



**City of Bellevue  
Development Services Department  
Land Use Staff Report**

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**Proposal Name:** Green Tree Medical

**Proposal Address:** 10600 Main Street

**Proposal Description:** The applicant requests a Formal Code Interpretation to determine if its proposed "patient to patient network in compliance with RCW 69.51A (Medical Cannabis)" is an allowed use in the Downtown-Multiple Use land use district.

**File Number:** 13-106272-DA

**Applicant:** The Green Tree Medical, 9804 Lake City Way NE, Seattle, WA. 98125.

**Decisions Included:** Interpretation of the Land Use Charts pursuant to LUC 20.10.420.C  
(Process II, LUC 20.30K)

**Legal Planner:** Catherine A. Drews

**State Environmental Policy Act  
Threshold Determination:** EXEMPT

**Director's Decision:** Interpretation of the Land Use Code  
Michael A. Brennan, Director  
Development Services Department



Carol V. Helland, Land Use Director  
Development Services Department

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Application Date:	January 31, 2013
Notice of Application Publication Date:	March 7, 2013
Decision Publication Date:	May 16, 2013
Project Appeal Deadline:	May 30, 2013

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For information on how to appeal a proposal, visit the Development Services Center at City Hall or call (425) 452-6800. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

**Interpretation of the Director  
Bellevue File No. 13-106272-DA**

**I. INTRODUCTION**

The applicant Green Tree Medical<sup>1</sup> has proposed a use described as a “patient to patient network in compliance with RCW 69.51A (Medical Cannabis).”<sup>2</sup> The use is proposed on property located at 10600 Main Street in the Downtown Multiple-Use (DNTN-MU) land use district. The Director determined, under the terms governing interpretation of the land use charts (LUC 20.10.420.A), that the applicant-proposed use is not allowed in the DNTN-MU district. The Director further determined that the terms of LUC 20.10.370 which describe the Downtown land use districts and the terms of the interim regulation for collective gardens that were adopted pursuant to City of Bellevue Ordinance No. 6058<sup>3</sup>, would not allow the proposed use to locate in the DNTN-MU district.

Under the terms of LUC 20.10.420.C, Green Tree requests an interpretation of the land use charts relating to the inclusion or exclusion of its proposed “patient to patient network in compliance with RCW 69.51A (Medical Cannabis).” This request for interpretation of the land use charts is being processed pursuant to Part 20.30K LUC, and will provide an avenue for the applicant to appeal the Director’s decision.

**Summary of the Interpretation Request:**

Green Tree requests the Director to interpret the Bellevue Land Use Code (LUC), specifically LUC 20.10.370 through *et. seq.* and Ordinance No. 6058, and to determine whether the operation of a “patient to patient network in compliance with RCW 69.51A” is an allowed use in the DNTN-MU land use district.

**Short Answer:** No. Medical cannabis uses are not specifically designated uses in the City’s land use charts and cannot be included within the scope of any currently listed use based on a review of the applicable land use classification manuals. Therefore, the use is prohibited throughout the City. Ordinance No. 6058 adopted interim official zoning controls regarding medical cannabis collective gardens to address the use issue; however, appropriate locations for collective garden uses did not include DNTN-MU and

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<sup>1</sup> The materials submitted for this code interpretation list the applicant as The Green Tree Medical. Green Tree’s business license lists them as doing business as Greenside Medical. For ease of reference, Green Tree will be used when referring to the applicant for this code interpretation.

<sup>2</sup> Green Tree’s business license receipt from the state which Green Tree’s Counsel provided to Special Assistant City Attorney Ann Marie Soto on January 3, 2013, lists the proposed use as operation of a “Patient to patient network and compliance with RCW69.51A [sic].” For ease of reference, this interpretation will refer to a “patient to patient network in compliance with Ch. 69.51A RCW,” which is how Green Tree’s counsel referred to the use in several communications with the City.

<sup>3</sup> Adopted on May 5, 2012, and subsequently extended by Ordinances Nos. 6079 and 6019. For ease of reference, Ordinance No. 6058 will be used in this interpretation to refer to the original ordinance adopting interim regulations for medical marijuana collective gardens together with the extending ordinances.

were limited to only four land use districts where residential uses are excluded: Light Industrial (LI); General Commercial (GC); Bel-Red General Commercial (BR-GC); and Medical Institution (MI).

