

July 6, 2015

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Marijuana Permanent Regulations: Update on state legislation reconciling the medical marijuana program within the regulatory framework of Initiative 502 (I-502), discussion of necessary amendments related to the state legislation, and status of the Planning Commission's recommendation for permanent regulations for marijuana uses.

Note: On April 24, 2015, Governor Jay Inslee signed into law the Cannabis Patient Protection Act (2 SSB 5052). The Act, which aligns medical marijuana with the recreational marijuana regulatory structure, renders the distinction between recreational and medical marijuana unnecessary in the context of land use regulations. Therefore, this memorandum will use only the term "marijuana," unless context dictates otherwise.

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POLICY ISSUES

Should the City amend the Bellevue Land Use Code (LUC) to allow and regulate marijuana producers, processors, and retailers and repeal the City's collective garden regulations consistent with recently-enacted state law? Should the City prohibit marijuana research until the Washington State Liquor and Cannabis Board develops the regulatory scheme for marijuana research uses?

Comprehensive Plan policies relevant to this discussion:

- 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 HO-8. Protect residential areas from illegal land use activities through enforcement of city codes.

DIRECTION NEEDED FROM COUNCIL

☐ Action
☒ Discussion
☒ Information

After review and discussion at this Study Session, staff requests direction from Council to amend the Planning Commission's recommendation consistent with newly-adopted state law, then bring a final ordinance forward for action at a future meeting. Staff also seeks direction regarding when to repeal the City's medical cannabis collective garden regulations (LUC 20.20.526). A copy of the Planning Commission's recommended permanent marijuana regulations, which have been amended for consistency with newly-enacted state law, is included as Attachment A.

BACKGROUND/ANALYSIS

This memorandum provides Council with the procedural background of the permanent regulations, a summary of 2SSB 5052, the Cannabis Patient Protection Act, a list of changes to the permanent regulations resulting from passage of the Act, a synopsis of marijuana bills pending before the legislature during the special session, and next steps to adopt permanent marijuana regulations.

Procedural Background.

The Planning Commission's recommendation on permanent regulations was presented to Council on November 10, 2014. A copy of the Planning Commission's Transmittal of the recommended Recreational Marijuana Land Use Code Amendment is included as Attachment B. The Planning Commission's recommendation includes two enhancements to the interim regulations for marijuana, which regulations formed the foundation for the permanent regulations. The Planning Commission added a requirement for marijuana uses to obtain an Administrative Conditional Use permit and added additional parks to the list of uses requiring separation from marijuana uses. The requirement for additional parks would include all parks mapped in the City's geographic information system, which includes public parks and parks maintained by certain single-family neighborhoods.

At the November 10, 2014 Study Session, Council raised two questions. First, Council asked if the City should consider repealing its collective garden regulations in light of the August 2013 memorandum from the U.S. Department of Justice regarding the enforcement of marijuana crimes. With the passage of 2SSB 5052, which repeals collective gardens on July 1, 2016, and the fact that the City does not have any collective gardens, Council may consider repealing Ordinance No. 6132 B-1, which implemented permanent regulations for medical cannabis collective gardens (LUC 20.20.526), either consistent with the effective date of the permanent regulations or on July 1, 2016, when the provisions sunset under the new state law. Staff seeks Council's direction on when the repeal of the collective garden provisions should take effect.

Second, Council also inquired if retail marijuana stores are required to provide information to customers regarding marijuana. The Washington State Liquor and Cannabis Board's (LCB) (previously the Liquor Control Board, re-named "Liquor Cannabis Board" under 2SSB 5052) rules require that all useable marijuana, marijuana concentrates, and marijuana-infused products sold at retail must include accompanying materials that contain warnings related to the effects of using marijuana and associated health risks. A copy of the relevant LCB rule is included as Attachment C. The LCB also has educational materials available on its website for both adults and parents. This literature may be viewed at: <http://liq.wa.gov/mj-education/for-adult-consumers>. Additional information about marijuana is available on the University of Washington's Alcohol & Drug Abuse Institute's website "Learn About Marijuana," which may be viewed at: <http://www.learnaboutmarijuanawa.org/>. Finally, Council also discussed the work of the regional Interagency Resource for Achieving Cooperation (IRAC) in developing guidance related to cannabis. A copy of IRAC's guidance is included as Attachment D.

With the commencement of the 2014-15 legislative session on January 12, 2015, it became apparent that the Washington State Legislature would integrate the unregulated medical cannabis program with the highly-regulated recreational marijuana program. Adoption of permanent marijuana regulations was placed on hold until the legislative session adjourned, so the permanent marijuana regulations could be revised as necessary to incorporate requirements arising from any new state legislation. The legislature

did adopt a comprehensive bill integrating medical marijuana into the recreational marijuana regulatory structure; however, only limited changes to the Planning Commission's recommendation are required as a result of passage of 2SSB 5052. A summary of the 72-page Cannabis Patient Protection Act is provided in the next section of this memo.

