

May 2, 2016

## **CITY COUNCIL STUDY SESSION ITEM**

### **SUBJECT**

Update on 2015 Marijuana legislation, current regulations, and direction on medical marijuana cooperatives, marijuana research licenses, and civil penalties and abatement actions for violating certain provisions of the Cannabis Patient Protection Act.

### **STAFF CONTACT**

Robert Hyde, Deputy City Attorney 452-2033  
Catherine A. Drews, Assistant City Attorney 452-6134  
*City Attorney's Office*

Mike Brennan, Director 452-4113  
*Development Services Department*

Detective Amanda Jensen 452-6915  
*Bellevue Police Department*

Mary Kate Berens, Deputy City Manager 452-4116  
*City Manager's Office*

### **POLICY ISSUES**

- Whether the City should allow medical marijuana cooperatives in single family residences?
- Whether the City should allow marijuana research as a permitted use?
- Whether the City should consider adding civil penalties and abatement authority and funding for violations of certain provisions of Cannabis Patient Protection Act?

### **DIRECTION NEEDED FROM COUNCIL**

X Action  
X Discussion  
X Information

At the conclusion of the May 2 Study Session, staff will seek Council direction regarding whether medical marijuana cooperatives and marijuana research facilities are appropriate for Bellevue and whether Council desires staff to develop civil penalties, abatement actions and an abatement fund to address illegal medical marijuana grows in homes.

### **BACKGROUND/ANALYSIS**

At the conclusion of the August 3, 2015, Study Session on permanent marijuana regulations, staff promised to return and provide Council with additional information on medical marijuana cooperatives, marijuana research licenses, and other provisions from three marijuana bills passed by the legislature in 2015. In February, Council requested that staff provide additional information regarding the increase in retail marijuana licenses from 4-8, possible refinements to the existing regulations, and an update on the implementation of the City's existing marijuana regulations. This memorandum provides the update and

address questions raised by the Council. Additionally, at the conclusion of the May 2 Study Session, staff will seek Council direction to address three new medical marijuana provisions: (1) medical marijuana cooperatives; (2) marijuana research licenses; and (3) whether to impose civil penalties and abatement actions for certain violations of medical marijuana laws. The provisions allowing medical marijuana cooperatives become effective July 1, 2016. Staff is tentatively scheduled to return on June 6 and present to Council an interim ordinance, which will, at a minimum, address the issue of cooperatives consistent with Council direction for action before July 1.

#### **BACKGROUND: REGULATING MARIJUANA IN BELLEVUE**

Council initially adopted interim regulations in 2013 to address the amendment to the state medical cannabis law, which, in part, allowed the establishment of medical marijuana collective gardens. Council's goal was to provide patients access to medical cannabis, while preserving neighborhood character. This was achieved by ensuring marijuana collective gardens were prohibited in residential neighborhoods. This trend of allowing access but ensuring that marijuana uses were not allowed in residential neighborhoods continued with the passage of I-502 and Council's adoption of interim regulations addressing recreational marijuana. In 2013, Council adopted project principles to guide the development of permanent marijuana regulations which are provided in Attachment A.

#### **POLICE UPDATE**

The Bellevue Police Department has seen a decline in marijuana arrests for youths since the legalization of recreational marijuana. In 2014, there were 26 total underage (i.e., under 21 years of age) marijuana arrests, 16 of which were for juveniles under the age of 18. In 2015, the total number of underage arrests related to marijuana dropped to 20, only 12 of which were for juveniles under the age of 18. Data indicates that children are still obtaining marijuana from the black market, not retail stores. The City's School Resource Officers have observed that the number one problem in Bellevue schools remains alcohol; however, vaporizers have become much more common. There is no data to suggest this is related to legalization of marijuana, merely the progression of how this drug is used and ingested.

Data shows that the retail marijuana stores in Bellevue have not been a source for increased calls to police due to criminal activity in or near the stores. Data provided by the Police Department indicates that these stores have fewer calls than other similar retail venues in Bellevue, in particular those that include liquor sales. Information from the Washington State Liquor and Cannabis Board (LCB) shows that all three of Bellevue's retailers passed random checks for compliance with LCB's rules, including no sales of marijuana products to minors.

