibiting collective gardens in all zoning districts (Ord. No. 4059, June 2012).

Consideration of Initiative Measure 502 relating to Marijuana Law Reform

I-502 is on the ballot for the November 6 general election. If passed, I-502 will decriminalize marijuana, with limits, for people over 21 in Washington, but I-502 will not amend the medical marijuana laws.³ Its passage, however, will provide medical marijuana patients with a readily available source of marijuana, rendering the need for collective gardens unnecessary. It is unknown if the state would take further action to amend the state medical marijuana laws if I-502 passes. But until Congress acts, the possession, production, and distribution of marijuana remains illegal under federal law and it is unknown what actions the federal government will undertake if I-502 passes.

If Council extends the interim zoning control for the allowed six-month period following the public hearing, then the interim zoning control will expire on November 7, the day after the General Election. It is possible the Secretary of State will not certify the election results by November 7 and has until December 6, 2012 to do so. The results of the November 7 election may affect the scope of any permanent regulations required for the regulation of medical marijuana collective gardens. Because of the uncertainty of relating to the outcome of I-502, Council may want to factor in the timing of the election and expiration of the interim zoning control when considering how to direct staff to proceed with permanent regulations for medical marijuana. For example, the Council could direct staff to continue developing permanent regulations under the interim zoning control, or to delay that work pending the election results in November and schedule another public hearing on the interim zoning control in late October.

³ Initiative Measure No 502, Sec. 9(12).

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Affidavit of Publication

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Counties of King and Snohomish

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The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

Newspaper and Publication Date(s)	
Seattle Times	06/18/12

Agent Christina McKenna Signature Christina McKenna

Subscribed and sworn to before me on 6/19/2012
DATE

[Signature]
(Notary Signature) Notary Public in and for the State of Washington, residing at Seattle

Carol J. Gumm

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The Seattle Times



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Re: Advertiser Account # 100335

Ad #: 204544

AD TEXT

NOTICE OF PUBLIC HEARING Interim Official Control Regulating Medical Marijuana

Location: City-Wide.

Public Hearing: NOTICE IS HEREBY GIVEN that the Bellevue City Council will hold a public hearing during its Regular Session meeting on Monday July 2, anticipated to begin at 8:00 p.m. or thereafter in the City Council Chambers in Bellevue City Hall, 450 110th Ave NE, Bellevue, on the interim official control regulating medical marijuana collective gardens. On May 7, 2012, the Bellevue City Council adopted Ordinance No. 6058 adopting an official interim zoning control regulating medical marijuana collective gardens for a period of six months to be in effect while the City drafts, considers, and holds hearings about medical marijuana collective gardens. The purpose of the July 2, 2012 public hearing is to provide an opportunity to take written and oral comments regarding medical marijuana collective gardens. The Growth Management Act, RCW 36.70A. 390, authorizes cities to adopt interim official controls provided cities hold a public hearing within 60-days of adoption. Cities may also renew the interim official control for one or more six-month periods if a subsequent public hearing is held and findings of fact are made before each renewal.

Translation and American Sign Language services are available upon 48 hours notice. Please call (425) 455-4162 (voice) or 711 (TDD Relay Service) if you require interpretation services.

Comments: Any person may participate in the public hearing by submitting written comments to the City Council in care of Myrna Basich, City Clerk, P.O. Box 90012, Bellevue, WA 98009, or the Director of the Development Services Department at the same address before the public hearing, or by submitting written comments or making oral comments to the City Council at the hearing. All written comments received by the City Clerk or Director will be transmitted to the City Council no later than the date of the public hearing. Written comments will also be accepted and may be mailed or e-mailed to Catherine A. Drews, Legal Planner, Development Services Department, City of Bellevue, P.O. Box 90012, Bellevue, Washington, 98009-9012 or by e-mail to cdrews@bellevuewa.gov. Comments must be received by 5:00 P.M. on December 12, 2011.
Applicant Contact: Catherine A. Drews, City of Bellevue Development Services Department, 425-452-6134.

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The Seattle Times



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PO Box 70, Seattle, WA 98111

City Of Bellevue Development
Sharon Taylor
PO Box 90012

Bellevue, WA 98009

Re: Advertiser Account # 100335

Ad #: 204749

Affidavit of Publication

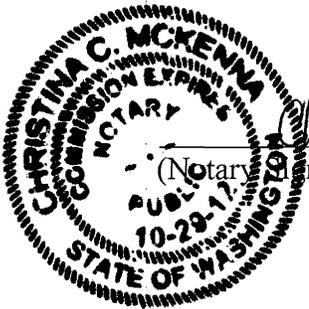
STATE OF WASHINGTON
Counties of King and Snohomish

The undersigned, on oath states that he/she is an authorized representative of The Seattle Times Company, publisher of The Seattle Times of general circulation published daily in King and Snohomish Counties, State of Washington. The Seattle Times has been approved as a legal newspaper by others of the Superior Court of King and Snohomish Counties.

The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

Newspaper and Publication Date(s)	
Seattle Times	06/19/12

Agent MAUREEN E. DUGGAN Signature Maureen E Duggan



Subscribed and sworn to before me on June 20, 2012
DATE

Christina C. McKenna
(Notary Signature) Notary Public in and for the State of Washington, residing at Seattle
Christina C. McKenna

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The Seattle Times



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Re: Advertiser Account # 100335

Ad #: 204749

AD TEXT

**City of Bellevue
Revised Notice of Public Meeting
Interim Official Control Regulating
Medical Marijuana**

NOTICE IS HEREBY GIVEN that the Bellevue City Council will hold a public hearing during its 8:00 pm Regular Session meeting on Monday July 2, in the City Council Chamber in Bellevue City Hall, 450 110th Ave NE, Bellevue, on the interim official control regulating medical marijuana collective gardens. On May 7, 2012, the Bellevue City Council adopted Ordinance No. 6058 adopting an official interim zoning control regulating medical marijuana collective gardens for a period of six months to be in effect while the City drafts, considers, and holds hearings about medical marijuana collective gardens. The purpose of the July 2, 2012 public hearing is to provide an opportunity to take written and oral comments regarding medical marijuana collective gardens. The Growth Management Act, RCW 36.70A.390, authorizes cities to adopt interim official controls provided cities hold a public hearing within 60-days of adoption. Cities may also renew the interim official control for one or more six-month periods if a subsequent public hearing is held and findings of fact are made before each renewal.

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Applicant Contact: Catherine A. Drews, City of Bellevue Development Services Department, 425-452-6134.
Questions relating to the public hearing process: Myrna Basich, City Clerk, 425-452-2733.

City Council Regular Session Monday, July 2, 2012, Meeting starts at 8:00 PM
Bellevue City Hall, Council Chambers
450 110th Avenue NE, Bellevue, WA

Affidavit of posting has been filed with the City Clerk for the Bellevue City Council.

Dated this 15th day of Jun, 2012.
Myrna L. Basich, City Clerk