



MEMORANDUM

DATE: November 19, 2012

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

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

SUBJECT: Ordinance 6079 Extending Ordinance No. 6058 – Interim Zoning Control
Regulating Medical Marijuana Collective Gardens

INTRODUCTION

On December 4, the East Bellevue Community Council (“EBCC”) will hold a public hearing on Ordinance No. 6079 extending the interim zoning control regulating medical marijuana collective gardens in Bellevue. The Bellevue City Council adopted Ordinance No. 6058 on May 7, 2102, a copy of which is included with this memorandum as Attachment A. 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. On October 22, Council held a public hearing and extended the interim zoning control for an additional six month period. A copy of Ordinance 6079 is included with this memorandum as Attachment B. Ordinance No. 6079, extending the interim zoning control 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

1. Regulation of Medical Marijuana in Washington

Federal and Washington law prohibits the production, processing, and dispensing of medical cannabis or medical marijuana 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 Act and the federal and state controlled substance acts, 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

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

² Chapter 69.51A RCW.

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 veto created inconsistency and uncertainty in the administration, operation, and enforcement of portions of the state law that were not vetoed and the existing Act, including the operation and regulation of medical marijuana collective gardens. While clarifying legislation was introduced in the 2012 legislative session, it was not adopted.

2. Collective Medical Marijuana Gardens

Under the Act, up to 10 qualifying patients may share responsibility for acquiring and supplying the resources required to produce and process marijuana for medical use, such as, a location for the collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest marijuana; marijuana plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of marijuana plants. The number of plants and the amount of marijuana that may be at the collective garden is limited. A collective garden may contain no more than fifteen plants per patient up to a total of 45 plants. Also, the collective garden may have on site no more than 24 ounces of useable marijuana per patient, up to a maximum of 72 ounces. The distribution of medical marijuana to non-members of the collective garden is prohibited. Persons who knowingly violate the Act are subject to criminal prosecution.

3. Interim Zoning Control Regulating Medical Marijuana Collective Gardens.

On May 7, 2012, the City Council adopted Ordinance No. 6058 implementing an interim zoning control regulating medical marijuana collective gardens for a period of up to six months to provide guidance to qualifying medical marijuana patients during this period of legal uncertainty. Under the Growth Management Act ("GMA"), a public hearing is required and the Council held the public hearing on July 2, 2012. Staff presented a summary of the July 2 public hearing to the EBCC on July 3. The interim zoning control would have expired by its terms on November 7, but the City Council extended the interim zoning control on October 22, as allowed under the GMA. Council found the extension was warranted because of the ongoing uncertainty related to the regulation of medical marijuana, including recent court decisions regarding medical marijuana land use regulations.

4. Passage of Initiative Measure 502 relating to Marijuana Law Reform

Washington voters approved Initiative Measure 502 (I-502) on November 6. I-502 decriminalizes, with limits, the possession of small amounts of marijuana for people over 21 in Washington. I-502 did not amend the medical marijuana laws.³ Its passage, however, will provide medical marijuana patients with a readily available source of marijuana. I-502 takes effect on December 6. The state Liquor Control Board is working to implement the requirements of I-502. Despite passage of the I-502, the possession, production, and distribution of marijuana remains illegal under federal law and it is unknown what actions the federal government will undertake in response to the passage of I-502. Staff continues to apprise the City Council regarding the impacts of I-502 on the regulation of medical marijuana and will update the EBCC when staff receives direction from Council regarding the impact of I-502.

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

ACTION REQUESTED OF THE EAST BELLEVUE COMMUNITY COUNCIL

Following review of Ordinance No. 6079 (extending Ordinance No. 6058), vote to approve the ordinance so it will become effective within the jurisdiction of the EBCC. Staff will be present at the December 4, 2012 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 December 4, 2012 meeting.

Attachment A: Ordinance 6058

Attachment B: Ordinance 6079 (extending Ord. No. 6058 by six months).

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6079

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

WHEREAS, federal law prohibits the production, processing and dispensing of medical marijuana 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 marijuana, the City Council adopted Ordinance No. 6058 implementing an interim zoning ordinance regulating medical marijuana 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 marijuana 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 marijuana collective gardens and advising the City Council about recent court rulings upholding cities' zoning authority to regulate and ban medical marijuana collective gardens; and

WHEREAS, Initiative 502 (I-502), seeking to decriminalize marijuana in the state of Washington, is on the November 6, 2012 ballot of the November 6, 2012 General Election, and it is unknown what actions the state or federal governments may take in response to the passage of I-502; and

WHEREAS, Ordinance No. 6058 will, by its terms, expire on November 7, 2012; 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 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, on October 22, 2012, the City held a public hearing to consider extending Ordinance No. 6058 for an additional 6 month period; 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

**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.

ORIGINAL

1301-ORD
10/22/12

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 November 7, 2012.

Passed by the City Council this 22nd day of October, 2012 and signed in authentication of its passage this 22nd day of October, 2012.

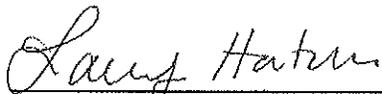
(SEAL)



Conrad Lee
Mayor

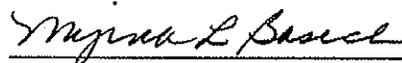
Approved as to form:

Lori M. Riordan, City Attorney



Lacey Hatch, Assistant City Attorney

Attest:



Myrna L. Basich, City Clerk

Published OCT. 25, 2012

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 July 2, 2012, 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.

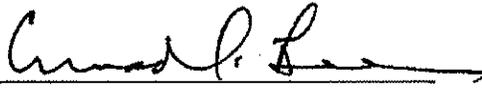
Section 7. Effective Date. In accordance with RCW 35A.13.190, this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption by a majority plus one of the City Council.

ORIGINAL

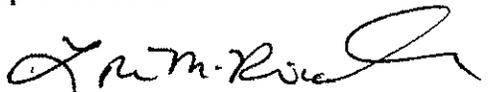
1277-ORD
05/07/12

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

East Bellevue Community Council
Summary Minutes of Regular Meeting

July 3, 2012
6:30 p.m.

Lake Hills Community Clubhouse
Bellevue, Washington

PRESENT: Chair Kasner¹, Vice Chair Seal, and Councilmembers Gooding² and Hughes

ABSENT: Councilmember Capron

STAFF: Catherine Drews, Legal Planner, Development Services Department

1. **CALL TO ORDER**

The meeting was called to order at 6:38 p.m. with Vice Chair Seal presiding.

2. **ROLL CALL**

The Clerk called the roll. Councilmembers Capron and Gooding were absent.

Vice Chair Seal led the flag salute.

3. **COMMUNICATIONS - WRITTEN AND ORAL:** None.

4. **APPROVAL OF AGENDA**

Councilmember Kasner moved to approve the agenda, and Councilmember Hughes seconded the motion. The motion carried by a vote of 3-0.

5. **PUBLIC HEARING**

- (a) Proposed 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 gardens zoning regulations; to be effective immediately upon adoption, scheduling a hearing on the maintenance of the interim zoning ordinance and declaring an emergency.

¹ Mr. Kasner participated via speakerphone.

² Councilmember Gooding arrived at 7:14 p.m.