City of Bellevue

MEMORANDUM

DATE: August 18, 2014

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

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

SUBJECT: Courtesy Public Hearing on Proposed Permanent Land Use Regulations for Recreational Marijuana Uses.

INTRODUCTION

On September 2, the East Bellevue Community Council ("EBCC") will hold a courtesy public hearing on the proposed permanent land use regulations for recreational marijuana producers, processors, and retailers. No action is required by the EBCC. Recreational marijuana uses are currently regulated under the City's interim zoning controls (Ordinances Nos. 6133 B-1 and 6156). The Planning Commission held a public hearing on July 30 and considered a broad range of regulatory options. Because of the scheduling constraints, staff was unable to schedule a courtesy hearing with the EBCC before the Planning Commission's public hearing on July 30. An EBCC council member did attend the public hearing. Following the courtesy hearing, staff will present any comments or feedback from the EBCC to the City Council, when the City Council considers the Planning Commission's recommendation in September or early October.

DISCUSSION

I. Regulatory Background

At the November 6, 2012, General Election, Washington voters approved Initiative 502 ("I-502"). I-502 became effective on December 6, 2012, and is codified into Chapter 69.50 RCW, the state Uniformed Controlled Substances Act.

In general I-502:

- Legalizes the use of marijuana by people 21 years and older. Adults may possess up to 1 ounce of marijuana, 16 ounces of marijuana-infused product in solid form, and 72 ounces of marijuana-infused product in liquid form;
- Specifies that only state-licensed marijuana production, processing, and sale of marijuana are permitted;
- Requires licensed facilities to be at least 1,000 feet from schools, public playgrounds, recreation centers, state-licensed day cares, public parks, public transit centers, libraries, and arcades[1]; and
- Limits signage to a maximum of one sign no larger than 11 square feet in area.

I-502 prohibits retail outlets from:

- Permitting anyone under the age of 21 from entering the premise;

[1] These facilities are defined at WAC 314-55-010. The separation distance is measured as the shortest line between the property lines of the proposed recreational marijuana use and the uses listed in the Washington State Liquor Control Board's ("LCB") rules. WAC 314-55-050(10).

- Selling marijuana or marijuana products to anyone under the age of 21;
- Displaying marijuana or marijuana products so they are visible from the public right-of-way; and
- Selling anything other than marijuana, marijuana-infused products[2], and paraphernalia; and;

I-502 prohibits for all recreational uses from:

- Advertising in any medium, within 1,000 feet from schools, public playgrounds, recreation centers, state-licensed day cares, public parks, public transit centers, libraries, and arcades; and
- Advertising on publically-owned or operated property or within a public transit vehicle or shelter; and
- Allowing consumption of marijuana and marijuana products on premises.

I-502 also establishes a standard for driving under the influence of marijuana. I-502 did not repeal or amend the Medical Cannabis Act, Chapter 69.51A RCW.

The Washington State Liquor Control Board ("LCB") is the agency tasked with developing and implementing regulations for recreational marijuana producers, processors, and retailers. The LCB published draft rules in the fall of 2013 and adopted final rules in December 2013.

Under federal law, the production, processing, and dispensing of marijuana is illegal.[3] On August 29, 2013, however, 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 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 in cases to determine whether the conduct at issue implicates one or more of the eight stated federal enforcement priorities set forth in the guidance. The DOJ guidance rests on expectations that state and local governments implement a strong and effective regulatory system.

II. City's Response to I-502

During the Council's July 15, 2013, Study Session, staff sought and received direction to develop recommendations for an emergency interim zoning ordinance implementing land use regulations for recreational marijuana producers, processors, and retailers. Based on the LCB's schedule, there was insufficient time for the City to pursue enactment of permanent zoning regulations using the process generally employed under the Land Use Code of delegating consideration of proposed zoning to the Planning Commission for a public hearing and subsequent recommendation to Council. Instead of this process, the City used the emergency ordinance and interim zoning control processes allowed under the Growth Management Act ("GMA").

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[2] Marijuana extracts, such as hash, hash oil, shatter, and wax may be infused into products sold by a marijuana retailer, but the extracts alone may not be sold. WAC 314-55-079(1). On June 25, the LCB passed an emergency amendment (Emergency Rule #14-23) to its rules addressing infused products to require portion control, product consistency, and prohibiting products appealing to children. http://liq.wa.gov/rules/recently-adopted-rules (last visited July 8, 2014).

[3] 21 U.S.C. 801 et. seq.

