



MEMORANDUM

DATE: July 19, 2016

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

FROM: Catherine A. Drews, Assistant City Attorney, 425-452-6134

SUBJECT: Discussion of Ordinance No. 6296 adopting official interim zoning controls prohibiting medical marijuana cooperatives and marijuana research uses, and imposing civil penalties for certain violations of the Medical Cannabis Act for a six-month period with the City drafts, considers, holds hearings and adopts permanent zoning regulations.

INTRODUCTION

On August 2, the East Bellevue Community Council (EBCC) will hold a public hearing to consider Ordinance No. 6296 which prohibits medical marijuana cooperatives and marijuana research uses, and imposing civil penalties for certain violations of the Medical Cannabis Act. The City Council adopted Ordinance 6296 and held the required public meeting on June 2016. A copy of Ordinance No. 6296 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

Council initially adopted interim regulations in 2013 to address the amendment to the state medical cannabis law, which, in part, allowed the establishment of medical marijuana collective gardens. Council's goal was to provide patients access to medical cannabis, while preserving neighborhood character. This was achieved by ensuring marijuana collective gardens were prohibited in residential neighborhoods. This trend of allowing access but ensuring that marijuana uses were not allowed in residential neighborhoods continued with the passage of I-502 and Council's adoption of interim regulations addressing recreational marijuana. In 2013, Council adopted project principles to guide the development of permanent marijuana regulations which are provided in Attachment B.

2015 CHANGES IN STATE LAW

At the July 6, 2015, Study Session, staff presented Council with information on three marijuana bills, the Cannabis Patient Protection Act (2SSB 5052), HB 2136 (Revenue Sharing); and HB 5121 (establishing a marijuana research license). The three new bills established the regulatory mechanism for medical marijuana, marijuana taxation, and revenue sharing, and refinements to the marijuana regulatory provisions. The bills also included new three new provisions of interest to the City: medical cannabis cooperatives; marijuana research licenses; and the authority to impose civil penalties

and undertake abatement actions for certain violations of the Medical Cannabis Act. A description of the three new provisions and Council's response follows.

Medical Marijuana Cooperatives. The Medical Cannabis Act allows up to four qualifying patients or their designated providers to share resources to grow medical marijuana. The cooperative must be registered with the LCB, may only be located *in the domicile* of one of the members, and cannot be located within one mile of a retail marijuana store. Cities are specifically authorized to prohibit cooperatives. This provision became effective on July 1. Consistent with prior Council action to provide access to medical marijuana while preserving neighborhood character, Ordinance No. 6296 prohibits cooperatives, which under state law are allowed only in residential neighborhoods. Factors influencing the Council's decision to prohibit marijuana cooperatives include the ability for patients to now access medical marijuana in retail marijuana stores and the ability to grow medical marijuana for their own use.

Marijuana Research Uses. In 2015, the legislature approved a new marijuana research license. This license would allow the holder to produce, process, and possess marijuana for limited research purposes (chemical potency and composition, efficacy and safety, clinical investigations of marijuana-derived drug products, or to conduct genomic or agricultural research). Licensed marijuana researchers may partner with the University of Washington or Washington State University to conduct research. Marijuana grown by a researcher may only be sold to other licensed marijuana researchers. Factors influencing the Council's decision to prohibit the use include the lack of program information from the state and the fact the City has not received any inquiries regarding this use. Council may reconsider this use in the future if program information becomes available and the City receives a request to site the use in the City.

Civil Penalties. Under the Act, jurisdictions are allowed to create and enforce civil penalties, including abatement procedures, for the growing or processing of medical marijuana and the keeping of marijuana plants beyond or otherwise not in compliance with the law. The Act provides that marijuana may only be grown where it cannot be seen or smelled. Creating and enforcing civil penalties and abatement procedures would require enforcement by the City's code enforcement division and establishment of an abatement fund. Council approved adding these civil enforcement provisions to provide an additional tool in the compliance tool box. Factors influencing this decision include allowing code compliance to work with citizens to first educate alleged violators, then initiate enforce when necessary. This provision will also assist the Bellevue Police Department by allowing code compliance to first respond to these types of calls. Code compliance would elevate any appropriate enforcement issues to the Bellevue Police Department.

