



DEVELOPMENT SERVICES DEPARTMENT  
ENVIRONMENTAL COORDINATOR  
450 110<sup>th</sup> Ave NE., P.O. BOX 90012  
BELLEVUE, WA 98009-9012

**OPTIONAL DETERMINATION OF NON-SIGNIFICANCE (DNS) NOTICE MATERIALS**

The attached materials are being sent to you pursuant to the requirements for the Optional DNS Process (WAC 197-11-355). A DNS on the attached proposal is likely. This may be the only opportunity to comment on environmental impacts of the proposal. Mitigation measures from standard codes will apply. Project review may require mitigation regardless of whether an EIS is prepared. A copy of the subsequent threshold determination for this proposal may be obtained upon request.

File No. 13-112830-AD

Project Name/Address: Amendments to Land Use Code to Regulate Medical Cannabis Collective Gardens--City-Wide

SEPA Planner: Matthews Jackson

Phone Number: 425-452-2729

**Minimum Comment Period: June 13, 2013, at 5:00 p.m.**

Materials included in this Notice:

- Blue Bulletin
- Checklist
- Vicinity Map
- Plans
- Other:

**CITY OF BELLEVUE  
ENVIRONMENTAL CHECKLIST  
(Integrated SEPA/GMA Process)**

**A. BACKGROUND INFORMATION**

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**PROPOSAL TITLE:** Medical Cannabis Collective Gardens Permanent Land Use Regulations: City-Wide (File No. 13-112380-AD).

**PROPERTY OWNERS' NAME:** N/A; applies City-wide

**PROPOSAL LOCATION:** City-Wide

**PROPONENT'S NAME:** City of Bellevue, Development Services Department

**CONTACT PERSON'S NAME:** Catherine A. Drews

**CONTACT PERSON'S ADDRESS:** Development Services Department  
City of Bellevue  
P.O. Box 90012  
Bellevue, WA 98009-9012

**CONTACT PERSON'S PHONE:** 425-452-6134

**BRIEF DESCRIPTION OF THE PROPOSAL'S SCOPE AND NATURE:**

1. **General description:** The proposal is to amend the Bellevue Land Use Code (LUC) to allow medical cannabis collective gardens in the General Commercial, Bel-Red General Commercial, Light Industrial, and Medical Institution land use districts. Collective gardens would be prohibited in residential areas. The LUC amendment will include performance standards to protect neighborhood character. The LUC amendment will be based on the interim land use regulations for medical cannabis collective gardens (Ordinance No. 6058).
2. **Site acreage:** N/A; applies City-wide
3. **Number of dwelling units/buildings to be demolished:** N/A
4. **Number of dwelling units/buildings to be constructed:** N/A
5. **Square footage of buildings to be demolished:** N/A
6. **Square footage of buildings to be constructed:** N/A
7. **Quantity of earth movement (in cubic yards):** N/A

8. **Proposed land use:** This LUC amendment will regulate medical cannabis collective gardens as an allowed use in the General Commercial, Bel-Red Commercial, Medical Institution, and Light Industrial Land Use district. Collective gardens will be prohibited in residential land use districts.
9. **Design features, including building height, number of stories and proposed exterior materials:** N/A
10. **Other:** N/A

**Proposed timing or schedule (including phasing, if applicable):**

A public hearing on the proposal is anticipated in July 2013. City Council final action on the proposal will follow that public hearing.

**Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.**

No.

**List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.**

SEPA checklist and threshold determination for this proposed LUC amendment.

**Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. List dates applied for and file numbers, if known.**

N/A

**List any government approvals or permits that will be needed for your proposal, if known. If permits have been applied for, list application date and file numbers, if known.**

Ordinance adoption by the City Council.

**B. Environmental Elements**

No discussion of the individual Environmental Elements is required for GMA actions per WAC 197-11-235.3.b.