On October 7, 2013, staff presented recommendations to Council in preparation for adoption of an emergency ordinance implementing an interim zoning control. In response to the draft rules and to ensure that the City had appropriate zoning established for recreational marijuana uses, on October 21, 2013, the City Council adopted Ordinance No. 6133 B-1. This ordinance implemented an emergency interim zoning control regulating the location of recreational marijuana uses and providing performance standards intended to address impacts related to the operation of recreational marijuana uses. These standards went beyond the LCB's rules for security and odor control. Council subsequently held a public hearing on the ordinance as required under the GMA on December 2, 2013, and extended the ordinance for a six-month period as allowed under the GMA. The Council also adopted planning principles to direct the work of the Planning Commission.

Shortly after Council adopted planning principles on December 2, 2013, the Washington legislature began its 2013-14 session. During this session, there was uncertainty regarding what action the legislature would take on pending bills regarding recreational marijuana regulation and medical cannabis during the 2014 legislative session. Because of the legislative uncertainty, staff waited to introduce the recreational marijuana work to the Planning Commission.

The City Council again extended the interim regulations on March 17, 2014. During the public hearing, Council adopted Ordinance No. 6156 extending and amending Ordinance No. 6133 B-1 requiring that marijuana retail outlets be located no closer than 1,000 feet to another marijuana retail outlet. The notice, however, for the March 17 public hearing did not anticipate this action, so another public hearing was held on May 12, 2014, to provide the public with an opportunity to comment on the amendment. Two people commented in opposition to marijuana uses in Bellevue.

Also at the May 12 Study Session, Council discussed imposing a moratorium on the acceptance and processing of permit and licensing applications for both recreational marijuana uses and medical cannabis collective gardens. A motion was made to impose a six-month moratorium, but the motion failed by a vote of 2 - 5. At the close of the public hearing, Council directed staff to begin working with the Planning Commission to develop a recommendation for permanent regulations for recreational marijuana uses consistent with the planning principles adopted in December 2013. The principles represent Council's desire for Bellevue-appropriate regulations for recreational marijuana uses that protect neighborhood character, bolster security requirements, provide a predictable regulatory structure that is understandable and enforceable, and ensure the permanent regulations are consistent with state law.

Staff introduced the topic of permanent regulations for recreational marijuana uses to the Planning Commission on May 28. Staff presented additional information based on questions raised by the Planning Commission during study sessions on May 28 and June 11 at the June 25 study session. Public comments were received both opposing and supporting recreational marijuana uses. The Planning Commission held a public hearing on July 30, 2104. At the conclusion of the public hearing and consideration of public comments, the Planning Commission directed staff to prepare a recommendation to the City Council for permanent regulations for recreational marijuana.

II. Proposal to Regulate Recreational Marijuana

At the July 30 public hearing, the Planning Commission considered a range of options for regulating recreational marijuana uses.

To facilitate discussion and consideration of the range of options under consideration, staff provided the Planning Commission with two proposed draft code amendments using the interim zoning regulations (Ordinances Nos. 6133 B-1 and 6156) as the starting point and including the Council's adopted Bellevue-appropriate performance standards. These performance standards include separation requirements from other uses, and requirements beyond LCB rules for security and odor control. Both options prohibited recreational marijuana uses in residential land use districts.
The first option started with provisions from the interim ordinances and included the following options:

1. Increasing the separation distance between recreational marijuana uses and certain uses from 1,000 feet to 1,320 feet (1/4 mile);
2. Amending the park separation requirement by deleting the term "public," so that all parks fall within the separation requirement;
3. Defining the term "park" to mean those parks included on the City of Bellevue GIS mapping system;
4. Prohibiting recreational marijuana uses in the Perimeter Design District, sub-district A;
5. Requiring an Administrative Conditional Use Permit; and
6. Including a provision addressing legally-established non-conforming uses consistent with the Land Use Code.

The second option was a draft code amendment comprised of the interim Ordinances Nos. 6133 B-1 and 6156.

To assist in consideration of the permanent regulations and to understand the effects of the options, the Planning Commission directed staff to prepare maps showing the additional requirements under consideration. Although the Planning Commission did not direct staff to include religious institutions as a use that should be separated from recreational marijuana uses, the Commission did ask staff to map religious institutions with the 1,320 foot separation buffer. The mapping demonstrated that buffering religious institutions resulted in an effective ban of recreational marijuana uses throughout the City, which was inconsistent with Council direction.

Staff prepared and presented several maps to assist the Planning Commission in its consideration of the permanent regulations. The maps illustrated the impact of the regulatory options by first showing the available parcels for the uses without any separation requirements. Each subsequent map showed another regulatory layer, beginning with the state's separation requirement, followed by the Council-adopted separation requirements, then the regulatory options under consideration by the Planning Commission. Again, the mapping demonstrated that increasing the separation distance and other measures resulted in limiting and clustering retail locations, and limiting available parcels for producers and processors.

