CITY OF BELLEVUE

EAST BELLEVUE COMMUNITY COUNCIL

FINAL PUBLIC HEARING NOTICE

Rules of Procedure are available at the City Clerk's Office

The East Bellevue Community Council will hold a final public hearing during its Regular Meeting on **Tuesday, May 7, at 6:30 p.m.**, in the Lake Hills Boys & Girls Club, 15228 Lake Hills Boulevard, to consider Ordinance No. 6109 extending interim regulations for medical cannabis collective gardens (Ordinance No. 6058) for an additional six month period to allow for development of permanent regulations.

Interim Regulations for Medical Cannabis Collective Gardens:

In 2011, the state adopted E2SSB 5073, amending the Medical Marijuana Act (Ch. 69.51A RCW) authorizing medical marijuana collective gardens allowing certain qualifying patients to produce, grow, and deliver marijuana for medical use. Ordinance 6058 is an interim zoning control regulating medical marijuana collective gardens in the City of Bellevue. The interim zoning control regulates the operation of medical marijuana collective gardens and limits the siting of collective gardens to four land use districts: Light Industrial (LI); General Commercial (GC); Bel-Red General Commercial (GC) and Medical Institution (MI) land use districts and includes other restrictions. The Bellevue City Council adopted Ordinance No. 6058 on May 7, 2012, imposing interim regulations for a six-month period, which the City Council extended for an additional six-month period on October 22, 2012 (Ordinance No. 6079). On April 15, 2013, the City Council extended the interim regulations for an additional six-month period to provide a regulatory framework for medical cannabis collective gardens as staff begins work on permanent regulations. Staff will present Ordinance No. 6109 extending the interim regulations for an additional six-month period.

Written comments may be addressed to the East Bellevue Community Council in care of Michelle Murphy, Deputy City Clerk, P.O. Box 90012, Bellevue, WA 98009.

Posting/Publication Date: April 30, 2013

City of Bellevue

MEMORANDUM

DATE: April 25, 2013

TO: Chair Kasner and Members of the East Bellevue Community Council

FROM: Catherine A. Drews, Legal Planner, 425-452-6134

SUBJECT: Discussion of Ordinance No. 6109 Extending the Interim Zoning Control Regulating Medical Marijuana Collective Gardens (Ordinance No. 6058) for an Additional Six-Month Period.

INTRODUCTION

On May 7, the East Bellevue Community Council (EBCC) will hold a public hearing on extending the interim zoning control regulating medical marijuana collective gardens in Bellevue. The interim zoning control limits location of medical marijuana collective gardens to four land use districts, none of which currently are zoned in the EBCC: (1) Light Industrial; (2) General Commercial; (3) Bel-Red General Commercial; and (4) Medical Institution. Collective gardens may not be located in residential districts. The City Council adopted Ordinance No. 6109 on April 15, 2013 extending the interim regulation for an additional six-month period. A copy of Ordinance No. 6109 is included as Attachment A to this memorandum. The ordinance is not effective within the EBCC area until the EBCC votes to approve the ordinance or the EBCC fails to disapprove the ordinance within 60 days following its enactment by the City Council. LUC 20.35.450.A.

DISCUSSION

Federal and Washington law prohibit 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 Cannabis Act (the "Act"), approving the limited use of medical cannabis by patients with qualifying medical conditions.[2] The Act allows qualified patients to either grow their own cannabis or to designate a provider to grow the cannabis for them. The Act also limits the quantity of medical cannabis a patient may possess.

Allowing the limited possession, use, and ability to cultivate medical cannabis created an inconsistency among the Act and the state and federal controlled substances acts. In an attempt to clarify that inconsistency, the legislature in 2011 passed ESSB 5703. This bill, in relevant part, authorized medical cannabis dispensaries and allowed qualifying patients to participate in collective gardens to grow cannabis for medical use. The bill also authorized cities to regulate and license the production, processing, or dispensing of medical cannabis 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

[1] 21 U.S.C. 801 et. seq.; Chapter 69.50 RCW.
[2] Chapter 69.51A RCW (formerly the Medical Marijuana Act).

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 bill that were not vetoed and the existing Act. This included the operation and regulation of medical cannabis collective gardens. While clarifying legislation was introduced in the 2012 legislative session, it was not adopted.

During the May 7, 2012 Regular Session, the Bellevue City Council responded to the uncertainty associated with the regulation of medical cannabis collective gardens by adopting Ordinance 6058, implementing an interim zoning ordinance regulating medical cannabis collective gardens for a period of six months to be in effect while the City addressed permanent zoning regulations. A copy of Ordinance No. 6058 is included as Attachment B to this memorandum. Under the Growth Management Act (GMA), a public hearing is required within 60 days of adoption of the interim zoning ordinance. The required public hearing was scheduled for July 2, 2012. Council provided further direction to staff to add the permanent regulations for collective gardens to the code amendment work plan.

Staff returned during the June 18, 2012 Study Session to provide Council with information in preparation for the July 2 public hearing. This information included: (1) what regulatory tools other jurisdictions were using to regulate medical cannabis collective gardens; (2) what effect, if any, passage of Initiative 502, which seeks to legalize cannabis in Washington, may have on the City's role in regulating collective gardens; and (3) the process for moving permanent regulations forward.

On July 2, 2012, Council held the public hearing required under the GMA. At the close of the public hearing, Council directed staff to work with the Planning Commission to develop permanent regulations after Council established guidelines and principles for the Commissions' review. A second public hearing was held on October 22, 2012, and Council adopted Ordinance No. 6079 extending the interim regulations for an additional six-month period.