## II. INTERPRETATION

### A. Summary of Events Leading to the Formal Code Interpretation.

#### 1. Background on State Marijuana Regulation.

Federal and Washington law prohibits the production, processing, and dispensing of medical cannabis or medical cannabis products under the respective state and federal controlled substances acts. In 1998, however, Governor Locke signed into law the Medical Cannabis Act, approving the limited use of medical marijuana by patients with qualifying debilitating or terminal medical conditions. 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, and provides an affirmative defense to criminal prosecution.

An inherent inconsistency exists between the Medical Cannabis Act and the state and federal controlled substances acts, relating to the production, processing and distribution of medical marijuana. In an attempt to clarify that inconsistency, the legislature in 2011 passed E2SSB 5073. 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 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 Governor also expressed reservations about provisions that could place government employees in a position to be held responsible for violating federal law during the discharge of their work duties. The veto created inconsistency and uncertainty in the administration and enforcement of portions of the state law that were not vetoed and the Medical Cannabis 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.

#### 2. Background Facts.

On April 16, 2012, Green Tree Medical applied to the Washington State Business Licensing Services for a Washington State business license and a City of Bellevue business license. Green Tree listed its proposed business as under the category "products and services provided" as a "Patient to patient network and compliance with RCW69.51A [sic]." The state electronically routes relevant portions of the application to the City for its review and subsequent action. Business licenses are reviewed by the City's Finance Department; however, business licenses with a physical Bellevue address are also routed to the City's Land Use Division to review the application and verify the use proposed by an applicant constitutes an allowed use in the underlying

land use district. Green Tree's application listed the physical business address as in Seattle. As a result, the City's Finance Department approved the business license application without routing the license application to Land Use for review.

On May 7, 2012, in response to the legal uncertainty in the regulation of medical marijuana, the Bellevue City Council adopted Ordinance No. 6058 implementing an interim official zoning control (the "interim regulation") regulating medical cannabis collective gardens. The purpose of the interim regulation was to provide guidance to qualifying patients and ensure that collective garden uses would not be located in a manner that is incompatible with nearby existing land uses which could lead to the erosion of community character and harmony.

The interim regulation allows qualifying patients<sup>4</sup> to participate in a collective garden to produce, process, transport, and deliver cannabis for medical use. RCW 69.51A.085, Ord. No. 6058, sec. 1.<sup>5</sup> The interim regulation incorporates the provisions of RCW 69.51A.085, provides a permitting process, and specifies that collective gardens may be located in four land use districts: General Commercial (GC); Medical Institution (MI); Bel-Red General Commercial (BR-GC); and Light Industrial (LI). Additionally, collective gardens and if applicable, the garden's associated delivery site, are required to meet separation requirements and apply for an Administrative Conditional Use (ACU) permit. Other performance standards include the following limitations; only one collective garden may be located on a property tax parcel; locations are required to be indoors; cannabis plants cannot be seen or smelled from a public place; collective garden memberships allow only up to 10 members and impose a 30 day waiting period to change garden memberships; and the delivery of medical cannabis is allowed only to members of the collective garden. RCW 69.51A.085 limits the number of allowable cannabis plants and useable cannabis permitted at the collective garden.

In December of 2012, seven months after the City Council adopted the interim regulation, Green Tree signed a lease for tenant space at 10600 Main Street, Bellevue Washington. Green Tree also applied to the Washington State Business Licensing Services to modify its state and City business licenses to reflect the new address at 10600 Main Street. Because the modification request specified a physical address in Bellevue, Finance routed Green Tree's application to Land Use for review of consistency with the underlying land use district.

On January 4, 2013, DSD denied the modification consistent with LUC 20.10.420.A. Special Assistant Attorney Ann Marie Soto sent a letter to Green Tree's counsel

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<sup>4</sup> Qualifying patient is defined in RCW 69.51A.010(4) as a person who is a patient of health care professional, has been diagnosed by that health care professional as having a terminal or debilitating medical condition, is a Washington resident at the time of diagnosis, has been advised by the health care professional of the risks and benefits of the medical use of marijuana, and has been advised by the health care professional that they may benefit from the medical use of marijuana.

