

Planning Commission Recommendation as Amended by 2SSB 5052
Draft Land Use Code Amendment: Marijuana Uses
July 6, 2015

Section 1. Ordinances Nos. 6133 B-1, ~~6156, 6180, and 6222 and 6156~~ are hereby repealed.

Commented [CoB CD1]: Repeals interim zoning regulations when LUCA becomes effective.

~~Section 2. Ordinance No. 6132 B-1 is hereby repealed or repealed effective July 1, 2016.~~

Commented [DC2]: Repeal date will be consistent with Council direction

Section ~~23~~. Section 20.10.440 – Resource Land Use Charts - of the Bellevue Land Use Code is hereby amended to add as separate entries “~~recreational~~ marijuana production” and “~~recreational~~ marijuana processing” as ~~an administrative conditional use permitted use~~ in the following land use district: Light Industrial (LI), and to add the following new note 6:

Commented [DC3]: Consistency with 2SSB 5052.

(6) See LUC 20.20.~~740-535~~ for general development requirements for ~~recreational~~ marijuana uses.

Commented [DC4]: Consistency with 2SSB 5052.

The “~~recreational~~ marijuana production” use shall be placed alphabetically in the use chart immediately below the “Agriculture, Production of Food and Fiber Crops, Dairies, Livestock and Fowl, Excluding Hogs” listing. “~~Recreational marijuana-Marijuana~~ processing” shall be placed directly below “Agricultural Processing” (Standard Land Use Code Reference 821).

Commented [CoB CD5]: Directs reader to new regulations for marijuana uses.

Section ~~34~~. Section 20.10.440 – Wholesale and Retail Land Use Charts - of the Bellevue Land Use Code is hereby amended to add under standard land use code reference 59 “~~Recreational marijuana-Marijuana~~ retail outlet” as ~~an administrative conditional use permitted use~~ in the following land use districts: GC; CB; F1; DNTN O-1; DNTN O-2; DNTN-MU; DNTN-OB; and DNTN-OLB, and to add the following new note 41:

Commented [DC6]: Consistency with 2SSB 5052.

(41) See LUC 20.20.~~740-535~~ for general development requirements for ~~recreational~~ marijuana uses.

Commented [CoB CD7]: Directs reader to new regulations marijuana uses.

The “~~recreational~~ marijuana retail outlet” use shall be placed in the use chart immediately below the “Adult Retail Establishments” listing.

Section ~~45~~. Section 20.25D.070 -- Resources in Bel-Red Land Use Districts Chart of the Bellevue Land Use Code is hereby amended to add as separate entries “~~recreational~~ marijuana production” and “marijuana processing” as prohibited uses in all Bel-Red land use districts.

The “~~recreational~~ marijuana production” use shall be placed alphabetically in the use chart immediately below the “Agriculture, Production of Food and Fiber Crops, Dairies, Livestock and Fowl, Excluding Hogs” listing. “~~Recreational marijuana-Marijuana~~ processing” shall be placed directly below “Agricultural Processing” (Standard Land Use Code Reference 821).

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July 6, 2015

Section ~~56~~. Section 20.25D.070 -- Wholesale and Retail in Bel-Red Land Use Districts Chart of the Bellevue Land Use Code is hereby amended to add under standard land use code reference 59 "~~Recreational m~~Marijuana retail outlet" as a ~~permitted~~ administrative conditional use in the following land use districts: BR-OR/OR1/OR2; BR-RC-1; RC-2; RC-3; BR-GC; BR-CR; and BR-ORT, and to add the following new note 17:

(17) See LUC 20.20.~~740-535~~ for general development requirements for ~~recreational~~-marijuana uses.

The "~~Recreational m~~Marijuana retail outlet" use shall be placed in the use chart immediately below the "Adult Retail Establishments" listing.

Section ~~67~~. A new section 20.20.~~740-535~~ of the Bellevue Land Use Code is hereby adopted as follows:

20.20.~~740-535~~ ~~Recreational~~ Marijuana Uses.

A. Purpose.

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

B. Applicability.

This section applies to ~~recreational~~-marijuana uses licensed by the Washington State Liquor ~~and Cannabis Control~~ Board. ~~This section is not applicable to medical cannabis collective gardens, which are governed by LUC 20.20.526.~~

C. Review Required – Administrative Conditional Use.

An administrative conditional use permit (Part 20.30E LUC) is required to operate any ~~recreational~~-marijuana use. The director shall review applications to operate a ~~recreational~~-marijuana use for compliance with this section and with all other applicable provisions of the Bellevue City Code.

