

## CITY COUNCIL STUDY SESSION

Land Use Code Amendment (LUCA) to allow garden supply retail and nurseries to continue operating in residential districts when they have been operating continuously since before 1955.

Carol Helland, Code and Policy Director, 452-2724  
Trish Byers, Code Development Manager, 452-4241  
*Development Services Department*

## DIRECTION NEEDED FROM COUNCIL

### DIRECTION

Staff seeks Council direction to proceed with the proposed schedule for processing the LUCA that will permit garden supply and nursery uses in residential districts when they have been operating continuously since before 1955.

## RECOMMENDATION

Direct staff to set the LUCA for a public hearing on March 18 without another study session.

## BACKGROUND & ANALYSIS

### Background

Bellevue Nursery began operations in 1954 under a license that was approved by the City Council. In 1955, the City adopted its first Zoning Ordinance which created a Single-Family Residence District (R-8.5) where Bellevue Nursery was located. The R-8.5 district did not permit garden supply or horticultural nurseries. The nursery use has been operating in a nonconforming status since that time and has remained in continuous operation at the same location from 1954 to the present. The zoning on the site has remained single family, though the designation was renamed to R-4 when the City replaced its Zoning Ordinance with the Land Use Code (LUC) in 1978.

In January 2018, the new owners of Bellevue Nursery applied for a Comprehensive Plan Amendment to change the land use designation on the nursery parcel from Single Family H (SF-H) to Neighborhood Business (NB).<sup>1</sup> Ultimately, the owners' purpose was to obtain NB zoning to legitimize the nursery as a permitted use and allow the establishment of complementary uses such as a café and landscaping services. The Bellevue Nursery CPA proceeded through the appropriate steps to Council review on November 26, 2018.

On November 26, 2018 the City Council held its final study session to discuss the 2018 CPAs, which included the Bellevue Nursery CPA. In lieu of a CPA, Council requested that staff determine whether a LUCA could be written that would correct the Bellevue Nursery nonconformity and allow additional subordinate uses.

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<sup>1</sup> Neighborhood Business is the name of both the land use designation in the Comprehensive Plan and the land use district. To obtain NB zoning, the Comprehensive Plan must be amended first so that the land use designation for the parcel is NB. The second step is to obtain a site-specific rezone from R-4 to NB.

On December 10, 2018, staff returned to Council with an example of a proposed amendment to LUC 20.10.440 that could, if adopted, correct the nonconformity. The amendment would legitimize garden supply and nursery uses in residential districts, like R-4, when the nursery uses have been in continuous operation since before 1955. Because staff provided a proposed LUCA that could correct the nonconformity, Council voted to deny the Bellevue Nursery CPA and directed staff to come back with a schedule to process the proposed LUCA. Council also directed staff to schedule the study session and public hearing on the proposed LUCA before the City Council rather than forwarding the proposal to the Planning Commission.

### **Schedule**

On December 10, 2018, Council directed staff to return with a schedule to process the LUCA. The public hearing has been tentatively scheduled for March 18. The necessity of another study session will depend on Council's direction tonight. Below are the options.

1. Direct staff to set the LUCA for a public hearing on March 18 without another study session.
2. Direct staff to schedule the LUCA for another study session on February 11 prior to the public hearing on March 18.
3. Provide alternative direction to staff.

The dates provided in this schedule will allow staff time to notify the Department of Commerce of the proposed LUCA and for state agencies to review the LUCA as required under the Growth Management Act.

### **Land Use Code Amendment**

The proposed LUCA provided to Council on December 10, 2018 would permit garden supply and nursery uses in R-4, R-10, R-15, R-20, and R-30 Districts. These residential districts are analogous to the 1955 R-8.5 District because the minimum lot size in all of these districts is 8,500 square feet. With the adoption of the LUCA, Bellevue Nursery and businesses that are similarly situated would no longer be nonconforming.

The additional uses that the owners of Bellevue Nursery wanted to establish could be permitted as subordinate uses. A subordinate use is one that is incidental or secondary to the primary use. The subordinate uses would also be subject to the performance standards in LUC 20.20.840.C, which requires that the subordinate uses are:

- Located on the same lot or in the same structure as the primary use;
- Functionally related to the principal use; and
- Generally limited in size to 25 percent of the floor area devoted to the related principal use.