ACTION REQUESTED OF THE EAST BELLEVUE COMMUNITY COUNCIL

Following review of Ordinance No. 6296, vote to approve Resolution No. 557 so that Ordinance 6296 becomes effective within the jurisdiction of the EBCC. Staff will be present at the August 2, 2016 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 August 2 meeting.

Exhibit A: Ordinance No. 6296

Exhibit B: Council Approved Planning Principles

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6296

AN ORDINANCE of the City of Bellevue, Washington, 1) adopting interim official zoning controls prohibiting medical marijuana cooperatives, marijuana research uses; 2) imposing civil penalties and abatement actions for violations of certain provisions of Chapter 69.51A RCW for a period of six months, to be in effect while the City drafts, considers, holds hearings and adopts permanent zoning regulations; 3) setting an effective date; and 4) scheduling a hearing on the maintenance of the interim zoning ordinance.

WHEREAS, in 2011, Washington adopted E2SSB 5073 amending Chapter 69.51A RCW (the Medical Cannabis Act), which in part authorized collective gardens that allowed certain qualifying patients to produce, grow, and deliver marijuana for medical use; and

WHEREAS, the City of Bellevue adopted an interim zoning control (Ordinance No. 6058) on May 7, 2012, prohibiting medical marijuana collective gardens from all land use districts except the General Commercial, Light Industrial, Bel-Red General Commercial, and Medical Institution Land Use Districts; and

WHEREAS, Washington voters approved Initiative 502 (I-502) on November 6, 2012. In relevant part, I-502 legalized the possession of small amounts of marijuana and marijuana-related products for persons age 21 and older, and directed the Washington State Liquor Control Board (LCB) to develop and implement rules to regulate and tax recreational marijuana producers, processors, and retailers by December 31, 2013; and

WHEREAS, the LCB rules became effective on November 16, 2013, and the LCB began accepting license applications for recreational marijuana uses beginning November 18, 2013; and

WHEREAS, on December 2, 2013, the Bellevue City Council approved project principles to guide the development of permanent regulations for marijuana uses that emphasized protecting neighborhood character by prohibiting marijuana uses in residential neighborhoods; and

WHEREAS, the LCB initially 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, after substantial work done by its Planning Commission and taking into consideration public testimony for and against permitting recreational marijuana production, processing and retail uses, the City of Bellevue adopted permanent regulations on August 3, 2015 in Ordinance No. 6253 (which is codified in Bellevue Land Use Code Chapter 20.20.535) providing for regulation of these businesses as permitted uses in the City of Bellevue, and prohibiting all marijuana uses from single-family and multi-family land use districts (R-1 through R-30; DNTN-R; BR-R); and

WHEREAS, there are currently three recreational marijuana retail businesses operating in the City of Bellevue located in separate subareas throughout the City and the City has not received complaints that residents have been unable to procure marijuana products due to unavailability from these retail outlets; and

WHEREAS, in July 2015, Washington State Legislature 2SSB 5052 went into effect, which authorized medical marijuana cooperatives; authorized jurisdictions to adopt civil penalties and abatement procedures for violations for growing, processing and possessing more than the allowed number of medical marijuana plants or medical marijuana; renamed the Liquor Control Board the "Liquor and Cannabis Board"; and directed the LCB to develop new regulations providing for alignment of the medical cannabis and recreational marijuana sales industries; and

WHEREAS, some of the recreational marijuana retail businesses in Bellevue have applied for medical marijuana endorsements with the LCB, which, if granted, will allow these businesses to sell medical marijuana in the city; and

WHEREAS, in July 2015, Washington State Legislature SB 5121 went into effect, establishing a marijuana research license and directing the LCB to establish rules for marijuana research uses; and

WHEREAS, in July 2015, Washington State Legislature 2E2SHB 2136 went into effect authorizing jurisdictions to prohibit the siting of medical marijuana cooperatives; and

WHEREAS, the provision in 2SSB 5052 authorizing medical marijuana cooperatives (which is codified at RCW 69.51A.250) and authorizing civil penalties and abatement procedures becomes effective on July 1, 2016; and