<sup>5</sup> Under the Growth Management Act, the interim regulation is valid for a six-month period; however, the regulation may be extended for additional six-month periods following a public hearing and meeting other requirements in the GMA. The City Council has twice extended the interim regulation. See Ordinances No. 6079 and 6109.

advising him that Green Tree's proposed use is prohibited at 10600 Main Street and that the City would be denying Green Tree's application to modify their business license. Land Use staff sent a letter confirming the Director's determination that Green Tree's proposed use to operate a "patient to patient network and compliance with RCW 69.51A," is prohibited in the DNTN-MU. The letter also confirmed that Land Use denied Green Tree's modification request on January 18, 2013. As provided in LUC 20.10.420.C, on January 31, 2013, Green Tree submitted an application and paid the appropriate fees for a formal code interpretation under Part 20.30K LUC. Green Tree sought a land use chart interpretation to secure the right to appeal the Director's determination that its proposed use is prohibited in the DNTN-MU. Requests for interpretation of the land use charts are processed pursuant to Part 20.30K LUC. *Id.* Consequently, this interpretation shall be processed as a Process II land use decision pursuant to LUC 20.30K.130.C.2.

## **B. Analysis.**

### **1. Establishment and Interpretation of Land Use Districts.**

The City derives its zoning authority from its police powers granted under the Washington State Constitution, Art. XI, Sec. 11. Zoning is the legislative division of a community into areas within which only certain designated uses of land or structures are permitted.<sup>6</sup> In Bellevue, each property is classified into a land use district and is subject to applicable LUC requirements. LUC 20.10.050. The purpose and scope of each land use district is described in LUC 20.10.180 through 20.10.395. LUC 20.10.100. However, the uses allowed in each land use district are listed with specificity in LUC Chart 20.10.440 together with information regarding the applicable review procedure necessary to establish a particular use. LUC 20.10.370.B. Uses not included in the use charts are prohibited. LUC 20.10.400. The use charts are organized by general categories: Residential; Manufacturing; Transportation and Utilities; Wholesale and Retail; Services; Recreation; and Resources. These categories are further grouped by land use district type: Residential, Downtown, Nonresidential Districts. Only charts detailing allowed uses in the Downtown are relevant to this code interpretation.

### **2. Description of the Downtown Multiple Use Land Use District.**

The purpose of the DNTN-MU Land Use District is to provide an area for a wide range of retail activity, and low-intensity offices, Downtown support services, and residential uses. Multiple uses are encouraged on individual sites, and in individual buildings, as well as broadly in the district as a whole. LUC 20.10.370.A.3.

### **3. Interpretation of the Land Use Charts.**

The LUC provides specific and final authority to the Director to determine if a proposed use is included or excluded in a particular use category. LUC 20.10.420. The LUC also provides criteria for the Director to consider when making a determination regarding the

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<sup>6</sup> McQuillin, Municipal Corporation, §25.07, 21 (3<sup>rd</sup> ed. 1983).

inclusion or exclusion of a proposed use. LUC 20.10.420.A. The Director makes this determination according to the “characteristics of a proposed use” and based upon the Director’s interpretation of the Standard Land Use Coding Manual, the Standards Industrial Classification Manual, and the North American Industry Classification System. *Id.*

4. Green Tree’s Proposed Use.

Green Tree’s counsel described the proposed operation in correspondence to the City Attorney’s Office on January 3, 2013. In the letter Green Tree admits they intend to deliver cannabis and that the required collective garden will not be located in Bellevue:

As I mentioned in my earlier email, the Nonprofit intends to operate a private, patient to patient network at the Bellevue Premises. This patient to patient network will serve as the site for delivery of medical cannabis to qualified patients (footnote omitted). The collective garden itself—where the medical cannabis is grown and processed is located in Seattle. To be clear, no medical cannabis will be grown or processed in Bellevue. Instead, members of the respective **collective garden** will meet at the Bellevue Premises to acquire medical cannabis in useable form, and in turn, remit payment to cover the resources required to produce and process the cannabis for medical use, consistent with RCW 69.51A.085(2)....