Data on marijuana arrests, calls for service at marijuana retail stores, and LCB compliance checks will be uploaded to the Council document library.

#### **STATUS OF CURRENT STORES AND LICENSE APPLICATIONS**

The LCB initially allocated four retail marijuana licenses for Bellevue; three retail outlets and three producer/processors are currently in operation. In December 2015, the LCB allocated an additional four licenses for retail stores for Bellevue, bringing the total number of allocated retail licenses to eight. According to the LCB, the additional four licenses are to accommodate medical marijuana demand anticipated as a result of the incorporation of medical marijuana outlets into the legal retail market regulated by the LCB. Under the new regulatory scheme for medical marijuana, existing and proposed retail license holders may apply for a medical marijuana endorsement, allowing that store to sell medical marijuana. To receive the endorsement, the applicant must meet Washington State Department of

Health (DOH) requirements, which includes having a certified medical marijuana consultant on staff. A certified consultant is required to attend and passed DOH approved certification training.

### CHANGES IN STATE LAW

At the July 6, 2015, Study Session, staff presented Council with information on three marijuana bills, the Cannabis Patient Protection Act (2SSB 5052), HB 2136 (Revenue Sharing); and HB 5121 (establishing a marijuana research license). The three new bills establish the regulatory mechanism for medical marijuana, marijuana taxation and revenue sharing, and refinements to the marijuana regulatory provisions. At the conclusion of this Study Session, staff seeks direction from Council on three issues to determine if the City should:

1. Ban marijuana cooperatives because they are allowed only in single-family land use districts?
2. Allow Marijuana Research Uses, and if so, limit their location to Light Industrial Land Use District?
3. Impose civil penalties and provide for abatement?

1. Medical Marijuana Cooperatives. Cooperatives replace collective gardens under the Cannabis Patient Protection Act (the Act). The Act allows up to four qualifying patients or their designated providers to share resources to grow medical marijuana. The cooperative must be registered with the LCB, may only be located in the domicile of one of the members, and cannot be located within one mile of a retail marijuana store. Cities are specifically authorized to prohibit cooperatives. This provision is effective on July 1, and staff seeks Council's direction on this issue so staff may prepare an interim ordinance for Council's consideration in advance of the July 1 deadline.

2. Marijuana Research Uses. The state approved a new marijuana research license. This license would allow the holder to produce, process, and possess marijuana for limited research purposes (chemical potency and composition, efficacy and safety, clinical investigations of marijuana-derived drug products, or to conduct genomic or agricultural research). As part of the application process, all research proposals must be approved by the Life Sciences Discovery Fund (LSDF). According to LSDF's website, the fund was established: "[I]n 2005 by the Governor and Washington's Legislature to foster growth of the state's life sciences sector and improve the health and economic wellbeing of its residents. . . ." If the LSDF determines the research project does not meet the stated requirements, the license application must be denied. A licensed marijuana researcher may partner with the University of Washington or Washington State University to conduct research. Marijuana grown by a researcher may only be sold to other licensed marijuana researchers. If Council were to consider allowing this use, an appropriate land use district for the use would be the Light Industrial where producers and processors are currently allowed. The City has not received any inquiries regarding this use.

3. Civil Penalties. Under the Act, jurisdictions are allowed to create and enforce civil penalties, including abatement procedures, for the growing or processing of medical marijuana and the keeping of marijuana plants beyond or otherwise not in compliance with the law. The Act provides that marijuana may only be grown where it cannot be seen or smelled. Creating and enforcing civil penalties and abatement procedures would require enforcement by the City's code enforcement division and establishment of an abatement fund. Staff seeks Council direction on whether to proceed with this issue.

### **For Council Information Only – No Action Required**

**Home Growing of Medical Marijuana.** Under the Cannabis Patient Protection Act, qualifying patients may grow up to 15 plants in their home. The exact number varies depending on the recommendation from a patient's health care professional and the patient's willingness to register in the state database, but the upper limit is 15 for a qualified patient. Persons who are both a qualified patient and acting as a designated provider for another may possess no more than 30 plants. Up to 60 plants are allowed for cooperatives. Growing or processing is not allowed if any portion of the activity can be readily seen by normal, unaided vision or readily smelled from a public place or the private property of another housing unit.