**C. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (do not use this sheet for project actions)**

**SUMMARY**

Project Summary: The proposal is to amend the LUC to allow medical cannabis collective gardens in the General Commercial, Bel-Red General Commercial, Light Industrial, and Medical Institution land use districts. Collective gardens would be prohibited in residential areas. The amendment will include performance standards to protect neighborhood character. The LUC amendment will be based on the interim land use regulations for medical cannabis collective gardens (Ordinance No. 6058).

Environmental Summary per WAC 197-11-235(3)(b):

State the proposal's objectives: To provide guidance to Bellevue citizens who are qualifying medical cannabis patients' interested in establishing and participating in a medical cannabis collective garden.

Specify the purpose and need to which the proposal is responding:

The proposed LUC amendment is intended to address the uncertainty related to the regulation of medical cannabis collective gardens. Federal and Washington law prohibit the production, processing, and dispensing of medical cannabis or medical cannabis products under the respective state and federal controlled substances acts.<sup>1</sup> In 1998, however, Governor Locke signed into law the Medical Cannabis Act (the "Act"), approving the limited use of medical cannabis by patients with qualifying medical conditions.<sup>2</sup> The Act allows qualified patients to either grow their own cannabis or to designate a provider to grow the cannabis for them. The Act also limits the quantity of medical cannabis a patient may possess.

Allowing the limited possession, use, and ability to cultivate medical cannabis created an inconsistency among the Act and the state and federal controlled substances acts. In an attempt to clarify that inconsistency, the legislature in 2011 passed ESSB 5073. This bill, in relevant part, authorized medical cannabis dispensaries and allowed qualifying patients to participate in collective gardens to grow cannabis for medical use. The bill also authorized cities to regulate and license the production, processing, or dispensing of medical cannabis and its products within their jurisdiction. Governor Gregoire signed the bill, but vetoed several portions related to dispensaries, and state licensing and registration requirements.

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<sup>1</sup> 21 U.S.C. 801 et. seq.; Chapter 69.50 RCW.

<sup>2</sup> Chapter 69.51A RCW (formerly the Medical Marijuana Act).

The veto created inconsistency and uncertainty in the administration and enforcement of portions of the bill that were not vetoed and the existing Act; specifically, the operation and regulation of medical cannabis collective gardens. While clarifying legislation was introduced in the 2012 legislative session, it was not adopted. During this legislative session which adjourned on April 28, the legislature considered, but did not adopt amendments to the Medical Cannabis Act (Ch. 69.51A RCW). The purpose behind the LUC amendment is threefold:

- (1) Allow qualified patients to have appropriate access to medical cannabis;
- (2) Preclude the establishment of collective gardens without regulations; and
- (3) Address public safety issues.

State the major conclusions, significant areas of controversy and uncertainty: See Response above. Bellevue citizens provided comments on the interim zoning regulation (Ord. No. 6058) that medical cannabis collective gardens are inappropriate for residential neighborhoods and that the permanent regulations should protect children.

State the issues to be resolved, including the environmental choices to be made among alternative courses of action: Issues to be resolved include development of a Bellevue appropriate approach to the regulation of medical cannabis collective gardens. Alternative courses of action include: not amending the LUC to regulate medical cannabis collective gardens. In terms of environmental impacts, the two alternatives are not significantly different. Qualifying medical cannabis patients are allowed to grow a limited amount of cannabis in their homes. Qualifying patients who participate in a collective garden must comply with applicable City codes, including those intended to protect the environment, including the City's Storm and Surface Water Utility Code, chapter 24.06 BCC.

State the impacts of the proposal, including any significant adverse impacts that cannot be mitigated: The proposal is a nonproject action to allow medical cannabis collective gardens as a use in limited land use districts. There are no significant adverse impacts resulting from that action. The collective gardens will be located indoors and the use is not expected to have significant impacts.

Describe any proposed mitigation measures and their effectiveness: No specific development is being approved with this proposal. No significant environmental impacts have been identified that would not otherwise be addressed by applicable city codes and state regulations, therefore no mitigation measures are proposed.