Using Bellevue Nursery as an example, up to 25 percent of the floor area of the nursery use could be devoted to a subordinate use if the use meets the performance standards above. If the floor area of the nursery is 2600 square feet, then a subordinate use or uses would be permitted to occupy up to 650 square feet of the space.

Additional steps beyond adoption of a LUCA would be required if the owners wanted to build condominiums on top of the nursery as has been suggested in some of their communications with the City. If the LUCA were adopted, a mix of nursery and residential uses could be permitted only on the

site through an additional Planned Unit Development (PUD) approval. A PUD application requires Process I land use review which includes public notice and a public meeting at the beginning of the process, a recommendation by the Development Services Director, a pre-decision hearing before a Hearing Examiner, a decision by the Hearing Examiner, and an option to appeal the Hearing Examiner's decision to the City Council. There are several criteria for a PUD which can be found in LUC 20.30D.150 <https://bellevue.municipal.codes/LUC/20.30D.150>. The criteria for PUD approval includes consistency with the Comprehensive Plan, compatibility with the surrounding land uses, and that any development under the PUD place no more burden on present or future public facilities and services than traditional development. These criteria help to ensure that any PUD will be compatible with the surrounding neighborhood.

Adoption of a LUCA as originally presented to Council on December 10, 2018 would legitimize the garden supply retail and nursery uses at locations where they have been operating continuously since before 1955, would allow uses subordinate to the nursery use to locate on the same site, and would create the opportunity to develop a mixed nursery and residential project if such a proposal satisfies the PUD decision criteria required by the LUC.

## **POLICY & FISCAL IMPACTS**

### **Policy Impact**

This LUCA, if adopted, will legitimize garden supply retail and nursery uses that have been in operation continually since before 1955 in R-4, R-10, R-15, R-20, and R-30 Districts. Once the garden supply retail and nursery uses are discontinued, the underlying residential zoning will control the uses that are permitted on each parcel.

### **Fiscal Impact**

There is no fiscal impact associated with implementing this LUCA. Administration of any amendments to the LUC will be met with current Development Services staffing levels through the permitting functions of the City.

## **OPTIONS**

The 2019 schedule is dependent on the direction Council gives staff at this study session.

1. Direct staff to set the LUCA for public hearing on March 18 without another study session.
2. Direct staff to schedule the LUCA for another study session on February 11 prior to the public hearing on March 18.
3. Provide alternative direction to staff.

## **ATTACHMENTS & AVAILABLE DOCUMENTS**

- A. Vicinity Map
- B. Example LUCA presented to the City Council on December 10, 2018

## **AVAILABLE IN COUNCIL LIBRARY**

November 26, 2018, City Council Study Session, Planning Commission recommendations to amend the Comprehensive Plan with five 2018 annual proposed plan amendments (CPA), and the City staff

recommendation on the East Main amendment.

<https://bellevue.legistar.com/LegislationDetail.aspx?ID=3761577&GUID=3AA5B37D-FF3C-47BE-970F-8E5D36608516>

November 26, 2018, City Council Study Session Minutes.

<https://bellevue.legistar.com/View.ashx?M=M&ID=608524&GUID=3CA6B858-C6EC-4015-9841-DF080815D6F4>

December 10, 2018, City Council Regular Session, Comprehensive Plan Final Review. Actions on Ordinances relating to the Comprehensive Plan of the City of Bellevue, consistent with the Growth Management Act (Ch. 36.70A RCW) and adopting certain proposed plan amendments as the City's 2018 Comprehensive Plan amendments.

<https://bellevue.legistar.com/LegislationDetail.aspx?ID=3774842&GUID=34852AB1-F39B-486C-A759-E2B11E00B436>

December 10, 2018, City Council Regular Session Minutes.

<https://bellevue.legistar.com/View.ashx?M=M&ID=608527&GUID=C1116653-6E3B-4F4C-9778-99DB10AC4A26>