WHEREAS, the Bellevue City Code does not contain provisions for the civil enforcement and abatement of violations for the growing and possession, of medical marijuana consistent with 2SSB 5052 (which is codified at RCW 69.51A.260); and

WHEREAS, the establishment of medical marijuana cooperatives and marijuana research uses if applicable in Bellevue may allow new uses that are incompatible with nearby existing land uses and lead to erosion of community character and harmony; 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 the 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, despite providing the updated guidance in 2013, the DOJ continues to investigate and prosecute certain marijuana crimes under federal law, including prosecution of medical marijuana growers and dispensaries; 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 banning the establishment of medical marijuana cooperatives and marijuana research uses and imposing civil penalties and abatement procedures will prevent substantial change until the land areas and the text of development standards applicable to marijuana uses is reviewed, and any needed revisions are made to city codes; now, therefore,

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

Section 1. Interim Regulation Adopted. Medical marijuana cooperatives authorized under RCW 69.51A.250 (now or as hereafter amended), are prohibited in the City of Bellevue.

Section 2. Marijuana research uses as authorized under RCW 69.50.372, now or as hereafter amended, are prohibited in the City of Bellevue.

Section 3. Civil Penalties and Abatement. Violation of RCW 69.51A.260 (now or as hereafter amended) shall constitute a civil violation as provided for in Chapter 1.18 BCC, for which a monetary penalty may be assessed and abatement may be required as provided therein. Civil enforcement under Ch. 1.18 BCC does not preclude the City from enforcement under the Penal Code, BCC Title 10.

Section 4. 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 5. 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 August 19, 2016, 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 6. 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 7. 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 8. Effective Date. This ordinance shall take effect and be in force five (5) days after adoption and publication.

ORIGINAL

Passed by the City Council this 20th day of June, 2016 and signed in authentication of its passage this 21st day of June, 2016.

(SEAL)



John Stokes, Mayor

Approved as to form:

Lori M Riordan, City Attorney



Catherine A. Drews, Assistant City Attorney

Attest:



Kyle Stannert, City Clerk

Published June 23, 2016.

**Project Principles for the
Regulation of Recreational Marijuana Producers, Processors, and Retailers
Approved by the Bellevue City Council**

December 2, 2013

1. Bellevue Appropriate. Bellevue will establish appropriate land use zones for recreational marijuana producers, processors, and retailers (“recreational marijuana uses”). To the extent permitted, Bellevue will establish performance standards consistent with applicable provisions of Chapter 69.50 RCW and Chapter 314-55 WAC, now or as hereafter amended, that ensure these business represent the community values and goals set forth in the City’s Comprehensive Plan.
2. Neighborhood Character is Protected. Recreational marijuana uses shall not be located in residential land use districts. Recreational marijuana uses shall be separated by 1,000 feet from elementary or secondary schools (public or private), playgrounds, recreation center or facility; child care center; public park; public transit center; library; and game arcade where admission is not restricted to persons age twenty-one or older, or a medical cannabis collective garden. Recreational marijuana use shall use appropriate ventilation to ensure abutting uses or properties are not impacted by odor.
3. Security Measures are Required. Recreational marijuana uses must have sufficient security measures to protect the public. Recreational marijuana uses must conform to state requirements for security and secure usable marijuana consistent with state pharmacy requirements for securing controlled substances.
4. Regulations are Specific and Understandable. The permanent regulations should be specific about the requirements to locate and operate recreational marijuana uses so that qualified licensees understand what is expected under the regulation.
5. Administration and Enforcement is Straightforward. Ensure regulations are capable of being administered and enforced. Development Services and the Bellevue police department should collaborate in matters of approval of license applications and renewals and where appropriate, enforcement.
6. The Outcome is in Conformance with Applicable Law. The establishment and operation of recreational marijuana uses must conform with, and not frustrate, the purpose of state law. Recreational marijuana uses must conform to the applicable requirements of Chapter 69.50 RCW and Chapter 314-55 WAC, now or as hereafter amended.
7. Processing of the Amendment is Inclusive. The code amendment process for recreational marijuana uses should seek and include input from a wide range of stakeholders.