1. **How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?**

The proposed LUC amendment will not increase the potential impacts to water, air, and earth resources or noise production.

**Proposed measures to avoid or reduce such increases are:** N/A

**2. How would the proposal be likely to affect plants, animals, fish or marine life?**

The proposed code amendment will not increase the potential impacts to plants and animals.

**Proposed measures to protect or conserve plants, animals, fish or marine life are:** N/A

**3. How would the proposal be likely to deplete energy or natural resources?**

Growing plants indoors requires energy and water. According to an article in the Seattle Times, studies indicate that growing 2.2 pounds of cannabis indoors produces 4,600 kilograms of carbon dioxide, which is considered a greenhouse gas. *Pot Grows Leave Huge Carbon Footprint*, Seattle Times, May 12, 2013. Collective gardens are limited to up to 45 plants and 72 ounces (4.5 pounds) of useable cannabis at one time. The Washington State Department of Ecology requires reporting of greenhouse gases when new emissions are expected to average 10,000 metric tons or more of carbon dioxide per year. *Guidance for Ecology Including Greenhouse Gas in SEPA Reviews*, June 3, 2011.

**Proposed measures to project or conserve energy and natural resources are:** None. See response to paragraph 3 above.

**4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?**

The proposal will not directly affect any environmentally sensitive areas because medical cannabis collect gardens are not allowed in critical areas.

**Proposed measures to protect such resources or to avoid or reduce impacts are:** N/A

**5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?**

The proposal will not affect any shoreline areas. The same shoreline overlay regulations will continue to apply to development and redevelopment.

**Proposed measures to avoid or reduce shoreline and land use impacts are:** N/A

**6. How would the proposal be likely to increase demands on transportation or public services and utilities?**

The proposed amendments to the Land Use Code are unlikely to change the demands on the transportation system. Qualifying patients will use the transportation system to travel to and from the collective garden or to deliver cannabis to other qualifying

patients who are members of the collective. Such travel is anticipated within the transportation system.

**Proposed measures to reduce or respond to such demand(s) are:** N/A

**7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.**

Conflicts with State and Federal Controlled Substances Acts. Marijuana is a classified as a Schedule 1 drug under both the federal Controlled Substance Act and Washington's Uniform Controlled Substance Act. Under both acts, it is unlawful to manufacture, distribute, dispense or possess a Schedule 1 drug, except in the manner authorized under the acts. 21 U.S.C. Sections 841(a)(1); RCW 69.50.401.

However, in 1998, Washington voters approved Initiative 692 (codified as chapter 69.51A RCW), which provided that "qualifying patients with terminal or debilitating illnesses who in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law." RCW 69.51A.005, and .020. In 2011, the Legislature passed ESSSB 5073, which the Governor vetoed in part, allowing up to 10 qualifying patients to create and participate in a collective garden for the purpose of producing, processing, transporting, and delivering cannabis for medical use. RCW 69.51A.085. (See also response to paragraph C above).

The proposed LUC amendment will not conflict with requirements to protect the environment. The proposal will require compliance with all city ordinances and codes, including those provisions related to environmental protection, such as the City's Storm and Surface Water Code, chapter 24.06 BCC.

**D. The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.**

Signature 

Date Submitted 5/28/2013

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.

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 22<sup>nd</sup> day of October, 2012 and signed in authentication of its passage this 22<sup>nd</sup> day of October, 2012.

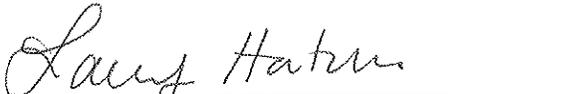
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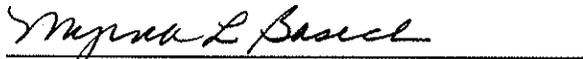
Conrad Lee  
Mayor

Approved as to form:

Lori M. Riordan, City Attorney

  
Lacey Hatch, Assistant City Attorney

Attest:

  
Myrna L. Basich, City Clerk

Published Oct. 25, 2012