D. Definitions Specific to ~~Recreational~~-Marijuana Uses.

The definitions codified at WAC 314-55-010, now or as hereafter amended, apply to this section. The following definitions are specific to ~~recreational~~-marijuana uses and shall have the following meanings:

Commented [CoB CD8]: Directs reader to new regulations marijuana uses.

Commented [DC9]: Consistency with 2SSB 5052.

Commented [CoB CD10]: Planning Commission recommendation.

Commented [DC11]: Consistency with 2SSB 5052.

Commented [CoB CD12]: Planning Commission recommendation for clarity.

Commented [DC13]: Consistency with 2SSB 5052.

Commented [DC14]: Consistency with 2SSB 5052.

Commented [DC15]: This sentence will be deleted only if medical cannabis collective garden provisions are repealed contemporaneously with adoption of the proposed land use code amendments. If the collective gardens provisions are repealed effective July 1, 2016, this section will require amendment then.

Commented [CoB CD16]: Planning Commission recommendation.

Planning Commission Recommendation as Amended by 2SSB 5052
Draft Land Use Code Amendment: Marijuana Uses
July 6, 2015

1. ~~4.~~ "Director" means the Director of the City of Bellevue's Development Services Department or his or her designee.
2. "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
3. "Marijuana processor" means a person licensed by the state liquor ~~and cannabis control~~ board to process marijuana into marijuana concentrates, useable marijuana and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.
4. "Marijuana producer" means a person licensed by the state liquor ~~and cannabis control~~ board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
5. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.
6. "Marijuana retailer" means a person licensed by the state liquor ~~and cannabis control~~ board to sell useable marijuana, and marijuana-infused products in a retail outlet.
7. "~~Recreational~~ Marijuana Uses" means the collective of Marijuana producer, retailer, and processor.
8. "Retail outlet" means a location licensed by the state liquor ~~and cannabis control~~ board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.
9. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.
- E. ~~Recreational~~ Marijuana producers, processors, and retailers must comply with all requirements of chapters 69.50 and 69.51A RCW, chapter 314-55 WAC, now or as

Commented [DC17]: Consistency with 2SSB 5052.

Commented [DC18]: Consistency with 2SSB 5052.

Commented [DC19]: Consistency with 2SSB 5052.

Commented [DC20]: Consistency with 2SSB 5052.

Commented [DC21]: Consistency with 2SSB 5052.

Commented [DC22]: Consistency with 2SSB 5052.

Planning Commission Recommendation as Amended by 2SSB 5052
Draft Land Use Code Amendment: Marijuana Uses
July 6, 2015

hereafter amended, and all applicable City of Bellevue ordinances, standards, and codes.

F. Limitations on Uses. The following limitations shall apply to all marijuana producers, processors, and retailers, unless stated otherwise:

1. A marijuana producer, retailer, or processor, shall not be located within 1,000 feet of the following 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;
 - h. Any game arcade or
 - i. ~~Any medical cannabis collective garden.~~

2. 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 two 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 paragraph G.3 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.

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

4. 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.

Commented [DC23]: This clause deleted only if medical cannabis collective provisions are repealed contemporaneously with adoption of the proposed land use code amendments. If the collective gardens provisions are repealed effective July 1, 2016, this section will require amendment then.

Commented [DC24]: Code administration for consistency with historical department practices.

Commented [CoB CD25]: Planning Commission recommendation.

Commented [CoB CD26]: Consistency with LCB measurement requirements (WAC 314.55.050(10)).

Planning Commission Recommendation as Amended by 2SSB 5052
Draft Land Use Code Amendment: Marijuana Uses
July 6, 2015

45. No marijuana producer, processor, or retailer shall be allowed in single family and multi-family land use districts (R-1 – R-30; DNTN-R; BR-R).
56. No marijuana retailer is allowed as a subordinate or accessory use in any land use district.
67. Marijuana shall be grown in a structure. Outdoor cultivation is prohibited.

Commented [CoB CD27]: Planning Commission recommendation for clarity.

G. Marijuana Retail Outlets.

1. Odor. Marijuana odor shall be contained within the retail outlet so that odor from the marijuana cannot be detected by a person with a normal sense of smell from any abutting use or property. If marijuana odor can be smelled from any abutting use or property, the marijuana retailer shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor.
2. Signage for Marijuana Retail Outlets. Retail outlets shall comply with WAC 314-55-155(1), now or as hereafter amended. Additionally, signage for retail outlets must undergo design review in those land use districts requiring such review in the Bellevue Sign Code, Chapter 22B BCC.