At the conclusion of the public hearing and consideration of public comment the Planning Commission directed staff to prepare a recommendation to the Council for permanent regulations for recreational marijuana uses based on the interim regulations. The Planning Commission voted to require an administrative use process and to include all mapped City parks when considering separation requirement

IV. Next Steps.

The Planning Commission will transmit its recommendation to the Council in early Fall 2014 for the Council's consideration. Council has stated its goal is to adopt permanent regulations before expiration of the interim zoning ordinances on October 21. Following conclusion of the

courtesy hearing, staff requests any feedback or comments you have on the proposed LUCA. Please contact me if you have any questions at 425-452-6134 or at cdrews@bellevuewa.gov. Staff will be present at the September 2, 2014 hearing to answer any questions you may have.

Exhibit A: Draft ordinance based on interim zoning regulations.
Exhibit B: Map of Possible Recreational Sites under Interim Regulations (7/23/14)

PROPOSED DRAFT RECREATIONAL MARIJUANA REGULATIONS: BASED ON INTERIM REGULATIONS

Section 1. Section 20.10.440 – Resource Land Use Charts - of the Bellevue Land Use Code is hereby amended to add as separate entries "recreational marijuana production" and "recreational marijuana processing" as a permitted use in the following land use districts: Light Industrial (LI), and to add the following new note 5:

(5) See LUC 20.20.710 for general development requirements for recreational marijuana uses.

The "recreational 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. "Recreational marijuana processing" shall be placed directly below "Agricultural Processing" (Standard Land Use Code Reference 821).

Section 2: 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 "Recreational marijuana retail outlet" as a permitted 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 20.20.710 for general development requirements for recreational marijuana uses.

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

Section 3. 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 "recreational marijuana production" and "marijuana processing" as a prohibited use in all Bel-Red land use districts.

The "recreational 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. "Recreational marijuana processing" shall be placed directly below "Agricultural Processing" (Standard Land Use Code Reference 821).

Section 4. 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 "Recreational marijuana retail outlet" as a permitted 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 20.20.710 for general development requirements for recreational marijuana uses.

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

Section 5. A new section 20.20.710 of the Bellevue Land Use Code is hereby adopted as follows:

20.20.710 Recreational Marijuana Uses.

A. Purpose.

The purpose of this section is to regulate recreational marijuana producers, processors, and retailers under Chapter 69.50 RCW by identifying appropriate land use districts and establishing development and performance standards. Recreational marijuana producers, processors, and retailers shall only be permitted when licensed by the Washington State Liquor Control 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

Comment [CoB CD1]: New provision from interim regulations

B. Applicability.

This section applies to recreational marijuana uses licensed by the Washington State Liquor Control Board. This section is not applicable to medical cannabis collective gardens, which are governed by LUC 20.20.526.

Comment [CoB CD2]: Clarity

C. Definitions Specific to Recreational 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 recreational 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 control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.
4. "Marijuana producer" means a person licensed by the state liquor control 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 do not include useable marijuana.
6. "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.
7. "Recreational Marijuana Uses" means the collective of Marijuana producer, retailer, and processor.
8. "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

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

D. Recreational marijuana producers, processors, and retailers must comply with all requirements of chapter 69.50 RCW, chapter 314-55 WAC, and all applicable City of Bellevue ordinances, standards, and codes, now or as hereafter amended.

E. 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;
   h. Any game arcade or
   i. Any medical cannabis collective garden.
2. No marijuana retailer shall be located within 1,000 feet of any other marijuana retailer.
3. 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).
4. No marijuana retailer is allowed as a subordinate or accessory use in any land use district.
5. Marijuana shall be grown in a structure. Outdoor cultivation is prohibited.

Comment [CoB CD3]: Added for clarity

F. 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 City of Bellevue Sign Code, Chapter 22B BCC.

G. 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, useable marijuana, and marijuana-infused products.

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

I. Release of Liability and Hold Harmless.

Comment [CoB CD4]: Consistency with medical cannabis collective gardens regulations.

The permittee of a recreational 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 recreational use. Additionally, within the release document, the permittee of a recreational 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 recreational marijuana use and for any claims brought by any of the recreational 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 recreational marijuana use.

