

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Continued discussion on medical marijuana cooperatives, marijuana research licenses, and civil penalties and abatement actions for violating certain provisions of the Cannabis Patient Protection Act.

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POLICY ISSUES

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

DIRECTION NEEDED FROM COUNCIL

 Action

 X Discussion

 X Information

At the conclusion of the June 6 Study Session, staff will seek Council direction regarding whether marijuana research facilities are appropriate for Bellevue and whether Council desires staff to incorporate civil penalties and abatement procedures for certain violations of medical marijuana laws. Staff also seeks Council direction to return with a final ordinance for action consistent with Council direction on June 20th.

BACKGROUND/ANALYSIS

At the May 2, 2016 Study Session, staff presented information to Council regarding marijuana research licenses, medical marijuana cooperatives, and other provisions from three marijuana bills passed by the legislature in 2015. Staff also provided additional information regarding the increase in retail marijuana licenses allotted to Bellevue from four to eight, possible refinements to the existing regulations, and an update on the implementation of the City's existing marijuana regulations. At the conclusion of the Study Session, Council directed staff to prepare an ordinance banning medical marijuana cooperatives by July 1, and to return with additional information addressing questions raised by Council related to medical marijuana research licenses and the imposition of civil penalties and abatement actions for certain violations of medical marijuana laws. This memorandum addresses Council's remaining questions from the May 2 Study Session.

At the conclusion of this Study Session, staff seeks Council direction on two remaining issues to determine if the City should:

1. Allow marijuana research uses, and if so, whether to limit their location to Light Industrial Land Use District?
2. Impose civil penalties and provide for abatement for certain violations of medical marijuana laws?

Staff is scheduled to return on June 20 and present an interim ordinance for Council action, which will, at a minimum, ban medical marijuana cooperatives throughout the City consistent with Council direction. The interim ordinance will also reflect any direction staff receives from Council on June 6. An interim ordinance will provide a six-month period to study these issues and determine if permanent changes are required to Bellevue's marijuana regulations. Included as Attachment B is a draft interim ordinance.

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.

On May 9, Council adopted Ordinance No. 6258 that implemented an interim zoning control that limited the number of retail marijuana outlets to one per subarea and added a 100-foot separation requirement between residential zones (R-1 through R-30) and marijuana retail outlets. This interim control allows the City time to study whether additional changes are required to its marijuana regulations based on changes to state law and administration and operation of the City's regulations.

RESPONSES TO COUNCIL QUESTIONS

At the May 2 Study Session, staff presented Council with information on three new issues related to the 2015 state legislative session: (1) medical marijuana cooperatives; (2) marijuana research licenses; and (3) state authority to impose civil penalties and abatement actions for certain violations of the Cannabis Patient Protection Act (2SSB 5052). At the conclusion of the Study Session, Council directed staff to prepare an interim ordinance banning medical marijuana cooperatives, in part because the Act permits cooperatives only in domiciles, which is inconsistent with the Council's goal of protecting neighborhood character and prior actions prohibiting marijuana uses in residential neighborhoods. Council also asked staff to return with additional information about marijuana research licenses and civil penalties and abatement authority, which are discussed below.

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.

Council asked two questions related to marijuana research licenses. The first question is whether the City can require a marijuana researcher to be associated with either the University of Washington or Washington State University. There are 6 public universities, 34 public community and technical colleges, and many more accredited private colleges and universities in Washington. Limiting marijuana researchers to become associated with only two of those schools limits the scope and extent of possible research. Should the Council wish to have marijuana researchers affiliate with an educational institution, staff recommends that this affiliation be with one of the public universities or community and technical colleges, not just the University of Washington or Washington State University. The second question is how the state defines “marijuana researcher.” A researcher is defined as “a person licensed by the state liquor and cannabis board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.”

If Council allows medical research in Bellevue, an appropriate land use district for the use would be the Light Industrial land use district where producers and processors are currently allowed because the uses are quite similar. The City has not received any inquiries regarding this use. Staff seeks direction from Council regarding if marijuana research licenses are an appropriate use for Bellevue.

Civil Penalties and Abatement. Under the Cannabis Patient Protection Act, jurisdictions are authorized 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 Act. Although the Act allows qualifying patients or their designated providers to grow their own medical marijuana, they may only do so in a “housing unit” and are limited to 15 plants. Also, medical marijuana may only be grown where it cannot be readily seen or smelled from a public place of the private property of another housing unit. A housing unit is defined as:

[A] house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

The Washington State Liquor and Cannabis Board must adopt rules to allow medical cannabis patients to extract or separate the resin from marijuana, but only using noncombustible methods.

The Bellevue City Code contains civil penalty and abatement provisions. The provisions allow for prosecutorial discretion and escalating enforcement that begins with a request for voluntary compliance, which elevates to a Notice of Violation if the violator fails to come into compliance. Once a Notice of Violation is issued, the code provides due process through an administrative hearing if an alleged violator wants to appeal the Director’s determination that a violation has occurred or is ongoing. If a violator completes the required corrective action and the Director approves the action 48 hours before a scheduled hearing, the hearing may be canceled and the violator avoids the imposition of civil penalties. These provisions also allow for abatement and recovery of costs for the abatement.

Code Compliance administers these civil penalty and abatement provisions. Under the City's current marijuana regulations, there is no authority for Code Compliance to respond to these complaints and therefore, the Bellevue Police Department (BPD) must respond. Based on experience, Code Compliance receives calls on marijuana either viewed in or smelled from a residence. The City's marijuana regulations address only recreational marijuana uses and only zoning requirements. There are no provisions, however, that authorizes civil enforcement of the new medical marijuana provisions. Consequently, only BPD is available to enforce violations of medical marijuana.

If Council elects to impose civil penalties and abatement for certain medical marijuana violations, BPD and Code Compliance would share enforcement responsibilities. BPD would continue its role in enforcing criminal matters, such as consumption of marijuana in public or investigation of large, illegal marijuana grows, while Code Compliance would handle complaints regarding likely the growing of medical marijuana. When required, Code Compliance would elevate matters to BPD for resolution. Staff seeks Council direction on whether to proceed with this issue.

ALTERNATIVES

- A. Provide staff direction on medical research licenses and civil penalties and abatement and direct staff to return on June 20 with a final ordinance for Council action.
- B. Provide alternative direction to staff.

RECOMMENDATION

Alternative A

ATTACHMENT(S)

- A. Council approved Project Principles for Regulation of Recreational Marijuana.
- B. Draft interim Ordinance