



MEMORANDUM

DATE: October 23, 2014

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

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

SUBJECT: Public hearing on Ordinance No. 6180 Extending the Interim Zoning Controls Regulating Recreational Marijuana Producers, Processors, and Retailers.

INTRODUCTION

On October 13, 2014, the Bellevue City Council adopted Ordinance No. 6180 extending the interim regulations for recreational marijuana for an additional six-month period. On November 4, the East Bellevue Community Council (EBCC) will hold a public hearing to consider Ordinance No. 6180 (Attachment A) and whether to extend the interim regulations for recreational marijuana uses within the jurisdiction of the EBCC.

DISCUSSION

Interim Regulations

Council adopted Ordinance No. 6133 B-1 as an emergency measure to ensure Bellevue had established appropriate land use districts and performance standards before the Washington State Liquor Control Board (LCB) began issuing licenses for recreational marijuana producers, processors, and retailers.

Ordinance No. 6133 B-1 accomplished several things:

- Established appropriate land use zones for each recreational marijuana use;
- Implemented separation standards between recreational uses and medical cannabis collective gardens;
- Required security measures beyond those required by the LCB; and
- Imposed requirements to control marijuana odor.

The provisions of Ordinance No. 6133 B-1 were subsequently extended and amended by Ordinance No. 6156, adopted by Council on March 17. Council amended the interim regulations to require that recreational marijuana retail outlets be separated from each other by 1,000 feet. The interim regulations were scheduled to expire on October 21, unless Council extended the interim regulations, which they did on October 13.

Status of Permanent Regulations Preparation

This development of permanent regulations began with an introduction of the issue to the Planning Commission on May 28, 2014. This was followed by a study session on June 25 and a public hearing on July 30. After receiving public comment and considering various regulatory options, the Planning Commission voted to recommend proposed recreational marijuana permanent regulations to the Council. The EBCC held

a courtesy public hearing on the Planning Commission's recommendation on August 5. Study sessions before the Council were originally proposed for late September and early October; however, Council scheduling considerations necessitated delaying consideration of the permanent regulations to November. This delay required extending the interim regulations for an additional six-month period to allow Council sufficient time to consider and adopt final, permanent regulations.

Next Steps

The following meetings are the minimum necessary to finalize work on the permanent regulations for recreational marijuana uses:

- November 10: Study Session with Council to present the Planning Commission's recommendation on permanent regulations for recreational marijuana uses.
- December 1 or December 8: Action on recreational marijuana regulations. Adoption of the permanent regulations will eliminate the need for a public hearing on the October 13 extension because the interim regulations will be repealed contemporaneously with adoption of the permanent regulations.
- January 6, 2015: EBCC approval/disapproval of the permanent regulations.

ACTION REQUESTED OF THE EAST BELLEVUE COMMUNITY COUNCIL

Following review of Ordinance No. 6180, vote to approve the ordinance so it will become effective within the jurisdiction of the EBCC. Staff will be present at the November 4, 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 November 4, 2014 meeting.

Attachment A: Ordinance No. 6180

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6180

AN ORDINANCE extending Ordinance No. 6133 B-1, adopting interim official zoning controls regarding the regulation of recreational marijuana producers, processors and retailers for a period of six months, to be in effect while the City drafts, considers, holds hearings and adopts permanent zoning regulations; providing for severability; and establishing an effective date.

WHEREAS, on November 6, 2012, Washington votes approved Initiative 502 (I-502), which in relevant part, 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 re-filed its proposed rules regulating recreational marijuana uses on September 4, 2013, and accepted the proposed rules on October 16; and

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

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

WHEREAS, the City of Bellevue Land Use Code (LUC) prohibits all recreational marijuana producers, processors, and retailers as uses in the City of Bellevue; and

WHEREAS, the City Council deems it to be in the public interest to establish interim regulations advising the public where recreational marijuana producers, processors, and retail uses may be located in the City of Bellevue before the application deadline established by the LCB for state licensing for such uses; and

WHEREAS, on October 21, 2013, in response to the licensing schedule published by the Washington State Liquor Control Board, the City Council adopted Ordinance No. 6133 B-1 implementing an emergency interim zoning ordinance regulating the location of recreational marijuana uses and imposing performance criteria intended to mitigate negative impacts arising from operation of recreational marijuana uses; and

WHEREAS, under the Growth Management Act (GMA), the City was required to hold a public hearing within 60 days of adopting Ordinance No. 6133 B-1, which public hearing was held on December 2, 2013, to receive public comment and extend Ordinance No. 6133 B-1 for a six-month period; and

WHEREAS, Ordinance No. 6133 B-1 will, by its own terms, expire on October 21, 2014, unless the City Council extends the ordinance as allowed by law; and

WHEREAS, on January 13, 2014 the Washington State Legislature convened and is considering several bills related to regulating recreational marijuana and reconciling medical cannabis with the recreational marijuana regulatory structure; and

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

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

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

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

WHEREAS, on March 17, 2014, the Council extended and amended Ordinance No. 6133 B-1 for an additional six month period after entering findings of fact and holding a public hearing and receiving public comment; and

WHEREAS, on July 30, 2014, the Planning Commission held a public hearing on draft permanent regulations for recreational marijuana and at the conclusion of the public hearing after taking and considering public comment, the Commission voted to recommend proposed permanent regulations to the Council; and

WHEREAS, the City Council's schedule prevents consideration of the Planning Commission's recommendation until after October 21, 2104, the date the interim regulations shall expire unless Council extends them; and

WHEREAS, the extension of interim regulations of six months in duration to allow the Council time to consider the recommended permanent regulations for recreational marijuana uses will continue to prevent substantial change until the Council completes its deliberations of the recommended permanent regulations land areas 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 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; provided a subsequent public hearing is held and findings of fact are made prior to each extension; and

WHEREAS, pursuant to BCC 22.02.050 and WAC 197-11-800(19), the adoption of this ordinance is exempt from environmental review under the State Environmental Policy Act; now, therefore,

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

Section 1. Extension of Interim Zoning Ordinance. Ordinance No. 6133 B-1 and 6156 are 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.

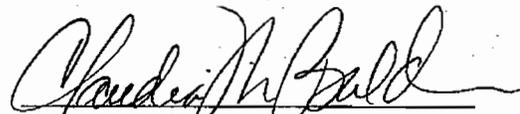
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Section 3. Findings of Fact. The findings contained in this ordinance are hereby adopted as findings of facts to justify extending Ordinance No. 6133 B-1 imposing the interim zoning ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in force on October 21, 2014.

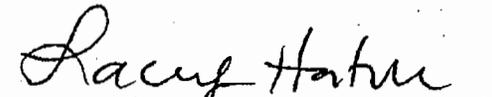
Passed by the City Council this 13th day of October, 2014 and signed in authentication of its passage this 13th day of October, 2014.

(SEAL)


Claudia Balducci, Mayor

Approved as to form:

Lori M. Riordan, City Attorney


Lacey Hatch, Assistant City Attorney

Attest:


Myrna L. Basich, City Clerk

Published October 16, 2014.