

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6316

AN ORDINANCE amending the Land Use Code regulating recreational marijuana retailers and prohibiting medical marijuana cooperatives and marijuana research uses; amending sections 20.10.440, 20.25A.015, 20.20.535, and 20.25D.070; repealing Ordinance Nos. 6286 and 6296; and establishing an effective date.

WHEREAS, in 2011, Washington adopted E2SSB 5073 amending Chapter 69.51A RCW (the Medical Cannabis Act), which in part authorized collective gardens that allowed certain qualifying patients to produce, grow, and deliver marijuana for medical use; and

WHEREAS, Washington voters approved Initiative 502 (I-502) on November 6, 2012. In relevant part, I-502 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 rules became effective on November 16, 2013, and the LCB began accepting license applications for recreational marijuana beginning November 18, 2013; and

WHEREAS, the LCB initially 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, after substantial work done by its Planning Commission and taking into consideration public testimony for and against permitting recreational marijuana production, processing and retail uses, the City of Bellevue adopted permanent regulations on August 3, 2015 in Ordinance No. 6253 (which is codified in Bellevue Land Use Code Chapter 20.20.535) providing for regulation of these businesses as permitted uses in the City of Bellevue, prohibiting all marijuana uses from single-family and multi-family land use districts (R-1 through R-30; DNTN-R; BR-R), and prohibiting medical cannabis collective gardens in the City of Bellevue; and

WHEREAS, there are currently three recreational marijuana retail businesses operating in the City of Bellevue located in separate subareas throughout the City and the City has not received complaints that residents have been unable to procure marijuana products due to unavailability from these retail outlets; and

WHEREAS, in July 2015, Washington State Legislature SB 5052, SB 5121, and 2E2SHB 2136 went into effect. SB 5052 renamed the Liquor Control Board the "Liquor and Cannabis Board" and directed the LCB to develop new regulations providing for alignment of the medical cannabis and recreational marijuana sales industries. SB 5121 established marijuana research licenses and directed the LCB to establish rules for marijuana research uses. 2E2SHB 2136 authorized jurisdictions to prohibit the siting of medical marijuana cooperatives; and

WHEREAS, some of the recreational marijuana retail businesses in Bellevue have applied for medical marijuana endorsements with the LCB, which, if granted, will allow these businesses to sell medical marijuana in Bellevue; and

WHEREAS, the establishment of medical marijuana cooperatives and marijuana research uses in Bellevue may allow new uses that are incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

WHEREAS, in January 2016, the LCB adopted new draft regulations for public review and comment which, among other provisions, would double the number of retail marijuana outlets in urban areas, including cities such as Bellevue, based upon a report commissioned by the LCB (known as the "BOTEC Report") for the purposes of estimating the size of the medical cannabis market in the state of Washington; and

WHEREAS, the BOTEC Report stated in the executive summary that "there is considerable uncertainty" in the estimates of the size of the medical cannabis market that were provided to the LCB due to a variety of factors, including the wide variety of responses of local jurisdictions in permitting collective gardens and/or medical cannabis dispensaries; and

WHEREAS, the BOTEC Report did not study any specific city or county with sufficient detail to be able to predict the size of the medical cannabis market or the need for additional retail outlets to serve medical patients in that city or county and in fact cautioned against over-reliance on the study which the authors characterized as a "snapshot in time"; and

WHEREAS, the LCB's decision to double the number of licenses available for retail establishments in Bellevue has in no manner been correlated to a substantial need for previously unavailable medical marijuana products for residents of Bellevue; 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 the 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, despite providing the updated guidance in 2013, the DOJ continues to investigate and prosecute certain marijuana crimes under federal law, including prosecution of medical marijuana growers and dispensaries; and

WHEREAS, as interim official zoning controls, on May 9, 2016, the City Council adopted Ordinance No. 6286 as emergency measures to further regulate recreational marijuana retailers, and on June 20, 2016, adopted Ordinance No. 6296 to prohibit medical marijuana cooperatives and marijuana research uses in the City of Bellevue, both for a period of six months, to be in effect while the City drafts, considers, holds hearings, and adopt permanent zoning regulations; and

WHEREAS, the City has held public hearings on these interim ordinances, drafted the text of development standards applicable to recreational marijuana retailers and zoning controls prohibiting medical marijuana cooperatives and marijuana research uses, and made the needed revisions to the City Codes to affect permanent zoning regulations for City Council consideration; and

WHEREAS, because of the Planning Commission's concurrent work on the Downtown Livability Initiative, Eastgate Corridor Study, and LID Principles Project and the fact that the interim controls will expire by their terms on November 9, 2016 if the Bellevue City Council does not take further action, consistent with LUC 20.35.410.A, the City Council finds it necessary to retain the processing of this land use code amendment; and

WHEREAS, the City Council held a study session on the proposed permanent zoning regulations on October 3, 2016 and held a public hearing on the proposed permanent zoning regulations on October 17, 2016 after providing legally required public notice; and

