

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6253-C

AN ORDINANCE of the City of Bellevue, Washington, adopting a six-month moratorium within the City of Bellevue on the acceptance or processing of applications, or issuance of permits and approvals, and uses or activities associated with marijuana research asserted to be authorized or actually authorized under HB 5121, 2ESSHB 2136, or any other laws of the state of Washington; providing for an effective date; and providing for severability.

WHEREAS, marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act ("CSA"), and possession, distribution and use of marijuana remains a violation of federal law; and

WHEREAS, representatives of the United States Department of Justice have stated that although state law may authorize the use and possession of marijuana, persons who are in the business of, or knowingly facilitate, the business of cultivating, selling or distributing marijuana are in violation of the CSA, regardless of state law, and that, state laws and local ordinances are not a defense to criminal or civil enforcement of federal law with regard to such conduct; and

WHEREAS, in a guidance memo dated August 29, 2013, addressed to all United States Attorneys, Deputy Attorney General James Cole stated that the Justice Department will continue to enforce the federal prohibition against the illegal distribution and sale of marijuana consistent with certain enforcement priorities; that states that have enacted laws that authorize marijuana production, distribution and possession pursuant to regulatory schemes that implement strong and effective regulatory and enforcement mechanisms consistent with these enforcement priorities are less likely to threaten federal enforcement priorities but that such regulatory schemes remain subject to challenge by the federal government; and, that although federal prosecutors have discretion not to take enforcement action against persons operating pursuant to a state regulatory scheme, the guidance memo does not alter the United States Department of Justice authority to enforce federal laws and is not a defense to violation of federal law, including any civil or criminal violation of the CSA; and

WHEREAS, despite such prohibition under federal law, the passage of Initiative 502 ("I-502") has legalized under Washington law the possession and private recreational use of marijuana and authorizes the production, processing, packaging, distribution, and retail sale of marijuana and marijuana infused products; and

WHEREAS, the Washington State Liquor and Cannabis Board ("LCB") (formerly the Washington State Liquor Control Board) has promulgated rules pertaining to licensing of the producers, processors, and retailer, and held public hearings throughout the state regarding the rules;

WHEREAS, on April 25, 2015, Governor Inslee signed into law 2SSB 5052, the Cannabis Patient Protection Act, to integrate medical marijuana into the regulatory system developed under I-502; and

WHEREAS, the City Council understands that although the voters have approved amendments to state law to permit the limited manufacture, packaging, distribution, retail sale, and recreational and medical use and possession of marijuana, marijuana remains a Schedule 1 controlled substance under the federal CSA, and possession, distribution and use of marijuana is still a violation of federal law; and

WHEREAS, on January 14, 2014, the Washington State Attorney General's Office issued its opinion (AGO No. 2014) that 1-502 does not preempt counties, cities, and towns from banning recreational marijuana within their jurisdictions and that local ordinances that do not expressly ban state licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction's police power; and

WHEREAS, several state courts have issued decisions that approve and affirm the Attorney General's opinion that cities have the authority to regulate marijuana uses; and

WHEREAS, on April 25, 2015, Governor Inslee signed HB 5121 into law, which amends chapter 69.50 RCW to establish a marijuana research license for limited research purposes, which permits licensed researchers to produce, possess, and sell marijuana to other marijuana researchers; and directs and authorizes the Washington State Liquor and Cannabis Board (LCB) to promulgate rules governing marijuana research; directs the Life Science Discovery Fund authority to review license applications to determine if the proposed research meets the criteria in the bill; and authorizes the University of Washington and Washington State University to contract with licensees to conduct research; and

WHEREAS, June 30, 2015, Governor Inslee signed into law 2E2SHB 2136, amending HB 5121 in part, establishing separation requirements and authorizing the University of Washington and Washington State University to contract to conduct marijuana research with an entity licensed to conduct such research by a federally recognized Indian tribe located within the geographical boundaries of the state of Washington; and

WHEREAS, to date, neither the LCB nor the Life Discovery Fund authority have provided any information regarding the marijuana research program; and

WHEREAS, the City Council has previously concluded that the rules promulgated and adopted by the LCB are woefully inadequate to address certain public health and safety concerns such as protections against crimes related to marijuana business activities, safety and welfare of minors, and nuisance and has adopted regulations to fill in some of those gaps in the rules adopted by the LCB; and

WHEREAS, the City has the authority to regulate the location and density of marijuana research uses within its boundaries; 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 of the Comprehensive Plan and other planning/policy documents are fulfilled; and

WHEREAS, without a moratorium the City could, in the near future, receive applications for development and operation of marijuana research uses and facilities that would undermine the City's ability to comprehensively consider the impacts of these uses and develop appropriate regulations for these uses; and

WHEREAS, a moratorium on applications for marijuana research uses and facilities is required to preserve the status quo and allow sufficient time to review and if necessary draft Comprehensive Plan and Bellevue Land Use Code and other City Code amendments that provide a balance between the operation of marijuana research uses, the public health, safety and quality of life for residents, and to present such amendments to the Planning Commission and City Council through the City's amendment processes; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390, authorizes cities to adopt provided a public hearing is held within 60 days of the commencement of the moratoria; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 also authorize Washington cities to extend moratoria for additional periods of up to six months following a public hearing and adoption of findings of facts; 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; and

WHEREAS, the City Council adopts the foregoing as its findings of fact justifying adoption of this ordinance; now, therefore

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

Section 1. Imposition of Moratorium. A moratorium is hereby imposed on the application for, intake of, review of, or issuance of any building or land use permits or approvals for construction, improvement, alteration or operation of a marijuana research use or facility.

Section 2. Duration and Scope of Moratorium. The moratorium imposed by this ordinance shall become effective on the date hereof, and shall continue in effect for an initial period of sixty (60) days, unless repealed, extended or modified by the City Council after subsequent public hearings and the entry of additional findings of fact pursuant to RCW 35A.63.220. The Council shall terminate the moratorium by ordinance and termination shall not be presumed to otherwise occur.

Section 3. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or no later than _____, so as to hear and consider public comment and testimony regarding this moratorium. Following such hearing, the City Council may adopt additional findings of fact, and may extend the moratorium for a period of up to six (6) months. If a period of more than six months is required to complete consideration of any changes to the Comprehensive Plan or Bellevue City Codes, the Council may adopt additional extensions after any required public hearing, pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 4. 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 5. Public Emergency. The City Council hereby finds and declares that a public emergency exists, and that this ordinance is a public emergency ordinance necessary for the protection of the public health and safety and should, therefore, take effect upon adoption. The facts upon which this public emergency are based include all recitals set out in this ordinance as well as those facts contained in the legislative record.

Section 6. Effective Date. In accordance with RCW 35A.13.190, this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption.

Passed by the City Council this ____ day of _____, 2015, and signed in authentication of its passage this ____ day of _____, 2015.

(SEAL)

Claudia Balducci, Mayor

Approved as to Form:

By: _____

Lori M. Riordan, City Attorney

Attest:

Myrna L. Basich, City Clerk

Published: _____