J. Conflicts

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

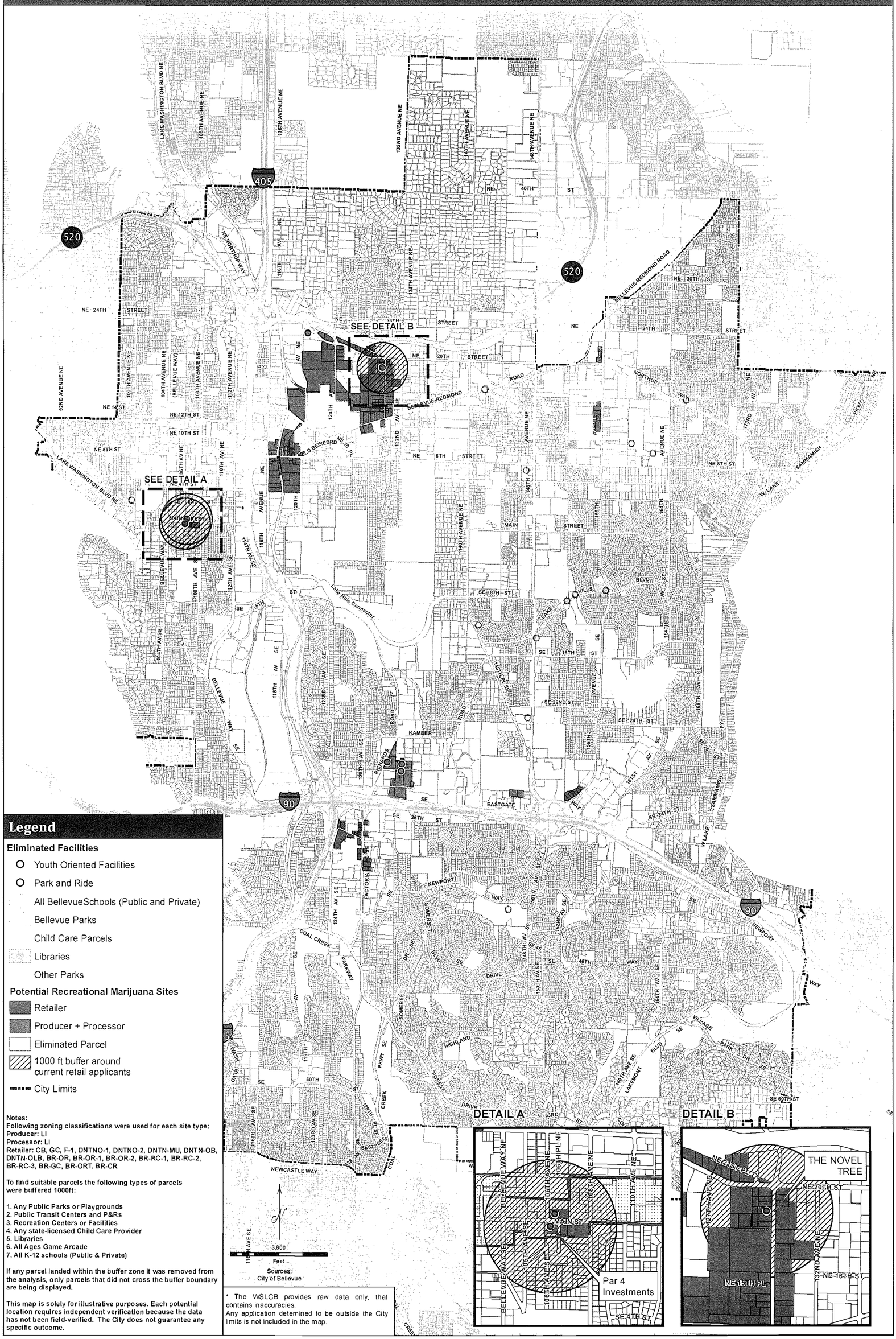
Section 5. Severability. Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 6. This ordinance shall take effect and be in force five (5) days after adoption and legal publication.

Possible Recreational Marijuana Sites under Interim Regulations

For Illustrative Purposes Only

City of Bellevue
GIS Services



Notes:
Following zoning classifications were used for each site type:
Producer: LI
Processor: LI
Retailer: CB, GC, F-1, DNTNO-1, DNTNO-2, DNTN-MU, DNTN-OB, DNTN-OLB, BR-OR, BR-OR-1, BR-OR-2, BR-RC-1, BR-RC-2, BR-RC-3, BR-GC, BR-ORT. BR-CR

To find suitable parcels the following types of parcels were buffered 1000ft:

1. Any Public Parks or Playgrounds
2. Public Transit Centers and P&Rs
3. Recreation Centers or Facilities
4. Any state-licensed Child Care Provider
5. Libraries
6. All Ages Game Arcade
7. All K-12 schools (Public & Private)

If any parcel landed within the buffer zone it was removed from the analysis, only parcels that did not cross the buffer boundary are being displayed.

This map is solely for illustrative purposes. Each potential location requires independent verification because the data has not been field-verified. The City does not guarantee any specific outcome.

* The WSLCB provides raw data only, that contains inaccuracies.
Any application determined to be outside the City limits is not included in the map.

Date: 7/23/2014 File Name: V:\pcd\arcgis\MedManjuanaSites\ZoningRecMarijuanaSites\502July_2014_11x17.mxd

IT Department