On February 25, 2013, staff presented project principles to the Council, which the Council adopted and directed staff to present to the Planning Commission. Staff is scheduled to present the principles to the Planning Commission on May 8. On April 15, 2013, Council adopted Ordinance No. 6109 extending the interim regulations for an additional six-month period after holding the public hearing as required under the GMA.

Staff is monitoring ongoing activities related to both medical and recreational marijuana. The Washington State Liquor Control Board (WSLCB) is undertaking required rulemaking to regulate the cultivation, production, and retail sale of recreational marijuana. During this legislative session, the legislature is considering amendments to the Medical Cannabis Act (Ch. 69.51A RCW). State rulemaking and legislative activities may inform the direction the City will take with the proposed permanent regulations for medical cannabis collective gardens. Staff will keep the Planning

Commission advised as we track the progress of the proposed bill in the legislature and WSLCB rulemaking activities.

Next Steps:

The proposed work schedule below captures the work necessary for the Planning Commission to develop and transmit its recommendation for permanent regulations to the Council. The schedule includes a courtesy public hearing before the EBCC, currently scheduled for June 4. The EBCC will hold a final public hearing after Council adopts the permanent regulations. Work on the permanent regulations will begin in May. Proposed schedule:

- May 8 – Introductory Study Session, including presentation of the Planning Principles
- May 22 – Study Session
- June 4 – Courtesy Public Hearing before the East Bellevue Community Council
- July 24 – Proposed public hearing on draft Medical Cannabis Land Use Code Amendment

Following the July 24 public hearing, staff anticipates the Planning Commission would present its recommendation to the Council during September, with final action to follow shortly thereafter.

Planning Commission work on the permanent regulations is anticipated to occur within the timeframe provided by this six month extension. However, the option to extend the interim zoning ordinance is available if the level of public involvement or the Planning Commission's workload over the next several months differs from what is anticipated. If needed, the interim regulation could be extended for an additional six month period and would require Council to hold a public hearing on or before November 7, 2013.

ACTION REQUESTED OF THE EAST BELLEVUE COMMUNITY COUNCIL

Following review of Ordinance No. 6109, vote to approve the ordinance so it will become effective within the jurisdiction of the EBCC. Staff will be present at the May 7, 2013 hearing to answer any questions you may have.

Please contact me at 425-452-6134 or at cdrews@bellevuewa.gov if you have any questions before the July 3, 2012 meeting.

Exhibit A: Ordinance No. 6109
Exhibit B: Ordinance No. 6058

1332-ORD
04/11/13

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6109

AN ORDINANCE extending Ordinance No. 6058 adopting an interim zoning ordinance regulating medical cannabis collective gardens for a period of six months, to be in effect while the City considers the adoption of permanent regulations for medical cannabis collective gardens; providing for severability; and establishing an effective date.

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, grow, 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 federal 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, on May 7, 2012 in response to the legal uncertainty created between state and federal regulation of cannabis, the City Council adopted Ordinance No. 6058 implementing an interim zoning ordinance regulating medical cannabis collective gardens on an interim basis, and adopting findings of fact; and

WHEREAS, under the Growth Management Act (GMA), the City was required to hold a public hearing within 60 days of adopting Ordinance No. 6058, which public hearing was held on July 2, 2012, to consider the interim zoning ordinance regulating medical cannabis collective gardens; and

WHEREAS, on October 8, 2012, information was presented to the City Council regarding the status of the code work to develop permanent regulations for

medical cannabis collective gardens and advising the City Council about recent court rulings upholding cities' zoning authority to regulate and ban medical cannabis collective gardens; and

WHEREAS, on October 22, 2012, the City Council held a public hearing as required under RCW 36.70A.390 and subsequently adopted Ordinance No. 6079 extending the interim regulations for medical cannabis collective gardens for another six month period to allow for ongoing research and work on permanent regulations for medical cannabis collective gardens; and

WHEREAS, Initiative 502 (I-502), seeking to decriminalize cannabis in the state of Washington, was approved by Washington voters on November 6, 2012 and it is unknown what actions the state or federal governments may take in response to the passage of I-502; and

WHEREAS, on February 25, 2013, the City Council adopted planning principles to guide staff and the Planning Commission in the development of permanent regulations for medical cannabis collective gardens; and

WHEREAS, Ordinance No. 6058 will, by its terms, expire on May 7, 2103; and

WHEREAS, the extension of the interim regulations of six months in duration for the filing of certain applications for development, establishment or licensing of medical cannabis 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 City has a compelling interest in the protection of the health and safety of all of 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, RCW 35A.63.220 and RCW 36.70A.390 authorizes cities to adopt interim zoning ordinances provided the City Council holds a public hearing on the interim zoning ordinance within 60 days of the commencement of the ordinance; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 further authorizes Washington cities to extend interim zoning ordinances for additional periods of up to six months following a public hearing and adoption of findings of fact; and

WHEREAS, pursuant to BCC 22.02.050 and WAC 197-11-880 the adoption of this ordinance is exempt from environmental review under the State Environmental Policy Act; now, therefore,

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ORIGINAL

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

Section 1. Extension of Interim Zoning Ordinance. Ordinance No. 6058 is hereby extended for an additional six month period, unless repealed, extended or modified by the City Council after subsequent public hearing and the entry of additional findings of fact pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 2. 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 3. Findings of Fact. The findings contained in this ordinance are hereby adopted as findings of facts to justify extending Ordinance No. 6058 imposing the interim zoning ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in force on May 7, 2013

Passed by the City Council this 15th day of April, 2013 and signed in authentication of its passage this 15th day of April, 2013.

(SEAL)

Conrad Lee, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Attest:

Myrna L. Basich, City Clerk

Published April 18, 2013.

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:

Myrna L. Basich, City Clerk

Published May 10, 2012