

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6296

AN ORDINANCE of the City of Bellevue, Washington, 1) adopting interim official zoning controls prohibiting medical marijuana cooperatives, marijuana research uses; 2) imposing civil penalties and abatement actions for violations of certain provisions of Chapter 69.51A RCW for a period of six months, to be in effect while the City drafts, considers, holds hearings and adopts permanent zoning regulations; 3) setting an effective date; and 4) scheduling a hearing on the maintenance of the interim zoning ordinance.

WHEREAS, in 2011, Washington adopted E2SSB 5073 amending Chapter 69.51A RCW (the Medical Cannabis Act), which in part authorized collective gardens that allowed certain qualifying patients to produce, grow, and deliver marijuana for medical use; and

WHEREAS, the City of Bellevue adopted an interim zoning control (Ordinance No. 6058) on May 7, 2012, prohibiting medical marijuana collective gardens from all land use districts except the General Commercial, Light Industrial, Bel-Red General Commercial, and Medical Institution Land Use Districts; and

WHEREAS, Washington voters approved Initiative 502 (I-502) on November 6, 2012. In relevant part, I-502 legalized the possession of small amounts of marijuana and marijuana-related products for persons age 21 and older, and directed the Washington State Liquor Control Board (LCB) to develop and implement rules to regulate and tax recreational marijuana producers, processors, and retailers by December 31, 2013; and

WHEREAS, the LCB rules became effective on November 16, 2013, and the LCB began accepting license applications for recreational marijuana uses beginning November 18, 2013; and

WHEREAS, on December 2, 2013, the Bellevue City Council approved project principles to guide the development of permanent regulations for marijuana uses that emphasized protecting neighborhood character by prohibiting marijuana uses in residential neighborhoods; and

WHEREAS, the LCB initially allocated four recreational marijuana retail licenses for the City of Bellevue, and there are no limits on the number of recreational marijuana producer and processor licenses to be issued; and

WHEREAS, after substantial work done by its Planning Commission and taking into consideration public testimony for and against permitting recreational marijuana production, processing and retail uses, the City of Bellevue adopted permanent regulations on August 3, 2015 in Ordinance No. 6253 (which is codified in Bellevue Land Use Code Chapter 20.20.535) providing for regulation of these businesses as permitted uses in the City of Bellevue, and prohibiting all marijuana uses from single-family and multi-family land use districts (R-1 through R-30; DNTN-R; BR-R); and

WHEREAS, there are currently three recreational marijuana retail businesses operating in the City of Bellevue located in separate subareas throughout the City and the City has not received complaints that residents have been unable to procure marijuana products due to unavailability from these retail outlets; and

WHEREAS, in July 2015, Washington State Legislature 2SSB 5052 went into effect, which authorized medical marijuana cooperatives; authorized jurisdictions to adopt civil penalties and abatement procedures for violations for growing, processing and possessing more than the allowed number of medical marijuana plants or medical marijuana; renamed the Liquor Control Board the "Liquor and Cannabis Board"; and directed the LCB to develop new regulations providing for alignment of the medical cannabis and recreational marijuana sales industries; and

WHEREAS, some of the recreational marijuana retail businesses in Bellevue have applied for medical marijuana endorsements with the LCB, which, if granted, will allow these businesses to sell medical marijuana in the city; and

WHEREAS, in July 2015, Washington State Legislature SB 5121 went into effect, establishing a marijuana research license and directing the LCB to establish rules for marijuana research uses; and

WHEREAS, in July 2015, Washington State Legislature 2E2SHB 2136 went into effect authorizing jurisdictions to prohibit the siting of medical marijuana cooperatives; and

WHEREAS, the provision in 2SSB 5052 authorizing medical marijuana cooperatives (which is codified at RCW 69.51A.250) and authorizing civil penalties and abatement procedures becomes effective on July 1, 2016; and

WHEREAS, the Bellevue City Code does not contain provisions for the civil enforcement and abatement of violations for the growing and possession, of medical marijuana consistent with 2SSB 5052 (which is codified at RCW 69.51A.260); and

WHEREAS, the establishment of medical marijuana cooperatives and marijuana research uses if applicable in Bellevue may allow new uses that are incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

WHEREAS, marijuana is still classified as a schedule I controlled substance under federal law and crimes related to marijuana remain subject to prosecution under federal law; and

WHEREAS, On August 29, 2013, the United States Department of Justice, Office of the Attorney General ("DOJ"), released updated guidance regarding marijuana enforcement. The guidance reiterates that the DOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats to public safety related to marijuana crimes in "the most effective, consistent, and rational way." The guidance directs federal prosecutors to review potential marijuana-related charges on a case-by-case basis and weigh all information and evidence, including whether the operation is demonstrably in compliance with a strong and effective state regulatory system and if the conduct at issue implicates one or more of the eight stated federal enforcement priorities. The DOJ appears to not differentiate application of the guidance between medical cannabis and recreational marijuana; and

WHEREAS, despite providing the updated guidance in 2013, the DOJ continues to investigate and prosecute certain marijuana crimes under federal law, including prosecution of medical marijuana growers and dispensaries; and

WHEREAS, pursuant to RCW 36.70A.390, a public hearing must be held within 60 days of the passage of this ordinance; and

WHEREAS, establishment of interim regulations of six months in duration for banning the establishment of medical marijuana cooperatives and marijuana research uses and imposing civil penalties and abatement procedures will prevent substantial change until the land areas and the text of development standards applicable to marijuana uses is reviewed, and any needed revisions are made to city codes; now, therefore,

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

Section 1. Interim Regulation Adopted. Medical marijuana cooperatives authorized under RCW 69.51A.250 (now or as hereafter amended), are prohibited in the City of Bellevue.

Section 2. Marijuana research uses as authorized under RCW 69.50.372, now or as hereafter amended, are prohibited in the City of Bellevue.

Section 3. Civil Penalties and Abatement. Violation of RCW 69.51A.260 (now or as hereafter amended) shall constitute a civil violation as provided for in Chapter 1.18 BCC, for which a monetary penalty may be assessed and abatement may be required as provided therein. Civil enforcement under Ch. 1.18 BCC does not preclude the City from enforcement under the Penal Code, BCC Title 10.

Section 4. Duration and Scope of Interim Regulations. The interim regulations imposed by this ordinance shall become effective on the date herein, 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.

Section 5. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing on this ordinance within sixty (60) days of its adoption, or no later than August 19, 2016, so as to hear and consider public comment and testimony regarding this ordinance. Following such hearing, the City Council may adopt additional findings of fact, and may extend the interim regulations 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 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 6. Permanent Regulations. The City Council hereby directs the staff to develop for its review and adoption permanent regulations to adopt the interim regulations adopted herein, and to transmit this ordinance to the Washington State Department of Commerce as required by law.

Section 7. 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 8. Effective Date. This ordinance shall take effect and be in force five (5) days after adoption and publication.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016 and  
signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

(SEAL)

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John Stokes, Mayor

Approved as to form:

Lori M Riordan, City Attorney

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Catherine A. Drews, Assistant City Attorney

Attest:

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Kyle Stannert, City Clerk

Published \_\_\_\_\_