WHEREAS, the City Council finds that the proposed amendments meet the decision criteria of LUC 20.30J.135 and are consistent with the Comprehensive Plan, enhance the public health, safety and welfare, and are not contrary to the best interest of the citizens and property owners of the City of Bellevue; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, BCC 22.02; now, therefore,

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

Section 1. Section 20.10.440 – Uses in Land Use Districts charts of the Bellevue Land Use Code are hereby amended to add as separate entries "Medical Marijuana Cooperative" and "Marijuana Research" as prohibited uses in Bellevue and to add the following corresponding new notes:

The "Medical Marijuana Cooperative" use shall be placed in the Resources – Residential Districts and Resources – Nonresidential Districts use charts immediately below the "Marijuana Processing" listing, and with a new note 7:

(7) Medical Marijuana Cooperatives, as authorized under RCW 69.51A.250, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

The "Marijuana Research" use shall be placed in the Services – Residential Districts and Services – Nonresidential Districts use charts immediately below the "Research, Development and Testing Services" listing, and with a new note 28:

(28) Marijuana Research uses, as authorized under RCW 69.50.372, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

A new citation to note 42 shall be added to Marijuana Retail Outlet listing in the Wholesale and Retail – Nonresidential Districts in columns General Commercial, Community Business, and Factorial Land Use District 1.

The following new note 42 shall be added to Wholesale and Retail – Nonresidential Districts section:

(42) Marijuana Retail Outlet excludes Medical Marijuana Cooperative. Medical Marijuana Cooperatives, as authorized under RCW 69.51A.250, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

Section 2. Section 20.20.535.A of the Bellevue Land Use Code is hereby amended to add medical marijuana cooperatives and marijuana research uses in the purpose statement:

Purpose. The purpose of this section is to regulate marijuana producers, processors, and retailers, medical marijuana cooperatives, and marijuana research regulated under Chapters 69.50 and 69.51A RCW by identifying appropriate land use districts and establishing development and performance standards. Marijuana producers, processors, and retailers shall only be permitted when licensed by the Washington State Liquor and Cannabis 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.

Section 3. Section 20.20.535.D of the Bellevue Land Use Code is hereby amended to add definitions for the terms "medical marijuana cooperatives" and "marijuana research":

....

10. "Medical marijuana cooperatives" means cooperatives authorized by RCW 69.51A.250, now or as hereafter amended, that are formed by qualifying patients or designated providers to share responsibility for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of members of the cooperative.

11. "Marijuana research" means research authorized by RCW 69.50.372, now or as hereafter amended, that permits a licensee to produce, process, and possess marijuana for limited research purposes, including to test chemical potency and composition levels; to conduct clinical investigations of marijuana-derived drug products; to conduct research on the efficacy and safety of administering marijuana as part of medical treatment; and to conduct genomic or agricultural research.

Section 4. Section 20.20.535.E of the Bellevue Land Use Code is hereby amended to add medical marijuana cooperatives and marijuana research uses in the compliance statement:

Marijuana producers, processors, and retailers, medical marijuana cooperatives, and marijuana researchers must comply with all requirements of Chapters 69.50 and 69.51A RCW, Chapter 314-55 WAC, now or as hereafter amended, and all applicable City of Bellevue ordinances, standards, and codes.

Section 5. Section 20.20.535.F of the Bellevue Land Use Code is hereby amended to add limitations on the locations of all marijuana retailers and quantity of marijuana retailers per subarea through adding a new section 2, renumbering the original sections 2 through 6 to sections 3 through 7, adding a new section 8, and renumbering the original section 7 to section 9 as follows:

1. A marijuana producer, retailer, or processor shall not be located within 1,000 feet of the following land 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; and
- h. Any game arcade.

2. A marijuana retailer shall not be located within 100 feet of the following land use districts: all single family and multi-family districts (R-1 through R-30).

3. No marijuana retailer shall be located within 1,000 feet of any other marijuana retailer.

a. Areas Where No Retail Marijuana Uses Are Located. If 2 or more marijuana retail applicants seek licensing from the state and propose to locate within 1,000 feet of each other, the City shall consider the entity who is licensed first by the State Liquor and Cannabis Board to be the "first-in-time" applicant who is entitled to site the retail use. First-in-time determinations will be based on the date and time of the state-issued license or conditional license, whichever is issued first. The Director shall make the first-in-time determination, whether in connection with an application for an Administrative Conditional Use Permit or as otherwise appropriate.

b. First-in-time determinations are location-specific and do not transfer or apply to a new property or site, unless the new site is within the same tax parcel. See subsection G.3 of this section for regulations applying to established retail uses and status of first-in-time determinations.

c. Appeal of Director Determination. The Director's first-in-time determination may be appealed pursuant to LUC 20.35.250, Appeal of Process II decisions.

4. No marijuana producer, processor, or retailer shall be located within 1,000 feet of any park mapped in the City's Geographic Information System.

5. Measurement. All separation requirements shall be measured as the shortest straight line distance from the property line of the proposed business location to the property line of the use listed in this section.

6. No marijuana producer, processor, or retailer shall be allowed in single-family and multifamily land use districts (R-1 – R-30; DNTN-R; BR-R).