Letter from K. Boehl to Special Assistant City Attorney Ann Marie Soto, January 3, 2013 (emphasis added).

Green Tree’s proposed “patient to patient network” use is not designated in the use charts nor is it included as an allowed use under the interim regulation. RCW 69.51A.085 includes the delivery of medical cannabis to qualifying members as part of the function of the collective garden, and the interim regulation incorporates this definition by reference. Section 1 of Ordinance No. 6058. The interim regulation further requires that the delivery of cannabis be from the collective garden authorized under the interim regulation: “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.” Section 1.F of Ordinance No. 6058 (emphasis added). Consistent with the terms of RCW 69.51A.085.A, the proposed “patient to patient network” use is classified as a facility for the delivery of cannabis in Bellevue, and is a function of operating a collective garden in Bellevue.

Taking into account the characteristics of the use proposed by Green Tree and based upon the Director’s interpretation of the applicable land use coding manuals, a collective garden use together with its associated delivery facilities is not permitted in the DNTN-MU. Ordinance No. 6058 clearly identifies collective gardens as a specific use category. The scope of the collective garden use is specifically defined consistent with the Medical Cannabis Act to include delivery of medical cannabis as described by the

applicant. Not surprisingly, neither medical cannabis collective gardens nor “patient to patient networks” are classified uses in the standard land use coding references. Therefore, the proposed use is prohibited throughout the City.

Green Tree’s request for code interpretation infers that the proposed “patient to patient network” use should be allowed at the 10600 Main Street location by interpreting the DNTN-MU land use district description as supportive of the proposed use despite the fact that it is not identified in the land use charts. This inference cannot be supported by the plain text of the LUC or the Council action taken to adopt interim regulations.

The Downtown district description states that permitted uses are those specifically identified in the land use charts contained in LUC 20.10.440. LUC 20.10.370.B. As stated above, collective gardens are not a specifically identified use in the land use charts and are, therefore, prohibited city-wide. The DNTN-MU district description identifies residential uses as appropriate in this land use district. However, one purpose of the interim regulation is to ensure there are no medical cannabis uses in residential neighborhoods to protect neighborhood character. The interim regulation allows collective gardens to be approved through an ACU permit only in commercial land use districts that do not identify residential uses as appropriate. The land use chart interpretation provisions reinforce this conclusion by stating that if there is a conflict between the land use district descriptions and the use chart, the use chart shall prevail. LUC 20.10.420.B. In this case, the land use charts do not list collective gardens or the associated facilities for delivery of medical cannabis as a use that is permitted anywhere in Bellevue. There is not conflict to be resolved, there is an absolute prohibition.

The Council addressed the use chart prohibition by adopting Ordinance No. 6058 as a mechanism to allow qualifying patients to establish collective gardens in a limited number of purely commercial land use districts during the interim period when the Planning Commission was developing a permanent approach to the regulation of medical cannabis. Council received testimony from Green Tree’s legal counsel during the February 25, 2013 study session requesting the Council allow the “patient to patient network” use in the DNTN-MU. However, the Council did not amend the interim regulation to accommodate that request when they adopted the most recent extension to Ordinance No. 6058 on April 15, 2013. The appropriate mechanism for the applicant to achieve its desired outcome is to participate in the legislative process before the Planning Commission and to seek adoption of permanent regulations applicable to collective gardens that would allow them to operate in the DNTN-MU district at the Main Street location.

It is inappropriate to circumvent the Council legislative process through an administrative code interpretation. Interpretations of the provisions of the LUC may not be used as a mechanism to amend the code. LUC 20.30K.120. To interpret the land use charts to allow the “patient to patient network” use in the DNTN-MU would violate the restrictions on variances for allowable uses pursuant to LUC 20.30G.150.A, and would unlawfully amend the terms of the land use charts and the interim regulations contained in Ordinance No. 6058. Operation of a collective garden, including its associated delivery facilities, is prohibited in the DNTN-MU.