To ensure the City maintained its recreational marijuana regulations throughout the legislative session and provide sufficient time for Council to consider the permanent regulations and any possible changes related to state legislative action, the recreational marijuana interim regulations were extended for an additional six-month period on April 6, 2015. The interim ordinance will expire by its terms on October 21, 2015.

The Cannabis Patient Protection Act (2 SSB 5052)

Governor Jay Inslee, while vetoing some sections, signed the Cannabis Protection Act (2SSB 5052) into law on April 24, 2015. The Act renamed the Liquor Control Board to the Liquor and Cannabis Board (LCB) and made LCB the medical marijuana oversight body. The Act requires LCB to develop rules and regulations for the production and sale of medical marijuana. Generally the medical use of marijuana is regulated through the regulatory structure of I-502. The Act repeals collective gardens effective July 1, 2016, and replaces collective gardens with cooperatives, where up to 4 qualifying patients may grow medical marijuana in a home. The Act also provides rules for growing medical marijuana for personal use. Extracting marijuana without a license is prohibited and the LCB must adopt rules for allowable noncombustible methods of extraction. Highlights of the 72-page bill follow.

MEDICAL MARIJUANA REGULATION

- Medical marijuana regulated through same mechanism as recreational marijuana.
- LCB must adopt rules and regulations for medical marijuana.
- Voluntary medical marijuana authorization database will be created. Patients not registering will have an affirmative defense to criminal marijuana charges; patients who register are provided arrest protection and may grow more plants (15 versus 4) and possess more useable marijuana (a variety of forms and quantities allowed versus six ounces of useable marijuana).
- Database is exempt from public disclosure (with limited exceptions).
- Establishes a medical marijuana consultant certificate for owners, employees, or volunteers of a retail marijuana outlet holding a medical marijuana endorsement.

LICENSING

- LCB to reevaluate and subsequently reopen license period for both producers and retail stores to address medical marijuana demand.
- Marijuana retailers may apply for a medical marijuana endorsement from LCB that allows them to sell both recreational and medical marijuana.
- Stores with endorsements must carry products identified by the Washington State Department of Health as beneficial to medical marijuana patients.

MINORS

- May be authorized to use medical marijuana with consent of parent or guardian.
- Parent or guardian must have sole control over the medical marijuana.

- Both minor and parent or guardian must be entered in the medical marijuana authorization database.
- Minors may not grow marijuana, but may accompany their parent or guardian, who is serving as their designated provider, into a marijuana retailer with a medical marijuana endorsement.
- Patients between the ages of 18 and 21 may enter medical marijuana retail outlets.

COOPERATIVES and COLLECTIVE GARDENS

- Collective gardens provisions are repealed effective July 1, 2016.
- Cooperatives are allowed beginning July 1, 2016:
 - Limited to 4 patients, and may include the designated provider for a minor.
 - 60-day waiting period before a new member may join after a member leaves.
 - May not be located within one mile of a marijuana retailer.
 - Must be located in the domicile of a member and only one cooperative per property tax parcel.
 - LCB or law enforcement may inspect a cooperative.
- Cooperative members:
 - Must register in the medical marijuana authorization database.
 - May not sell, donate, or provide marijuana to non-members.
 - May possess a maximum 60 plants and 72 oz. of useable marijuana.

GROWING FOR PERSONAL USE (Medical Marijuana Only)

- Only indoor growing is permitted in the domicile of a qualifying patient or designated provider.
- Marijuana cannot be grown in locations readily seen by unaided vision or readily smelled from a public place or the private property of another housing unit.
- Qualifying patient or designated provider in database may possess: up to 6 plants and up to 8 ounces useable marijuana.
- Unregistered qualifying patient or designated provider may possess: up to 4 plants and up to 6 ounces of useable medical marijuana.
- Health care provider can increase number of plants to 16 and amount of useable cannabis to 16 oz.
- Cities may enact and enforce civil penalties for growing, processing, and for possessing more than the allowed number of plants.

Changes to the Planning Commission's Recommendation Related to 2SSB 5052

Although 2 SSB 5052 is comprehensive, its focus is primarily on establishing the regulatory framework for medical marijuana. Consequently, only limited revisions to the Planning Commission's November 10, 2014 recommendation are necessary for consistency with the new act. The only necessary substantive change is repealing the City's collective garden regulations, LUC 20.20.526 (Ordinance No. 6132 B-1). The regulations can be repealed with two different effective dates: (1) July 1, 2016 (sunset date under the state act); or (2) the effective date of the permanent regulations. Because there currently are no collective gardens in Bellevue, Council may desire an immediate repeal of the collective garden regulations. **At the conclusion of the Study Session, staff seeks Council's direction on when the repeal of the collective garden provisions should take effect.** The following table lists the necessary changes in summary form.