7. No marijuana retailer is allowed as a subordinate or accessory use in any land use district.

8. With the exception contained in this section, no more than one marijuana retailer shall be permitted within each of the following subareas: Crossroads, Downtown, Eastgate, Wilburton, and Factoria; and no more than two marijuana retailers shall be permitted within the BelRed subarea; except that up to one additional marijuana retailer shall be permitted in excess of the subarea limits provided above if located within either the Medical Institution (MI) or BelRed Medical Office-1 (BR-MO-1) districts of the BelRed and Wilburton subareas. The number of marijuana retailers allowed pursuant to this section shall total no more than six city-wide.

9. Marijuana shall be grown in a structure. Outdoor cultivation is prohibited.

Section 6. Section 20.25A.015 – Uses in Downtown Land Use Districts charts of the Bellevue Land Use Code are hereby amended to add as separate entries "Medical Marijuana Cooperative" and "Marijuana Research" as prohibited uses in Bellevue and to add the following corresponding new notes:

The "Marijuana Research" use shall be placed in the Services – Downtown Districts use chart immediately below the "Research, Business Incubation, Development and Testing Services" listing, and with a new note 13:

(13) Marijuana Research uses, as authorized under RCW 69.50.372, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

A new citation to note 16 shall be added to Marijuana Retail Outlet listing in the Wholesale and Retail – Downtown Districts in columns Downtown Office District 1, Downtown Office District 2, Downtown Mixed Use District, Downtown Old Bellevue District, and Downtown Office and Limited Business District.

The following new note 16 shall be added to the Wholesale and Retail – Downtown Districts section:

(16) Marijuana Retail Outlet excludes Medical Marijuana Cooperative. Medical Marijuana Cooperatives, as authorized under RCW 69.51A.250, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

The “Medical Marijuana Cooperative” use shall be placed in the Resources – Downtown Districts use chart immediately below the “Marijuana Processing” listing, and with a new note 5:

(5) Medical Marijuana Cooperatives, as authorized under RCW 69.51A.250, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

Section 7. Section 20.25D.070 – Bel-Red Land Use charts of the Bellevue Land Use Code are hereby amended to add as separate entries “Medical Marijuana Cooperative” and “Marijuana Research” as prohibited uses in Bellevue and to add the following corresponding new notes:

A new citation to note 18 shall be added to Marijuana Retail Outlet listing in the Wholesale and Retail – Bel-Red Districts in columns Bel-Red Office Residential Nodes, Bel-Red Residential Commercial Nodes, Bel-Red General Commercial, Bel-Red Commercial Residential, and Bel-Red Residential Transition.

The following new note 18 shall be added to the Wholesale and Retail – Bel-Red Districts section:

(18) Marijuana Retail Outlet excludes Medical Marijuana Cooperative. Medical Marijuana Cooperatives, as authorized under RCW 69.51A.250, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

The “Marijuana Research” use shall be placed in the Services – Bel-Red Districts use chart immediately below the “Research, Business Incubation, Development and Testing Services” listing, and with a new note 14:

(14) Marijuana Research uses, as authorized under RCW 69.50.372, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

The “Medical Marijuana Cooperative” use shall be placed in the Resources – Bel-Red Districts use chart immediately below the “Marijuana Processing” listing, and with a new note 4:

(4) Medical Marijuana Cooperatives, as authorized under RCW 69.51A.250, now or as hereafter amended, are prohibited in Bellevue. See LUC 20.20.535 for general requirements applicable to marijuana uses.

Section 8. Section 20.25D.070 – Bel-Red Land Use charts of the Bellevue Land Use Code are hereby amended to allow “Marijuana Retail Outlet” as an Administrative Conditional Use (A) under the “BelRed Medical Office/Node” column, with note 17, a new note 18 as provided above, and a new note 19:

(19) Marijuana retail outlet that is allowed as an Administrative Conditional Use pursuant to this section is permitted in BR-MO-1 only.

Section 9. Section 20.25J.020 – Medical District Land Use chart of the Bellevue Land Use Code is hereby amended to allow marijuana retail outlet as an Administrative Conditional Use (A) by adding a new note 11 for “Health care-related retail (i.e., pharmacy, crutches, etc.) under the “Land Use” column:

(11) Marijuana retail outlet is permitted as a health care-related retail only in Hospital Center and Hospital Perimeter Development Area—DA1 and Medical Office Development Area—DA2.

Section 10. Repeal. Ordinance Nos. 6286 and 6296 are hereby repealed.

Section 11. 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 12. Effective Date. This ordinance shall take effect and be in force five (5) days after adoption and legal publication.

ORIGINAL

Passed by the City Council this 7th day of November, 2016
and signed in authentication of its passage this 10th day of November,
2016.

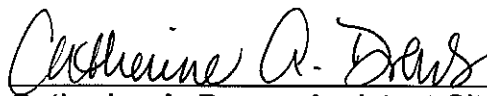
(SEAL)



John Stokes, Mayor

Approved as to form:

Lori M Riordan, City Attorney



Catherine A. Drews, Assistant City Attorney

Attest:



Kyle Stannert, City Clerk

Published November 10, 2016,