**Reduction of Separation Distances.** HB 2136 allows cities to reduce the separation distance between marijuana uses and designated sensitive uses to a distance of 100 feet, except for schools and playgrounds (which must remain at 1,000 feet). The rationale is that in some locations the 1,000 foot separation distance required under I-502 precluded locating any marijuana uses in some jurisdictions. Bellevue has not had this experience. In fact, the Planning Commission explored increasing the separation distances and determined that the preclusion of the uses would not warrant an increase in the separation distances.

**Additional Notice Requirements Allowed.** Jurisdictions may now require applicants provide additional notice regarding their intent to establish a marijuana use. The City's marijuana regulations require an applicant obtain an Administrative Conditional Use permit, which already requires public notice in three ways: (1) publication, (2) mailing notice to property owners within 500 feet of the project site, and (3) posting two signs on the site or on a location immediately adjacent to the site. These notice requirements have proven to be effective, and staff does not recommend further action.

**Consumption in a Public Place.** HB 2136 aligns the definition of public place for marijuana smoking with the definition of public place for the prohibition on tobacco smoking. Consequently, consumption of marijuana in a public place is prohibited, which means not only outdoors, but also in public facilities such as schools, elevators, public conveyances or transportation facilities, public restrooms, libraries, restaurants, bars, and taverns. RCW 70.160.020.

**Limitations on the Sale of Marijuana.** Marijuana may not be sold in vending machines or drive-throughs, and marijuana clubs are prohibited.

**Revenue Sharing.** HB 2136 provides revenue sharing with cities and counties on a per capita basis and allocates additional funding to jurisdictions that allow marijuana uses:

2015-2017: At least \$12 million is to be provided for distribution to cities and counties in the budget that is adopted for 2015-2017. Of that \$12 million, \$6 million shall be distributed in FY 2016 and \$6 million in FY 2017. In 2015-2017 counties will receive 60% and cities 40%. Distributions will be based on the taxable sales of the jurisdiction. For cities, only jurisdictions that have retail sales will receive funding.

2017-2019 and beyond: Once the State's General Fund has received \$25 million in marijuana excise tax revenue, then 30% up to a maximum of \$20 million per year will be distributed to cities and counties. Thirty percent must be distributed to counties, cities, and towns where licensed marijuana retailers are physically located. Each jurisdiction must receive a share of the

revenue distribution under this subsection based on the proportional share of the total revenues generated in the individual jurisdiction from the taxes collected from the licensed marijuana retailers physically located in each jurisdiction.

Seventy percent must be distributed to counties, cities, and towns ratably on a per capita basis. Counties must receive 60% of the distribution, which must be disbursed based on each county's total proportional population. Funds may only be distributed to jurisdictions that do not prohibit the siting of any state licensed marijuana producer, processor, or retailer.

The total share of marijuana excise tax revenues distribute to counties and cities may not exceed fifteen million dollars in fiscal years 2018 and 2019 and twenty million dollars per fiscal year thereafter.

### **REGULATORY OPTIONS FOR CONSIDERATION**

With the changes in the state marijuana laws and concerns expressed by the public, Council has expressed an interest in assessing and potentially refining the existing regulations. If refinements are desired, Council may consider refining the current regulations by utilizing one of the following options:

- Add separation requirements between residential neighborhoods (R-1 – R-30) and marijuana uses.
- Designate the number of allowed stores for each subarea
- Require applicants to conduct community meetings (similar to those required for homeless encampments)
- Increase the separation distance from sensitive sites
- Continue to monitor relevant data and assess the performance of the existing regulations.

### **ALTERNATIVES**

- A. Provide staff direction on marijuana cooperatives, medical research licenses, and civil penalties and abatement.
- B. Provide alternative direction to staff.

### **RECOMMENDATION**

Alternative A

### **ATTACHMENT(S)**

- A. Council approved Project Principles for Regulation of Recreational Marijuana.

### **AVAILABLE IN COUNCIL DOCUMENT LIBRARY**

Marijuana and alcohol incident and arrest statistics for:

Bellevue Liquor Theft 2015  
Bellevue Liquor Theft 01/2016 – 04/2016  
Marijuana Arrests 2014  
Marijuana Arrests 2015  
Calls for Service – Marijuana Retail  
WA State Liquor and Cannabis Board Statistics