### III. FACTORS FOR CONSIDERATION

In making an interpretation of the provisions of the Land Use Code, the Director shall take the following factors into consideration. LUC 20.30K.140.

#### A. Applicable Provisions of the Land Use Code.

The applicable LUC provisions considered in this formal code interpretation are the following:

1. LUC 20.10.010 Purpose of Land Use Districts
2. LUC 20.10.020 Establishment of Land Use Districts
3. LUC 20.10.050 Property Classified
4. LUC 20.10.370 Downtown (D)
5. LUC 20.10.400 Use Chart Described
6. LUC 20.10.420 Interpretation of Land Use Charts by Director
7. LUC 20.10.440 Land Use Charts
8. LUC 20.30G.150 Variance from the Land Use Code – Limitations on Authority
9. Part 20.30K LUC Interpretation of the Land Use Code.
10. Ordinance No. 6058 (Extended by Ordinances Nos. 6079 and 6109).

#### B. The Impact of the Interpretation on other Provisions of the Land Use Code.

The interpretation does not impact other provisions of the LUC other than those considered in the analysis provided here. To proceed as Green Street desires would violate the prohibition on use variances in LUC 20.30G.150.A and violate the provision of LUC 20.30K.120 that prohibit using the formal code interpretation process to amend the LUC.

#### C. The Implications of the Interpretation for Development within the City as a whole.

The interpretation confirms that medical cannabis uses are limited to collective gardens, and that collective gardens may be located only in the four land use districts specified in the interim regulation (Ord. No. 6058). This confirmation provides a predictable regulatory framework for staff who administer the LUC and the interim regulation, and also for qualifying patients interested in establishing and participating in a medical cannabis collective garden in Bellevue. The interpretation also confirms the process and applicable performance requirements for siting and permitting a collective garden.

#### D. Applicable Provisions of the Comprehensive Plan and other Relevant Codes and Policies.

The following polices from the Comprehensive Plan were deemed relevant to the issue presented and reviewed in relation to the interpretation:

## **Land Use Element**

**Policy LU-9.** Maintain stability and improve the vitality of residential neighborhoods through adherence to, and enforcement of, the city's land use regulations.

**Policy LU-28.** Support Downtown's development as an Urban Center, maintaining it as the financial, retail, and business hub of the Eastside.

**Policy LU 29.** Strengthen Downtown as the primary commercial area to provide local goods and services to surrounding neighborhoods and to the residents and employees within the District.

**Policy LU-30.** Encourage the development of housing within the Downtown including units targeted to workers who are expected to fill jobs to be created in the Downtown over the next decade.

## **Economic Development Element:**

**Policy ED-1.** Maintain a business climate that supports the retention and expansion of the city's economic base.

**Policy ED-3.** Develop and maintain regulations that allow for continued economic growth while respecting the environment and quality of life of city neighborhoods.

**Policy ED-12.** Develop an environment that fosters respect for all individuals and groups.

**Policy ED 24.** Maintain land use development standards within the city's commercial areas that promote high quality, aesthetically attractive development, in order to add economic value to these areas and to ensure they are good neighbors.

## **Downtown Subarea Plan**

**Policy S-DT-19.** Maintain an attractive economic environment to encourage private investment through stable tax rates and a predictable regulatory framework.

**Policy S-DT-26.** Encourage residential uses to occur in mixed-use structures or complexes.

The interpretation is consistent with and does not hinder the Comprehensive Plan policies.

#### **IV. EFFECT OF INTERPRETATION**

Pursuant to LUC 20.30K.150, an interpretation of any Land Use Code provision issued under Chapter 20.30K LUC shall have the same effect as any provision of the Land Use Code. An interpretation of the Land Use Code remains in effect until or if rescinded in writing by the Director. LUC 20.30K.155.

#### **V. APPEAL**

An Interpretation of the Land Use Code under Chapter 20.35.015 is a Process II administrative land use decision made by the Director. Pursuant to LUC 20.35.250, Process II decisions may be appealed to the Hearing Examiner by providing a written statement of appeal and the appeal notification form (including payment of any applicable appeal fee) to the City Clerk not later than 5:00 p.m. on the 14<sup>th</sup> day following the date of publication of the decision of the Director.