3. First-in-Time – Change in ownership, relocation, and abandonment

a. Ownership. The status of a first-in-time determination is not affected by changes in ownership.

b. Relocation. Relocation of a retail outlet to a new property voids any first-in-time determination previously made as to the vacated property. The determination shall become void at the time on the date the property is vacated. Applicants who may have been previously denied a license at the vacated property due to a first in time determination at the vacated property may submit a new application after the prior first in time determination becomes void.

c. Discontinuance. If an existing marijuana retail use is discontinued or abandoned for a period of 12 months with the intention of abandoning that use, then the property shall forfeit first-in-time status. Discontinuance of a licensed retail use for a period of 12 months or greater constitutes a prima facie intent to abandon the retail use. Intent to abandon may be rebutted by submitting documentation adequate to rebut the presumption. Documentation rebutting the presumption of intent to abandon includes but is not limited to:

i. (1). State licensing review or administrative appeal; or

ii. (2). Review of building, land use, other required development permits or approvals; or

Commented [DC28]: Code administration for consistency with historical department practices.

iii. (3). Correspondence or other documentation from insurance provider demonstrating an intent to reestablish the use after either a partial or full loss or disruption of the use.

iv. (4). The Director shall determine whether a retail use has been discontinued, abandoned, or voided, whether in connection with an application for an administrative conditional use permit or as otherwise appropriate.

d. Accidental Destruction. First-in-time status is not affected when a structure containing a state-licensed retail outlet is damaged by fire or other causes beyond the control of the owner or licensee; provided redevelopment occurs within 12 months or the licensee provides documentation demonstrating why redevelopment cannot commence within 12 months, otherwise the Director shall determine the retail use abandoned, unless the licensee can demonstrate an intent not to abandon the use. If the retail use cannot be reestablished within 12 months, the licensee shall provide a schedule with reasonable deadlines to establish the use.

e. Appeal of Director Determination. The Director's Determination of whether a retail use has been discontinued, abandoned, or voided may be appealed pursuant to LUC 20.35.250, Appeal of Process II decisions.

H. Marijuana Producers and Processors. Marijuana production and processing facilities are allowed only in the Light Industrial land use district and shall comply with the following provisions:

- a. Marijuana production and processing facilities shall be ventilated so that the odor from the marijuana cannot be detected by a person with a normal sense of smell from any adjoining use or property;
- b. Signage for marijuana producers and processors shall comply with the City of Bellevue Sign Code, Chapter 22B of the Bellevue City Code.
- c. A screened and secured loading dock, approved by the director shall be required. The objective of this requirement is to provide a secure, visual screen from the public right of way and adjoining properties, and prevent the escape of odors when delivering or transferring marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products.

Commented [DC29]: Consistency with 2SSB 5052.

I. Regulations Applicable to all Marijuana Uses

1. Security. In addition to the security requirements in chapter 315-55 WAC, during non-business hours, all ~~recreational~~ marijuana producers, processors, and retailers shall store all marijuana concentrates, useable marijuana, marijuana-infused products, and cash in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or

Commented [DC30]: Consistency with 2SSB 5052.

securely attached thereto. For useable marijuana products that must be kept refrigerated or frozen, these products may be stored in a locked refrigerator or freezer container in a manner approved by the Director, provided the container is affixed to the building structure.

2. ~~41.~~ Release of Liability and Hold Harmless.

a. The permittee of a ~~recreational~~ marijuana use shall provide an executed release in a form approved by the Bellevue City Attorney's office to the City of Bellevue, for itself, its agents, officers, elected officials and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution or seizure of property, or liabilities of any kind that result from any arrest or prosecution for violations of federal or state law relating to operation or siting of a ~~recreational marijuana~~ use. Additionally, within the release document, the permittee of a ~~recreational~~ ~~marijuana~~ use shall indemnify and hold harmless the City of Bellevue and its agents, officers, elected officials, and employees from any claims, damages, or injuries brought by adjacent property owners or other third parties due to operations at the ~~recreational~~ marijuana use and for any claims brought by any of the ~~recreational marijuana~~ use's members, employees, agents, guests, or invitees for problems, injuries, damages, or liability of any kind that may arise out of the operation of the ~~recreational~~ marijuana use.

Commented [DC31]: Consistency with 2SSB 5052.

~~41.~~ Conflicts

In the event of a conflict between chapters ~~69.50~~ and ~~69.51A~~ RCW, chapter 314-55 WAC, and this section, the most restrictive provision shall apply.

Commented [DC32]: Consistency with 2SSB 5052.

Section ~~78~~. 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 ~~89~~. This ordinance shall take effect and be in force five (5) days after adoption and legal publication.