Changes to the Proposed Permanent Regulations Associated with 2 SSB 5052

LUC Provision	Change for Consistency with 2 SSB 5052
Purpose (20.20.710.A)	Conform to include medical cannabis
Applicability	Include medical cannabis and delete references to Collective Gardens
Throughout	Update references to Liquor Control Bd. to Liquor & Cannabis Bd. Remove term “recreational” because for land use purposes the distinction is no longer relevant.
Definitions	Update definitions consistent with state law
Collective Gardens	Repeal and establish an effective date

Other Revisions

Additionally, the Planning Commission’s recommendation was amended to include the Development Services Department’s process to determine which marijuana retailer is first in time for purposes of applying the 1,000-foot separation requirement between marijuana retailers. The provisions relate to code administration and reflect historical practices.

Marijuana Research License (SB 5121)

The legislature also passed a new law establishing a marijuana research license that permits a licensee to produce and possess marijuana for limited research purposes. The LCB must develop a licensing program and regulatory scheme for the research use. Research licensees may only sell marijuana grown within its operation to other marijuana researchers. The bill also allows the University of Washington and Washington State University to contract with marijuana research licensees to conduct research. Because the program is undeveloped, there is uncertainty regarding the scope of the allowed research program. This uncertainty can be addressed initially by prohibiting the use until staff learns about the use and can recommend appropriate land use districts and if necessary, appropriate performance standards for the use. Staff recommends amending the land use charts to incorporate marijuana research as an unpermitted use until there is sufficient information for the Planning Commission and Council to make an informed decision. **Staff seeks direction on Council’s preference on addressing marijuana research licenses.**

PENDING ACTION: 2E2SHB 2136 (An act relating to comprehensive marijuana market reforms to ensure a well-regulated and taxed marijuana market in Washington State).

The Washington legislature passed 2E2ESHB 2136 on June 27, 2015 and delivered it to Governor Inslee’s office for action. Governor Inslee had not yet taken action on the bill when this memorandum was completed. If the Governor signs the bill into law, the bill would provide revenue sharing with jurisdictions that allow marijuana uses and revise the tax structure for marijuana. Additionally, the bill would allow jurisdictions to:

- Impose separation requirements for marijuana research premises.
- Reduce separation distances from 1,000 feet down to 100 feet, except that distances cannot be reduced for elementary and secondary schools and playgrounds.
- Prohibit marijuana producers or processors from operating or locating a business within areas zoned primarily for residential use.

- Require marijuana applicants to provide notice of their pending application to any of the state-listed sensitive uses and churches that are within 1,000 feet of the perimeter of the proposed location of the marijuana use.
- Prohibit the siting of medical marijuana cooperatives.

Regarding marijuana uses:

- Allows marijuana retailers one additional sign not to exceed 1,600 square inches).
- Requires applicants to provide signage and public notice regarding their application for marijuana use.
- Prohibits marijuana retailers from operating vending machines or having a drive-through window.
- Prohibits marijuana clubs.
- Allows LCB to issue marijuana research licenses.

Staff will be prepared to discuss the status of the bill and land use implications for the City at the July 6, 2015 Study Session.

Next Steps

Following Council's direction on whether to move forward with the Recreational Marijuana Land Use Code amendments, staff will return with a final ordinance for Council adoption at a future meeting to be scheduled before expiration of the interim ordinance on October 21, 2015. Action is tentatively scheduled for July 20.

OPTIONS

1. Direct staff to prepare the amended Planning Commission recommendation as a final ordinance, including repeal of the City's collective garden regulations **effective immediately** and prohibiting marijuana research uses, for Council adoption at a future meeting to be scheduled before expiration of the interim ordinance on October 21, 2015; or
2. Direct staff to prepare the amended Planning Commission recommendation as a final ordinance, including repeal of the City's collective garden regulations **effective July 1, 2016** and prohibiting marijuana research uses, for Council adoption at a future meeting to be scheduled before expiration of the interim ordinance on October 21, 2015; or
3. Do not proceed with the proposed Code amendment and provide alternative direction to staff.

RECOMMENDATION

Option 1.

ATTACHMENT(S)

- A. Amended Planning Commission recommended land use code amendment.
- B. Planning Commission Recommendation with Attachment 1 (Recommended Ordinance)
- C. WAC 314-55-105 Packaging and Labeling Requirements.
- D. Regulatory Guidance for Licensed I-502 Cannabis Operations, Version 1.1 (Oct. 2014).